

## Reconstruction of the Company's Liability Law to Minimize the Occurrence of Election Crimes

Sukarno<sup>1</sup>, Juajir Sumardi<sup>2</sup>, Muhadar<sup>2</sup>, Anwar Borahima<sup>2</sup>

<sup>1</sup> Doctoral Program, Hasanuddin University, Makassar, Indonesia

<sup>2</sup> Hasanuddin University, Makassar, Indonesia

**Abstract:** This study aims to create a legal construction of corporate responsibility that can minimize the occurrence of election crimes committed by companies. The method used is normative legal research intended to be able to examine norms related to the issue of corporate accountability in election crimes. The results of this study are that the maximum limit on donations from political parties and candidates participating in the election must be clearly regulated so as not to provide an opportunity for companies or individuals to deposit their money so as not to violate the provisions of the existing law, companies that provide donations must also be given a minimum limit of having carried out activities and arrangements. The cost of each component, such as advertising costs, props, and campaign costs, must be given a maximum limit and update Law Number 7 of 2017 concerning General Elections providing a maximum limit for donations from political parties and candidates participating in the election. Additionally, the condition that companies making donations have been established and operated for a minimum of one year, attaching the results of the general meeting of shareholders regarding the donation of campaign funds and adding a maximum limitation on the use of campaign funds for the manufacture of advertisements, props, and campaign costs.

**Keywords:** accountability, company, general election.

### 重構公司責任法最大限度減少選舉犯罪的發生

**摘要：**本研究旨在創建一種公司責任的法律結構，以最大限度地減少公司犯下的選舉犯罪的發生。使用的方法是規範性法律研究，旨在能夠檢查與選舉犯罪中的公司責任問題相關的規範。這項研究的結果是，必須明確規定政黨和參選候選人捐款的最高限額，以免為公司或個人提供存款的機會，以免違反現行的規定。法律規定，提供捐贈的公司也必須得到最低限度的活動和安排。每個組成部分的成本，如廣告成本、道具和競選成本，必須有一個最高限額，並更新 2017 年關於大選的第 7 號法律，規定了參加選舉的政黨和候選人的捐款的最高限額。此外，捐贈公司成立並運營至少一年的條件，附上股東大會關於捐贈競選資金的結果，並增加了競選資金用於製造的最高限制。廣告、道具和活動費用。

**关键词：**問責制，公司，換屆選舉。

## 1. Introduction

Given the importance of the position of the general election for a democratic country, it is no exaggeration to say that cleanliness, honesty and fairness in the conduct of elections will reflect the quality of democracy in the country concerned. The ability to manifest or realize an honest and fair general election

will also mean seeing the maturity of the community as a participant in the general election in democracy [1].

Campaign funds can be obtained from donations from other parties, individuals, groups, companies, or non-government legal entities [2]. The funds are legal donations. Article 13 paragraph (4) of the Election Commission Regulation of the Republic of Indonesia

Number 24 of 2018 concerning General Election Campaign Funds, that: "Campaign Funds originating from legal donations from other parties, as referred to in paragraph (1) letter c, come from the following: a) individual, b) group, and/or c) companies or non-government business entities."

The law limits the amount of individual campaign fund donations to a maximum of Rp. 2,500,000,000, while the campaign fund donations originating from groups, companies [3], or non-government business entities may not exceed Rp. 25,000,000,000. This is based on the provisions of Article 327 of Law Number 7 of 2017 concerning elections.

However, issues regarding election violations related to campaign fund donations are of various types, for example, the emergence of illegal donors who do not mention the identity of the donors, both individuals and companies [3], donating campaign funds exceeding the amount stipulated by law, violations by presidential candidate pairs and Vice President and Legislative candidates who do not report the campaign funds to be used, and so on. It is undeniable that the emergence of fraud in campaigns and elections has become an open secret, for the sake of winning and succeeding, the presidential and vice presidential candidates and legislative candidates will be carried out by their supporters. This includes providing campaign funds outside the limits of the law. Many companies or non-government business entities donate campaign funds to election participants. With the provision regarding limits on government donations and campaigns, in this case the legislators must also make provisions regarding the mechanism for accountability in case of violations in the election.

Based on the description of the background of the problem, the main problems in this research are described as follows: How is the legal construction of corporate responsibility that can minimize the occurrence of election crimes conducted by companies?

## 2. Methods

This type of research is normative legal research, which is normative legal research, the study of applicable normative law [4]. This application can be realized through legal documents. The results of the implementation will create an understanding of the realization of the implementation of the normative legal provisions studied properly or not.

## 3. Results and Discussion

### 3.1. Transparency

Transparency can be defined as the disclosure of information both in the decision-making process and in disclosing material and relevant information about the company [5].

According to the author, transparency here is

openness in providing information about the distribution and use of campaign funds from individuals, groups, or companies as well as from non-governmental legal entities.

One of the evidences that the KPU [6] is trying to encourage the implementation of accountable and transparent elections is by creating rules for campaign activities, as stated in the General Election Commission Regulation Number 34 of 2018 concerning Election Campaign Funds, namely by reporting the Initial Campaign Fund Report (LADK) [7], there are demands for transparency that high in disclosing the identity of donors who must be included in every campaign finance report. According to PKPU RI Number 24 of 2018 concerning Election Campaign Funds, article 4 states that election campaign revenues and expenditures must be managed and accounted for.

According to the report received by the KPU, the largest to campaign funds in 2019 [8] was the contribution of legislative candidates, amounting to 1.99 trillion (84%), followed by contributing political parties with a value of 315.6 billion or 13.3% of the total receipt of funds. The campaign, after those donations from individuals, amounted to 19.7 billion (1%) and other contributions [9] (commitments/bank interest) of 16.5 billion, the last one was donations from non-government enterprises of 15 billion (0.6%) and group contributions of 9.5 billion (0.4%) [2].

In Law No. 17 of 2017 concerning General Elections, the maximum limit for donations from other parties is regulated, but the law does not regulate the maximum contribution from candidates or from political parties, so that according to the author, this has the potential for manipulation in donation. Because the Election Law regulates campaign funds originating from individuals, groups, and non-government legal entities [10].

The absence of a limit on the contribution of campaign funds from political parties and legislative candidates provides a way for individuals and companies to contribute beyond the specified limit and allows legislative candidates to hunt for campaign funds anywhere. Legislative candidates can receive direct donations from individuals and companies, they then act on their behalf when the donations are deposited into political party campaign funds [11] Unfair competition will occur among legislative candidates because legislative candidates with limited funds will face legislative candidates with abundant funds.

Political parties participating in the election only pay attention to written requirements to participate in the election and ignore social responsibility and openness to the community.

The largest recipients of campaign [12] fund donations from non-governmental business entities were PKB with a contribution of 7.4 billion, followed by PSI with a value of 6.2 billion, Nasdem with a value

of 1 billion, and Golkar with a value of 395 million. Meanwhile, other political parties do not accept donations from non-government business entities.

The total expenditures of campaign funds for all political parties participating in the 2019 simultaneous elections is presented in [8].

Regulations regarding the expenditure of campaign funds by law are not clearly regulated regarding the types and forms of expenditure of campaign funds contributed by donors. The absence of rules regarding the types and forms of spending campaign funds will of course complicate the implementation of the report format system that will be made by election participants because election participants do not have a reference regarding the types and forms of spending campaign funds so that the types and forms of expenditures of these funds are fully given the responsibility to the participants of elections to administer and provide reports.

According to the author, the expenditure of campaign funds should be clearly regulated so that the accountability of these funds becomes more transparent. The legislators provide for the benefit of the principle of freedom and that is true, but restrictions on freedom must also be controlled and limited so that in its implementation there is no misuse that could lead to abuse that violates the principle of equality between existing parties.

The principle of transparency of campaign finance reports is critical given the many indications of irregularities, "as was conveyed by the Coordinator of the Political Corruption Division of Indonesia Corruption Watch (ICW)." "Abdullah Dahlan admitted that the reporting of political party campaign funds in the 2009 Legislative Elections, almost all of them dishonest because it does not match reality. According to Abdullah, the report submitted by political parties participating in the elections to the General Election Commission (KPU) for further verification by auditors showed significant discrepancies with the campaign expenditures in reality."

Clear sanction does not support this passionate desire. For example, Article 13 of the PKPU requires that political parties or coalitions of political parties proposing pairs of candidates and pairs of individual candidates must open a special account for campaign funds at a commercial bank. Administrative sanctions do not accompany the obligation to open a special account for campaign funds. As a result, the special account only contains LADK. Supposedly, a special account can reveal the party/combination of parties or candidates in conducting financial transactions in funding during the campaign.

### 3.2. Accountability

Accountability is the clarity of the functions, structures, systems and responsibilities of company organs so that their management is carried out

effectively [13].

Accountability can be called an old issue related to campaign finance management. Nevertheless, this issue has never lost its relevance because this aspect also determines the legitimacy of the results of the electoral contestation. This issue also almost always sticks out from one election to another because campaign finance reports often trigger debate, not only among candidate pairs and their supporters, but also among election campaigners. How come? Critics often point out the gap between what is reported and what is found on the ground. Transparency and accountability issues are, in fact, closely linked to election. Not only related to campaign funds, the same issue is also related to government performance.

The various references above show us that the accountability of campaign finance management in general is still not strong. Some problems that linger, among others, are the lack of transparency of candidate pairs regarding the sources of income for campaign funds and their expenditures for political expenditures [14]. The high cost of politics is a different issue; however, this also affects the management model in question. Apart from that, there are several weaknesses in the regulations, which then provide an opening for fraud in the management of campaign funds. Apart from all that, the above conditions also cannot be separated from the fact that public control itself is still weak, and this will be the focus of the next study. With various obstacles that can threaten the implementation of the campaign finance audit, the KPU can take several emergency steps. Because the audit constraint was created from legal-formal factors, the KPU must immediately seek a legal breakthrough. Two paths can be taken by the Commission. The KPU can encourage the DPR or the government to amend the Election Law on several articles that make it difficult to conduct campaign finance audits. Because the problem lies in the high gap between campaign finance reporting entities and the availability of KAP, the proposed amendments are directed primarily at making room for other auditor resources, such as BPK or BPKP, is involved in conducting audits, as well as pressure to extend the time for conducting audits of funds campaign. Indeed, this step will be politically more difficult, considering that the DPR, as a political institution of course has an interest in field conditions that do not allow the audit to be carried out properly. Apart from the amendments, the KPU could place this situation as an emergency, so that the President could be urged to make a Perpu that substantially has the same ideas as the agenda for the amendments to the Election Law.

Without definite guidelines from the KPU, reports on campaign funds for election participants will not meet the correct reporting rules and standards, making it difficult for KAP to conduct audits. It is not enough that the campaign finance reports of election

contestants do not reflect the real situation in the end. In other words, there is a possibility that campaign finance reports were manipulated by election participants. According to the author, so that accountability, namely the implementation of functions, structures and responsibilities, can run well, structurally the KPU as the institution most responsible for the implementation of general elections, must always supervise and control the implementation of elections, including supervising the distribution of campaign funds so that there are no indications in the implementation of elections. Manipulation of data also ensured that there are no contributors who do not provide a clear identity in accordance with the laws and regulations.

The author also hopes that companies or non-governmental legal entities that will contribute to campaign funds so that their companies have operational standards, because the company [15] may just be established and its shareholders are existing companies that were only established to make donations to candidates participating in the election and to supervise so that issues like the above do not happen, companies that will contribute to campaign funds must include a report of approval from the GMS (general meeting of shareholders) regarding the amount of funds to be donated to election participants and election organizers, according to the author. It is critical to avoid any donations in the name of the company.

Many ways that political parties can use when campaign funds used in the implementation of the campaign are not included in the campaign finance reports. These are the donations not given through a special account for campaign funds owned by political parties. Some donations could come from sources not regulated by law or prohibited by law or from illegal funds. Another issue that becomes a problem is that there are donors who provide cash so that these donations are not registered in a special account for campaign funds and unwritten in the book of financial transactions so that the flow of funds through cash stores is very difficult to trace the origin of the donation.

The principle of accountability forces candidates to dare to be open and transparent. Candidates will be held accountable for all activities listed in the campaign finance report. The candidate must explain to the public how much money has been received and spent, the allocation of the budget to finance what activities, and who are the donors of funds received so far.

Donations report "campaign funds were rigged by placing few donors with a not-so-large amount. Donors with large numbers tend not to be reported because to balance the balance of revenues and expenditures during the final campaign finance report, the money is also related to illicit money and hidden political spending.

The number of suspicious transactions that occurred during the campaign is evidence of the weakness of the supervisory function. In the context of its own supervision, Bawaslu has only a very narrow role where in PKPU No. 7 of 2017. Bawaslu is only given the authority to gain access to data on campaign finance reports, not on the process of fund flow.

So far, campaign finance audits have only been limited to compliance audits. The compliance audit conducted only assesses the conformity of campaign finance reporting with campaign finance laws and regulations. The audit conducted was neither investigative nor comprehensive. Auditors have no obligation to investigate and ensure that campaign finance transactions are in accordance with the activities carried out during the campaign period. This of course does not provide a complete picture of the reality of the receipts and expenditures of campaign funds.

KPU, Bawaslu, the police, and the appointed Public Accountant must go down to investigate and match the reported funds with the activities carried out by the candidate. This is important because the agencies involved in the implementation of elections have only to wait for reports. The campaign finance reports submitted are only normative and do not reflect reality. Additionally, campaign finance reports are only judged to be compliant and non-compliant, and there are no sanctions for candidates if there are inappropriate campaign finance reports.

### **3.3. Independence**

Restrictions on spending on campaign funds need to be implemented to "reduce the profits of political parties and candidates who have much money, especially for candidates who fund their campaigns with their own money. About 30% of all countries limit the amount of spending on political parties, while more than 40% limit their spending on candidates [9]. The effectiveness of spending limits depends on whether they are set at the right level to curb the profits of those with much money without hindering an inclusive and attractive campaign."

The community as the supervisor of the election actually wants to play a role in supervising the use of campaign funds. It would be impossible how the public can only monitor the LADK when the report has been officially uploaded on the KPU website and to see the process the public cannot access. Therefore, the public can only hope that the Election Supervisory Body (Bawaslu) which has given the authority and mandate by law to conduct overall supervision in accordance with the stages of the general election [16]. If you see "Article 9 of Bawaslu Regulation Number 11 of 2017 concerning Supervision of Campaign Funds for the Election of Governors, Regents, and Mayors," Bawaslu will supervise campaign funds in the following ways.

Firstly, Bawaslu must ensure that the donations

given by individuals [17], groups, and companies, as well as non-governmental legal entities, do not exceed the limits set by the applicable law. Secondly, Bawaslu must examine in detail the accumulated number of campaign fund contributions originating from individuals when reporting on campaign funds given to eligible participants. Thirdly, Bawaslu must obtain a clear tax report for the pairs of candidates who are participating in the election. Fourthly, Bawaslu must carefully compare the suitability of the size of the list of personal assets and tax reports that have been reported with the number of existing donations. Fifthly, Bawaslu must ensure that the documents provided by the donor are original. Sixthly, Bawaslu must perform a factual check of the identity of the existing donors carefully. And the Seventhly, Bawaslu must identify any potential solutions for donations originating from a single donor source.

By looking at the seven points that are the task of Bawaslu to be monitored, the public must be sure and fully hope that the reports made both on the receipt and expenditure of campaign funds are carried out transparently and accountably. If it is found that there is a violation or deviation from the campaign finance report by a candidate for the regional head, Bawaslu can forward the findings and reports that are not under its authority to the authorized agency (KPK or PPATK).

The formula for setting limits on campaign funds for legislative candidates is in a proportional way, namely, adjusting the maximum limit for campaign funds based on the characteristics of the electoral districts (dapil) of the candidates. To be able to limit this, the Regional General Election Commission (KPUD) can be given the authority to determine the maximum amount of campaign funds that can be issued by a candidate for his campaign needs in an electoral district in a certain area. For provincial areas, the Provincial KPUD may impose restrictions, for Regency/Municipal area Regency/Municipal KPUDs may impose restrictions and for candidates for DPR RI who are given the authority to limit campaign funds are the central KPU. That way, healthy competition will be created because election participants can compete at the same level or level because the maximum limit for campaign funds that is set is the same for legislative candidates competing in the same electoral district.

According to the author, the regulation of the provision of campaign funds in the law is critical to maintain independence from policy making from the candidates who become winners of the election process because by giving too many donations, it can enable the donors to control the elected officials in determining policies so that this not good in political development and in the interests of the nation's progress.

The problem of limiting campaign funds has become a problem from an election process to the next

election or from year to year and the KPU as an institution responsible for the implementation of the election tries to respond to this problem by issuing a discourse to provide restrictions on campaign funds that have not been regulated, namely, donations, coming from political parties and candidates participating in the general election but until now there has been no clarity on the arrangement of these two things.

It is the same with restrictions on campaign finance spending, the KPU has drafted a campaign finance arrangement, but until now there has been no such regulation [18]. Many disagreements between members of the DPR [15] exist regarding the discussion of this draft because many do not agree.

In the opinion of the author, this makes sense because the regulation of restrictions on campaign funds and campaign spending will impact the programs determined by each political party.

Campaign funds in the form of money must be placed in a Special Campaign Fund Account (RKDK) before being used for campaign activities. Contributions received by election participants must be accompanied by a donor statement containing the identity of the donor.

A limit on donations regulated in the 2019 Election Campaign Fund exists, namely for pairs of presidential and vice presidential candidates and political parties for the legislative election, individual donations are a maximum of IDR 2.5 billion, donations from groups are a maximum of IDR 25 billion and a maximum of IDR 25 billion for Non-Governmental Business Entities. Meanwhile, for DPD candidates, the maximum contribution from individuals is Rp. 750 million and the contribution of groups and Non-Governmental Business Entities is a maximum of Rp. 1.5 billion.

The contributions set out above can be given in the form of money, services and goods. This is also a problem in supervising donations received through cash, goods, or services because these donations are not visible in the bank account book and these donations will be difficult to trace.

In 2019, the General Elections Supervisory Body carried out direct supervision of the submission of LPSDK submitted by political parties whose supervision was focused on the following:

- Compliance with election participants reporting LPSDK reports to the Provincial KPU and Regency/Municipal KPU/KIP, on time according to the time stipulated in the legislation.

- Ensure the publication of the KPU on the LPSDK document on the official website and/or bulletin board the day after the submission of the LPSDK.

- Conduct an analysis of LPSDK and examine the sources and forms of donations received by election contestants.

The government hopes that the public can participate in supervising the use of campaign funds, but according to the table above, the public cannot participate in monitoring because reports on the use of funds can only be accessed by the public when the KPU has uploaded the report for the length of time, while at the time determined by the KPU, it is still available for the political parties that have not submitted financial reports on the use of campaign funds.

The author sees that there are weaknesses in the audit that was conducted based on all financial transactions [19] recorded through a special campaign fund account, including donations in the form of cash that must be deposited into the special account. However, in practice, there are many modes of donation without going through bank transactions, so this is more undocumented and undetected than can be detected through bank accounts.

So far, public accounting firms have only audited financial statements made by political parties and election participants so that any funds that are excluded in bank accounts cannot be traced. So, according to the author, the audit is not only limited to financial statements, namely seeing the compatibility between receipts and expenditures, but public accounting firms should be given the authority to audit all processes of incoming and outgoing funds, both through bank accounts and those deposited in cash, as well as assess the suitability of incoming and outgoing funds with campaign activities. This clearly requires a larger number of auditors and the time allotted to conduct audits becomes longer.

#### 4. Conclusion

Law Number 7 of 2017 concerning General Elections provides a maximum limit on donations from political parties and candidates participating in the election, adds the requirement that companies that make donations have been established and operate for a minimum of 1 (one) year, attach the results of the general meeting of shareholders regarding donations to campaign funds as well as adds a maximum limit on the use of campaign funds for ad creation, props and campaign costs.

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