

LAW ENFORCEMENT ON CAMPAIGN ACTIVITIES IN PLACES OF WORSHIP
CASE STUDY OF DECISION NUMBER 56/PID.SUS/2019/PN SKH

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Abstract

This study aims to find out the basis of Law Enforcement on campaign activities in places of worship that focuses on the Sukoharjo District Court Decision Number 56/Pid.Sus/2019/PN Skh, a case related to this research regarding campaign activities in places of worship.

One of the characteristics of a democratic country is the existence of people's sovereignty within the country, and Indonesia is a country that adheres to the Pancasila Democracy system, as evidenced by the holding of General Elections, hereinafter referred to as General Elections. The implementation of elections is regulated in Law No. 7 of 2017 concerning General Elections, which also regulates election crimes, the legal basis is formed and enforced to maintain the dignity of democracy that applies in Indonesia.

This research method in writing this thesis uses a normative type of research, which is carried out by reviewing secondary data, which includes primary legal materials, secondary legal materials, and tertiary legal materials. The nature of the research is descriptive, which is to describe the basis of the prosecutor's considerations in giving demands and the judge's considerations in making decisions as well. The duty of a Prosecutor as a Public Prosecutor is to prove his indictment. Where the decisions and demands of judges and prosecutors must uphold the value of justice, and not forget the value of humanity. As well as the judge's consideration in deciding this case, seeing from the indictment that the indictment was prepared on a subsidiary basis, it became the authority of the Panel of Judges to prove the indictment of Article 521 Jo. Article 280 paragraph (1) letter h of Law No. 7 of 2017 concerning General Elections.

also pay attention to non-juridical elements.

Kata Kunci:

Penegakan Hukum, Pemilu,
Tindak Pidana Pemilu,
Jaksa, Hakim

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Abstrak

Penelitian ini bertujuan untuk mengetahui dasar Penegakan Hukum terhadap kegiatan kampanye di tempat ibadah yang memfokuskan pada Putusan Pengadilan Negeri Sukoharjo Nomor 56/Pid.Sus/2019/PN Skh, kasus terkait penelitian ini tentang kegiatan kampanye di tempat ibadah. Salah satu ciri negara demokrasi adalah dengan adanya kedaulatan rakyat di dalam negara tersebut, dan Indonesia adalah negara yang menganut sistem Demokrasi Pancasila, dibuktikan dengan diselenggarakannya Pemilihan Umum yang selanjutnya disebut dengan Pemilu. Pelaksanaan Pemilu diatur dalam Undang-Undang No.7 Tahun 2017 Tentang Pemilihan Umum, yang di dalamnya juga mengatur terkait tindak pidana Pemilu, dasar hukum tersebut dibentuk dan diberlakukan untuk menjaga marwah demokrasi yang berlaku di Indonesia. Metode Penelitian ini dalam penulisan skripsi ini menggunakan jenis penelitian normatif, yaitu dilakukan dengan cara mengkaji data sekunder, yang meliputi bahan hukum primer, bahan hukum sekunder, dan bahan hukum tersier. Sifat penelitian deskriptif, yaitu mendeskripsikan mengenai dasar pertimbangan jaksa memberikan tuntutan serta pertimbangan hakim dalam menjatuhkan putusan serta. Tugas seorang Jaksa sebagai Penuntut Umum untuk membuktikan dakwanya. Dimana putusan dan tuntutan hakim maupun jaksa harus menjunjung tinggi nilai keadilan, dan tidak melupakan nilai kemanusiaan. Serta pertimbangan hakim dalam memutuskan perkara ini melihat dari dakwaan yaitu dakwaan disusun secara subsidair maka menjadi kewenangan Majelis Hakim untuk membuktikan dakwaan Pasal 521 Jo.Pasal 280 ayat (1) huruf h Undang-Undang No.7 Tahun 2017 tentang Pemilihan Umum. Dalam memberikan tuntutan dan juga putusan, seorang jaksa serta hakim tidak hanya mempertimbangkan dari unsur yuridis, melainkan juga memperhatikan unsur non yuridis.

I. INTRODUCTION

According to the 1945 Constitution of the Republic of Indonesia, hereinafter referred to as the 1945 Constitution, Article 1 paragraph (2) that sovereignty rests with the people and is implemented according to the Constitution. Where this is normative evidence that Indonesia is a democratic country, because the sovereignty of the State of Indonesia is in the hands of the people. Democracy comes from the Greek word taken from the word "demos"

(the people) and "kratos" (government), so that democracy means the government of the people. That means the people are in control in a democracy, because in a democracy the government comes from the people, by the people and for the people, it means that community involvement is the key in making political decisions.

Indonesia is a country that adheres to a democratic system called Pancasila Democracy. One of the proofs that Indonesia adheres to a democratic system is the existence of General Elections, hereinafter referred to as General Elections. Elections in

Indonesia are based on Law no. 7 of 2017 concerning General Elections, where the mechanism and implementation procedures are contained in it.

In organizing elections, election participants are expected to be able to obey the rules, one of which is not campaigning in places of worship. According to Law No. 7 of 2017 concerning General Elections Article 1 paragraph (35), Election Campaign is carrying out the activities of Election Contestants or other parties appointed by Election Contestants..

In the Election Law Number 7 of 2017 concerning General Elections Article 280 paragraph (1) point h that:

"Executors, participants, and election campaign teams are prohibited from: using government facilities, places of worship, and places of education;"

Based on the Election Law Number 7 of 2017 concerning General Elections, Article 521 states that:

"Every election campaign implementer, participant, and/or election campaign team who intentionally violates the prohibition on the implementation of the election campaign as referred to in Article 280 paragraph (1) letter a, letter b, letter c, letter d, letter e, letter f, letter g, letter h, letter i, or letter j shall be sentenced to a maximum imprisonment of 2 (two) years and a maximum fine of Rp. 24,000,000.00 (twenty four million rupiah)."

Even though it has been banned and criminal threats are also regulated, in practice in the field, there are still many people who violate these rules. Often election participants who nominate themselves as legislative candidates do various ways without heeding the aspects of morality, especially the legal aspects.

The politicization of places of worship is a serious threat to the democracy of a nation. The involvement of religious elements in practical politics has been proven to have led to many negative things, namely discrimination, potential for division and social friction which resulted in the estrangement of kinship ties.

As was done by the candidate for legislative member of the House of Representatives of the Republic of Indonesia in the Central Java Region V from the Gerindra Party, NR Kurnia Sari, S.Pd who carried out the campaign at a place of worship, and has undergone a trial for the decision on a campaign case at a mosque in Kartasura, Sukoharjo. The judge sentenced Kurnia Sari to probation. The case of the Indonesian House of Representatives for the Java Electoral District

Central, NR Kurnia Sari is one example of the many cases of campaign implementation in places of worship. The author is interested in analyzing the cases mentioned above because there are many election cases that are difficult to prove and when election participants are unable to implement the rules and conduct of elections properly, they are certain to injure the democratic party, because the benchmark for success in the implementation of elections is not only about who wins, but also who wins. how many voters there are, but also how the process is, how the community maintains the dignity of the democratic party, and how the elected representatives of the people are worthy to represent the community in an honorable manner.

Where the main purpose of law enforcement is to create a sense of justice, legal

certainty, and benefit in society. High integrity is needed from a prosecutor who gives a claim, as well as a judge who gives a decision on a criminal act of carrying out a campaign in a place of worship. According to Roscoe Pound sees justice in the concrete results it can provide to society. He saw that the results obtained should be in the form of satisfying human needs as much as possible with the smallest sacrifice.

RESEARCH METHODS

This type of research in legal writing is in accordance with the formulation of the problem and the purpose of this study, using normative research. Illustrates that regulations are formed to meet needs in various aspects. According to Peter Mahmud Marzuki, research related to the law Legal Research is always normative.¹

This research is a descriptive juridical research, namely, legal research carried out by examining library materials or secondary data as a basic material to be researched by conducting a search on the regulations studied. Worship.²

DISCUSSION

1. Prosecutors' considerations in filing charges for criminal acts of campaign activities at places of worship.

The Prosecutor's Office is a government agency that exercises state power, especially in the field of prosecution. In the Prosecutor's Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, Article 2 paragraph (1) affirms that. "The Prosecutor's Office of the Republic of Indonesia is a government institution that exercises state power in the field of prosecution and other authorities based on the law".

According to Article 1 point 6 (b) of the Criminal Procedure Code (KUHP) explains that: "A public prosecutor is a prosecutor who is authorized by this law to carry out prosecutions and carry out judges' decisions".

The defendant has violated Article 521 in conjunction with Article 280 Paragraph (1) letter h of Law no. 7 of 2017 concerning General Elections with the following elements:³

1. The "everyone" element.
2. Elements of "executors, participants, and/or Election Campaign Teams".
3. The element of "deliberately in the campaign using facilities"

government, places of worship, and places of education".

The defendant's actions did not only socialize the election, but also carried out campaign activities in the mosque which is a place of worship. Because of the foregoing, the Prosecutor's consideration in submitting his claim is that the actions committed by the defendant have

¹ Peter Mahmud Marzuki, 2009, Legal Research, Jakarta, Kencana Prenada Media Group, p. 35

tarnished the democratic election party, which the public prosecutor stated in his claim as aggravating things. In addition, that the demands of the public prosecutor in point 2 related to the imposition of criminal penalties, namely, that the panel of judges impose

imprisonment for 5 (five) months and a fine of Rp. 10,000,000.- (ten million rupiah) subsidiary 2 (two) months of confinement is a fully considered claim, where the defendant has violated Article 521 JO Article 280 paragraph (1) letter h Law no. 7 of 2017 concerning General Elections, but the violations are as far as providing calendars, and socializing themselves in places of worship to women, totaling 30 people.³

What happened in the case related to the implementation of the campaign in places of worship with the defendant NR Kurnia Sari, S.Pd the prosecutor also had non-judicial considerations which were also written in the letter of complaint in mitigating matters, namely:

- The defendant attended the trial in an orderly manner and admitted his actions
- Defendant has a baby

Apart from the consideration that the defendant has tarnished the essence of the house of worship, the case mentioned above is the mosque. Where the function of the mosque is a place of worship and gathering of Muslims in carrying out religious activities, especially the defendant himself is also a Muslim, and this is very regrettable.⁴

Based on the existing indictment, the prosecutor has described the elements contained in the indictment with the available evidence, the prosecutor is trying to collect various kinds of legal evidence such as, witnesses including expert witnesses, letters, existing instructions with some evidence in the form of ballot paper specimens, calendars, envelopes, and photos during the campaign. With all the available evidence, the prosecutor as the public prosecutor has acted legally in proving his indictment.

The indictment in this case is an alternative charge, in this case the second indictment of the public prosecutor regarding money politics was not proven, because the envelope containing Rp. 300.000,- is considered a normal nominal to replace consumption money,

³ Results of Personal Interview with Rizsa Kusuma, SH, Prosecutor at the Sukoharjo State Attorney's Office. On Monday, November 2, 2020. At 10.00 WIB.

⁴ Results of Personal Interview with Rizsa Kusuma, SH, Prosecutor at the Sukoharjo State Attorney's Office. On Monday, November 2, 2020. At 10.00 WIB.

based on the General Election Commission Decree Number: 278/PT.024-Kpt/ 06/KPU/I/2019 which states that the amount of food, drink and transportation costs for campaign participants is at least Many are in accordance with regional cost standards (which are determined by the local government) and may not be given in the form of money, but goods. According to the author, the indictment should have been dug more deeply so that it can be proven, due to the fact that the defendant gave money instead of goods or food.

In the drafted demands, which are also contained in Decision Number 56/Pid.Sus/2019/PN Skh, it can be seen that the prosecutor did not provide a charge according to the maximum threat of punishment. Based on the data obtained by the author using the interview method, the prosecutor did not give the same demands with the maximum threat of punishment because there are several considerations, both juridical and non-juridical.

Juridical considerations are based on the facts discovered by the prosecutor in the examination, while non-juridical considerations are more subjective or the other side of the defendant, which means that the public prosecutor also pays attention to humanity and justice for the whole community. In addition, based on the results of an interview with Rizsa Kusuma as the Public Prosecutor, that the filing of a claim in this case does not provide a maximum demand because according to the prosecutor that the case can actually be resolved administratively, considering that there is a legal basis that regulates it. According to the author, a prosecutor has worked professionally by continuing to handle the case, especially seeking and presenting existing evidence.

The public prosecutor in giving a claim must also provide the severity and lightness of the demands to be submitted to the defendant considering that in practice it is often found that the victim is the trigger for a criminal act, in this case according to the author it can be seen that there is no victim or someone who is directly harmed but with this case can tarnish the dignity of democracy in Indonesia, the prosecutor must also continue to provide the fairest demands so that it does not happen again in the future. In the author's opinion, based on

the existing facts, the prosecutor in filing charges related to the crime of campaigning activities at places of worship with the defendant NR

Kurnia Sari, S.Pd, this has fulfilled the requirements and has fulfilled the requirements of the prosecutor to file a claim.

2. Judges' Considerations in Making Decisions on Criminal Acts of Campaign Activities at Places of Worship

Legal considerations are a method or method used by judges in making decisions based on judicial power and must adhere to the legal principle of *nullum delictum nulla poena sine praevia legi* (no offense, no criminal without prior regulation).

In the general provisions of Article 1 point 11 of the Criminal Procedure Code, what is meant by a judge's decision is a judge's statement pronounced in an open court session, which can be in the form of sentencing or free or free from all lawsuits in the case and according to the method regulated in this law.

The panel of judges in making a decision is not based on the Police Investigation Procedure File (BAP) or the demands of the Public Prosecutor. The Dossier of Investigation Procedures (BAP) and the demands are only for reference, so the trial is a legal fact, which shows whether or not a criminal act is proven, as well as the severity of the criminal verdict imposed on the defendant.⁵

CONCLUSION

The suggestions that the author gives in implementing law enforcement against election crimes, especially campaign activities are as follows:

1. Prosecutors as public prosecutors are expected to be active in the examination so that they can prove the indictments prepared so that there is a deterrent effect for perpetrators of election crimes, because many election violations occur but are not processed until the court.

⁵ ⁸Results of Personal Interview with Boxgi Agus Santoso, SH, Judge at the Sukoharjo District Court. On Monday, November 16, 2020. At 10.00 WIB

2. Judges in giving criminal sanctions related to election crime cases must be more severe and emphasized, so that there are no more similar cases and the public does not underestimate election violations.

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