

A LEGAL ANALYSIS OF THE ACCOUNTABILITY OF BLACK CHAMP CAMPAIGNERS IN THE GENERAL ELECTION THROUGH SOCIAL MEDIA

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ABSTRACT

Political campaign methods have developed to the point of utilizing social media. The utilization of Instagram social media in political campaigns is often misused to spread black campaigns. Criminal liability can depend on the form of the black campaign crime committed. If the perpetrator carries out a black campaign in the form of defamation or insult, the maximum penalty that can be given is 4 (four) years and/or a maximum fine of Rp750,000,000.00 (seven hundred and fifty million rupiah) and if in the form of spreading information with the aim of causing hatred towards political opponents (individuals) the criminal sanction can be imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah).

1. Introduction

A democratic state is characterized by a system of government that aims to establish popular sovereignty, signifying that supreme power and sovereignty are fully held by the people, and the government subsequently exercises its rights and authority on their behalf. All citizens have equal rights and the opportunity to actively contribute or participate in decision-making processes, which ultimately impact the lives of many.

A democratic form of government can be realized, among other things, through the existence of political parties. The existence of political parties subsequently gave rise to what has become a general rule in the form of elections for the president and vice president, regional heads at the district/city level, and representatives of the people. This is known as a general election (pemilu) in a democratic system, and many people even refer to it as a democratic celebration. Each election participant has a campaign strategy to promote a self-image that can create a positive perception among the public about which party will be considered superior in the eyes of the public as voters. In practice, campaign strategies are often carried out by justifying various means, so that in the process, the campaign is perceived as a vehicle for mutually undermining



election participants, while simultaneously striving to build a positive self-image as a form of self-promotion to convince voters by disparaging other voters.

Campaign strategies are always accompanied by the emergence of the phenomenon of smear campaigns, commonly known as black campaigns. Black campaigns are carried out with the aim of discrediting, harming, or attacking political opponents. They are conducted in a malicious manner outside of political ethics, such as by contradicting existing facts, obtaining information from dubious sources, and leading to slander and slander. Black campaigns are seen as a normal practice to convince voters. This form of campaigning is certainly detrimental to election participants in terms of their dignity, reputation, or honor, which must be maintained during the campaign period, and to the public as the recipients of information.

Black campaigns can also be conducted using more sophisticated media, reflecting on advances in technology and information. Modern developments have demanded that election participants be more creative in presenting their visions and missions to the public. This is why social media has begun to be used in politics, particularly in campaigns.

The use of social media in politics is certainly justified. It is considered to provide convenience and is highly effective for disseminating information. It also serves as a source of information, allowing information to spread widely and freely, eliciting a quick and direct response. Social media is easily accessible to anyone, anytime, and anywhere, making social media campaigns inexpensive and appealing to all groups. Furthermore, social media can provide a platform for dialogue about differing opinions, often related to support or rejection of certain ideas. The presence of social media has had an impact, with public politics via the internet increasing rapidly.

The use of social media, especially Instagram, for campaigning is often misused by many irresponsible individuals who easily insert black campaigns and simultaneously escalate tensions between election participants.

2. Research Method

The type of research used in this study is normative legal research, also known as doctrinal legal research. Law is conceptualized as what is written in legislation (law on books), and research into legal systematics can be conducted within specific legislation or written law.

This research is descriptive and analytical, meaning it merely describes the circumstances of an object or event without the intention of drawing generally applicable conclusions. This legal research is also referred to as library research





or document study because it primarily utilizes secondary data available in libraries.

The data collected through the library study were analyzed using qualitative analysis. Qualitative analysis is based on the paradigm of the dynamic relationship between theories, concepts, and data, which constitutes feedback or a constant modification of theories and concepts based on the collected data and relates to black campaigning on social media as an election crime.

3. Results And Discussion

Results

Election activities are inseparable from an activity commonly known as a campaign. Both elections and campaigns can be likened to two sides of the same coin, inseparable from each other. Article 1, number 35 of Law Number 7 of 2017 concerning General Elections defines an election campaign as an activity carried out by election participants or other parties appointed by election participants, namely political parties consisting of organized groups of people or individual election participants. The content of the campaign is intended to convince voters by conveying and offering a vision, mission, and programs to be implemented and pursued, and/or by projecting the election participant's self-image as a form of promotion.

Campaigns are also known as a component of political communication. Political communication, in this case, is the means and vehicle prepared as an intermediary for conveying political messages. Political communication is intended as an effort to influence the public in an organized and continuous manner over a predetermined period.

In fact, those to be elected, or what are generally referred to as election participants, may have equal qualities, that is, equal in their strengths or even weaknesses, both in terms of public perception of their image and in terms of their vision, mission, and future work program plans. To gain support and win the election, each election participant has a different strategy or plan for their campaign.

Each election participant's campaign strategy can be fully utilized by creating and promoting a self-image that can convey a positive perception to the public, indicating which candidate will be considered superior in the eyes of the public as voters. Campaign strategy can be defined as comprehensive planning by election participants, whether individually or by a group of people or political organizations, that is defined as a certainty of the actions they will undertake at that time and within a specific timeframe. The goal is none other than to gain

political support from the public to achieve future political goals. In reality, campaign strategies are often carried out by justifying various means, so that in the process, the campaign is seen as a vehicle for mutually undermining election participants while simultaneously striving to build a positive self-image as a form of self-promotion to convince voters.

The misuse of social media in the form of black campaigns is certain to have negative effects, including the emergence of conflict and various disadvantages in the election process. Although political figures participating in the election have agreed not to spread black campaigns, in reality, black campaigns are still rampant, planned and carried out by certain individuals under the guise of anonymous (unnamed) accounts, allegedly volunteers for the political figures in question.

Political campaigns using social media methods are limited to a maximum of 10 (ten) accounts for each type of social media platform. This is regulated in Article 35 paragraph (2) of General Election Commission Regulation Number 28 of 2018 concerning General Election Campaigns. This applies to all social media platforms such as Instagram, Facebook, Twitter, YouTube, WhatsApp, Line, and others.

Furthermore, according to Article 36 of General Election Commission Regulation Number 28 of 2018 concerning General Election Campaigns, there are still other procedures that must be fulfilled regarding social media accounts to be used for campaigning. The social media accounts in question must be officially registered by the campaign organizer no later than 1 (one) day before the campaign period begins.

Social media accounts that have been officially registered and are ready to be used as a medium for political campaigning must contain at least material regarding the superior vision and mission created, as well as the planned programs to be implemented by the election participants. This content can be presented in the form of written text, audio, or images, or a combination of the three, whether narrative, graphic, character-based, interactive or non-interactive, and can be received through the recipient's device. This is expressly regulated in Article 35 paragraphs (3) and (4) of General Election Commission Regulation Number 28 of 2018 concerning General Election Campaigns.

4. Discussion

In general, the term "election crime" is synonymous with or part of the criminal offenses in the criminal law regime. Another term for a crime is "criminal act" or "delik," which in Dutch is called strafbaar feit. When associated with elections, it

can be termed "election crime" or "election crime." Using the term "delik" or "election crime" becomes more specific, specifically referring only to criminal acts that occur during the election process. The term "election crime" is used to refer to crimes that occur during or are related to the implementation of election stages.

Campaign activities are regulated by the General Elections Commission (KPU), including campaign procedures. However, among other things, during the campaign process, candidate pairs must avoid hate speech, slander, and hoaxes. Candidate pairs or their campaign teams are prohibited from engaging in black campaigning during the campaign period. Black campaigning is not recognized in Law Number 7 of 2017 concerning General Elections, but if we refer to Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law, as the same law that regulates elections, it is expressly stated that "conducting a campaign in the form of incitement, slander, or inciting political parties, individuals, and/or community groups against each other constitutes a form of black campaign" (Explanation of Article 69 letter c of Law No. 8 of 2015).

Although the term black campaign is not recognized in Law Number 7 of 2017 concerning General Elections, based on the prohibited matters in that law, what can be equated with black campaigning under Law Number 8 of 2015 is incitement and inciting individuals or communities against each other (letter d). However, Law No. Law No. 7 of 2017 does not categorize these actions as election crimes. Article 280 paragraph (4) of the Election Law states, "Violations of the prohibitions in paragraph (1) letters c, f, g, i, and j, and paragraph (2) constitute election crimes." Letter d is not included in the category of election crimes, based on the wording of paragraph (4).

In fact, many violations are found during campaigning. Violations of prohibited campaigning practices, such as insulting individuals or other election participants based on ethnicity, religion, race, and intergroup relations (SARA), as well as inciting and pitting individuals or the public against each other, are considered smear campaigns in various media and circles.

Smear campaigns are considered criminal acts because they have significant impacts, namely, they can tarnish the reputation of other candidates, making them unpopular with the public and damaging the quality of democracy in Indonesia. Smear campaigns frequently occur on social media, and the use of social media for smear campaign activities, with content containing insults,



slander, and fake news, constitutes a cybercrime with the modus operandi of illegal content.

The real-time nature of social media and its unrestricted use means it is not surprising that smear campaigns are quite widespread. This situation is exacerbated by people's tendency to believe easily without verifying sources and readily sharing posts they read on social media. This is undoubtedly very disturbing, as circulating information can no longer be controlled and often triggers arguments, riots, or even hate speech and racial and ethnic (SARA) incidents.

Black campaigns, before the advent of social media, involved sharing or disseminating information through brochures, pamphlets, articles, banners, and other means containing false news, slander, and/or negative information directed at a particular candidate.

The phenomenon of black campaigns, commonly known as "black campaigns," aims to denigrate, harm, or attack political opponents. It is conducted in a malicious manner outside of political ethics, namely by distorting existing facts, obtaining information from questionable sources, and leading to slander and slander. Black campaigns are often considered a normal practice to convince voters.

With the advancement of technology and technology, election crimes have become increasingly diverse, including black campaigns. With the advent of the internet and social media, black campaigners no longer only conduct their activities directly or through mass/print media, but also frequently engage in black campaigns through social media.

These black campaigns are carried out by individuals using banners, face-to-face meetings, flyers, and through online platforms such as social media (Facebook, Twitter, Instagram, etc.) or messaging apps (WhatsApp, Messenger, etc.). A common example of a black campaign is hiring buzzers to spread fake news (hoaxes) about opposing candidates during regional elections. Social media is changing the way people view social life.

Furthermore, black campaigns also aim to assassinate political opponents by creating negative opinions about them, as mentioned above, and simultaneously serve as a plan to reduce their chances of being elected as political opponents, thus eliminating their rivals.

In practice, black campaigns have long been used in political campaigns. However, when it first emerged, black campaigns were still known as smear campaigns, meaning dirty campaigns, namely campaigns conducted in dirty,





bad, or improper ways. Later, smear campaigns became more commonly known as black campaigns, as they are today.

The practice of black campaigns has essentially been around for a long time. Initially, black campaigns involved spreading gossip, issues, or rumors through word of mouth, thus becoming known as whispering campaigns, meaning campaigns through word of mouth. Over time, black campaigns have evolved beyond word of mouth, but have also expanded to include other media, such as print and electronic media, which still dominate today. Later, they have expanded even further, including the use of more sophisticated technology, such as real-time social media, which has unlimited use.

Campaigns have undergone several changes in the means used, resulting in slightly different methods for conveying visions, missions, work programs, and everything related to election participants. This also applies to black campaigns. In the past, black campaigns were conducted through the distribution or dissemination of information through print media such as pamphlets, photocopied articles, banners, and other media, containing negative information about the opposing party to the general public. This dissemination was carried out by campaign teams and supporters of the relevant election participants.

Black campaigns are now conducted using more sophisticated media, reflecting advances in technology and information. Modern developments have demanded that election participants be more creative in presenting their visions and missions to the public, thus leading to the use of social media in the political sphere, particularly in campaigns.

The most frequently used social media platforms for campaigning include Facebook, Instagram, LinkedIn, Twitter, TikTok, and Telegram. However, the use of social media in campaigning is often misused by many irresponsible individuals who easily insert black campaigns and simultaneously escalate tensions between election participants.

Social media has enormous potential to spread false information and significantly influence public decision-making. The purpose of spreading these false information is none other than a plan to undermine political opponents, which in turn will influence the public to believe the issue. While black campaigning isn't always guaranteed to be an effective strategy for boosting votes, it is a well-established form of unrest that can cause public unrest and anxiety. The potential impact of social media should not be underestimated, necessitating the establishment of specific, strict regulations to address black campaigning conducted on social media in general.





Negative campaigning is not prohibited and should not be avoided, as the intended negative elements depend on individual perceptions. Negative elements may be perceived by the election participants themselves, their appointed campaign implementers, and their campaign teams. However, voters may not perceive these negative elements as positive, as they perceive them as evidenced by the presentation of truthfully and reliably obtained facts.

5. Conclusion

The forms of black campaign crimes in elections include incitement, slander, and sowing discord. If the platform used to commit a black campaign is social media, it can also include insults, defamation, and the dissemination of information intended to incite hatred toward political opponents.

The elements of a black campaign crime on social media include intentionally attacking a person's honor or reputation by making accusations intended to make the accusations public through written or graphic forms and broadcasting, displaying, or posting them to the public. Insults and defamation committed through social media must include the intentional and unauthorized distribution, transmission, and access of electronic information and/or documents containing insults and/or defamation.

The criminal liability of perpetrators of black campaigns (black campaign) on social media can be charged with Law Number 7 of 2017 concerning General Elections and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. Criminal liability can depend on the form of the black campaign crime committed. If the perpetrator carries out a black campaign in the form of defamation or insult, the amount of criminal punishment that can be given is a maximum of 4 (four) years and / or a maximum fine of Rp. 750,000,000.00 (seven hundred and fifty million rupiah) and if in the form of spreading information with the aim of causing hatred towards political opponents (individuals) the criminal sanction can be a maximum of 6 (six) years imprisonment and / or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

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