

# Civil Liability for the Use of Personal Data by Political Parties in Election Testimony Verification

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## ABSTRACT

In a democratic system, regional head elections Pilkada are one of the important pillars to elect leaders and representatives of the people. However, inaccurate voter data in the integrity of elections often causes problems in the implementation of elections including double data. Double data not only undermines the principle of fairness but also has the potential to reduce public trust in democracy. Therefore, election monitoring is essential to maintain the fairness and openness of the voting process. People's constitutional rights are affected by this issue, as they need assistance to report changes in voter data or match unregistered data. Almost all communities in Medan have conducted matching and research cokolit properly, according to the election monitoring results. However, the issue of double data is still a problem that must be monitored again by Bawaslu. The author collects information about the 2024 Pilkada from the Election Supervisory Board of Medan City. That there are still many double data that occur in the community. The purpose of this research is to find out how well the cokolit works to avoid double data and how it affects voting and fairness. This research shows that most citizens of Medan City have followed the procedures when conducting cokolit, thus reducing the possibility of double data. Transparency, public trust, and community engagement in the elections also increased as a result. In addition, this monitoring activity also provides suggestions for improving the double data prevention system, including increasing cooperation between election organizers and independent monitors, expanding cokolit socialization to the community, and using artificial intelligence-based technology for automatic detection. Such measures are essential to ensure integrity, fairness and transparency in elections.

**Keywords:** Civil Liability, Personal Data, Political Parties.

## I. Introduction

Elections are an arena of competition to fill political positions in government based on formal elections of eligible citizens. Election participants can be individuals and political parties but the most important are political parties. Political parties put forward candidates in elections to be elected by the people. In modern times, elections occupy an important position because they are related to several things. First, elections are the most important mechanism for the viability of representative democracy. It is the most sophisticated mechanism invented so that the people remain in charge of themselves. The rapid development of society, the large number, the widespread distribution and the variety of activities carried out made the complexity of the problems faced by the people more varied. These conditions did not allow the people to gather in one place and discuss the problems they faced seriously and thoroughly. Finally, representative democracy emerged as a necessity with elections as a mechanism to elect representatives.



Second, elections are an indicator of a democratic state. In fact, no country can claim to be democratic without holding elections even if it is authoritarian by nature. When the Schumpeterian perspective on democracy, namely democracy as a "method of politics" dominates the theorization of democracy, elections become the most important element of democracy. politics" dominates the theorization of democracy, elections become the most important element of the measure of a democratic state. In fact, Przeworski and his colleagues define democracy as "simply a regime that holds elections to fill government positions" provided that true competition requires that there be an opposition that has an agreement to win public office and that the chief executive and legislative seats are filled through elections. Meanwhile, Dahl mentions that two of the six features of political institutions required by large-scale democracy are related to elections, namely elected officials and free, fair and periodic elections. Article 28 of the 1945 Constitution reads "Freedom of association and assembly to express thoughts orally and in writing and so forth shall be determined by law". One of the manifestations of these provisions is the formation of political parties in the constitutional system. The formation of this political party can represent a part or all of the interests of the people. With the legal basis above, the law on political parties was formed as one of the ways to establish a party. Apolitical party is an organization that is national in nature and is formed by a group of Indonesian citizens voluntarily on the basis of a common will and ideals to fight for and defend the interests of the ideals to fight for and defend the political interests of members, society, nation and state, and maintain the integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia (Utama, 2023).

The definition of personal information according to the Personal Data Protection Law is "data about individuals who are identified or can be identified directly or indirectly through electronic or non-electronic systems". With the understanding that has been explained, there are aspects that need to be harmonized between personal information used in the political party verification process and personal data protection. Before a political party is recognized as a participant in the general election, it needs to be verified by the KPU to ensure that the party is eligible. This mechanism is regulated through regulations stipulated by the agency responsible for the stages of the general election in accordance with Law Number 7 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2022 concerning Amendments to Law Number 7 of 2017 concerning General Elections into Law. In this regulation, the institution responsible for regulating the stages of the election is the KPU.

## II. Research Method

This author uses Normative juridical research type method or library legal research. As secondary data sources, namely: sources from literature books, laws and regulations, scientific journals, magazines and others that have to do with the title of this research. So that it can support the material discussed, as well as the provisions in the articles relating to the issues raised by researchers.

## III. Result and Discussion

### 3.1. Legal Protection of Personal Data in the Election Testimony Verification Stage

Elections are an instrument or means to carry out democracy, even in many democracies, elections are considered as a symbol of as well as a measure of democracy (Nazmi, 2023) One important aspect in organizing elections that needs to be considered is the protection of the personal data of election participants. In an effort to protect personal data, the KPU as an election organizing agency has issued several regulations, one of which is through KPU Regulation No. 6 of 2021 concerning Continuous Voter Data Updating where the personal data of election participants is explicitly referred to as voter data. What is meant by voter data is individual data and / or structured aggregate population data that meet the requirements as voters. This voter data must be stored, maintained and kept correct and protected by confidentiality in a big data. Big Data is

often described as a significant accumulation of various types of data, generated at high speed from various sources, whose handling and analysis require new and powerful processing and algorithms (Kusnaldi et al., 2022). In KPU Regulation No. 6 of 2021, it is explicitly stated that the voter data required in the process of updating voter data are NIK, KK number, full name, place of birth, date of birth, gender, marital status, address and disability information. Kusnaldi et al (2022) Against these data, both KPU, Provincial KPU and Regency / City KPU must secure and keep confidential individual data containing personal data. Furthermore, the protection of voters' personal data in the organization of elections is carried out through several stages: (Kusnaldi et al, 2022).

- Storage of voter data by maintaining the confidentiality of personal data
- Supervision of personal data processing and management
- Prevention of unauthorized access to personal data using electronic-based security systems.

The Indonesian government has a responsibility to create and implement adequate and effective regulations related to personal data. The government should play an active role in enacting appropriate regulations, providing education and awareness regarding privacy rights, as well as monitoring and enforcing laws against data privacy violations. Although Indonesia already has a draft law on personal data protection, it currently does not have legislation that specifically regulates personal data protection. On the other hand, Indonesia currently has several regulations related to personal data protection, as follows (Suari et al., 2023).

- Law No. 10 of 1998 on the Amendment to Law No. 7 of 1992 on Banking
- Law No. 36/1999 on Telecommunications Law No. 39/1999 on Human Rights
- Law No. 19 of 2016 on the Amendment to Law No. 11 of 2008 on Electronic Information and Transactions UU ITE

The verification process must go through two stages, namely administrative verification and factual verification Testimony. Administrative verification is the process of examining written evidence that is related to the validity of the fulfillment of all the requirements of political parties participating in the general election administratively. Meanwhile, factual verification Testimony is the process of matching the truth of written evidence that is related to the validity of the fulfillment of the requirements for political parties to become participants in the general election factually (Maad, 2023). In the process of verifying political parties, it is necessary to have integrity from election organizers such as the KPU and Bawaslu, for which factual verification of each management, domicile and membership verification is also needed without distinguishing between large or small parties in a proportional and equitable manner (Sultan et al. 2022). With integrity in verification, it will produce public officials from credible and qualified political parties, as we all know that verification is a provision stipulated in the Election Law. However, there are differences in the verification process in 2019 and 2024, where after the Constitutional Court Decision Number 55 / PUU-XVIII / 2020 parliamentary parties or political parties that have passed the 2019 general election verification and passed / met the provisions of the Parliamentary Threshold only carry out administrative verification in the 2024 elections (Maad, 2023).

### 3.2. Civil Liability of Political Parties for Misuse of Personal Data

Political parties are articulated organizations composed of politically active actors in society, i.e., those who focus their attention on controlling the power of government and who compete for popular support, with some other groups that have different views so that political parties are major intermediaries linking forces and social ideologies with official government institutions and linking them with broader political action (Bernandus et al, 2022). Political Party has several functions, namely: law number 2 year 2008.

- Political parties function as a means:

- political education for members and the wider community to become Indonesian citizens who are aware of their rights and obligations in the life of society, nation and state;
  - creation of a climate conducive to the unity and integrity of the Indonesian nation for the welfare of society;
  - absorbing, collecting, and channeling the political aspirations of the community in formulating and determining state policies;
  - political participation of Indonesian citizens; and
  - Political recruitment in the process of filling political positions through democratic mechanisms by taking into account gender equality and justice.
- The function of political parties as referred to in paragraph 1 is realized constitutionally. According to Budiardjo, political parties have several functions, namely: (Rahajeng et al, 2023).
  - Party as a medium of political communication. The main task of political parties is to channel the various opinions and aspirations of the people and organize to reduce confusion in society. In a large modern society, the opinions and aspirations of individuals or groups can disappear without a trace if they are not united with similar opinions and aspirations. This process is known as interest aggregation. Once amalgamated, these opinions and aspirations are processed and formulated into a "Formulation of Interests".
  - Political parties as a means of political socialization. Political parties also play a role in socializing politics, which is a process in which an individual acquires attitudes and orientations towards political phenomena that generally apply in the society in which the individual is located. The political socialization process usually takes place from childhood to adulthood, through lectures, cadre courses, and so on.
  - Political parties as political recruitment tools. Political parties also serve to seek out and invite talented individuals to engage in political activities as party members, thereby expanding political participation. This is done through personal contact, persuasion, and efforts to involve the younger generation as cadres who will replace the old leadership in the future.
  - Political parties as conflict management tools. In a democratic atmosphere, competition and differences of opinion in society are natural. If a conflict occurs, political parties attempt to resolve it. According to Sukarna (1994), political education is an absolute requirement considering that political education educates awareness of the state and nation. Political parties in countries that are not yet independent emphasize this political education to have qualified cadres to realize the country's independence. In countries that are already independent, political education must still be carried out to prevent loss of independence or re-colonization in a more subtle form.

In Indonesia, the participation of political parties in the contestation of general elections must meet the requirements, one of which is related to its membership. Damayanti, et al. (2023) Referring to Article 173 paragraph 2 of the Election Law and PKPU Number 4 of 2022 that political parties that want to participate in the election must register with the KPU and pass both administrative and factual verification conducted by the KPU. Registration of political parties as election participants in 2024 is carried out using the KPU's Political Party Information System SIPOL website where technically every political party whose registration file has been declared complete can access sipol to fill in its membership requirements. Damayanti et al. (2023) states the phenomenon of community data profiteering to fulfill the membership requirements of political parties in the 2024 elections is a factual existence, especially during the registration and verification of candidates for election participants. Article 140 of PKPU Number 4 of 2022 concerning Registration, Verification, and Determination of Political Parties Participating in the Election of Members of the House of Representatives and the Regional House of Representatives, explains that the public can also submit written reports on the correctness of documents on the requirements of political parties to the KPU, Provincial KPU, or Regency / City

KPU until before the determination of Political Parties participating in the Election. Written reports can be attached with the following files:

- Clear residence identity of the reporter;
- Evidence that underpins or strengthens the report
- Description of the explanation of the object of the reported problem. In addition, people who feel that their NIK has been taken without their knowledge, can report via the internet by: Visit the election info complaint page; Select the "Response" menu and select the "Political Party Data Updating" stage; Select the "Political party member data profiteering" option and click "Check Political Party Members"; Enter the NIK that was profited without knowledge and put a check mark in the column "I'm not a robot" Click "Search".

After that, the website will direct the party whose data has been used to fill out the complaint form completely. After the reporting is completed, the relevant political party will delete the data of the party whose data was taken from the Political Party Information System SIPOL. Victims can also take repressive steps by reporting to the Police. As per Article 13 Law No. 2 of 2002, the police have the main tasks of maintaining security and public order, enforcing the law, and providing protection, protection and services to the community.

The protection of personal data in private rights, according to the regulations mentioned earlier, is guaranteed by Article 28G paragraph 1 of the 1945 Constitution, and is regulated by the Population Administration Law and the -PDP Law. Article 19 of the PDP Law states that personal data controllers and personal data processors include individuals, public bodies, and international organizations. A political party is a public body that is also a controller of personal data of its members. However, the controller of personal data must have a basis for processing personal data which includes the consent of the processing of personal data from the subject of personal data by taking into account the purpose, need and balance of interests between the political party as a controller of personal data and the subject of personal data. Article 57 paragraph 1 and paragraph 2 of Law No. 27 of 2022 on Personal Data Protection PDP explains that if the political party as the controller of personal data does not obtain valid permission from the identity owner or personal data subject, it may be subject to administrative sanctions in the form of: Law No.27 of 2022.

- Written warning;
- Temporary suspension of all personal data processing activities;
- Deletion or destruction of personal data; and/or
- Administrative fine.

In addition, parties who make use of personal data as a requirement for political party membership can be charged with Article 263 paragraph 2 of the Criminal Code which reads: "With the same punishment shall also be punished whoever deliberately uses a forged or falsified document as if it were an original and unfalsified document, if the use may cause a loss". For the formulation of this article, the perpetrator of personal data profiteering can be subject to a maximum imprisonment of 6 years. In addition to Article 263 paragraph 2 of the Criminal Code, the perpetrator can also be charged using Law Number 24 of 2013 Amendment to Law Number 23 of 2006 concerning Population Administration, in which sanctions against parties who use other people's identities can be resolved with administrative sanctions (Detikbali, September 13, 2022). In relation to this personal data profiteering, as stated in Article 65 paragraph 1 of the PDP Law which states that every person is prohibited from unlawfully obtaining or collecting personal data that does not belong to him/her with the intention of benefiting himself/herself or others which may harm the subject of personal data. With these provisions, political parties that profiteer from a person's personal data to fulfill the membership requirements for election participants can be punished under the provisions of Article 67 with a maximum penalty of 4 or 5 years in prison and/or a fine of up to Rp. 5,000,000,000 five billion rupiah.

However, due to the lack of socialization of the Personal Data Protection Law, the enforcement of this regulation has not been able to be carried out in a consistent and binding manner. Law No. 27 Year 2022

Article 1365 of the Civil Code KUHP on the regulation of Unlawful Acts PMH. This article states that any act that violates the law and causes harm to another person requires the perpetrator to compensate for the loss. There are four elements that must be proven in a lawsuit based on PMHKitabUndang- Undang Hukum Perdata.

- Unlawful Acts
- Error intentional or due to negligence
- Loss material and immaterial
- Causal relationship between the act and the loss

Law No. 27 of 2022 The government of the Republic of Indonesia enacted Law No. 27 of 2022 on Personal Data Protection, the purpose of which is to provide legal protection to injured parties so that they can sue and seek compensation for their personal data (Law No. 27 of 2022). If a person who feels aggrieved due to the use of personal data caused by the registration of election candidates using the requirements of the member's KTP-el or KK to be uploaded to Sipol, for which there is no consent to use their personal data, then the original owner of the data can file a written lawsuit based on Article 26 paragraph 1 and paragraph 2 of Law Number 19 of 2016 concerning ITE that: Law number 19 of 2016.

- Unless otherwise stipulated by laws and regulations, the use of any information through electronic media involving personal data of a person must be done with the consent of the person concerned.
- Any person whose rights are violated as referred to in paragraph 1 may file a lawsuit for the losses incurred under this Act.

Political parties are in accordance with Article 34 paragraph 1 of Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties which states that political party finances are sourced from membership fees; lawful donations; and financial assistance from the State Revenue and Expenditure Budget/Regional Revenue and Expenditure Budget (Law No.2 of 2011).

#### IV. Conclusion

Elections are an important instrument in democracy, where the protection of personal data of election participants is a major concern. KPU has issued regulations to protect voter data, including the type of data required and the process of storing voter data with confidentiality maintained. In addition, the protection of voters' personal data is implemented through the stages of monitoring and preventing unauthorized access to personal data. The Government of Indonesia is responsible for creating and implementing effective regulations related to personal data protection. Although there is a draft law on the matter, there is still a need for regulations that specifically regulate the protection of personal data. A political party is an articulated organization composed of politically active actors in society, i.e., those who are concerned with controlling governmental power and who compete for popular support, with some other groups who have different views. Thus, political parties are the major intermediaries linking social forces and ideologies with official governmental institutions and linking them to broader political action. Article 1365 of the Civil Code KUHP on the regulation of Unlawful Acts PMH. This article states that any act that violates the law and causes harm to another person requires the perpetrator to compensate for the loss. There are four elements that must be proven in a lawsuit based on PMH Civil Code Article 1365.

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