

# Absence of Sanction Regulations: Conceptual Weakness of PKPU Number 15 of 2023 on Election Campaigns

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## ARTICLE INFORMATION

## ABSTRACT

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Advancements in information technology have brought significant changes to various aspects of law, including notarial practices. One of the main challenges in the digital era is how notaries can adapt their services to technological advancements, particularly in conducting virtual meetings for contract creation. Law Number 30 of 2004 regarding Notary Positions, as amended by Law Number 2 of 2014 (UUJN), still mandates physical presence in the creation of authentic deeds, while Law Number 11 of 2008 on Information and Electronic Transactions (UU ITE) has recognized the validity of electronic documents as legal evidence. This research aims to legally discuss the authority of notaries in conducting virtual meetings for contract creation, using a normative approach that emphasizes the analysis of legislation. The findings indicate a gap between existing regulations, where the need for digitalization in notarial services has not been fully accommodated within the current legal system. Therefore, legal reform is required to provide legal certainty for notaries in facing the digital era without neglecting the principle of authenticity in notarial deeds.

## 1. Introduction

The KPU, as one of the electoral organizing bodies, is granted various authorities by law, one of which is to establish the General Election Commission Regulations at each stage of the upcoming elections. The campaign stage is one of the most important stages in the implementation of the Presidential and Vice-Presidential Elections, Members of the House of Representatives, Regional Representative Council, Provincial Regional House of Representatives, and District/City Regional House of Representatives. Through the campaign, Election Participants or other parties appointed by the Election Participants are given the opportunity to persuade voters by offering their vision, mission, programs, and/or self-image (Barthos & Wiwoho, 2023).

The implementation of the election campaign is regulated by PKPU Number 15 of 2023 on Election Campaigns (Tobing & Kasenda, 2024). The implementation of the election campaign is carried out using methods such as limited meetings, face-to-face meetings; dissemination of campaign materials to the public; installation of campaign props in public places; social media, print mass media advertisements, electronic mass media, and online media; public meetings; debates between candidate pairs on election campaign materials; and other activities that do not violate election campaign prohibitions and legal regulations.

The implementation of campaign stages in elections is highly prone to issues, both between election participants and the election organizers, as well as between the participants themselves (Reilly, 2002). therefore, the KPU as the technical organizer has regulated campaign principles, campaign implementers, campaign materials, campaign methods, and campaign prohibitions.

In PKPU Number 15 of 2023 on General Election Campaigns, the methods of election campaigns have been regulated, namely: a) Limited meetings, b) Face-to-face meetings, c) Dissemination of election campaign materials to the public, d) Installation of election campaign props in public places, e) Social media, f) Print media, electronic media, and online media advertisements, g) Public meetings, h) Candidate pair debates on election campaign materials; and i) Other activities that do not violate election campaign prohibitions and statutory regulations.

One potential issue in the implementation of the election campaign methods is the method of distributing campaign materials and the method of installing campaign props (Ikfina, 2023). In PKPU Number 15 of 2023, the KPU has prohibited the distribution of campaign materials and the installation of campaign props in places of worship, hospitals or healthcare facilities, government-owned facilities, and public infrastructure such as parks and public spaces. Although it has regulated prohibitions on the methods of distributing campaign materials and installing campaign props, the KPU has not stipulated what sanctions will be imposed and how these sanctions will be applied to Election Participants or other parties designated by the Election Participants if they violate the prohibitions on the distribution of campaign materials and the installation of campaign props.

As a comparison in the 2018 Election, in PKPU Number 23 of 2018 Regarding General Election Campaigns, the KPU regulates the imposition of sanctions on Implementers and/or Campaign Teams who violate the provisions on the dissemination of campaign materials and the installation of campaign props. The sanctions imposed include administrative sanctions and the removal or cleaning of campaign materials or campaign props.

The absence of sanctions against violations of campaign material dissemination and campaign tool installation will result in election participants or other parties designated by election participants spreading and installing campaign tools in prohibited public places such as schools, health facilities, and other government-owned facilities without facing any penalties.

One of the core principles of legislative materials, namely the principle of legal certainty, is not in line with the lack of sanction regulations in PKPU Number 15 of 2023 on Election Campaigns (Khoirunnisa & Jubaidi, 2024), pertaining to violations of the distribution of campaign materials and the installation of campaign props. If the Election Supervisory Board discovers or the public complains the distribution of campaign materials or the placement of campaign props in locations that are forbidden, this will leave a legal void. If any parties break these restrictions, what penalties will be applied and how? Furthermore, who administers the penalties?

Legal vacuums can occur because certain matters or situations have not yet been regulated by legislation, or even if they have been regulated, the regulations may be unclear or incomplete (Maitre - Ekern & Dalhammar, 2016). The consequence of the legal vacuum regarding matters or situations that are not or have not yet been regulated in the dissemination of campaign materials and the installation of campaign props during the election can lead to legal uncertainty (*rechtsonzekerheid*) or uncertainty in legislation within society, which in turn can result in legal chaos (*rechtsverwarring*) in the implementation of the election.

Is the condition of having prohibitions but no sanctions in the implementation of the campaign as referred to in PKPU Number 15 of 2023 on Election Campaigns ideal? The way to demonstrate the ideal condition is by examining the concept of the position of PKPU within the hierarchy of legislation (Arfandy & Purwadi, 2022). This article aims to highlight conceptual issues in PKPU Number 15 of 2023 Regarding Election Campaigns that do not align with the principles of legislative material formation, focusing on the principle of legal certainty, specifically the absence of sanctions for violations of campaign material dissemination methods and campaign media installation.

This article begins with an explanation of the position of PKPU within the hierarchy of legislation, followed by a theoretical understanding of the principles of legislative materials, and the next section provides a critical analysis of PKPU Number 15 of 2023 on Election Campaigns regarding the absence of sanctions for violations of campaign prohibitions. This section will demonstrate that the absence of sanctions for violations of campaign prohibitions will lead to a legal vacuum in PKPU Number 15 on Election Campaigns (Jaya & Ilyas, 2024), resulting in legal uncertainty in the event of violations in the placement of campaign props and the dissemination of campaign materials. The final section is the concluding review.

## 2. Method

### 2.1. Principles of the Content of Legislative Regulations

In general, besides the principles of legislative formation, there are also principles of the substantive content of legislation that need to be considered. The principles of the substance of legislation are formed based on several principles as follows:

1. The principle of the hierarchy of laws (*lex superior derogate lex inferiori*) is that lower laws must not contradict higher laws.
2. The principle of *lex specialis derogate legi generali* is that more specific legislation supersedes more general legislation.
3. The principle of *lex posterior derogate lex priori* is that a later-born regulation supersedes an earlier-born regulation if the subject matter regulated by the regulations is the same.
4. The principle of legal certainty is that every piece of legislation must be able to guarantee legal certainty in an effort to create order in society.
5. The principle of protection is that every piece of legislation must function to provide protection in order to create societal tranquility (Posner, 1979).
6. The principle of prioritizing the public interest is that in legislation, it must consider the balance between various interests while prioritizing the public interest.

### 2.1. Principle of Legal Certainty

One of the fundamental principles of legislative content is the principle of legal certainty, which means that every piece of legislation must guarantee legal certainty in an effort to create order in society. Legal certainty (*rechtszekerheid*, legal certainty) is an important principle in legal actions (*rechtshandeling*) and law enforcement (*handhaving, uitvoering*). The existence of legislation can provide a higher level of legal certainty than customary law, customary law, or jurisprudence.

Since the early development of legal theory and philosophy, the certainty of law has been recognized (Berteau, 2008), namely, since the existence of the doctrine of the idea of law (*Idee Des Recht*) which was first developed by Gustav Radbruch in his book titled *Einführung in Die Rechtswissenschaften*. The doctrine of the idea of law (*Idee Des Recht*) states that there are three elements of the idea of law that must exist proportionally, namely legal certainty (*rechtsicherheit*), justice (*gerechtigkeid*), and utility (*zweckmäßigkeit*). Furthermore, Gustav Radbruch stated that in the theory of legal certainty, there are 4 (four) fundamental aspects that are closely related to the meaning of legal certainty itself (Ficor, 2021), namely:

1) Law is a positive matter that means positive law is legislation. 2) Law is based on a fact, which means that law is made based on reality. 3) The facts contained or stated in the law must be formulated clearly, so as to avoid errors in the interpretation and understanding of the law. 4) Positive law should not be easily changed.

According to Sudikno Mertokusumo, legal certainty is a guarantee that the law must be enforced properly (Ratnawati et al., 2024). This means that legal certainty expects efforts to regulate the law in legislation made authoritatively. So that these rules have a juridical aspect that can guarantee the certainty that the law functions as a regulation that must be obeyed.

Legal certainty has become common when certainty has become part of the formation of law. Law without the value of certainty will lose its identity and the meaning of the true presence of law, because it can no longer be used as a guide/example for the existence of every person in controlling daily behavior (Stolleis, 2016). Normatively, legal certainty can be defined as a form of legislation that is created and enacted with certainty, meaning that legal certainty can regulate clearly and logically so that it does not cause doubt in case of multiple interpretations of the rules and does not create conflicts in the norms existing in society.

PKPU Number 15 of 2023 on Election Campaigns, as a legislative regulation governing election campaigns, should be able to guarantee legal certainty in an effort to create legal order during the implementation of the campaign stages. The imposition of sanctions for violations of campaign methods, such as the installation of campaign props and the dissemination of campaign materials, constitutes a form of legal certainty as a guarantee of electoral law enforcement to control the behavior of election participants during the campaign stages.

### 3. Results

#### 3.1. The Position of PKPU in the Hierarchy of Legislation

The presence of state institutions or commissions in Indonesia that are granted duties and authorities by the constitution and laws requires regulations that govern how the tasks and authorities of these institutions or commissions are carried out. The General Election Commission (KPU) as one of the commissions assigned tasks and authority by the constitution as the organizer of general elections, alongside the Election Supervisory Body (Bawaslu) and the Honorary Council for Election Organizers, is national, permanent, and independent.

According to Jimly Asshidiqie, the position of the KPU as an independent regulatory agency (Independent regulatory agencies) regulated by the constitution and further elaborated by law, states that state institutions at the central level are distinguished into 4 (four) institutions, namely: a. Institutions established based on the Constitution that are further regulated and determined by or with Laws, Government Regulations, Presidential Regulations, and Presidential Decrees; b. Institutions established based on Laws that are further regulated and determined by or with Government Regulations, Presidential Regulations, and Presidential Decrees; c. Institutions established based on Government Regulations, or Presidential Regulations that are further determined by Presidential Decrees; d. Institutions established based on Ministerial Regulations that are further determined by Ministerial Decrees or Decrees of Officials under the Minister.

Based on the classification of state institutions mentioned above, it can be understood that the KPU is a state institution established based on the Constitution, which is further regulated and determined by or with Laws, Government Regulations, Presidential Regulations, and Presidential Decrees. The KPU is included as a state institution that is based in the center of government and can also be in the regions, and also as a government organization that carries out state functions.

The KPU, as the technical organizer of the General Election, in carrying out its duties, authority, and obligations, is granted the authority to establish KPU Regulations, which are derivative regulations and technical regulations for conducting the general election, thus playing a very important role in the conduct of the election. KPU regulations are a type of legislation, specifically written regulations that contain generally binding norms and are formed or established by state institutions or authorized officials through procedures set forth in legislation. As also emphasized in Article 8 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation, regulations issued by a commission are explicitly referred to as recognized and binding legislation.

The Regulation of the General Election Commission (PKPU) is part of the legislation that falls under the authority of the KPU to formulate in order to carry out the elections. PKPU is the implementation of legislation as referred to in Article 75 paragraphs (1) and (2) of Law Number 7 of 2017 concerning General Elections, which stipulates that: “to organize the General Election as regulated in this Law, the KPU forms KPU Regulations and KPU Decisions.” KPU Regulations are the implementation of statutory regulations.

Based on the provisions of Law Number 12 of 2011 concerning the Formation of Legislation as amended by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation, the types and hierarchy of legislation according to the provisions of the Article are as follows (Hamdana, 2024): a) The 1945 Constitution of the Republic of Indonesia, b) Decrees of the People’s Consultative Assembly, c) Laws / Government Regulations in Lieu of Law, d) Government Regulations, e) Presidential Regulations, f) Provincial Regional Regulations, and g) Regency/City Regional Regulations.

Implicitly, KPU Regulations are part of the hierarchy of legislation as regulated by Law No. 12 of 2011 on the Formation of Legislation (Setiawan et al., 2023). The provision of paragraph 1 states that: the types of legislation, other than those referred to in Article 7 paragraph (1), include regulations established by the People’s Consultative Assembly, the House of Representatives, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Audit Board, the Judicial Commission, Bank Indonesia, Ministers, bodies, institutions, or commissions of equivalent rank established by Law or Government under the mandate of Law, the Provincial Regional Representative Council, the Governor, the District/City Regional Representative Council, the Regent/Mayor, the Village Head or equivalent.

Next, the provision of paragraph (2) stipulates that the Legislation referred to in paragraph (1) is recognized and has binding legal force as long as it is mandated by higher legislation or established based on authority.

Based on the description above, it is clear that the position of PKPU in the hierarchy of legislation in Indonesia is categorized as a regulation established by a commission of the same level formed by law or the government under the authority of the law. Thus, the PKPU is clearly recognized and has binding legal force because it is mandated by higher regulations and is formed based on the authority granted by the law to the KPU. Therefore, in its formation, PKPU must be established in accordance with the substance of the prevailing laws and the principles of the substance of the applicable laws.

### **3.2. Theoretical Understanding of the Principles of Legislation Formation**

PKPU, as a piece of legislation recognized in its existence and having binding legal force, must be formed in accordance with the substantive content of the legislation. The terminology 'substance of legislative regulations' was first introduced by A. Hamid S. Attamimi, presented orally in a Workshop on the Development of Legal Science at the Faculty of Law, University of Indonesia, on February 22, 1979, with the manuscript completed later and published in the Journal of Law and Development, Issue 3, 1979.

A. Hamid S Attamimi indirectly translates the content of legislative regulations as material that must be included in each type of legislative regulation (Putra et al., 2020), whereas Article 1 number 13 of Law Number 12 of 2011 states that the Content of Legislative Regulations is the material included in Legislative Regulations according to the type, function, and hierarchy of Legislative Regulations. Thus, what constitutes the substance of a regulation varies depending on its type, function, and content. In drafting the content of legislation, there are several principles that must be fulfilled, namely: a) protection, b) humanity, c) nationalism, d) kinship, e) archipelagic, f) unity in diversity, g) justice, h) equality before the law and government, i) order and legal certainty, and/or j) balance, harmony, and alignment.

In the Explanation of Law No. 12 of 2011, the meaning of these principles is mentioned as follows: a) The principle of protection is that every substance of legislation must function to provide protection to create societal tranquility. b) The principle of humanity is that every material content of legislation must reflect the protection and respect for human rights as well as the dignity and worth of every citizen and resident of Indonesia proportionally. c) The principle of nationalism is that every substance of legislation must reflect the diverse character and nature of the Indonesian nation while maintaining the principle of the Unitary State of the Republic of Indonesia. d) The principle of kinship is that every content of legislation must reflect deliberation to reach consensus in every decision-making process. e) The principle of archipelagicism is that every substance of legislative regulations must always consider the interests of all regions of Indonesia, and the substance of legislative regulations made in the regions is part of the national legal system based on Pancasila and the 1945 Constitution of the Republic of Indonesia. f) The principle of unity in diversity is that the content of legislation must take into account the diversity of the population, religion, ethnicity, and groups, the specific conditions of the region, as well as the culture in community, national, and state life. g) The principle of justice is that every material content of legislation must reflect proportional justice for every citizen. h) The principle of equality before the law and government is that every substance of legislation must not contain provisions that discriminate based on background, including religion, ethnicity, race, class, gender, or social status. i) The principle of order and legal certainty is that every substance of legislation must be able to create order in society through the guarantee of legal certainty. j) The principle of balance, harmony, and alignment is that every substance of legislation must reflect balance, harmony, and alignment between the interests of individuals, society, and the interests of the nation and state.

Certain laws may incorporate additional principles in line with the relevant legal field in addition to reflecting the previously listed principles. What does it mean to say 'other principles in accordance with the field of law of the relevant legislation.'

Legislation is a written regulation that contains generally binding legal norms and is formed by state institutions or authorized officials. Legislation is a highly strategic legal instrument for regulating national and state life. Legislation that is generally binding results in the community having no other choice but to obey or comply with the regulations. Therefore, the formation of legislation must be based on regulations or mechanisms that ensure the realization of good legislation.

According to A. Hamid S. Attamimi, the Principles of Legislation Formation are legal principles that provide guidelines and direction for the formulation of regulations into appropriate forms and structures, for formation using proper methods, processes, and procedures.

To realize a good and accountable PKPU, it is necessary to consider the theoretical foundations and various principles in the formation process, including the substance or content of each piece of legislation. PKPU Number 15 of 2023 on Election Campaigns as a strategic legal instrument to regulate the implementation of campaigns that is generally binding for all election stakeholders. Elections should be established in accordance with the principles of good legislative content, one of which is the principle of order and legal certainty. The absence of regulatory sanctions against violations of campaign methods, such as the installation of campaign props and the dissemination of campaign materials, will lead to legal uncertainty, making it difficult to maintain order during the campaign stages of the general election.

### 3.3. Conceptual Issues of PKPU Number 15 of 2023 Regarding Campaigns

PKPU Number 15 of 2023 on Election Campaigns is conceptually problematic, as it does not align with the substance of legislative regulations and the principles of legislative rule-making. This conceptual issue, in turn, has the potential to undermine the principle of legal certainty in the administration of elections.

#### 3.3.1. *The Absence of Sanction Regulations*

According to the Great Dictionary of the Indonesian Language, a sanction means a burden, action, or punishment for violating an agreement or regulation. Meanwhile, law refers to statutes, judicial decisions, adjudicating cases, and sanctions for legal violations. Meanwhile, according to Achmad Ali, who quotes Paul Bohannon's opinion, defines sanctions as a set of rules about how legal institutions can intervene in a matter to maintain a social system, so that society can live in that system peacefully and in a predictable manner.

According to Prof. Dr. Sudiono Mertokusumo, as quoted by Achmad Ali, sanctions are reactions, consequences, or repercussions of violating social norms. There are several elements in sanctions, namely reaction, consequence, and the repercussions of violating or deviating from social norms (both legal and non-legal norms). Sanctions are a power or a tool of power to compel someone to adhere to certain social norms, and regarding legal sanctions, they can be distinguished into private sanctions and public sanctions.

With sanctions, the community is forced to comply with or adhere to legal norms. With sanctions, the obedience of society to the law can be maintained. It is unimaginable if a rule is called law without the presence of sanctions. A rule without the threat of sanctions would be more connotative of a regular statement than a legal norm. Meanwhile, law according to Leon Duguit, as quoted by Bakri, is a rule about the behavior of members of society, a rule that, when applied at certain times, is adhered to by a society as a guarantee of common interests, which, if violated, provokes a collective reaction against the person who commits the violation. And law according to S.M Amin, SH as quoted by Bakri is a collection of regulations consisting of norms and sanctions. The sanction is called law, and the purpose of the law is to maintain order in human interactions, thereby preserving security and order.

In PKPU Number 15 of 2023 on Election Campaigns, prohibitions have been established for campaign implementation methods, such as the distribution of campaign materials and the installation of campaign props, which are prohibited in places of worship, hospitals or healthcare facilities, government-owned facilities, and public infrastructure like parks and public spaces. However, the PKPU does not specify any sanctions for those who violate these regulations. Thus, it will result in an untidy situation in the dissemination of campaign materials and the installation of campaign props. Election participants who conduct campaigns can freely distribute campaign materials and install campaign props in prohibited places without being subject to sanctions by the election organizers, either the KPU or Bawaslu. This is because the PKPU on Campaigns does not regulate sanctions for violators of the prohibition on the campaign methods of dissemination and installation of campaign props.

As a set of norms or rules established to regulate the behavior of election participants during the campaign phase, particularly regarding the methods of installing campaign props and disseminating campaign materials, it is appropriate to regulate the imposition of sanctions for anyone who violates them in order to create a safe, orderly, peaceful, and harmonious condition during the election campaign.

The imposition of sanctions for violations of campaign material dissemination and campaign tool installation can be enforced by the KPU as the technical organizer of the election against parties that

violate the prohibitions on the dissemination of campaign materials and the installation of campaign tools, thereby ensuring the creation of order, tranquility, and peace in the election. The function of sanctions in the implementation of the campaign is to ensure that election participants who conduct campaign activities comply with and adhere to the electoral campaign regulations.

### 3.3.2 The Occurrence of Legal Vacuums

Legal vacuum can be defined as a state of emptiness or the absence of legislation (law that regulates certain order in society), so a legal vacuum in positive law is more accurately referred to as a legislative or regulatory vacuum. The consequence of the existence of a legal vacuum, regarding matters or situations that are not or have not yet been regulated, can lead to legal uncertainty (*rechtsonzekerheid*) or uncertainty in legislation in society, which in turn can result in legal chaos (*rechtsverwarring*). In the sense that as long as it is not regulated, it means it is allowed, and as long as there are clear and regulated procedures, it does not mean it is prohibited. This is what causes confusion in society regarding which rules should be used and applied. In society, there is no certainty about the rules applied to regulate the occurrences.

The campaign stage is the phase given to election participants to convince voters by offering their vision, mission, programs, and/or personal image. Through campaign methods, election participants can directly persuade voters to choose them in the voting booth later. Considering the importance of this campaign stage, the KPU as the technical organizer of the election has established PKPU Number 15 of 2023 on Election Campaigns, which includes regulations on campaign prohibitions.

For campaign methods involving the dissemination of campaign materials and the installation of campaign props, it has been prohibited to distribute and install them in places of worship, hospitals or healthcare facilities, government-owned facilities, and public infrastructure such as parks and public spaces. However, there are no sanctions regulated for violations of these prohibitions. As a result of the absence of sanctions, there will be a legal vacuum that leads to legal uncertainty (*rechtsonzekerheid*) or uncertainty in the implementation of regulations during the campaign, which will further result in legal chaos (*rechtsverwarring*). There will be confusion during the campaign regarding which rules are used and applied in case of violations during the dissemination of campaign materials and the installation of campaign props.

Based on the above description, in order to avoid legal vacuums, it is very necessary to regulate sanctions in the PKPU on Election Campaigns against violations of campaign methods such as the dissemination of campaign materials and the installation of campaign props.

## 4. Conclusion

PKPU Number 15 of 2023 on Election Campaigns, as a piece of legislation recognized in its existence and having binding legal force in the implementation of campaign stages, should regulate the imposition of sanctions against parties who violate it to achieve order and legal certainty in campaign implementation. This article shows that the formation of PKPU Number 15 of 2023, which does not regulate the imposition of sanctions, is an error that does not align with the substance of the legislation and the principles of the applicable legislative substance. The absence of sanctions in PKPU Number 15 of 2023 on Election Campaigns against parties that violate campaign methods such as the dissemination of campaign materials and the installation of campaign props will result in a legal vacuum, leading to legal uncertainty (*rechtsonzekerheid*) or uncertainty in the implementation of campaign regulations, which will further result in legal chaos (*rechtsverwarring*) in the elections.

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