

Conference Paper

PKPU Policy Number 20 of 2018 Concerning the Prohibition of Former Corruptors as Legislative Candidates in the 2019 General Election

B Bahrudin and H Hidayatullah

Universitas Muria Kudus, Indonesia

ORCID:B Bahrudin: <http://orcid.org/0000-0003-4738-8455>**Abstract**

This research was conducted to analyse the prohibition of former corruptors' ability to become legislative candidates based on PKPU Policy Number 20 of 2018, in terms of synchronizing the policy with higher laws and examining it from the perspective of political ethics and legal politics in eradicating corruption in Indonesia. The research method adopted was normative juridical, and the types and sources of data used were secondary data, applying data sources from primary, secondary, and tertiary legal materials. The results of data processing are presented in the descriptive analysis. The outcomes of this research indicate that the synchronization of PKPU policy law No. 20 of 2018 regarding the disallowance of ex-corruptors from becoming legislative candidates clash with higher laws and regulations, namely Law Number 7 of 2017 regarding elections in conjunction with Law Number 12 of 2011 about the formation of laws and regulations. Therefore, the conclusion of the KPU regulations has no binding legal force. The actualization of a fair and sovereign election requires all policymakers' support, especially in the enforcement and application of political ethics and the law to eliminate corruption in Indonesia.

Keywords: policy, ex-corruptors, legislative candidate, election

Corresponding Author:

B Bahrudin
bahrudin984@gmail.com

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1. Introduction

The KPU, as the organizer of the Election, has the authority to formulate the rules for the administration of elections (*electoral law*) and the implementation of elections (*electoral process*). One of the policy products in the KPU regulations is the prohibition of candidates for former corruptors as a requirement for registering candidates in the 2019 Election that raise pros and cons, which are regulated in KPU Regulation Number 20 of 2018 concerning Nomination of Members of the House of Representatives of the Republic of Indonesia (DPR RI), Provincial Region House of Representatives (DPRD



Provinsi) and the District / Municipal House of Representatives (DPRD Kabupaten / Kota), hereinafter referred to as PKPU 20/2018.

Article 4 paragraph (3) PKPU 20/2018 states that: “In the democratic and open selection of candidates as in paragraph (2), it does not include formerly convicted of drug dealers, sexual crimes against children, and corruption”.

Then Article 11 paragraph (1) letter d, which regulates the requirements for nominating candidates for legislative candidates, states: “The integrity pact signed by the leadership of a political party is according to its level using form Model B.3”.

This article’s provisions state that political parties are prohibited from nominating former corruption convicts to become candidates in the 2019 Election. PKPU is very problematic both in terms of the formulating process and the substance it regulates.

Implementing a fair election with integrity as the spirit of PKPU 20/2018 is a necessity that the candidacy of legislative members must come from clean figures and never have a track record of integrity defects. Considering the important role of the KPU in realising a democratic rule of law, the KPU in the formation of laws and regulations must be based on statutory orders and/or be attached to the duties and authorities they have (attribution).

The authority for KPU attribution is regulated in Article 12 letter c and Article 13 letter b of Law 7/2017 concerning General Elections, namely compiling and stipulating KPU regulations for each stage of the Election. However, the regulation of limiting the political rights of a citizen must be contained in the law, not regulated in statutory regulations under the law in casu PKPU 20/2018.

Indeed, PKPU is very problematic both in terms of the drafting process and the substance it regulates. In terms of the drafting process, the KPU should involve the Ministry of Law and Human Rights, the executive in drafting laws and regulations in Indonesia, to minimize overlapping regulations. In terms of substance, PKPU is against the existing regulations, namely Law 7/2017 on Elections.

From the background explanation above, this study’s problem can be formulated, which is the position of the prohibition of former corruptors from becoming legislative candidates based on PKPU Number 20 of 2018 in terms of legal synchronization with higher laws and regulations. How is the study from the perspective of political ethics and legal politics to eradicate Indonesia’s corruption on former corruptors who run for legislative members?

2. Research Method

Researchers will examine related legal substance, namely aspects of the substance of the laws and regulations related to the effectiveness of former corrupt legislative candidates in the 2019 simultaneous election in a normative juridical review. Researchers will also examine the legal structure of the preparation of PKPU 20/2018, such as related agencies. The results of the research are then analysed using the legal system theory from Lawrence Friedman's theory [1].

This type of research the researcher uses is normative juridical. Normative juridical research is legal research that examines library materials or secondary data as the basic material for research by searching for regulations and literature relating to the problem study [2].

Meanwhile, the research approach that will be carried out by researchers is the statutory approach (*statue approach*) in normative legal research. The statutory approach (*statue approach*) is an approach that is implemented by examining all laws and regulations related to the legal issue being handled [3].

The type and source of data used are secondary data from primary legal materials, secondary legal materials and tertiary legal materials. Then processed and presented in the form of descriptive analysis.

3. Results and Discussion

3.1. PKPU Juridical Review Number 20 of 2018

The KPU as one of the elections administering institutions has the authority according to the provisions stipulated in Article 22E paragraph (5) of the 1945 Constitution of the Republic of Indonesia. Based on the principle of independence, the KPU has the authority to form KPU regulations under statutory orders and/or is attached to the duties and authorities owned (attribution), which is regulated in the provisions of Article 12 letter (c) and Article 13 letter (b) of Law 7/2017 concerning General Elections. Among the KPU's authority for attribution in this article is that the KPU is tasked with compiling and stipulating KPU regulations for each Election stage.

The granting of the KPU's attribution authority to draft regulations is also regulated in Article 75 of Law 7/2017 concerning General Elections, which reads:

1. To hold Elections as regulated in this law, KPU shall establish KPU regulations and KPU decisions;

2. KPU regulations as referred to in paragraph (1) are the implementation of statutory regulations;
3. To fulfil their duties and authorities, Provincial KPU and District / Municipal KPU shall determine decisions based on KPU decisions and KPU regulations;
4. If the KPU establishes KPU Regulations relating to the implementation of the Election stages, the KPU must consult with the House of Representatives (DPR RI) and the Government through a hearing meeting.

In compiling PKPU 20/2018, KPU implements a participatory regulation amendment mechanism consistently with the following mechanisms:

1. Inventorying and compiling strategic content material issues that will be outlined in KPU regulations;
2. Discussing KPU regulations in meetings within the KPU Secretariat General and KPU plenary meetings;
3. Conducting a public test with political parties and stakeholders;
4. Conducting consultations with Commission II DPR RI and the Government cq. Ministry of Home Affairs;
5. Holding a Focus Group Discussion (FGD) with legal experts and experts in the field of general elections;
6. Compiling the final formulation and final discussion on the approval of KPU members in the KPU plenary;
7. Requesting for the Ratification of Law to the Minister of Law and Human Rights of the Republic of Indonesia.

The KPU policy in formulating and establishing PKPU 20/2018 is based on forming a sequence of applicable laws and regulations. This is by Article 7 and Article 8 of Law Number 12 of 2011 in conjunction with Article 75 of Law 7/2017 concerning General Elections.

Based on Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Laws and Regulations, the types and hierarchy of statutory regulations consist of:

1. The 1945 Constitution of the Republic of Indonesia;
2. Decree of the People's Consultative Assembly;

3. Laws / Government Regulation in Substitution of Laws;
4. Government Regulations;
5. Presidential Regulation;
6. Provincial Regulations; and
7. Regency / City Regional Regulations.

Based on Article 8 paragraph (1) and (2) Law Number 12 of 2011 concerning the Formation of Prevailing Laws, it is indicated that KPU regulations are categorized as regulations stipulated by commissions which are at the same level as state institutions established by law or the government on the order of law. Furthermore, the KPU Regulation's existence is recognized and binding legal force because it is ordered by a higher level of statutory regulations and is formed based on the law's authority to the KPU.

3.2. PKPU Synchronization Number 20 of 2018 to higher laws and regulations

Synchronization of law is carried out by seeing whether a statutory regulation in effect in a particular field of life does not conflict with one another when viewed from a vertical or hierarchical perspective of the existing laws and regulations [4].

Legal synchronisation is the adjustment and harmonisation of various laws and regulations related to existing and currently being drafted laws that govern a particular field.

This legal synchronization is intended so that the substances regulated in the statutory product do not overlap, complement each other (supplementary), are interrelated, and the lower the type of regulation, the more detailed and operational the content material will be.

Ideally, the regulations drafted by the KPU are detailed but must be related to the above regulations. If the regulations above allow former corruption convicts to run for legislative candidates, the KPU cannot revoke these political rights in an implementing regulation. Moreover, it is against the laws above and also other laws regarding human rights.

The regulation regarding the prohibition of former corruption convicts from participating in the contestation in the General Election has also been tested twice to the Supreme Court, which the ban cannot be enforced. Therefore, the disharmony between

the KPU regulations and the laws above it needs to be synchronized so that there is legal certainty.

According to [3] in understanding the vertical synchronization/hierarchy of laws and regulations, there is a *lex superior derogat legi inferiori* principle, which means that if there is a conflict between the laws and regulations which are hierarchically lower and higher, the laws and regulations that are the lower must be set aside.

With the Supreme Court Decision Number 46 P / HUM / 2018 on requests for judicial review of Article 4 paragraph (3), Article 6 paragraph (1) letter e and Article 11 paragraph (1) letter d, and attachment Model B.3 KPU Regulation Number 20 of 2018, shows that the substance of the articles regulating the prohibition of former corruptors from becoming legislative candidates in the 2019 Election is invalid or null and void. When viewed from the legal substance, the KPU regulations are not by the higher laws and regulations, namely Law 7/2017 concerning General Elections in conjunction with Law Number 12 of 2011 concerning the Formation of Legislation. Therefore, the KPU Regulations products do not have binding legal force and do not apply generally.

3.3. Overview from a political ethics perspective

According to the language, ethics comes from the Greek “ethos” which means customs or habits, inner feelings, the inclination of the heart to do actions. Meanwhile, the word politics comes from the Greek “polis” which means city-state. If interpreted in terms, this policy is then interpreted as politics used as a concept of community regulation [5].

According to [6], political ethics is illustrated by the political attitudes and behaviour that is by a regulatory framework that can form a logic of individual or public thinking to achieve the nation’s and state’s goals.

Essentially, political ethics is the public’s view of the merits of the political elite’s behaviour by using the parameters of the values contained in Pancasila. It is the values in Pancasila that must be used as ethical references in any field of life, including political life.

Political behaviour is declared to violate ethics if the behaviour is against the values of Pancasila. Candidates for legislative members who are formerly convicted of corruption can be interpreted as humans who can be potentially corrupt. If they become legislators with the opportunity to become corrupt again, this must be prevented.

Therefore, the policy formulation of KPU regulations that prevent corrupt behaviour and its perpetrators from entering the life spheres of state administration is a form of embodiment of incorporating political ethics factors against the prohibition for former

corruptors to run for legislative elections. This is an effort to overcome the bad record of state administration practices that involve corruption, collusion and nepotism, especially in the people's representative institutions in Indonesia (DPR RI, DPD, DPRD Provinsi and DPRD Kabupaten / Kota).

3.4. Overview of the legal politics of corruption eradication in Indonesia

According to [7], political law is a state policy through state agencies authorized to determine the desired regulations expected to be used to express what is contained in society and achieve what it aspires to. Soedarto also defined legal politics as an effort to create good regulations according to the circumstances and situation.

The definition of legal politics, according to [8], is related to the choice of objectives among the various possible objectives. Whereas the law must always make adjustments to the goals that the community wants to achieve, thus the law has dynamics. Political law is defined as the necessity to determine a choice regarding the goals and methods to achieve these goals.

Based on the opinions of legal experts above, there are similar characteristics in legal politics, namely basic policies that contain the direction in which the law will be taken, and are made by the authorities as to the authorized party. Law-making is carried out by selecting mutually agreed upon values developing in society and then pouring it into norms as rules of collective behaviour, which are *constituendum*. This means that it contains the ideal law or legal ideals that will be enforced in society.

The problem of corruption is part of the problem of political law. Because through political law, corruption is expected to be eradicated. The legislation is a form of legal politics (legal policy). The definition of legal policy includes making and implementing laws that can indicate the nature of the direction in which the law will be built. Political law provides a foundation for forming a more appropriate law, the situation and conditions, the culture and values that develop in a society by taking into account society's needs for the law itself [9].

Political law in Indonesia is a policy of administering the Republic of Indonesia in law that will, is currently and has been in effect, which originates from the values that apply in society to achieve the goals of the country that you aspire to. The national law's political objectives include two interrelated aspects, namely as a tool used by the government to create a national legal system to realize the greater ideals of the Indonesian nation.

The success of eradicating corruption is largely determined by the presence or absence of political support from the authorities. Political support can be manifested in various policy forms, all of which lead to space, circumstances, and situation that support the corruption eradication program to work more effectively. On the other hand, political support from the authorities can encourage public participation to eradicate corruption jointly.

Therefore, placing a political position to eradicate corruption means seeing how corrupt behaviour is a common enemy because the negative impacts and losses that it causes have endangered the state. The political system that is being implemented greatly influences the efforts to tackle corruption because corruption is not just a symptom of the law but is part of the political system related to legal politics. Political law is an attitude to choose things that develop in society, then selected according to priorities and align them with the Indonesian constitution, namely the 1945 Constitution of the Republic of Indonesia which is then outlined in legal products.

4. Conclusion

Regulating the prohibition of former corruptors from becoming legislative candidates based on PKPU 20/2018 in terms of legal synchronization with higher regulations does not follow the principle of *Lex superiori derogate legi inferiori*.

With the Supreme Court Decision Number 46 P / HUM / 2018 on requests for judicial review of Article 4 paragraph (3), Article 6 paragraph (1) letter e and Article 11 paragraph (1) letter d, and attachment Model B.3 KPU Regulation Number 20 of 2018, shows that the substance of the articles regulating the prohibition of former corruptors from becoming candidates for the 2019 Election is invalid or null and void.

Ethics plays a balancing role in the middle of the process of political dynamics. In terms of human behaviour, ethics serves as a preventive fence against good and bad behaviour before reaching the right and wrong provisions, which is the function of the law's behaviour fence. That way, human deviant behaviour must pass through an ethical system that functions as a correction and does not need to enter into legal mechanisms in resolving these deviations in human behaviour.

Corruption is an extraordinary crime that damages and threatens the foundations of the nation's life. The problem of corruption is part of the political and legal issues and the political configuration when it affects the birth of the legal product.

All nation elements must support efforts in realizing the implementation of a clean and sovereign Election. The spirit of running a country that is free from corruption, collusion and nepotism can be implemented, one of which is through legal product instruments.

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