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PROBLEMS IN LAW ENFORCEMENT AND REFORMULATION OF CRIMINAL NORMS FOR COVERT CAMPAIGNING IN PLACES OF WORSHIP

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ABSTRACT

The Constitutional Court (MK) Decision Number 65/PUU-XXI/2023 has given rise to a new paradigm by absolutely prohibiting all forms of general election campaigning in places of worship without exception of permits. However, sociological and political realities show the rampant practice of covert campaigning by partisan actors who are not officially registered with the General Elections Commission (KPU). The dogmatic loophole in the limiting phrase "implementers, participants, and campaign teams" in Article 280 paragraph (1) letter h of the Election Law has triggered anomalies in law enforcement. This normative legal research aims to examine the meaning of the prohibition from the perspective of the Pancasila Legal State Theory, unravel the deadlock in criminal accountability by the Gakkumdu Center system through the lens of Criminal Policy and Law Enforcement Theory, and offer ideas for norm reconstruction based on Integrative Legal Theory. The results of the study indicate that allowing covert campaign teams that are not registered with the KPU to exploit places of worship harms the values of divinity and national unity. The paralysis of Gakkumdu stems from the rigidity of overly formalistic criminal law formulations and a permissive legal culture. Therefore, an integrative reconstruction of norms is needed by expanding the legal subject of criminal law to "every person," prioritizing material proof of actions, and implementing a double-track system that includes vicarious liability for election participants who benefit. This progressive step is crucial for transforming election law to ensure both certainty and substantive justice.

KEYWORDS: Covert Campaign, Places of Worship, Constitutional Court Decision, Gakkumdu.

INTRODUCTION

General elections, hereinafter referred to as elections, are a means of people's sovereignty to elect members of the House of Representatives, members of the Regional Representative Council, the President and Vice President, and to elect members of the Regional House of Representatives, which are carried out directly, publicly, freely, confidentially, honestly, and fairly in the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia (Iftitah, 2019). In the context of the current election regime in Indonesia, elections are intended to elect members of the DPR, DPD, President and Vice President, and provincial/district/city DPRD, which are carried out by the election organizer, namely the General Election Commission (KPU). The KPU is a national, permanent, and independent electoral management body (Iftitah, 2019), and is obliged to carry out all stages of the election in a timely manner. The stages of election administration begin with program and budget planning and the drafting of election administration regulations, and end with the swearing-in of the President and Vice President as well as members of the DPR, DPD, provincial DPRD, and regency/city DPRD (Arrasyid *et al.*, 2025). Among these stages, there is a stage that is no less important in convincing constituents, namely the election campaign period. During the campaign period, the KPU must provide fair space for all election participants to campaign, ensure transparent campaign funds, and prevent mass mobilization, money politics, and sentiments based on ethnicity, religion, race, and intergroup relations (Simanjuntak, 2017). An election campaign is an activity carried out by election participants or other parties appointed by election participants to convince voters by offering the vision, mission, program, and/or image of the election participants (Rifa *et al.*, 2024). Antar (2004) defines a campaign as a series of organized communication activities aimed at creating a specific impact on the majority of the target audience on an ongoing basis within a certain period of time. Meanwhile, Pau and Parrot (1993) in Antar (2004) define a campaign as activities carried out consciously to support and improve a planned process during a certain period with the aim of influencing a specific audience. (Assiddiq & Ambarwati, 2021)

Therefore, the existence of a campaign team is a necessity that plays a significant role in disseminating the vision, mission, program, and/or image of election participants, so that constituents

have the confidence to vote for them. A campaign team is a team formed by a candidate pair together with a political party or a coalition of political parties tasked with assisting in the implementation of the campaign and responsible for the technical implementation of the campaign (Isnaini, 2018). Before conducting a campaign, based on several provisions in Law Number 7 of 2017 concerning General Elections (Election Law), including Article 272 paragraph (1) and Article 299 paragraph (3) letter b, the campaign team must be registered with the KPU. Furthermore, referring to the Election Law, further provisions regarding general election campaigns are regulated in KPU Regulations. (Fath, 2019; Suhendra, 2024)

In conducting election campaigns, election campaign teams are bound by the provisions stipulated in the KPU-Regulation governing general election campaigns, including those related to campaign materials, campaign methods, campaign materials, and campaign tools. Election campaign materials are delivered orally and/or in writing to the public and can only be categorized as campaign material if they include 1) the vision, mission, and program of the presidential and vice presidential candidates; 2) the vision, mission, and program of the political party represented by candidates for the DPR, provincial DPRD, and regency/city DPRD; and 3) the vision, mission, and program of the candidate for the DPD. In addition to the aforementioned campaign materials, candidates may also present their image, including their candidate number and photo/image. The election campaign can be carried out through the following methods: a) limited meetings; b) face-to-face meetings; c) distribution of election campaign materials to the public; installation of election campaign props in public places; e) social media; f) advertisements in print media, electronic media, and online media; g) public meetings; h) debates between candidate pairs on the election campaign materials of the candidate pairs; and i) other activities that do not violate election campaign prohibitions and the provisions of laws and regulations (Kurniawan & Michael, 2023). During the campaign, campaign teams are prohibited from posting election campaign materials (leaflets, brochures, pamphlets, posters, stickers, clothing, headgear, drinking/eating utensils, calendars, business cards, pins, stationery, and/or other campaign attributes) and install campaign props (advertisements, banners, and/or flags) in public places that have been prohibited, including *places of worship*. The Election Law does not provide a further definition of what is meant by a place of worship.

However, in more technical regulations through KPU Regulation Number 15 of 2023 concerning General Election Campaigns (PerKPU 15/2023), a definition of the boundaries of public places, in this case places of worship, has been included, namely courtyards, fences, and/or walls. Thus, grammatically speaking, places of worship include courtyards, fences, and the outer walls of places of worship.

Article 280 paragraph (1) letter h of the Election Law stipulates that election organizers, participants, and campaign teams are prohibited from using government facilities, *places of worship*, and educational institutions. Violations of the prohibition on election campaigning in places of worship are punishable under Article 521 of the Election Law, namely imprisonment for a maximum of two (2) years and a fine of up to Rp24,000,000 (twenty-four million rupiah) (Amalina, 2022). Places of worship are sacred and holy places for religious communities in Indonesia, as well as places for worship, prayer, and drawing closer to God. In the context of religion and culture, places of worship are considered sacred areas that must be respected (Katarina & Fitria, 2022). However, during election campaigns, places of worship are often used for campaigning by organizers, participants, and campaign teams. This has led to conflicts between the sanctity of places of worship and the political needs of organizers, participants, and campaign teams. The Constitutional Court (MK), through Decision Number 65/PUU-XXI/2023, has ruled and stated that Article 280 paragraph (1) letter h of the Election Law must be interpreted and read in full as follows "Election organizers, participants, and campaign teams are prohibited from: h. using government facilities, places of worship, and educational institutions, except for government facilities and educational institutions as long as they have obtained permission from the person in charge of the place and are present without election campaign attributes." This means that places of worship are completely prohibited from conducting election campaign activities, regardless of whether or not permission has been obtained from the person in charge of the place. In the Election Law, campaign teams must be registered with the KPU and are prohibited from campaigning in places of worship as referred to in Article 272 in conjunction with Article 521 in conjunction with Article 280 paragraph (1) letter h. However, the prohibition on campaigning in places of worship still contains legal loopholes, considering that campaigning in places of worship can still be carried out by covert campaign teams that are not

registered with the KPU. According to reasonable reasoning, not all campaign teams are listed and registered with the KPU, so in practice and as is common knowledge, there are campaign teams that are not registered with the KPU but carry out activities as if they were official campaign teams registered with the KPU to win a certain candidate/election participant. Therefore, based on the background described above, the research question in this study is as follows:

1. How is the prohibition on covert campaigning in places of worship regulated following Constitutional Court Decision Number 65/PUU-XXI/2023?
2. How is criminal liability for covert campaigning in places of worship determined under the Gakkumdu system?
3. How can the norms prohibiting covert campaigning in places of worship be reconstructed to provide legal certainty and justice?

METHOD

This research is normative legal research (*doctrinal research*). Normative legal research is a scientific research procedure and method to discover the truth based on legal scientific logic from a normative perspective (Ibrahim, 2006). This research began with a search for various relevant legal materials, both in the form of legislation and other legal materials. Next, the legal materials that were successfully inventoried will be analyzed deductively to draw a conclusion. The approach used to resolve the legal issues being studied in this research was a combination of *the statute approach* and *the conceptual approach*.

RESULTS AND DISCUSSION

1. The Problem of Regulating the Meaning of Provisions Prohibiting Covert Campaigning in Places of Worship After Constitutional Court Decision Number 65/PUU-XXI/2023

Constitutional Court (MK) Decision Number 65/PUU-XXI/2023 is an important milestone in purifying sacred spaces from practical political activities. After the issuance of Constitutional Court Decision Number 65/PUU-XXI/2023, the legal landscape of elections in Indonesia underwent a fundamental paradigm shift, particularly regarding the sterilization of places of worship from practical political activities. The Constitutional Court, through its *ratio decidendi*, emphasized that places of worship are entities that must be absolutely excluded from campaign activities, regardless of whether or not

permission has been granted by the person in charge of the place. This ruling is essentially an effort to purify sacred public spaces so that they are not co-opted by short-term electoral interests that often trigger polarization. Through this ruling, the Constitutional Court explicitly removed the exemption clause that previously allowed campaigning in places of worship if permission was obtained. The legal construction after this ruling emphasizes a rigid separation between religious entities and electoral interests. Places of worship are returned to their original essence as an inclusive transcendent medium for all religious adherents, not as a stage for mass consolidation that is prone to triggering horizontal polarization due to differences in political preferences. Juridically, this ruling is binding on all elements affiliated with election participants. However, the grammatical interpretation of Article 280 paragraph (1) letter h of the Election Law still limits the legal subjects of violators to only "implementers, participants, and campaign teams." This provision basically assumes that all election campaign activities are carried out within a formal and registered institutional corridor. This is where the legal anomaly lies, in that the Election Law strictly prohibits campaigning in places of worship by certain subjects, but leaves a wide enough loophole for other parties to conduct covert campaigns in places of worship by covert campaign teams that are not registered with the KPU. Empirical reality shows the existence of a phenomenon of legal smuggling carried out through *covert* campaigns. This *modus operandi* is carried out by individuals or groups who *de facto* work for the victory of certain candidates, but *de jure* is not registered as official campaign teams with the KPU. The gap between positive legal norms that only cover official campaign teams registered with the KPU, and this sociological reality demands a progressive interpretation of the law.

In the discourse of electoral law, the term "covert campaign team" refers to individuals or groups who *de facto* carry out a series of actions that fulfill the elements of a campaign (conveying a vision, mission, self-image, and call to vote), but *de jure* are not registered as part of the official campaign team registered with the KPU. The existence of these entities is not accidental but is often part of a *shadow campaigning* strategy with a very clear objective: to avoid the scrutiny of the Election Supervisory Agency (Bawaslu) and to absolve election participants (candidates) of legal responsibility in the event of election campaign violations, such as exploitation/campaigning in places of worship.

When religious leaders, militant sympathizers, or volunteers who are not registered with the KPU use religious platforms to insert practical political messages, the formal legal instruments of the Election Law often experience paralysis due to rigid principles of legality. It is not uncommon for Bawaslu to have difficulty taking action against these actors because they hide behind the pretext of freedom of expression or religious preaching. In the context of elections in Indonesia, the most relevant and philosophical analytical tool for dissecting this issue is the Pancasila Rule of Law Theory.

In the context of statehood, Pancasila is a state philosophy or *staatsidee* (state ideal) that functions as a *philosophical foundation* and *common platform* or *kalimatun sawa* among fellow citizens (Hidayat, n.d.). Pancasila is also the ideology of the Indonesian state and nation. Pancasila has a very important place because it is a consensus regarding common ideals that are crucial to the establishment of the constitution and constitutionalism in Indonesia. It is these common ideals that, at their most abstract level, are most likely to reflect the common interests among fellow citizens who, in reality, must live amid pluralism or diversity. The concept of the Pancasila Rule of Law State does not merely adopt the principle of *rechtsstaat*, which glorifies formal legal certainty, or *the rule of law*, which emphasizes equality before the law, but has a prismatic character that combines the values of divinity, humanity, unity, democracy, and social justice. The concepts of *rechtsstaat* and rule of law are translated identically into Indonesian as Negara Hukum (State of Law) through the formulation of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), which states that the State of Indonesia is a State of Law. When viewed from this perspective, turning a blind eye to covert campaigning in places of worship for reasons of administrative formalities (the perpetrators not being registered with the General Elections Commission as an official campaign team) is a betrayal of the essence of the law itself.

The first principle of Pancasila, Belief in One God, is the embodiment of the relationship between humans and God, which forms the moral and ethical basis for the administration of the state, including the electoral system. Within the framework of the Pancasila Rule of Law, the law must not separate religion from the state (secularism), but the law must protect religion from degradation. Places of worship are manifestations of transcendental spaces where humans communicate with God Almighty. When covert campaigning is carried out in places of

worship, for example through sermons that include calls to vote for candidates or the distribution of political attributes under the guise of charity, then in fact there has been a desacralization of religious values. Perpetrators of covert campaigns who hide behind the status of "not being an official campaign team registered with the General Elections Commission" often exploit religious sentiment to gain votes for candidates. From the perspective of progressive law in the spirit of Pancasila, this action cannot be justified simply because the perpetrators do not have formal status under the Election Law. The Pancasila-based State of Law requires protection of the purity of religious teachings so that they are not reduced to political commodities. Therefore, the meaning of implementers, participants, and campaign teams in Article 280 paragraph (1) of the Election Law must be interpreted extensively or teleologically, not merely grammatically. Anyone who carries out practical political activities in places of worship, which in substance fulfill the elements of campaigning, must be considered a legal subject who can be held accountable in order to maintain the dignity of God Himself because, in essence, the prohibition on the use of places of worship for election campaigns is interpreted so that organizers, participants, and campaign teams do not use or involve religion as a political tool to win election contests. This is because sometimes it can potentially divide the unity and integrity of the nation based on different political views, as well as contradict the general public interest (Habibah & Sutopo, 2025). The prohibition of campaigning in places of worship as referred to in Article 280 paragraph (1) letter h of the Election Law in conjunction with Constitutional Court Decision Number 65/PUU-XXI/2023 is also in line with the fiqh siyasah principle of *tasharruful imam 'alar ra'iyah manuthun bil mashlahah*, which means " " or that the actions or policies of an imam (leader/government) towards his people must be based on the realization of benefits (maslahah) that return to the people.

The third principle, Indonesian Unity, requires that election laws function as instruments of national integration, not tools of segregation. Sociologically, places of worship are public spaces that are most heterogeneous in terms of political preferences, yet homogeneous in terms of beliefs. When covert campaigns enter this space, the potential for horizontal conflict becomes very high (Haboddin, 2012). Congregations that come for the purpose of worship can be divided by provocative political narratives and are very likely to have different views from some of the congregation. The weakness of

regulations that only apply to campaign teams registered with the KPU creates injustices that endanger unity. Covert campaign teams that are not registered with the KPU often use more aggressive and divisive narratives (identity politics) in places of worship because they feel immune to the law. Identity politics often arises in various political moments where ethnic and religious considerations are often the main issues (Hashfi & Andriyani, 2025). Strongly religious-based identity politics can have an impact on social divisions among urban communities (A'dani et al., 2025). If the law is fixated on the administrative formalities of registering campaign teams with the KPU, then the state is indirectly allowing the seeds of division to grow in a place that should be unifying. Therefore, in the spirit of the Principle of Unity, law enforcement against election campaigns in places of worship must be based on *the impact of the act*, not the status of the perpetrator. If the act threatens religious cohesion, then legal instruments must be able to address it, regardless of whether the perpetrator is an official campaign team registered with the KPU or not.

The fourth principle emphasizes wisdom in deliberation/representation. Elections are a manifestation of people's sovereignty that must be carried out with rationality and wisdom, not through the manipulation of religious emotions. Covert campaigning in places of worship is essentially a form of manipulation that undermines the rationality of voters. Political actors who use back channels (covert campaign teams that are not registered with the KPU) to campaign in places of worship tend to avoid debates on programs and ideas, instead exploiting the blind obedience of the people to religious leaders or sacred symbols. In the construction of the Pancasila Rule of Law State, democracy must not run wild without ethical guidance. "Wisdom" implies that the process of electing leaders must be carried out in a dignified and *fair* manner. Allowing legal loopholes for covert campaign teams to operate in places of worship is tantamount to condoning unwise democratic practices. Legal interpretation must be returned to the noble goal of Pancasila democracy, which is to produce leaders through an honest and fair process. This justice is violated if election participants and campaign teams who obey the rules do not campaign in places of worship, while other participants use covert campaign teams to mobilize votes in the same places without penalty.

The fifth principle, Social Justice for All Indonesian People, requires fair treatment under the law (*equality before the law*). In the field of law, it is

often said that one of its main objectives is to uphold justice (Azharie, 2023), as evidenced by the legal maxim *iustitia fundamentum regnorum*, which states that justice is the most important, fundamental, and ultimate principle in the field of law (Hyronimus, 2011). The current legal construct, which provides loopholes for impunity for covert campaign teams that are not registered with the General Elections Commission (KPU), creates substantial injustice. This gives rise to an anomalous situation in which the law is sharp towards official administrative campaign teams (), but blunt towards illegal volunteers who essentially commit the same violations. To realize legal justice in line with Pancasila, it is necessary to apply a broader concept of accountability, such as the doctrine of *vicarious liability* in electoral criminal law. Election participants (candidates) should have an absolute obligation to ensure that none of their supporters violate campaign zoning. If it is proven that there is a covert campaign in a place of worship that benefits a particular candidate, and the candidate does not make a reasonable effort to prevent or reject it, then the candidate must be held legally responsible.

This approach is in line with the progressive nature of Indonesian law, which does not allow the text of the law to become a shackle for those seeking justice. The Constitutional Court, through Decision Number 65/PUU-XXI/2023, has paved the way by removing the permit exception. The next step is for law enforcement officials (Gakkumdu) and election organizers to have the courage to make a legal breakthrough (*rechtsvinding*) by interpreting that the ban on campaigning in places of worship applies to "everyone" who acts in the interests of election participants (candidates), not only those whose names are registered and listed as official campaign teams with the KPU. Thus, the Pancasila State Theory of Law provides a solid philosophical foundation that the ban on campaigning in places of worship is non-negotiable and cannot be circumvented by administrative tricks. Protection of places of worship is protection of the values of divinity and national unity. The law must be present as a commander capable of penetrating the veil of formality in order to uphold substantive justice, ensuring that sacred places remain homes for God and His people, not markets for practical political transactions.

2. Criminal Liability for Covert Campaigning in Places of Worship According to the Gakkumdu System

The dynamics of electoral law after Constitutional Court (MK) Decision Number 65/PUU-XXI/2023

leave residual issues at the level of formal and material criminal law enforcement. Although constitutionally, places of worship are prohibited from all forms of election campaign activities without exception, the instrumentalization of criminal law through Article 521 in conjunction with Article 280 paragraph (1) letter h of the Election Law often reaches a dead end when faced with the phenomenon of covert campaigning in places of worship. Actors who are not registered with the General Elections Commission (KPU) as official campaign teams, such as volunteer supporters, partisan religious leaders, or the administrators of the places of worship themselves, often escape criminal election charges. To analyze this impasse, a comprehensive analysis is needed based on two main theoretical pillars, namely *penal policy* theory and *law enforcement theory*, which are operationally implemented through the Integrated Law Enforcement Center (Gakkumdu) system to handle election crimes. Handling is considered inappropriate if the Gakkumdu Center procedures are not followed (Ramadhan, 2019). The Gakkumdu Center is a regulation issued by the General Election Supervisory Agency (Bawaslu), the Indonesian National Police, and the Attorney General's Office to ensure that the process of handling election crimes is fair, transparent, and free from irregularities (Daelli et al., 2024). Despite the positive role of the Gakkumdu Center, there are various weaknesses in the process and role of Gakkumdu in carrying out its duties and authorities, including regulatory problems that require Gakkumdu decisions to be unanimous between Bawaslu, the Attorney General's Office, and the Police. In addition, the existence of a *dissenting opinion* () by Gakkumdu is only noted in the decision, which ultimately means that Bawaslu's input can be disregarded by the Police or the Attorney General's Office (Junaidi, 2020). On the other hand, law enforcement is a necessity carried out by the state in protecting its citizens, because criminal acts are a pressing social problem that must be addressed in order to achieve a harmonious, orderly, and peaceful life as a manifestation of a peaceful society. (Ariyanti, 2019)

Criminal law, often referred to as *criminal law*, regulates criminal acts and everything related to crime in the context of society (Wahid et al., 2022). Because criminal law is part of public law, the state has a direct obligation to protect the rights and interests of the wider community (Putra et al., 2024). Criminal policy, as conceptualized by criminal law experts such as Sudarto and Barda Nawawi Arief, is essentially a rational effort by society or the state to

combat crime, which is an integral part of efforts to protect society (*social defense*) and achieve *social welfare* (Arief, 2002). This policy operates through three central stages, namely the formulation stage (legislative policy), the application stage (judicial/enforcement policy), and the execution stage (executive/administrative policy) (Arief, 2005). The phenomenon of covert campaigners getting away with it in places of worship reflects a dysfunction in the formulation and application stages. The formulation stage is closely related to criminal law *policy*. According to Sudarto, criminal law policy means the effort to create criminal legislation that is appropriate to the circumstances and situation at a given time and for the future. (Fardha, 2023)

At the formulation stage, lawmakers have formulated criminal election offenses in the Election Law with very limited legal subject boundaries, namely "implementers, participants, and campaign teams" registered with the KPU. The construction of *actus reus* (criminal act) in the form of campaigning in places of worship becomes irrelevant if *mens rea* (malicious intent) and the act are committed by subjects outside the restrictive phrase of the Election Law. This policy of formulating offenses adopts the principle of legality (*nullum delictum nulla poena sine praevia lege poenali*) in an overly rigid and formalistic manner. As a result, electoral criminal law fails to anticipate developments in electoral crime (covert campaigning). The formulation of electoral criminal policy should include a sweeping clause stipulating that "anyone" who deliberately carries out activities that fulfill the material elements of campaigning in places of worship can be punished. At the application stage, criminal policy is enforced by law enforcement officials. In the context of electoral law, this authority is monopolized by the Gakkumdu Center, which consists of elements from the Election Supervisory Agency (Bawaslu), the Police, and the Attorney General's Office. The Gakkumdu system is designed to provide swift legal certainty through time limits for handling cases (formal and material requirements). However, in cases of covert campaigning in places of worship, this application stage is often premature. Investigators and examiners face difficulties in proving the existence of a structural or instructional relationship (assistance/encouragement) between the perpetrators in the field and the candidates and/or official campaign teams. Due to the impasse in constructing the concept of participation (*deelneming*) in election crimes, cases are often dismissed on the grounds that they do not fulfill the elements of legal subjectivity.

To understand why the Gakkumdu Center is often unable to take action against covert campaigning in places of worship, it is relevant to use Lawrence M. Friedman's legal system theory framework, which divides the legal system into three elements: substance, structure, and legal culture. *First*, as mentioned in the policy formulation, the substance of the Election Law is not compatible with the reality of covert campaigning. A narrow interpretation of the definitions of "campaign" and "campaign team" has led to impunity. Following Constitutional Court Decision Number 65/PUU-XXI/2023, the substance of the prohibition is now absolute (no campaigning at places of worship whatsoever), but the criminal provisions in Article 521 of the Election Law are limited to certain parties. This creates a vacuum in the punishment regime for *de facto* perpetrators. *Second*, the legal structure includes law enforcement agencies themselves, namely Bawaslu, the Police, and the Attorney General's Office, which are members of the Gakkumdu center. The institutional design of Gakkumdu requires consensus among the three institutions at every stage of decision-making (plenary session). Regarding covert campaigning in places of worship, there are often differences in opinion. Bawaslu may see an essential violation of the campaign ban, but the Police and the Attorney General's Office, which are accustomed to strict conventional criminal evidence, often refuse to pursue cases due to the absence of formal evidence in the form of an official campaign team registered with the General Elections Commission (KPU). In addition, the very short time frame for handling criminal election violations (only a few dozen days) makes the investigation process to prove the covert affiliation of the perpetrator with election participants (candidates) even more difficult. *Third*, the element of legal culture refers to the attitudes and values of society towards the law. In the context of elections in Indonesia, there is a strong culture of patronage and clientelism, in which religious leaders often double as unofficial political patrons. The community often condones or even supports political activities in places of worship under the pretext of "preaching" or "the obligation to elect leaders of the same religion." This social permissiveness becomes a natural shield for those who engage in covert campaigning. Election supervisors at the lower levels (Panwascam or Panwaslu Kelurahan/Desa (PKD)) often experience sociological intimidation if they dare to reprimand or prosecute religious leaders who campaign covertly from the pulpit of places of worship. (Antikorupsi, 2023)

In response to the impasse of the Gakkumdu system, the theory of law enforcement and progressive criminal policy offers a way out through the application of a more flexible criminal doctrine. Gakkumdu should not only rely on electoral administrative law, but also optimize the principles of general criminal law, including the use of the doctrine of participation (*deelneming*) whereby Bawaslu and the police can investigate elements of *uitlokking* (incitement) or *medeplegen* (complicity). If it is proven that a candidate or political party provided funds, attributes, or instructions to certain figures to campaign covertly in places of worship, then the candidate can be charged as an instigator/intellectual actor (*intelectuele dader*), while the perpetrator at the pulpit is *the pleger* (material perpetrator), even if they are not registered as an official campaign team with the General Elections Commission (KPU). Furthermore, the Election Law actually recognizes the terminology "other parties appointed by Election Participants" (Editorial, 2017). Gakkumdu must develop *circumstantial evidence* parameters to prove that this "appointment" does not have to be in writing, but can be proven by the existence of material facilities, a track record of closeness, or the absence of objections (negligence/affirmative attitude) from the candidate regarding the campaign that benefits them. The integration between tightening policy formulation (through future revisions to the Election Law) and the progressiveness of the Gakkumdu structure (through a broad interpretation of *deelneming*) is a *conditio sine qua non*. Without this, the ban on campaigning in places of worship after Constitutional Court Decision Number 65/PUU-XXI/2023 will only ensnare honest election participants, while those who manipulate legal loopholes through covert campaigning in places of worship will continue to enjoy immunity and undermine the integrity of the elections.

3. Reconstructing the Norm of Prohibiting Covert Campaigning in Places of Worship to Provide Legal Certainty and Justice

Moving away from the law enforcement deadlock by the Gakkumdu Center and the dogmatic loopholes following Constitutional Court Decision Number 65/PUU-XXI/2023, the current electoral legal system is in a state of *vacuum of justice* amid the existence of positive norms. Electoral criminal law loses its binding force when confronted with covert political actors who reduce the sanctity of places of worship for the sake of practical electoral politics. A holistic legal reform effort is needed through the

integrative legal theory paradigm proposed by Romli Atmasasmita. Good law is law that is in accordance with *the living law* in society and reflects the values that apply in that society (Atmasasmita, 2012). Integrative legal theory explains that bureaucratic and social engineering must be based on a system of norms, behavior, and values derived from Pancasila as the ideology of the Indonesian nation (Farida, 2016). This theory places justice as the most ideal goal, even though the meaning of justice can be very diverse, all directed towards the success of national development in the context of Indonesian (social)ness (Nasihuddin *et al.*, 2024). Integrative legal theory deconstructs the understanding of law that has been trapped in rigid positivism. According to this theory, law should not be interpreted merely as a system of norms (laws), but must be a complete structure that integrates three elements, namely *the value system* (based on Pancasila), *the normative system* (in the form of comprehensive laws and regulations), and the behavioral system (*behavioral system* of the community and law enforcement) (Kusumaatmadja, 2012). In the context of covert campaigning in places of worship, reconstruction must be carried out directly at the heart of the norm, namely by reformulating articles so that they reflect the values of justice and legal certainty, which in turn will change law enforcement behavior in the field.

Before constructing a new normative framework, it is necessary to localize the flaws in the existing norms. The weak point of Article 280 paragraph (1) letter h in conjunction with Article 521 of the Election Law⁷ lies in the opening phrase, which is very limitative, namely "election organizers, participants, and campaign teams are prohibited from....". This norm contains legal uncertainty because it is unable to cover material acts (covert campaigning) carried out by *unregistered* entities (covert campaign teams that are not registered with the General Elections Commission). At the same time, this norm violates legal justice because it only punishes those who are administratively compliant in registering themselves, while allowing partisan volunteers (covert campaign teams) to maneuver freely in places of worship. Based on the normative system approach in integrative legal theory, the formulation of laws must be clear (*lex certa*) and unambiguous (*lex stricta*). The reconstruction of criminal norms regarding the prohibition of campaigning in places of worship must include an expansion of the definition of the act, a detailed description of the elements of the offense, and a clustering of sanctions that restore justice.

Therefore, the ideal reconstruction of norms to replace or improve the provisions of Article 280

paragraph (1) letter h and Article 521 of the Election Law is, *first*, regarding the expansion of legal subjects. Covert campaigning in places of worship must be defined materially, not merely administratively, so that the formulation of legal subjects prohibited from campaigning in places of worship must be expanded and reconstructed to include "everyone." With this expansion of legal subjects, anyone who conducts covert campaigning in places of worship can be prosecuted either as an instigator/intellectual actor (*intelectuele dader*) or as a material actor (*pleger*) at the pulpit of a place of worship, even if they are not registered as an official campaign team with the General Elections Commission (KPU). *Second*, regarding the anatomy of the elements of a criminal offense (). In order to avoid disparities in interpretation at the Gakkumdu center, the elements of the offense (*bestanddeel delict*) must be formulated cumulatively, consisting of four elements: 1) the legal subject element "Every Person", by changing the restrictive phrase "implementers, participants, and campaign teams" to "Any Person" (*natuurlijk persoon*) or "corporation/organization." This is a sweeping norm that ensures that covert campaign teams, including place of worship administrators, partisans, or affiliated religious leaders, can be prosecuted by law; 2) the element of fault "intentionally," which is *mens rea* (malicious intent) that requires proof that the perpetrator was aware that their actions took place in a place of worship and knew that their actions contained practical political content; 3) the material element of "conducting direct or covert campaign activities" to measure *de facto* actions, not *de jure* status, including sermons that include calls to vote, the distribution of campaign materials/props under the guise of charity, or declarations of political support within places of worship; 4) the element of location "in a place of worship" explicitly includes a geographical limitation clause in accordance with PerKPU 15/2023, which covers the main building, courtyard, fence, and outer wall of the place of worship, which is strictly prohibited following Constitutional Court Decision Number 65/PUU-XXI/2023. *Third*, the formulation of criminal and administrative sanctions (*double track system*). In modern legal developments, the term *double track system* refers to the separation of criminal sanctions from administrative sanctions. This development in the legal system introduced measures (*maatregel*) as an alternative to basic penalties, especially imprisonment (Ramadhani & Barda Nawawi Arief, 2012). From an integrative justice perspective, imposing corporal punishment on perpetrators in the field often does not address the

root of the problem if the intellectual actors (candidates) continue to enjoy electoral benefits. Therefore, sanctions must be reconstructed using a *double track system*, namely the main criminal sanction (for perpetrators in the field/material *perpetrators/pleger*) in the form of "imprisonment for a maximum of 2 (two) years and a maximum fine of category III", as stipulated in the new criminal fines provisions in Law Number 1 of 2023 concerning the Criminal Code. Increased fines are necessary to provide a proportional deterrent effect. In addition, additional/administrative criminal sanctions (for candidates) should be imposed by adopting the doctrine of *vicarious liability* (substitute liability) proven by the existence of material facilities, a record of closeness, or the absence of rebuttal (negligence/affirmative attitude) from the candidate/candidates regarding the campaign that benefits them, then the candidate/candidates concerned can be subject to administrative sanctions in the form of cancellation as a candidate pair/election participant.

The reconstruction of the norm prohibiting covert campaigning in places of worship above is philosophically and sociologically a manifestation of integrative legal theory. *First*, in the realm of values, this reconstruction of norms restores the value of God Almighty to its most exalted place. Religion and places of worship are protected from being used as political commodities. The value of social justice is also upheld because the law now stands neutral in that anyone who damages the sanctity of a place of worship with political campaign residue, whether registered as an official campaign team with the General Elections Commission (KPU) or not, will receive equal legal consequences. *Second*, in the normative system, changing the subject phrase to "Every Person" and introducing absolute/vicarious *liability* sanctions for candidates provides *legal* certainty. Legal certainty is no longer interpreted as blind obedience to flawed texts, but rather obedience to texts that have recorded the reality of modern crimes. *The legal loopholes* that have been exploited by grassroots political mafias have been successfully closed. *Third*, in terms of behavioral systems, the reconstruction of this norm's " " will trigger a *butterfly effect* on the legal culture of society and officials. Law enforcement officials at the Gakkumdu center no longer have any reason to stop investigating cases on the grounds that "the perpetrator is not an official campaign team registered with the KPU." The burden of administrative proof has shifted to material proof of the act. Meanwhile, for the community and religious leaders, the threat of

criminal punishment that extends to "everyone" will encourage *self-censorship* and the courage to reject any offers of politicization under the guise of religion, in order to protect the dignity of their places of worship from criminal charges. Through the integration of these three systems, Indonesian election law does not merely exist as a pile of elitist regulations, but also as a product of the interaction between the social, cultural, and moral structures of society, transforming into an instrument of social engineering that is authoritative, fair, and provides certainty in the political arena ahead of the general election, as Pancasila and the 1945 Constitution are democratic and socially just by upholding legal certainty and achieving justice in all areas of life, including in electoral matters. (Gustriani et al., 2025)

CONCLUSION

Based on the entire description above, the conclusion of this legal writing can be drawn into three main points. *First*, Constitutional Court Decision Number 65/PUU-XXI/2023 has actually produced a progressive *ratio decidendi* by removing all forms of exceptions to campaigning in places of worship. However, the lack of interpretation adjustments to the limiting phrase "implementers, participants, and campaign teams" in Article 280 paragraph (1) letter h and Article 521 of the Election Law has actually given rise to a new paradox in the form of the proliferation of covert campaigns by covert campaign teams that are not registered with the KPU. From the perspective of the Pancasila State Theory, ignoring this dogmatic loophole violates the values of Divinity (desacralization of sacred spaces) and Unity (threat of segregation among the people).

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Therefore, this prohibition must be interpreted broadly (extensively), focusing on the essence of the material act, not merely the administrative shell. *Second*, a review through the theory of Criminal Policy and the theory of Law Enforcement reveals that the paralysis of the Gakkumdu Center in taking action against covert campaign actors stems from dysfunction at the stage of norm formulation, which is overly rigid and formalistic. Law enforcement officials are often caught up in the absence of a provision requiring campaign teams to be officially registered with the General Elections Commission (KPU) as a formal requirement for prosecution, thereby ignoring the doctrine of participation (*deelneming*) in criminal law. A legal culture that is permissive towards the politicization of religious platforms further exacerbates the structural deadlock within the Gakkumdu Center. *Third*, to restore legal certainty and justice, the reconstruction of norms is absolutely necessary through an Integrative Law theory approach. Crucial changes to the normative system must be made by reconstructing Articles 280 and 521 of the Election Law. The subject of the offense must be expanded to "Every Person" to ensnare volunteers and partisan house of worship administrators. In addition, it is necessary to adopt a *double track system* that threatens criminal punishment for perpetrators in the field/material *perpetrators/pleger*, while also imposing administrative sanctions (absolute/substitute liability) on candidates who are proven to have received electoral benefits from such covert campaigns. The integration of these new norms is believed to improve the system of behavior of officials in dealing with violations.

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