

Reform of the Political Party Law and the Election Law Related to the Criminal Responsibility of Political Parties in Indonesia

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Abstract: - This study tries to analyze the criminal liability of political parties in the Political Party Law and the Election Law in Indonesia, as well as conceptualize the renewal of the criminal liability of political parties. This research includes normative legal research, with the type of data used in this study is qualitative data. The results of the study indicate that political parties are corporations that can and are capable of being held criminally responsible, as seen in Law Number 2 of 2008 as amended by Law Number 2 of 2011 concerning Political Parties. Criminal liability can be further regulated by imposing it on individual legal subjects. As a conceptualization of the renewal of the criminal responsibility of political parties, it is necessary to define the affirmation of political parties as the subject of criminal acts, sanctions and types of criminal acts, special punishment rules, and reasons for the elimination of a prosecution.

Key-Words: - criminal liability, political parties, elections, Indonesia

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1 Introduction

Political parties as legal entities are regulated in Law No. 2 of 2011 Article 3 stating that political parties must be registered with the Ministry to become legal entities". Political parties are born as bodies created by law (*rechtspersoon*, legal entities). It is also contained in the Law No. 7 of 2017 concerning General Elections, article 173 stating that political parties can become election participants after fulfilling the requirements of legal entity status in accordance with the Law on Political Parties. However, the Election Law does not specify when, in what ways, and how to stipulate and impose criminal penalties on corporations. Thus, the Election Law does not adhere to a corporate criminal liability system. In reality, it is possible that corporations have a role in committing election crimes [1,2]. Therefore, it is also necessary to consider establishing a corporate criminal responsibility system against the Election Law [3-5]. Legal politics in the field of criminal law is the politics of criminal law is holding elections to achieve the best results of criminal legislation in the sense of fulfilling the requirements of justice and efficiency" and "efforts to realize criminal laws and regulations that are in accordance with the circumstances and situations at a time and for the future [6].

Based on the theory of legal reality which provides an understanding of the capacity and existence of a legal entity as a legal subject created by law, a political party is called a corporation, can perform legal actions because the existing provisions state it as a legal subject and impose an obligation which is then followed by giving rights to legal entities, so that they later become independent legal subjects/known as *person standi in judicio* [7-9]. Political parties have never been held accountable for violations committed by legislative candidates who commit election crimes, because the law does not regulate the party's responsibility for criminal acts committed by legislative candidates [10]. The phenomenon of legislation in Indonesia, corporations or legal entities can only be accounted for in criminal law with the parameters of (1) the unlawful act is committed by a person who has an employment relationship or other relationship with a legal entity/corporation and (2) the unlawful act is committed in the environment/atmosphere of a legal entity/corporation as seen from the articles of association of the legal entity/corporation [11]. This study attempts to analyze the criminal liability of political parties in the Political Party Law; criminal liability of political parties in the Election Law; and renewal of the criminal liability of political parties in Indonesia.

2 Literature Review

A political party is a corporation or legal person that has a different status and arrangement from other forms of legal entity [9]. The status of a legal entity, either as a private association or specifically as a partial legal order is granted by total legal order of state [12]. Political parties exist legally when they receive status as legal entities either because of the way they are created or after going through certain legal procedures. Political parties are corporations that can and are capable of being held criminally responsible, as can be seen in Law No. 2 of 2008 as amended by Law No. 2 of 2011 concerning Political Parties. Political parties as legal entities are regulated in Law No. 2 of 2011 Article 3, as well as Law No. 7 of 2017 concerning General Elections.

Reviewing criminal liability must be distinguished from criminal acts. A criminal act only refers to the prohibition and threat of action with a crime [13]. Whether the person who commits the act is then also sentenced to be punished, as has been threatened, this depends on the question of whether in committing this act he has made a mistake. Because the principle of accountability in criminal law is: not being punished if there is no mistake (*geen straf zonder schuld; actus non facit reum nisi mens sit rea*). Criminal acts only refer to the nature of actions that are prohibited by law, and criminal liability (mistakes) refers to people who violate them and can be punished as threatened [13].

Examining the relevance of the arrangements in the “general provisions” in the Election Law, that the words “election contestants” and the words “political parties”, if confirmed in the arrangement of “election crimes” Chapter II “Election Criminal Provisions” then there is a setting for “Election Participants” but there is no “Political Party” setting. The regulation has implications for political parties as the subject of criminal acts that should be criminally accountable, by referring to or using the doctrine of corporate criminal liability. But on the contrary, that the subject of the criminal act “person” is written textually which has implications for criminal liability. In relation to the rules and guidelines for criminal punishment/corporate criminal liability, that the general sentencing rules in the Criminal Code are oriented to “people” (natural persons), not aimed at “corporations”. Therefore, if a special law mentions the existence of a criminal act subject in the form of a corporation, then it should also be accompanied by special rules for punishment for corporations, which can include (a) affirmation of the corporation as the subject of a

criminal act; (b) determination of criminal sanctions/actions for corporations; (c) determination of who can be accounted for; (d) determining when the corporation/management can be accounted for; (e) determination of special criminal rules for corporations (among others, special conditional criminal rules for corporations); and, (f) determination of the reasons for eliminating prosecution or criminal prosecution for corporations [14].

Law No. 2 of 2011 concerning Amendments to Law No. 2 of 2008 concerning Political Parties in Article 1 letter (a) Political parties are organizations that are national in nature and are formed by a group of Indonesian citizens voluntarily on the basis of the same will and ideals to fight for and defend the political interests of members, society, nation and state, as well as maintain the integrity of the Unitary State based on Pancasila and the 1945 Constitution [15, 16]. Political parties as the subject of criminal acts are : a. the actions of the management when committing a criminal act are not in their personal capacity but in relation to carrying out their functions and authorities (which are regulated in the Articles of Association or by laws of Political Parties); b. the actions of the management do not have to be in the form of committing prohibited acts (commission offenses) but also acts that violate legal obligations (omission offenses); c. criminal acts committed by corporations must be against the law. The unlawful nature of corporate criminal acts is not only obedient to the contents of the prohibition of the law, but it can also be seen that the act is a continuation of the policy or way of managing the corporation, which is in this case is political party [17].

Law No. 2 of 2008 Article 47 stated that (1) violation of the provisions as referred to in Article 2, Article 3, Article 9 paragraph (1), and Article 40 paragraph (1) shall be subject to administrative sanctions in the form of refusal to register a political party as a legal entity by the Ministry; Violation of the provisions as referred to in Article 13 letter h is subject to administrative sanctions in the form of a warning by the government; Violation of the provisions as referred to in Article 13 letter I shall be subject to administrative sanctions in the form of termination of assistance to the State Revenue and Expenditure Budget/Regional Revenue and Expenditure Budget until the report is received by the Government in the relevant fiscal year; Violation of the provisions as referred to in Article 13 letter j shall be subject to administrative sanctions in the form of a warning by the General Elections Commission; Violation of the provisions

as referred to in Article 40 paragraph (3) letter e shall be subject to administrative sanctions imposed by the agency/institution tasked with maintaining the honor and dignity of the Political Party and its members. Article 48: (1) A Political Party that already has a legal entity violating the provisions of Article 40 paragraph (1) shall be subject to administrative sanctions in the form of suspension of management by the District Court; Violation of the provisions as referred to in Article 40 paragraph (2) is subject to administrative sanctions in the form of temporary suspension of the Political Party concerned in accordance with its level by the District Court for a maximum of 1 (one) year; A Political Party which has been temporarily suspended as referred to in paragraph (2) and commits another violation of the provisions as referred to in Article 40 paragraph (2) shall be dissolved by a Constitutional Court Decision; In the event of a violation of the provisions as referred to in Article 40 paragraph (3) letter a, the management of the Political Party concerned shall be sentenced to a maximum imprisonment of 2 (two) years and a fine of 2 (two) times the amount of funds received; In the event of a violation of the provisions as referred to in Article 40 paragraph (3) letter b, letter c, and letter d, the administrator of the Political Party concerned shall be sentenced to imprisonment for a maximum of 1 (one) year and a fine of 2 (two) times the maximum amount. the amount of funds received; Violation of the provisions as referred to in Article 40 paragraph (4) is subject to administrative sanctions in the form of temporary suspension of the management of the Political Party concerned in accordance with its level by the district court and its assets and shares are confiscated for the state; Violation of the provisions as referred to in article 40 paragraph (5) is subject to sanctions for dissolution of the Political Party by the Constitutional Court. Article 49: (1) Any person or company and/or business entity that contributes to a Political Party exceeding the provisions as referred to in Article 35 paragraph (1) letter b and letter c shall be punished with imprisonment for a maximum of 6 (six) months and a fine of 2 (two) months) times the amount of funds donated; Political party administrators who receive donations from individuals and/or companies/business entities that exceed the provisions as referred to in Article 35 paragraph (1) letter b and letter c shall be subject to imprisonment for a maximum of 1 (one) year and a fine of one year Contributions received by political parties from individuals and/or companies/business entities exceeding the limits as referred to in Article 35 paragraph (1) letter b and

letter c shall be confiscated for the state. Article 50: Political party administrators who use their political parties to carry out the activities as referred to in Article 40 paragraph (5) shall be prosecuted under Law No. 27 of 1999 concerning Amendments to the Criminal Code relating to Crimes against State Security in Article 107 letter c, letter c d, or letter e, and the Political Party may be dissolved.

Law No 2 of 2011 Article 47: (1) Violation of the provisions as referred to in Article 2, Article 3, Article 9 paragraph (1), and Article 40 paragraph (1) shall be subject to administrative sanctions in the form of refusal to register a Political Party as a legal entity by the Ministry. There are no revisions to Article 47 paragraphs (2), (3), (4), and (5).

Criminal liability in the 2015 of the Draft of Criminal Code Article 37: "Criminal responsibility is the passing of objective and subjective reproaches on a criminal act and subjectively to a person who meets the requirements to be punished for his actions. Elucidation in the 2015 RKUHP Article 37: "criminal acts do not stand alone, they only mean when there is criminal responsibility. This means that anyone who commits a crime does not automatically have to be punished. In order to be convicted, there must be criminal liability. 2019 Draft of Criminal Code Article 45 paragraph (1) stated that corporations are the subject of criminal acts". The fundamental general principle in criminal liability is the principle of "no crime without error" (culpability principle). This principle (which is the principle of humanity) is a partner of the Legality Principle (which is a social principle) and is also the embodiment of the idea of mono-dualistic balance [18].

3 Research Methods

This research is categorized as normative legal research, namely by reviewing and analyzing library materials or secondary data which includes research on legal principles, legal systematics, legal synchronization, legal history, and legal comparisons [19]. The normative research approach or known as the doctrinal approach is that as long as this law is said to be a norm, whether it has been formed and has a positive form (*ius constitutum*), or whether it has not been positive (*ius constituendum*), so far, this legal research must also be considered as research. Normative [20].

The type of qualitative data consists of complementary primary and secondary data. Sources of research in the form of primary legal materials and secondary law [21]. The data are classified based on the problems analyzed, through

the legal sources of the 1945 Constitution of the Republic of Indonesia; Criminal Code; Law No. 2 of 2008; Law No. 2 of 2011; Law No. 7 of 2017; 2015 Draft of Criminal Code; The 2019 Draft of Criminal Code is analyzed to link the existence of the regulation and its implementation.

4 Criminal Accountability of Political Parties in the Political Party Law

Law No. 7 of 2017, regulates the subject of criminal acts in the form of *rechtspersoon*, namely: campaign implementers, election participants, campaign teams (including political parties) the arrangements are in several articles.

Table 1. The Criminal System in the Election Law

No	Article	Criminal System (Criminal Law System)		
		Criminal act	Error (PJP)	Criminal
1	496	Providing incorrect information in the election campaign finance report	Election contestants; deliberately	Imprisonment for a maximum of 1 (one) year and a fine of a maximum of IDR 12,000,000.00 (twelve million rupiahs)
2	521	Violating the prohibition on the implementation of election campaigns	Implementers, participants, and/or campaign teams; deliberately	Imprisonment for a maximum of 2 (two) years and a fine of not more than IDR 24,000,000.00 (twenty-four million rupiah)
3	523 Paragraph (1)	Promising or giving money or other materials in return for direct or indirect election campaign participants	Implementers, participants, and/or campaign teams; deliberately	Imprisonment for a maximum of 2 (two) years and a fine of not more than IDR 24,000,000.00 (twenty-four million rupiah)
4	523 Paragraph (2)	During the quiet period, promise or give money or other material rewards to voters directly or indirectly	Implementers, participants, and/or campaign teams; deliberately	Imprisonment for a maximum of 4 (four) years and a fine of a maximum of IDR 48,000,000.00 (forty-eight million rupiah)
5	525 Paragraph (2)	Using excess donations, not reporting excess donations to KPU, and/or not submitting excess donations to the state treasury no later than 14 (fourteen) days after the election campaign period ends	Election contestants; ---	Imprisonment for a maximum of 2 (two) years and a fine of not more than IDR 500,000,000.00 (five hundred million rupiah)
6	526 Paragraph (2)	Using excess donations, not reporting excess donations to KPU, and/or not submitting excess donations to the state treasury no later than 14 (fourteen) days after the election campaign period ends	Election contestants; ---	Imprisonment for a maximum of 2 (two) years and a fine of not more than IDR 500,000,000.00 (five hundred million rupiah)
7	527	Proven to receive donations to election campaign funds	Election contestants; ---	Imprisonment for a maximum of 3 (three) years and a fine of not more than IDR 36,000,000.00 (thirty-six million rupiah)
8	528 Paragraph (1)	Receiving donations...and not reporting to the KPU and/or not depositing them into the state treasury	Election contestants; ---	Imprisonment for a maximum of 4 (four) years and a fine of 3 (three) times the amount of donations received

Regulations, one of which includes political parties in the Election Law, are also found in Book One “General Provisions” Chapter I “Understanding Terms”, Article 1 point 27: “Election contestants are political parties for the election of DPR members, Provincial DPRD members, Regency/Municipal DPRD members. cities, individuals for the election of DPD members, and pairs of candidates proposed by political parties or a combination of political parties for the election of president and vice president.”

5 Reform of the Criminal Liability of Political Parties in Indonesia

The criminal liability of political parties contained in the Law on Political Parties has the following

weaknesses and shortcomings such as criminal acts related to the problem of funding political parties [22]. The Law on Political Parties imposes criminal liability on their administrators if they receive donations exceeding the amount determined by law. Meanwhile, political parties that receive benefits from these funds are not held criminally responsible, and as legal subjects who are equated with humans and have rights and obligations, political parties can also take legal actions and can also violate the law [23-25].

The criminal liability of political parties contained in the Election Law has weaknesses and shortcomings such as criminal liability that separates the legal subjects of “election participants” (including political parties) from the legal subjects of “people” related to the election campaign finance

report, the criminal consequences are more severe for “people” than for “election participants”; The legal subject of “campaign implementers” (including political parties) during the campaign period and during the quiet period who commits a crime, is subject to criminal sanctions [26]. The period of voting day that is regulated is the legal subject “person” who commits a crime, is threatened with a crime; c. does not separate legal subjects “electoral participants” between political parties and people, who do not report excess donations, are subject to criminal sanctions; d. imposes criminal liability on legal subjects “leaders of political parties or coalition of political party leaders” who deliberately withdraw their candidates and/or pairs of candidates. Legal subjects “political parties” are not given the burden of criminal responsibility for these crimes.

Comparison with other countries regarding criminal liability of legal entities, corporations, for example Australia stated that, “the nature of corporate liability in criminal cases will be very depending on the type of offense. In cases where the relevant offense is contained within or subject to the *Criminal Code 1995* (Cth), then Part 2.5 of the *Criminal Code* sets out the nature of corporate criminal liability. The code provides for the following: a. The Code applies to bodies corporate in the same way that it applies to individuals, but with modifications as are set out in the code and made necessary by the fact that the criminal liability is being imposed on a company rather than an individual [27-29].

Reforming the criminal liability of political parties in Indonesia, including corporations, can include affirmation of political parties, corporations, and the like as subjects of criminal acts: determination of criminal sanctions/actions; determination of who can be accounted for; determination of when it can be accounted for; determination of special punishment rules; f. determination of the reasons for eliminating prosecution or criminal offences [14]. The criminal law reform adheres to three main issues in criminal law, namely: first, the prohibited acts here involve determining what criteria are used as a measure to determine an act to be a criminal act; second, liability here concerns the subject of human and/or corporate criminal acts. Here also deals with the error problem (*dolus/culpa*); third, the crime here is related to the problem of sanctions, which is to strengthen or strengthen the application of a norm [30-32].

6 Conclusion

Based on the results of these studies, it is concluded that the criminal liability of political parties in the Political Party Law is not regulated. Criminal liability is imposed on the legal subject of the person. However, the criminal liability of political parties in the Election Law is not regulated. Criminal liability is imposed on the legal subject of the person. Reform of the criminal liability of political parties in Indonesia, including affirmation of political parties as the subject of criminal acts: determination of criminal sanctions/actions; determination of who can be accounted for; determination of when it can be accounted for; determination of special punishment rules; and, determination of the reasons for the abolition of prosecution or the abolition of the crime.

The reform of the Political Party Law and the Election Law is related to the criminal responsibility of political parties. Positioning the subject of criminal acts of political parties (*rechts persoon*) with the subject of criminal acts of individuals/management (*natuurlijk persoon*) clearly and without ambiguity. The legislators are able to position that political parties can be held criminally accountable in terms of criminal acts, how, when, and in what cases the position of political parties can be held criminally responsible, both together with the subject of criminal acts of people or administrators, as well as in the position of the subject of an independent crime.

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