

The President's Failure in Implementing Presidential Visions, Missions and Programs: Tort or Breach of Contract? (Civil Law Perspective)

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Abstract

The visions, missions and programs are offered by candidate in the Presidential election campaign, so they become part of the campaign promises. Campaign promises does not meet the requirements of the contract in Article 1320 of the Indonesian Civil Code, so the failure of fulfilling campaign promises is not breach of contract (based on Judge's decision on the Case Number 17/PDT.G/2009/PN.JKT.PST). In the name of justice for the people, the failure of fulfilling campaign promise must be able to be sued in court. Since the presidential visions, missions and programs are regulated by Laws, so the failure in implementing it is unlawful (tort) based on the Case Number 278/PDT.G/2010/PN.JKT.PST. The lawsuit against the President for his failure is not to dismiss the President, but to force the President to implement the visions, missions and programs in his term of office.

Keywords: campaign promise; torts; breach of contract; presidential vision, mission and program

1. Introduction

The Unitary State of the Republic of Indonesia held the first direct presidential election by the people in 2004. Before the amendment to the Constitution¹, the sovereignty was in the hands of the people and implemented by the The People's Consultative Assembly (Majelis Permusyawaratan Rakyat or MPR)². The MPR was the highest state institution and authorized to establish the Guidelines of the State Policy (Garis-garis Besar Haluan Negara or GBHN)³. MPR also had the authority to elect⁴, appoint and dismiss the President. The GBHN gave direction to the President to undertake national development. The violation of GBHN by the President became one of the reasons for the MPR to dismiss the President. The President should report the responsibility in the MPR session which held at the end of the reign of the President.

After the amendment of the Constitution, sovereignty is in the hands of the people and implemented according to the Constitution⁵. The MPR is no longer be the highest state institution, and lost the authority to establish GBHN. As a state institution equal to the President, the MPR no longer elect the President. The President is elected directly by the people⁶. The absence of GBHN does not mean the President governs and undertake national development without any guidance.⁷ The national development must be in accordance with the vision, mission and programs offered by the presidential candidate during the presidential election campaign. After being elected as President, then the vision, mission and the program must be regulated in the written regulation in order to have binding legal force⁸.

2. Discussion

2.1. The President's Visions, Missions And Programs As Part Of Campaign Promise

The visions, missions and programs are offered by candidate in the presidential election campaign⁹, so they become part of the campaign promises. An election promise or campaign promise is a promise or guarantee made to the public by a candidate or political party that are trying to win an election.¹⁰

Campaign promises, although consist of the word 'promise', is not the promise, agreement or contract referred to in the Indonesian Civil Code. There is no difference among promise, agreement or contract based on Indonesian Civil Code. Based on Article 1320 Indonesian Civil Code, there are four requirements for the validity of an agreement: 1) The mutual consent of those who bind them-selves (the parties agree those who commit themselves); 2) The capability to make an agreement (each party must be qualified to create agreement); 3) A

¹ Constitution of Republic of Indonesia Year 1945 hereinafter referred to as Constitution. This Constitution is amended four times, in 1999, 2000, 2001, and 2002.

² Article 1 paragraph 2 Constitution (before amendment)

³ Article 3 paragraph Constitution (before amendment)

⁴ Article 6 paragraph 2 Constitution (before amendment)

⁵ Article 1 paragraph 2 Constitution (as third amendment)

⁶ Article 6A paragraph 1 Constitution (as third amendment)

⁷ The development planning then regulated by Law No. 17 Year 2007 concerning National Long-Term Development Plan Year 2005-2025

⁸ Point 3 Planning Process on General Explanation of Law No. 25 Year 2004 concerning National Development Planning System

⁹ Article 1 point 22 Law No. 42 Year 2008 concerning General Election of President and Vice President, also mentioned on Article 1 point 35 Law No. 7 Year 2017 concerning General Election

¹⁰ https://en.wikipedia.org/wiki/Election_promise, accessed June 10, 2018

particular object (a certain thing); and 4) A lawful cause.¹

The four requirements above consist of the subjective conditions ('mutual consent' and 'capability' as stated in number 1 and 2) and objective conditions ('particular object' and 'a lawful cause' as stated in number 3 and 4). If the agreement does not fulfill the subjective conditions, then the agreement can be canceled. But if the agreement does not fulfill the objective conditions, then the agreement is null and void by law.

Then, the campaign promise does not meet the requirements of the contract in Article 1320 of the Indonesian Civil Code. For the first requirement, there is no 'mutual consent of the parties' applied in campaign promise. The presidential election is carried out effectively and efficiently based on the principle of direct, general/public, free, secret, honest and fair. Agreements to vote for a certain candidates are not explicit, but secretly through the ballot. There is no evidence that the voter has chosen a certain candidates because the ballots are anonymous. In Indonesia, the voters shall not make any writing and / or other notes on the ballot. The ballots which contained writings and / or other notes shall be declared invalid.

For the second requirement 'The capability to make an agreement', the candidate of President, Vice President as well as voters in the election are legal subject. Candidates must be 35 years old, educated, healthy, not declared bankrupt by the court, have carried out taxation obligations, etc. While Voters are Indonesian citizens at least 17 (seventeen) years old or have (ever) married and listed in the voters list. Voters as mature citizens play a role in the making and execution of political decisions.

For the third and fourth requirements, every promise offered in the campaign is always ideal, so the object of the campaign promise does not violate any law or other norms. As an ideal offering, campaign promises can not be limited as a particular object and difficult to define.² Since the campaign promise is not the contract referred to in the Indonesian Civil Code, so the failure of fulfilling campaign promise cannot considered as breach of contract. As part of campaign promise, the visions, missions and programs are not the contract referred to in the Indonesian Civil Code. So the President's failure to implement his visions, missions and programs cannot considered as breach of contract.

2.2. Comparison Of Campaign Promises And Private Contract

As comparison, campaign promises (including visions, missions and programs) and private contract also have different legal consequences. Based on the principle of *Pacta Sunt Servanda* (the agreement becomes law for the parties who agree), the private contract is directly legally binding since there is an agreement. While campaign promise will be legally binding after the candidate wins the election. The campaign promise is offered by the candidate, but the fulfillment of the campaign promise will be done after the candidate get the status of President and Vice President. The results of the Presidential Election as declared in the Commission of General Election's Decree is applicable in *erga omnes* principle. Means, the winner of the Presidential Election become President and Vice President for all Indonesian people, not just for the voters, constituents, or supporting parties only.

Table 1. Comparison of Campaign Promise and Private Contract

Elements	Campaign Promise	Private Contract
The parties	Candidate and voters	Legal entity
Agreement	Unprovable	Provable
Capability	Capable	Capable
Object	Unlimited, not particular	Limited, particular
A lawful cause	Does not violate any law or other norms	Does not violate any law or other norms
Legally binding	After winning the election	Directly, since the agreement
Principle	<i>Erga omnes</i>	<i>Pacta sunt servanda</i>

Visions, missions and programs as part of campaign promises are not a private contract, so the failure of fulfilling campaign promises is not breach of contract. Then the failure of fulfilling campaign promises are not enough to be given only informal sanction (namely moral, political nor electoral sanctions). The moral, political nor electoral sanctions only give bad reputations to candidates and decrease the number of voters. In the name of justice for the people, the failure of fulfilling campaign promise must be able to be sued in court. It takes a legal mechanism to force the President to fulfill his campaign promises in his term of office. The President should take the responsibility if he failed implementing his vision, mission and program in the national development. Taking the responsibility does not mean the President is being dismissed, but rather ensures that the President implementing his vision, mission and program in his term of office.

¹ Subekti and Tjitrosudibio, **Indonesian Civil Code (Burgerlijk Wetboek)**, Pradnya Paramita, Jakarta, 1992, pg. 283

² In every Presidential campaign, candidates make promises on a wide variety of issues. Read : Shaw, Carolyn M, **President Clinton's first term: Matching campaign promises with presidential performance**, *Congress & the Presidency* Vol. 25 No. 1; Spring 1998; ProQuest Research Library, pg. 43

2.3. The Indonesian Court's Decisions On The President's Failure To Implement His Visions, Missions And Programs

As examples of citizen lawsuit against the President's failure to implement his visions, missions and programs, there are 2 (two) cases, namely Case Number 17/PDT.G/2009/PN.JKT.PST and Case Number 278/PDT.G/2010/PN.JKT.PST.

Case Number 17/PDT.G/2009/PN.JKT.PST is a citizen lawsuit related to breach of campaign promises by President because the President failed to increase economic growth and reduce poverty and unemployment. A lawsuit filed by Indonesian Voters Institution (Lembaga Pemilih Indonesia or LPI) as plaintiffs at the Central Jakarta District Court (Pengadilan Negeri Jakarta Pusat). The lawsuit is directed to the President and Vice President of the Republic of Indonesia. Finally, the judges state that the campaign promises are not a private contract, so the failure of fulfilling campaign promises is not breach of contract.

Instead, the Case Number 278/PDT.G/2010/PN.JKT.PST is a citizen lawsuit related to torts¹ by President for neglecting the provision of social security. A lawsuit filed by 120 (one hundred and twenty) Indonesian Citizens who are members of the Social Security Action Committee (Komite Aksi Jaminan Sosial or KAJS), as plaintiffs at the Central Jakarta District Court (Pengadilan Negeri Jakarta Pusat). The attorney consists of 17 (seventeen) advocates who are members of the People's Defenders Team for Social Security (Tim Pembela Rakyat Untuk Jaminan Sosial).

The lawsuit is directed to the Republic of Indonesia, with 11 (eleven) defendants namely the President of the Republic of Indonesia, Chairman of the Parliament (Dewan Perwakilan Rakyat or DPR), Vice President of the Republic of Indonesia, and 8 (eight) Ministers. In this case, The Government (President and the People's Legislative Assembly) had not ratified the law concerning Social Security Agency, which up to 5 (five) years ignored the constitutional rights of the citizens. Whereas survey of the Indonesian Voice Network (Jaringan Suara Indonesia)², notice that improvement of health services and free treatment for the poor became part of Presiden Susilo Bambang Yudhoyono's campaign promise during the presidential election in 2009.

The Central Jakarta District Court granted the citizen lawsuit partially as follows :

- 1) Defendants are required to immediately :
 - a) enact the Law concerning Social Security Agency,
 - b) enact Government Regulations and Presidential Regulations concerning Social Security Agency.
 - c) make adjustments to 4 (four) Social Security Agency, namely PT Jamsostek, PT Askes, PT Asabri, and PT Taspen to be managed trustee body for the entire population of Indonesia.
- 2) Sentenced the defendant directly to pay the court fee of IDR 2,381,000 to the court.

Then one point rejected by The Central Jakarta District Court is to punish the defendant jointly to pay the loss of IDR 1 (one rupiah) to the people of Indonesia due to the failure of realizing the National Social Security System (Sistem Jaminan Sosial Nasional or SJSN).

Decision of The Central Jakarta District Court Number 278/PDT.G/PN.JKT.PST is a progressive verdict and fairly judged the government (President and Parliament) which has been proven to be unlawful for ignoring the citizens' constitutional rights. The right to social security and decent living has been recognized as a constitutional right for all Indonesian people pursuant to the Constitution. Article 28 H paragraph (1), (2), and (3) of the Constitution states:³

- (1) Everyone shall have the right to live a physical and spiritual prosperity, to domicile, and to obtain a good and healthy living environment and to be entitled to health services.
- (2) Everyone shall have the right and privilege to have equal opportunities and benefits to achieve equality and fairness.
- (3) Everyone shall have the right to social security which enables his complete development as a dignified human being.

The constitutional right of the citizen demands the obligation of the government in Article 34 Paragraph (3) of the Constitution which states that: "The State is responsible for the provision of appropriate health and public service facilities."⁴ Therefore, the failure of fulfilling campaign promises is not breach of contract, but tort (an action against the law). There is a significant difference between tort and breach of contract.⁵ Torts are not preceded by an agreement as required for the breach of contract. While the similarity of both lawsuit is submitted to the District Court. In fact, there are many government actions that can be substantially categorized as torts. Torts committed by the government obviously harm the people because they do not get justice that should be

¹ A TORT. Without reason; unjustly; wrongfully. Henry Campbell Black, *Black's Law Dictionary*, ST. Paul, Minn.: West Publishing Co., 1968, pg 7

² www.jaringansuaraindonesia.com

³ As second amendment

⁴ As fourth amendment

⁵ Tort (French : tortum, Latin : tortus) is a wrongful act, not including a breach of contract or trust, that results in injury to another's person, property, reputation, or the like, and for which the injured party is entitled to compensation. Read : www.dictionaty.com

their right. Citizens' lawsuits that suffer losses due to the ignorance by the government, must be brought to trial by a legally-regulated mechanism. It is unfair for the people if they must wait for presidential accountability at the end of his term of office.

Classification of torts according to Article 1365 of the Indonesian Civil Code: "Any unlawful act, which carries harm to another person, obliges a person who, for whose fault, issues the loss, compensates for such loss."¹ The requirements to determine torts are : a) there must be an action; b) the action must be against the law; c) there is a loss; d) there is a causal relationship between the doers' action and the loss; and e) there is an error (fault, misdoing).² Generally the doers must be accountable, because he is aware of the consequences of his actions.

There are new doctrines to determine tort. The first requirement 'there must be an action', means not only active deeds, but also passive deeds (including omission or doing nothing). On the second requirement 'against the law' means not only against the regulations, but also against other norms in the society. The third requirement of 'loss', creates an obligation for the doers to pay compensation. The compensation is not only in the form of money, but also restore the condition as it original³.

In the Case Number 278/PDT.G/2010/PN.JKT.PST, the government ignored the constitutional rights of the citizens. By delaying enactment of the Law concerning Social Security Agency, means that there has been an omission of legislation, because the government :

- 1) Has not implemented Article 28H paragraph (3) and Article 34 paragraph (2) Constitution. The Government (the President, the Vice President and the relevant Ministers) and the Parliament should develop a social security system for all the people and fulfill the right of social security to enables self-development as a dignified human being.
- 2) Does not make technical regulations to implement the social security. The Government and the Parliament should implement 22 (twenty two) delegation orders in several articles on Law No. 40 Year 2004 concerning National Social Security System.
- 3) Have violated Article 34 paragraph (3) Constitution and Article 19 Law No. 40 Year 2004 concerning National Social Security System. The Government should organize a lifetime health insurance program for all Indonesians without any exception.
- 4) Not implementing the National Social Security System (SJSN) until the transitional deadline ends on October 19, 2009. The Government and the Parliament should guarantee the right to social security and perform the State's duty to undertake adequate measures as mandated in Article 9 and Article 12 of the International Covenant on Economic, Social and Cultural Rights which has been ratified under Article 2 of Law No. 11 Year 2005. The Government enacted the Law No. 24 Year 2011 concerning Social Security Agency on November 25, 2011, after being sued by the people.
- 5) Ignoring the general principles of good governance. In fact, the government did not immediately enact the Law No. 24 Year 2011 concerning Social Security Agency and delayed implementing regulations for Law No. 40 Year 2004 on the National Social Security System means that the Government does not enforce legal certainty of social security.
- 6) Denying the vision, mission and program as campaign promises. Improving health services and free treatment for the poor were part of the vision, mission and program that promised by President during the Presidential Election campaign on 2009.

The failure in implementing vision, mission and program means commit a tort (break the law). The legal position and the binding force of vision, mission and program by the candidate of Presiden and Vice President are regulated in several Laws as follows :

- 1) Vision, mission and program of the candidates are offered during the presidential election campaign to convince the voters.⁴
- 2) One of the requirements to be candidates for President and Vice President is to have vision, mission and program in managing the government.⁵
- 3) In registering the candidates of President and Vice President to the General Election Commission, the Political Parties shall submit the document of the vision, mission and program of the Candidates.⁶

¹ Subekti and Tjitrosudibio, **Indonesian Civil Code (Burgerlijk Wetboek)**, Pradnya Paramita, Jakarta, 1992, pg. 288

² MA Moegni Djodirdjo and Advocaat & Procureur, **Tort : Accountability (Aansprakelijkheid) For Damages, Caused By Unlawful Acts**, (Jakarta:Pradnya Paramita, 1979) pg. 34-35

³ JM van Dunne and Gr van der Burght, **Tort (Article 1365 Civil Code)**, Jurisprudence Cooperation Council, Dutch and Indonesia, Civil Law Project, Semarang, 1998, pg 6, 8 and 10

⁴ Article 1 point 22 Law No. 42 Year 2008 concerning General Election of President and Vice President and Article 1 point 35 Law No. 7 Year 2017 concerning General Election

⁵ Article 5 point r Law No. 42 Year 2008 concerning General Election of President and Vice President and Article 169 point t Law No. 7 Year 2017 concerning General Election

⁶ Article 15 point e Law No. 42 Year 2008 concerning General Election of President and Vice President and Article 229 paragraph (1) point e Law No. 7 Year 2017 concerning General Election

- 4) The vision, mission and program of the Candidates of President and Vice President become the substance of campaign.¹
- 5) The General Election Commission shall facilitate the dissemination of campaign materials covering the vision, mission and program of the Candidate of President and Vice President through the website of The General Election Commission.²
- 6) The subject of presidential candidate debate is a national vision in accordance with the objectives of the State as mentioned in the Preamble of Constitution.³
- 7) Vision, mission and program that will be implemented for 5 (five) years term of office (if elected), become significant substance as a requirement that must be owned by the candidate of President and Vice President.⁴
- 8) Educative and informative debate among candidates is required to streamline the vision and mission mission.⁵
- 9) The vision, mission and program are based on the principle that the President holds the power of government according to Article 4 paragraph (1) Constitution, as well as the elaboration of the laws and regulations.⁶
- 10) The vision and mission of the Candidates refers to the Long Term National Development Plan (Rencana Pembangunan Jangka Panjang/RPJP) in accordance with Law No. 17 Year 2007 concerning the Long Term National Development Plan for 2005-2025, and described in the annual work plan of the elected President in the form of the Medium Term National Development Plan (Rencana Pembangunan Jangka Menengah/RPJM) accordance with Law No. 25 Year 2004 concerning National Development Planning System.⁷
- 11) Determination the plan into a legal product is to bind all parties in its implementation.⁸ The Law as the legal basis for Long Term National Development Plan⁹, and Presidential Regulation for Medium Term National Development Plan¹⁰ and the annual national development plan.¹¹

The Case Number 278/PDT.G/2010/PN.JKT.PST brings new hope to the people, that the President's failure to realize the vision, mission and program can be categorized as tort that possible to be sued in court.

3. Conclusions

As part of a campaign promise, the presidential vision, mission and program are not the contract referred to in the Indonesian Civil Code. The President's failure in implementing his visions, missions and programs as part of a campaign promise, is not a breaching of contract. The presidential visions, missions and programs are regulated by Laws, so the failure in implementing his visions, missions and programs is unlawful (tort). The lawsuit against the President for his failure is not to dismiss the President, but to force the President to realize the visions, missions and programs in his term of office.

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¹ Article 37 paragraph (1) Law No. 42 Year 2008 concerning General Election of President and Vice President and Article 274 paragraph (1) huruf a Law No. 7 Year 2017 concerning General Election.

² Article 37 paragraph (2) Law No. 42 Year 2008 concerning General Election of President and Vice President and Article 274 paragraph (2) Law No. 7 Year 2017 concerning General Election

³ Article 39 paragraph (5) Law No. 42 Year 2008 concerning General Election of President and Vice President and Article 277 paragraph (5) Law No. 7 Year 2017 concerning General Election.

⁴ General Explanation Paragraph 5 Law No. 42 Year 2008 concerning General Election of President and Vice President

⁵ General Explanation Paragraph 7 Law No. 42 Year 2008 concerning General Election of President and Vice President

⁶ Explanation of Article 15 point e Law No. 42 Year 2008 concerning General Election of President and Vice President and Explanation of Article 229 paragraph (1) point e Law No. 7 Year 2017 concerning General Election.

⁷ Explanation of Article 37 paragraph (1) Law No. 42 Year 2008 concerning General Election of President and Vice President and Explanation of Article 274 paragraph (1) huruf c Law No. 7 Year 2017 concerning General Election.

⁸ Point 3 The planning process in the General Explanation Law No. 25 Year 2004 concerning National Development Planning System

⁹ Article 13 paragraph (1) Law No. 25 Year 2004 concerning National Development Planning System

¹⁰ Article 19 paragraph (1) Law No. 25 Year 2004 concerning National Development Planning System

¹¹ Article 26 paragraph (1) Law No. 25 Year 2004 concerning National Development Planning System and Point 3 The planning process in the General Explanation Law No. 25 Year 2004 concerning National Development Planning System

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