

The President's Authority in the Organization of Political Campaign for General Elections May Lead to Presidential Bias

Evi Oktarina,¹ Sayyidina Mufakkar²

Sekolah Tinggi Ilmu Hukum Sumpah Pemuda Palembang, Indonesia

Email: evioktarina255@gmail.com

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Abstract: *The issue of whether the president is allowed to campaign is not a new one, as stipulated in Article 299 of Law Number 7 of 2017 concerning General Elections, which states that the President and Vice President have the right to conduct campaigns. This raises concerns about the President potentially favoring one pair of candidates to the advantage or disadvantage of other election participants during the campaign period. The purpose of this research is to examine the impact of the President's authority in conducting election campaigns. This study is juridical-normative (legal research), utilizing a descriptive approach based on secondary data. Article 299 of Law Number 7 of 2017 concerning Elections states that the President has the right to conduct campaigns, while ensuring the continuity of state administration tasks, refraining from using state facilities, and avoiding actions that could benefit or harm any pair of candidates. This situation can lead to presidential bias and tendencies toward favoring one pair of candidates, misuse of authority by exploiting state facilities for non-state interests, and the potential for actions that could influence the electoral prospects of each pair of candidates positively or negatively.*

Introduction

The state is an institution that possesses extraordinary power, both positively and negatively. It also represents the highest organization within any societal group that aspires to unity and sovereignty within its territory. This definition inherently carries constitutional meanings typically held by a sovereign state, which include sovereign people, territory, and government. This constitutional meaning encompasses the theory of state form (Madung, 2013). According to Abu Daud Busroh in his book titled "Ilmu Negara," the theory of state form represents a political embodiment system of state elements (Busroh, 1987). One of these state elements is the presence of a sovereign government tasked with managing the constitutional order within a country.

Indonesia, as a state founded on the principle of equality, is referred to as a Republic. This characterization is echoed by Otto Koellreutter in his analysis of state forms (Yuswalina, 2020). The 1945 Constitution of the Republic of Indonesia further solidifies this in Chapter 1, Article 1, Clause (1), which defines Indonesia as a unitary state in the form of a Republic. Clause (2) specifies that sovereignty resides with the people and is exercised according to the Constitution, a principle reaffirmed in Clause (3) stating that Indonesia is

The President's Authority in the Organization of Political Campaign for General Elections May Lead to Presidential Bias

Evi Oktarina, et al.

a legal state. Additionally, Indonesia, as a Republic, adopts a governmental system known as the American system or Checks and Balances. In this system, power is divided into three branches: Executive, Legislative, and Judiciary. This framework aligns with Montesquieu's concept of the separation of powers, where each branch operates independently of the others (Yuswalina, 2020).

The state system in Indonesia itself is inseparable from the doctrine of Trias Politica, which applies the separation of powers to three different institutions: Legislative, Executive, and Judicial. By separating these authorities, it is hoped that the governance of the state remains balanced, corruption is avoided, and mechanisms of checks and balances are implemented (Suparman, 2023). One of the institutions discussed in this research is the executive branch, responsible for implementing laws, in this case, the President.

As a republic led by a president, Indonesia's republican form of government signifies that the people do not directly govern but elect representatives to administer the government on their behalf. Therefore, the election and establishment of this republican form are constitutionally mandated by the founding fathers of the nation. Budiardjo states that Indonesia adheres to constitutional democracy (Rowa, 2015).

One form of democracy implemented in Indonesia is the direct conduct of general elections to elect representatives who will serve in the government, based on the principle of "of the people, by the people, and for the people" (Ariyanti et al., 2021; Hoesein, 2023; Sumual et al., 2023). Every citizen can participate in politics through their voting rights (Pratiwi et al., 2023). Political rights are considered constitutional rights and human rights (Rudy et al., 2023).

The implementation of general elections, which has become a highly anticipated event every five years in Indonesia, serves as a festival of democracy for the Indonesian people. It is an occasion where the populace can learn about the visions and missions of each candidate, which directly impact their lives. However, each election often brings about phenomena that spark interesting discussions, such as the phenomenon of presidential campaigning. Democracy is heavily influenced by the political system, leading to both positive and negative developments (Febrian et al., 2022). Moreover, debates surrounding the Election Law in 2017, particularly concerning the presidential threshold issue, have further shaped these dynamics (Taqwa et al., 2023).

The issue of presidents being allowed to campaign is not new, as stipulated in Article 299 of Law Number 7 of 2017 concerning General Elections, which grants the President and Vice President the right to conduct campaigns. However, these campaign activities must still consider the continuity of state administration and local government, as outlined in Article 300 of Law Number 7 of 2017 concerning General Elections. Furthermore, during election campaigns, incumbents are prohibited from using their official facilities except for security purposes, as specified by the regulations in Article 281 of Law Number 7 of 2017 concerning General Elections.

However, in the political year of 2024, a new issue has arisen that is widely discussed, sparked by statements from the 7th President of the Republic of Indonesia, Joko Widodo, regarding the president's right to campaign during

The President's Authority in the Organization of Political Campaign for General Elections May Lead to Presidential Bias

Evi Oktarina, et al.

the general elections. This has raised concerns among many parties, especially because one of the vice presidential candidates in the 2024 election contest has familial ties to President Joko Widodo. This situation has led to concerns that the president may show favoritism towards one candidate pair, which could potentially benefit or disadvantage certain participants during the campaign period.

The President, as the holder of executive power, is highly susceptible to abusing their authority for the benefit of their faction in order to retain their position as the executive authority in government (Abdurrahman & Fauzi, 2022). This is because many abuses of power occur when an individual possesses significant authority, and transparency can only constrain abuses of power in high-authority scenarios (Hoeft & Mill, 2024). Power functions as a reinforcing agent that prioritizes consequences for behaviors stemming from inclinations, emotions, or convictions of its possessor (Wisse & Sleebos, 2016).

This raises an interesting set of issues to discuss. Firstly, the extent of the president's authority in organizing political campaign activities during general elections. Secondly, the implications of the president's authority in managing political campaigns during general elections. These two issues form the main points of focus for this article. The objective of this research is to examine the president's authority in political campaigns during general elections, especially in cases where a vice presidential candidate has familial ties to the president, and to analyze its impacts.

Method

In conducting this writing, the research method employed is normative legal research, using a descriptive approach. Normative legal research involves examining secondary data related to theories, concepts, legal principles, and relevant laws (Ali, 2018). The data collection technique utilized includes primary, secondary, and tertiary legal materials. Primary legal materials utilized in this research are binding legal sources such as legal principles and rules, consisting of the Republic of Indonesia Law Number 7 of 2017 concerning General Elections and Republic of Indonesia Law Number 43 of 2008 concerning Presidential Elections. Secondary legal materials are sources that provide detailed explanations of primary legal sources, such as books, articles, journals, news, legal publications, and other related documents. Tertiary legal sources are utilized based on credible legal websites related to the topic.

Results and Discussion

The President's Authority in the Administration of Political Campaigns for General Elections

Democracy is a political system that emerged since five centuries before Christ, when Greek people forming city-states attempted to answer how a political system should be organized to fulfill the interests and collective welfare of society. According to Schumpeter, democracy is succinctly defined as a mechanism for selecting and empowering the government, not a type of society nor a set of moral goals, a mechanism involving competition among one or more groups of elected politicians, organized into political parties, for the

The President's Authority in the Organization of Political Campaign for General Elections May Lead to Presidential Bias

Evi Oktarina, et al.

votes that will enable them to govern until the next election (Rowa, 2015). Substantively, democracy strengthens governance at only the top half of the conditional distribution (Tarverdi et al., 2019).

Normatively, democracy is something ideally and conceptually intended to be implemented or conducted by a state, as exemplified by the phrase "government of the people, by the people, and for the people." This expression is commonly translated into the constitutions of respective countries, such as in the 1945 Constitution of the Republic of Indonesia which states that "sovereignty is vested in the hands of the people and is implemented according to the Constitution." This aligns with Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (Rowa, 2015).

According to the wording of the article, it can be interpreted that the people or citizens have the right to vote and to be elected, and they are free to exercise these rights according to their conscience without fear or coercion from others. This is included as an indicator of a country adhering to democratic principles (Hadiwijoyo, 2012). Therefore, periodic elections are a characteristic feature of a democratic system of governance.

General elections serve as an instrument to implement popular sovereignty by establishing governmental organs that can represent the voices and interests of the people. The concept of "government of the people, by the people, and for the people" signifies that governance operates in the hands of the people and acts on behalf of the people, meaning that the ultimate sovereignty resides with the people (Labolo & Ilham, 2017). This aligns with Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia mentioned earlier.

The implementation of general elections in Indonesia is constitutionally regulated under the Constitution of the Republic of Indonesia, which includes provisions such as: (Al-Fatih, 2015)

1. Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia states: "Sovereignty is vested in the hands of the people and is implemented according to the Constitution."
2. Article 2 paragraph (1) of the 1945 Constitution of the Republic of Indonesia reads: "The People's Consultative Assembly consists of members of the People's Representative Council and members of the Regional Representative Council who are elected through general elections and further regulated by law."
3. Article 6A paragraph (1) of the 1945 Constitution of the Republic of Indonesia states: "The President and Vice President are elected as a pair directly by the people."
4. Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia reads: "Governors, Regents, and Mayors, each as heads of provincial, district, and city governments, are democratically elected."
5. Article 22E consists of six clauses related to general elections, namely Article 22E paragraphs (1), (2), (3), (4), (5), and (6).

The articulation of each article in the 1945 Constitution of the Republic of Indonesia appears to encompass elements of both the Continental European legal state concept and the legal state concept according to the Anglo-Saxon

The President's Authority in the Organization of Political Campaign for General Elections May Lead to Presidential Bias

Evi Oktarina, et al.

system. Despite this, Indonesia does not merely follow a path but remains grounded in Pancasila as stated in the 1945 Constitution of the Republic of Indonesia (MPR RI, 2018). Following amendments to the 1945 Constitution of the Republic of Indonesia, fundamental elements of Indonesia's legal state include the supremacy of law or legality, separation of powers, decentralization of power, protection of human rights, and independent judiciary.

One of the fundamental elements of Indonesia's legal state mentioned above is the separation of powers, commonly known as "*trias politica*." In the context of positive law, this means that the institutions responsible for lawmaking in the Indonesian government are operated by the Legislative Branch (People's Consultative Assembly, People's Representative Council, and Regional Representative Council), the Executive Branch (President/Vice President assisted by ministers), and the Judicial Branch (Judicature) (Burlian, 2015).

Indonesia is a republic, as clearly stated in Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which declares that "Indonesia is a unitary state in the form of a Republic." Additionally, Indonesia follows a presidential system, where the President serves as both the head of state and the head of government. This is affirmed in Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states: "The President of the Republic of Indonesia shall hold the government in accordance with the Constitution." As the head of state, the President is the official symbol of Indonesia globally. As the head of government, the President is assisted by the Vice President and Ministers in the cabinet, wielding executive power to carry out daily governmental duties.

In addition to carrying out the duties and responsibilities of a President as the Head of State and Head of Government, the President also possesses rights or authorities of their own in leading a country. These presidential rights or authorities are enshrined in legislation, specifically the Constitution of the Republic of Indonesia of 1945. In exercising these extensive presidential powers, the President may be assisted by the Vice President and form a cabinet of ministries. These authorities include the following:

1. Article 5, Paragraph 1 of the 1945 Constitution: The President has the right to propose bills to the People's Consultative Assembly.
2. Article 11, Paragraph 1 of the 1945 Constitution: The President, with the approval of the People's Consultative Assembly, declares war, makes peace, and enters into agreements with other countries.
3. Article 11, Paragraph 2 of the 1945 Constitution: The President, in making other international agreements that have broad and fundamental implications for the lives of the people related to the state financial burden and/or require the amendment or enactment of laws, must do so with the approval of the People's Consultative Assembly.
4. Article 12 of the 1945 Constitution: The President declares a state of emergency. The conditions and consequences of a state of emergency are determined by law.

The President's Authority in the Organization of Political Campaign for General Elections May Lead to Presidential Bias

Evi Oktarina, et al.

5. Article 14, Paragraph 1 of the 1945 Constitution: The President grants pardons and rehabilitations, taking into account the considerations of the Supreme Court.
6. Article 14, Paragraph 2 of the 1945 Constitution: The President grants amnesty and abolition, taking into account the considerations of the People's Consultative Assembly.
7. Article 15 of the 1945 Constitution: The President grants titles, decorations, and other honors as regulated by law.
8. Article 16 of the 1945 Constitution: The President forms an advisory council tasked with providing advice and considerations to the President, further regulated by law.
9. Article 22, Paragraph 1 of the 1945 Constitution: In urgent situations, the President has the right to establish government regulations as substitutes for laws.
10. Article 33, Paragraph 2 of the 1945 Constitution: Branches of production that are important for the state and vital to the people's livelihood are controlled by the state.
11. Article 33, Paragraph 3 of the 1945 Constitution: Land, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.

In addition, regarding the implementation of electoral campaigns, both a president and vice president have the right to conduct campaigns, as stipulated in Article 299 of Law Number 7 of 2017 concerning General Elections. In conducting these campaigns, a president and vice president must also ensure the continuity of state administration duties, as mentioned in Article 300. This entails that a president must manage both domestic and foreign affairs responsibly, ensuring that they do not neglect their duties, which could potentially lead to detrimental consequences for the public.

Therefore, referring to Article 299 of Law Number 7 of 2017 concerning General Elections, the president has the right to conduct campaigns. However, there are exceptions in its implementation: the president must still ensure the continuity of state administration duties and is prohibited from using state facilities during the campaign, as stated in Article 304 of Law Number 7 of 2017 concerning General Elections, which specifies:

- a. Mobility facilities, such as official vehicles including those of state officials and government employees, as well as other official transportation vehicles;
- b. Office buildings, official residences, government-owned official residences, provincial government-owned residences, district/city government-owned residences except in remote areas where implementation must adhere to principles of fairness;
- c. Office facilities, regional radio stations, and government-owned telecommunications equipment of provincial/district/city governments, and other equipment; and
- d. Other facilities financed by the state budget (APBN) or regional revenue and expenditure budgets.

The President's Authority in the Organization of Political Campaign for General Elections May Lead to Presidential Bias

Evi Oktarina, et al.

However, the law does not yet specify how a president or vice president should respond when it is found that a family member is participating in general elections or legislative elections. This is because Article 299 of the Election Law states that the president and vice president have the right to conduct campaigns. This can lead to multiple interpretations when indeed there are family members who have familial ties with the president or vice president. This situation could potentially undermine public trust in the president or vice president, portraying them as favoring candidates solely because they are related to them, rather than maintaining impartiality and neutrality as expected in democratic contests.

The Impact of the President's Authority in Organizing Political Campaigns for General Elections

Indonesia has established itself as a unitary state in the form of a Republic. As a consequence of being a unitary state in the form of a Republic, as stipulated in Article 1 paragraph (1) of the Constitution of the Republic of Indonesia of 1945, sovereignty resides with the people and is exercised according to the Constitution as stated in Article 1 paragraph (2) of the Constitution of the Republic of Indonesia of 1945.

Indonesia adheres to a republican system based on constitutional principles, where the president holds the authority of both head of state and head of government. However, the president's authority is constrained by the constitution. The process of electing the president is conducted through general elections. According to Jimly Asshiddiqie, general elections are a determination process determined by the people themselves, where representatives of the people decide on the pattern and manner of governance. These representatives act on behalf of the people and aim to achieve long-term and relatively short-term goals that truly reflect the will of the people (Asshiddiqie, 2012).

The implementation of general elections aims to elect representatives of the people and regional representatives to form a democratic and strong government that receives support from the people, in order to realize a government that is pro-people and prioritizes the interests of the people, thereby achieving the nation's aspirations (Sirajuddin et al., 2021). General elections are also a crucial means for citizens to exercise their fundamental rights. According to Jimly Asshiddiqie, the objectives of conducting general elections include, among others (Asshiddiqie, 2012):

1. To enable the orderly and peaceful transition of government leadership.
2. To facilitate the replacement of officials who will represent the interests of the people in representative institutions.
3. To uphold the principle of popular sovereignty.
4. To uphold the principle of human rights for citizens.

In a system and electoral process, besides having objectives, there are certainly functions as well. According to Dieter Nohlen, the function of general elections depends on the electoral system, which is influenced by the political system of the country (Nurwijayanti & Prasetyoningsih, 2009). Additionally, Prof. Mahfud MD provides insight into the functions of general elections as a

The President's Authority in the Organization of Political Campaign for General Elections May Lead to Presidential Bias

Evi Oktarina, et al.

screening tool for leaders who will represent and carry the aspirations of the people in representative institutions. Those elected are considered individuals or groups with the capability or responsibility to act on behalf of a larger group through political parties (MD, 2018). Just as political parties function to create a good and effective government (Janah et al., 2023). In Indonesia itself, elections serve to strengthen the presidential system of government (Rannie et al., 2024). Moreover, elections embody the application of democratic values guaranteed by the constitution (Ahsan et al., 2023).

The process of conducting general elections also includes several scheduled agendas determined by the election organizers, one of which is the campaign agenda. According to Regulation of the General Election Commission Number 4 of 2017, Article 1 paragraph (15) states: "Election campaign, hereinafter referred to as campaign, is an activity to offer visions, missions, candidate pair programs and/or other information aimed at introducing or convincing voters." Meanwhile, Imawan defines campaign as a persuasive effort to invite others who are not yet in agreement or convinced by the ideas we offer, so that they are willing to join and support them (Cangara, 2011).

The objectives of campaign activities are as follows:

1. Campaign activities are typically aimed at creating changes at the cognitive level of knowledge. At this stage, the expected influence includes raising awareness, changing beliefs, or increasing public knowledge about specific issues.
2. The next stage focuses on changing attitudes. The goal is to evoke sympathy, likeability, concern, or support from the public regarding the campaign themes.
3. Meanwhile, in the final stage, campaign activities aim to bring about concrete and measurable changes in the behavior of the public. This stage requires specific actions to be taken by the campaign targets (Heryanto & Farida, 2011).

In campaign activities, everyone is allowed to participate, either as active participants or campaign team members, including a president. This is stipulated in Article 299 paragraph (1) of the Election Law, which states that the president and vice president have the right to conduct campaigns. Additionally, in Article 281 paragraph (1) of the Election Law, which reads:

Election campaigns involving the president, vice president, ministers, governors, vice governors, regents, vice regents, mayors, and deputy mayors must adhere to the following provisions:

1. Not using facilities in their official capacity, except for facilities provided for state officials as regulated by laws and regulations; and
2. Taking leave without burdening the state.

During the campaign period, the president is prohibited from using state facilities such as official vehicles, government office buildings, official residences owned by the central government, provincial government, and district/city government, except in remote areas where implementation must adhere to the principle of fairness. Additionally, state-owned office facilities,

The President's Authority in the Organization of Political Campaign for General Elections May Lead to Presidential Bias

Evi Oktarina, et al.

regional radio stations, government telecommunications or encryption facilities, and other equipment funded by the national budget (APBN) and regional budgets (APBD) are also excluded from use.

The use of state facilities inherent to the position of the president, concerning security, health, and protocol, is conducted professionally and proportionally according to field conditions. In addition, a president campaigning must take leave. The campaign leave schedule for the president is communicated by the Minister of State Secretary to the General Election Commission (KPU) at least 7 working days before the president starts campaigning. Furthermore, the president must also be registered as an official member of the campaign team of the supported presidential candidate pair.

When a president engages in campaigning, it can lead to various impacts because the Election Law does not provide detailed regulations on this matter. The position of the president in electoral matters can refer to the Law on Government Administration, which mandates that the president must not take actions or issue decisions that are not in the interest of the state, for example, for personal gain. Furthermore, it explicitly prohibits state officials from engaging in corruption, collusion, and nepotism.

Khairul Fahmi discusses several significant impacts and concerns regarding the participation of the president in campaigning, as follows (Fahmi, 2024):

1. The status of the president as a member or non-member of a political party must be a point of concern, as regulated in Article 269 of the Election Law, which states that the execution of election campaigns by the president and vice president consists of party officials or a coalition of proposing parties, individuals, and organizing organizations appointed. If a president is a member of a political party, they have the right to campaign for their party or the presidential/vice presidential candidate endorsed by their party without conditions. This is a serious concern due to the potential for misalignment with national interests, which could lead to the president's lack of neutrality and a tendency to favor a particular candidate pair to boost their electoral chances.
2. There is a prohibition for the president and vice president to use state facilities during campaigns. The use of state facilities for campaigning can only be allowed with clear limitations when state officials are also transparent about their status as campaign team members. Therefore, it is crucial to distinguish between personal interests and national interests to avoid disrupting the constitutional system.
3. As public officials, the president is also prohibited from making decisions or taking actions that benefit or disadvantage any candidate pair, as stated in Article 282 of the Election Law. This prohibition relates to the president's duties and authorities, preventing them from issuing decisions or written determinations related to government administration that aim to provide advantages or disadvantages to specific election participants. The consequences of such actions by the president can influence electoral advantages or disadvantages for

The President's Authority in the Organization of Political Campaign for General Elections May Lead to Presidential Bias

Evi Oktarina, et al.

election participants, including presidential and vice presidential candidates.

Conclusion

Article 299 of Law Number 7 Year 2017 regarding General Elections grants the president the right to conduct campaigns, but with exceptions that require strict adherence to the continuity of state administration duties and prohibit the use of state facilities during campaign activities, as stipulated in Article 304 of the same law. Additionally, the president is prohibited from making decisions or taking actions that benefit or disadvantage any candidate pair, as outlined in Article 282 of the Election Law.

The impacts arising from the president's authority to participate in political campaign activities include potential misalignment with national interests, leading to the president's perceived lack of neutrality and bias towards a particular candidate pair. Ambiguity in the president's status within a campaign team could potentially result in the misuse of authority by utilizing state facilities for non-state purposes. Furthermore, there is a risk of actions that could influence electoral outcomes, either positively or negatively, for each candidate pair involved.

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The President's Authority in the Organization of Political Campaign for General Elections May Lead to Presidential Bias

Evi Oktarina, et al.

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The President's Authority in the Organization of Political Campaign for General Elections May Lead to Presidential Bias

Evi Oktarina, et al.

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