

Construction Of Indonesian Criminal Law Policy On The Crime Of Money Politics In General Election

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CONSTRUCTION OF INDONESIAN CRIMINAL LAW POLICY ON THE CRIME OF MONEY POLITICS IN GENERAL ELECTION

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Abstract - Money politics in general elections is one of the things that harm democracy by creating injustice. The rise of money politics is partly due to regulatory loopholes that cannot reach the perpetrators of money politics. This article aims to provide insight into the construction of Indonesia's current criminal law policy governing money politics and its effectiveness in combating electoral corruption. This research uses the empirical normative juridical method by referring to secondary data from legislation and scientific literature. The results conclude that the construction of criminal law policy on money politics is in-laws, including the Criminal Code and Law No. 7/2017 on General Elections. However, these laws are not effective in overcoming the crime of money politics. Comprehensive improvements are needed to overcome money politics in general elections, such as clear and firm regulations with strict legal sanctions, a legal apparatus with integrity, and political education for the community to prevent the practice of money politics. Thus, it is expected to reduce and overcome money politics and maintain the integrity of democracy in general elections.

Keywords: Money Politics; Criminal Law; Crime; General Election.

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INTRODUCTION

Money politics is a criminal activity that is commonly observed during general elections in Indonesia (Navisa, 2018). It involves giving or promising money or other incentives to influence the election outcome in exchange for votes or support (Sholeh et al., 2018). This practice can occur at various stages of the election, such as during the campaign, candidate registration, gathering support, and voting. Money politics creates a transactional relationship between candidates and voters, which undermines the integrity of democratic values in general elections (Aminuddin & Attamimi, 2019). This corrupt practice is particularly beneficial for candidates who have access to large amounts of money or are backed by financially powerful interest groups. It creates an uneven playing field that favors those with resources and undermines the credibility of the electoral process. Money politics erodes the principles of honesty and fairness, leading to unhealthy competition between candidates.

In summary, money politics is a criminal activity that involves the use of money or other incentives to influence the outcome of an election in exchange for votes or support. This corrupt practice undermines the integrity of democratic values in general elections and creates an unfair playing field that benefits wealthy candidates and interest groups (Kang, 2002). Money politics has resulted in a system where dominant financial interests can maintain a great degree of control while making only minor concessions to the interests of the broader public (Reuter, 2015).

In Indonesia, money politics is predominantly observed during legislative elections (Muhtadi, 2019b). According to estimates from the 2019 general election, the money politics practices ranged from 19.4% to 33.1% of the permanent voter list, which means around 192 million people (Muhtadi, 2019a). According to estimates from the 2019 general election in Indonesia, anywhere from 37.3 million to 63.5 million voters may have been exposed to vote-buying. According to the most conservative estimate, one in every three Indonesians may have been targeted by this corrupt practice. A survey conducted by the Indonesian Institute of Sciences (LIPI) during the 2019 General Election found that 40% of respondents received money from candidates but did not consider voting for them. Meanwhile, 37% of respondents admitted to receiving and considering voting for the candidate who offered the money (Ichwanudin, 2019). This survey result is reinforced by the Central Statistics Agency's 2020 survey on the anti-corruption behavior index, which revealed that 32.74% of the public viewed money politics during general elections as an ordinary occurrence, raising concerns and worries (Supriyatna, 2020).

In 2019, Yunis conducted research and found that the practice of money politics is a common phenomenon among candidates participating in general elections (Yunis, 2019). Money politics even become a culture in general elections (Permata & Khasanah, 2020). Money politics refers to the practice of candidates using financial incentives to win over the hearts of voters. Surprisingly, many candidates do not see this practice as inappropriate but rather as a necessary strategy to secure votes. Unfortunately, the practice of money politics has become a tradition that has persisted for years, dating back to the New Order era in Indonesia (Al Yakin & Latief, 2022). It has become so entrenched that it characterizes every electoral democracy plan. The widespread practice of money politics can create significant challenges for candidates who have moral integrity but lack capital. Candidates who do not have access to significant funds will struggle to compete with their wealthier opponents who can use their financial resources to gain significant support from voters.

This fact shows that people are used to money politics as if it has become part of the general election. People see democracy as a way to share their wealth during elections. This assumption will undermine the fundamentals of democracy that uphold the principles of fairness, equality, and transparency because money politics will reduce the integrity of elections and trigger fraudulent actions in the democratic process. Money politics also decreases people's political participation as they lose faith in the democratic process and are reluctant to participate in elections, as well as being an entry point for corruption and other fraud in government (Drapalova, 2019). Elected candidates may become indebted to donors or deliver policies that favor them rather than what is best for society. Therefore, a vigorous and efficient criminal law policy is needed to tackle the practice of money politics in general elections. Such policies should include sanctions to be implemented properly to act as a deterrent for individuals who engage in money-related crimes and prevent the recurrence of this corrupt practice.

Besides the culture of money politics which is considered normal in people's lives, the rise of money politics is also caused by "regulatory loopholes" that cannot reach the perpetrators of money politics (Lati Praja Delmana, 2020). Therefore, the main objective of this research is to enhance the criminal law policy on money politics during the general election, particularly the legislative elections, in Indonesia by scrutinizing its construction, formulation, and implementation. It is crucial to ensure that the criminal law policy on money politics is effective and efficient throughout all stages, including the formulation, application, and execution phases (Arief, 2005). Strengthening punitive sanctions in electoral criminal law policy is deemed as one of the viable alternatives to tackle the issue of money politics (Van Ham & Lindberg, 2015). Having a well-designed criminal law policy on money politics will foster the conduct of general elections characterized by honesty and fairness under Article 22 E paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which mandates that general elections be directly, generally, freely, secretly, honestly, and fairly every five years.

1. Research Method

This research is empirical normative juridical research that uses secondary data as the primary source and empirical data to strengthen normative data. Empirical normative legal research is legal research based on laws and regulations that examines the system of norms and regulations and observes the reaction of the norm system to work in society (Muhaimin, 2020). Secondary data is in the form of primary legal materials in laws and regulations and secondary legal materials in scientific works. The data obtained is analyzed qualitatively to conclude the research theme.

2. Definition and Characteristics of Money Politics in General Elections

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General elections are a form of popular sovereignty to elect representatives of the people and holders of executive power (Sukmariningsih, 2021). The election model in Indonesia uses a proportional system where voters choose political parties and their candidates for representatives in the House of Representatives (Ramdani & Arisandi, 2014). This electoral system has advantages because the number of party seats corresponds to the number of seats obtained and an opportunity for minority groups to elect representatives who will occupy as representatives of the people in parliament. However, this system also has disadvantages because it accentuates the individual candidates for people's representatives so that they compete to get votes from voters in various ways, including using money or money politics (Permata & Khasanah, 2020).

Money politics refers to the practice of bribery in which a person offers gifts or promises in return for a certain outcome, such as abstaining from exercising the right to vote or contesting an election. The gifts or promises involved are usually in the form of money or goods, and the act of gift-giving is intended to influence the recipient's decision-making process. This practice is commonly known as vote buying or electoral bribery. According to various sources, money politics is a widespread problem in many countries and can have serious consequences for the democratic process (Holish et al., 2018; Shiddiq, 2019; Umam, 2020; Wardhana, 2020). It is essential to address this issue to ensure free and fair elections and to uphold the principles of democracy.

Money politics is also defined as a process of buying and selling votes in the pursuit of obtaining public votes by providing rewards (Febrianto et al., 2020). This practice typically occurs within the context of politics and power, where individuals engage in the buying and selling of votes by offering money, goods, or other incentives to voters as a means of gaining political benefits (Putra, 2018). In this more general definition, money politics encompasses various modes of action, goals to be achieved, and awareness on the part of those who engage in such actions. The overarching objective is to influence the behavior of others to act following the wishes of those perpetrating money politics. Vote buying, also known as the buying and selling of votes, is a straightforward economic exchange that involves candidates buying and voters selling votes. The process of buying and selling votes is akin to an auction, in which the voting owner will sell their vote to the buyer offering the highest price (Schedler & Schaffer, 2007). It is crucial to address money politics and vote buying to preserve the integrity of the democratic process and ensure that elections are conducted fairly and transparently.

In Indonesia, money politics is the practice of exchanging cash or other valuables for political positions, policies, or decisions (Irwan et al., 2021). This behavior can take many forms, including direct elections in which candidates may give supporters cash or goods in exchange for their votes. The first concept of money politics refers to activities that do not involve voters directly. For example, politicians may offer bribes or make promises of future rewards to other politicians or government officials in exchange for their support or cooperation. The second concept of money politics is more specific to direct elections. In this context, money politics practices may include campaign transport costs, the distribution of money or goods to voters, and the distribution of food or other goods in exchange for votes. Other forms of transactions may also take place, such as dawn attacks, where candidates or their supporters may try to influence the vote through intimidation or violence (Kurniawan & Hermawan, 2019). Overall, the two concepts of money politics in Indonesia highlight how money and power are intertwined in the political process. These practices can undermine the fairness and integrity of elections and erode trust in democratic institutions.

Based on these definitions, it can be concluded that money politics and vote buying refer to the same practice, namely giving money or material benefits to voters to influence their votes in general elections. Both concepts have the same goal which is to buy votes in general elections. However, there are differences in the use of terms between money politics and vote buying. The term money politics tend to be more commonly used to describe corrupt practices or unauthorized attempts at political influence outside of elections. This term can include providing money or material benefits to public officials or political parties to gain influence or access to public policy. Meanwhile, the term vote buying more specifically refers to the practice of giving money or material benefits to voters in elections. This term can be done to obtain more votes than their competitors. Based on this concept, at least three things can be considered hallmarks or characteristics of money politics (Fariz et al., 2014; Yusuf et al., 2023);



1. Vote Buying: Vote buying refers to offering or providing goods, services, or money in exchange for votes in general elections (Halida et al., 2022; Nichter, 2014). Vote buying can occur in a variety of ways, including the distribution of cash, food, or other valuable goods, the provision of transportation to polling stations, and the promise of jobs or favors in exchange for votes. The ultimate goal of vote buying is to persuade voters to support a specific candidate or party, regardless of their own beliefs or preferences. This matter undermines the democratic process by promoting corruption and encouraging candidates to unethical means to gain power.
2. Vote Broker: A vote broker is an individual who represents a candidate or a political party in buying and selling of votes during an election. Their primary role is to identify potential voters and persuade them to sell their votes to the candidate or party they represent (Widiastuti, 2021). Vote brokers usually operate in areas where poverty rates are high, education levels are low, and there is a weak rule of law, making people more vulnerable to vote to buy. Vote brokers typically use various incentives, such as cash, food, or other favors, to encourage potential voters to sell their votes (Mares & Young, 2019). Vote brokers may also collaborate with other intermediaries, such as local politicians, community leaders, or organized crime groups, to broker deals with voters.
3. Political Corruption: political corruption is defined as any illegal or unethical activity in which politicians or government officials abuse their position of power for personal gain (Amundsen, 2019). Bribery, embezzlement, nepotism, cronyism, and patronage are all examples of corruption. Bribery is one of the most common forms of political corruption, in which gifts or money are offered to politicians or government officials in exchange for favorable policies or other benefits. Bribery is the act of offering or receiving something of value, usually cash or other material goods, in exchange for a favor or action that is not legally or ethically justified (Batrancea et al., 2022). In political corruption, bribery can involve money or gifts between politicians or government officials and private individuals or companies seeking to gain an advantage in the political arena.

Based on the characteristics of money politics, it shows that money politics is an action carried out by the perpetrators in secret and is not always in the form of money. It is also carried out secretly by using vote broker services. The practice of money politics makes it difficult for the general election supervisory body to enforce the law due to the lack of evidence that supports its existence. Money politics is also synonymous with political corruption, which seems to be a habit in every election, be it general elections, regional head elections, or village head elections in Indonesia. Although broadly speaking, political corruption includes patronage, vote buying, pork barreling, bribery, kickbacks, conflicts of interest, nepotism, influence peddling, and campaign financing (Adelina, 2019). Therefore, action is needed to stop the practice of money politics and make people aware that this practice will harm them in the long run. Money politics is the primary cause of the emergence of corrupt leaders who do not care about the interests of the people.

3. Policy and Implementation of Criminal Law in Overcoming the Crime of Money Politics on General Election in Indonesia

3.1. Policy of Criminal Law in Overcoming the Crime of Money Politics on General Elections in Indonesia

Criminal law policy is a policy made by the government in the form of laws and other regulations related to criminal law (Vivi, 2019). It aims to prevent offenses, provide appropriate punishment for offenders, guarantee constitutional rights, and ensure that all people are processed under the law to protect and prosper society. The operationalization of criminal law policy is carried out through the formulation, application, and execution stages (Kenedi, 2017). The formulation stage is strategic in criminal law policy because here the legislature is tasked with determining the types of acts that can be criminalized and what types of sanctions will be imposed. Crime prevention efforts are not the task of law enforcement alone but also of lawmaking institutions (the legislature).

Criminal law policies that regulate the criminal act of money politics in general elections are regulated in the Criminal Code and Law No. 7/2017 on General Elections. In Article 149 of the Criminal Code, there is a regulation that threatens the punishment of people who give, promise, or bribe someone to use or not use their voting rights and threatens the person who receives them. However, the criminal

provisions in Article 149 are not used as the basis for law enforcement²⁵ against money politics in general elections because there are already special criminal provisions regulated in Law No. 17 of 2017 concerning General Elections, following the principle of *Lex Specialis Derogat Legem Generalis*, one of the legal principles that imply that special legal rules override general legal rules. The provisions of Article 149 of the Criminal Code are general provisions whose existence must be overridden because there are rules of money politics in general elections regulated in Law No. 7 of 2017 as a special law on general elections.

¹⁶ In Law No. 7 of 2017, the provisions on criminal offenses in general elections are regulated in Book II. Based on the formulation of the articles contained in Book II, there are several types of criminal offenses related to general elections:

1. Election administrators' criminal offenses are governed by 24 articles, namely Articles 489, 499, 501-508, Articles 513-514, Articles 518, 524, Articles 537-539, Articles 541-543, Articles 545-546, Article 549, and Article 551.
2. Articles 488, 491; Articles 497-498; Article 500; Article 504; Articles 509-511; Articles 515-517; Articles 519-520; Articles 531-536; Article 544; and Article 548 govern electoral offenses committed by the general public. Electoral offenses by government officials are regulated in Articles 490 and 494.
3. Electoral crimes committed by state administrators or public officials are stipulated in 2 articles, namely Article 522 and Article 547.
4. Articles 498, 525 paragraph 1, 526 paragraph 1, and 529-530 deal with electoral offenses committed by legal persons.
5. Electoral offenses committed by campaign organizers and participants are dealt with in Articles 495 and 496, 521, 523, 525 paragraph 2, 526 paragraph 2, 527 and 528 and 550.
6. Articles 552 and 553 deal with electoral offenses committed by candidates for the presidency and the vice presidency.

It relates specifically to the criminal offense of money politics and is governed by Articles 515, 521, and 280 paragraph (1), 523 paragraph (1) and 280 paragraph (2), 523 paragraph (3), and 554 and 280 paragraph (3). However, the criminal provisions of Article 515 have the same substance as Article 523 paragraph 3. Article 521 also has the same substance as Article 523, paragraph 1. Meanwhile, Article 554 is used if the perpetrator of the criminal offense, as referred to in Article 523, is the general election organizer. The criminal provision of money politics in general elections are substantially regulated in Article 523, namely, deliberately promising or giving money or other materials, divided into three stages of general elections, namely, the campaign period, the quiet period, and the voting day.

¹ Article 523, paragraph 1, of Law Number 7 of 2017 on General Elections threatens crimes against perpetrators of money politics committed by implementers, participants, and/or campaign teams during the campaign period. The maximum criminal penalty is 2 (two) years in prison and a fine of IDR 24,000,000.00. (twenty-four million rupiahs). Article 523 paragraph (2) threatens perpetrators of money politics committed by implementers, participants, and/or campaign teams during the quiet period with up to four years in prison and a fine of IDR 48,000,000.00. (forty-eight million rupiahs). Article 523 Paragraph (3) threatens the perpetrators of money politics committed by any person on the day of voting with a maximum imprisonment of 3 (three) years and a maximum fine of IDR 36,000,000.00 (thirty-six million rupiahs). Law Number 7 of 2017 on General Elections does not regulate criminal penalties for recipients of money in politics.

³ In Article 523, paragraphs 1-3, it appears that there are similar elements in the criminal offense of money politics in general elections, namely the elements of legal acts and guilt. However, there are differences in imprisonment. In paragraph (1), the sentence is two years in prison; in paragraph (2), it is four years; and in paragraph (3), it is three years. The legislators set the punishment for perpetrators of money politics during the calm period higher than during the voting or campaign period. Similarly, in the determination of fines, during the calm period, the fines for perpetrators of criminal acts of money politics are higher than during the campaign period or at the time of voting. In these articles, the criminal

sanctions imposed on the perpetrators of criminal offenses use the maximum penalty. This matter is the same as the arrangement of criminal penalties in the Criminal Code. The formulation of such criminal sanctions shows that the legislator still relies on the same approach as that used in the Criminal Code, even though Indonesia's current socio-political situation is different from the 16th century when the Criminal Code was enacted.

The criminal offense of money politics in general elections is regulated in Articles 476-487 of Law Number 7/2017 on General Elections. Therefore, the mechanism for handling the criminal offense of money in politics is no different from other general election crimes. To implement these provisions, Election Supervisory Body (Bawaslu) stipulated Bawaslu Regulation Number 9 of 2018 concerning the Integrated Law Enforcement Centre, which was later replaced by Bawaslu Regulation Number 31 of 2018. The Supreme Court also made Supreme Court Regulation Number 2 of 2018 on Special Judges for Election and General Election Crimes to enforce Article 485 paragraph 6 of Law Number 7/2017 on General Elections. In addition, Article 477 of Law Number 7 of 2017 also confirms that the investigation, prosecution, and examination of general election criminal offenses must be carried out by Law Number 8 of 1981 concerning Criminal Procedure Law, unless otherwise specified in the general election law, such as the establishment of an Integrated Law Enforcement Centre (ILEC), namely Articles 486 and 487.

3.2. Implementation of Criminal Law in Overcoming the Crime of Money Politics on General Elections in Indonesia

Implementing criminal law policy is part of criminal law enforcement efforts, including those at the judicial and executive levels. The judicial policy is the application of criminal law after passing the legislative or formulation stage, while the executive stage is the implementation of judicial policy, which is administrative. The judicial and executive stages are the concretization of criminal law contained in the law, or law "in concreto" (Priyambodo, 2020). The process of law enforcement carried out by the authorized apparatus starts with the process of investigation and prosecution under the rules of law stipulated in the legislative stage, the process of decision-making by the judiciary or judicial institution, and the implementation of court decisions or the executive stage carried out by the criminal execution apparatus or the prosecutor's office.

The implementation of criminal law policies on money politics in Indonesia can be seen in court decisions and the implementation of these decisions. Referring to the 2019 general elections, as of November 4, 2019, The Election Supervisory Agency (Bawaslu) had handled 16,134 administrative violations, 373 code of ethics violations, 582 criminal violations, 1,475 other legal violations, and 2,578 non-violations. The most percentage is administrative violations, which are around 96%. Then the criminal offenses amounted to 25%, which is much lower than the initial allegations before being handled by Bawaslu. In the 2019 general election, Bawaslu arrested 25 cases of money politics in 25 districts or cities in 13 provinces (Bawaslu, 2019). Meanwhile, in the regional head general elections, there were 262 cases of alleged money-politics violations that had been assessed and investigated (Ardianto, 2020).

At the implementation stage of the criminal policy on money politics, out of 76 court decisions that have permanent legal force, 12 (twelve) court decisions declared the defendant free and or released, and 64 (sixty-four) court decisions stated that the defendant was proven to have committed the criminal act of money politics as referred to in Article 523 of Law Number 7 of 2017 concerning General Elections, consisting of 46 (forty-six) court decisions sentencing with probation so that the convicted person does not serve imprisonment unless he commits a criminal act during the probation period. The remaining 18 (eighteen) court decisions imposed different prison sentences, the lowest being the Boyolali District Court Decision Number: 10/Pid.sus/2019/PN. Byl, which sanctioned a prison sentence of 10 (ten) days and a fine of IDR 1,000,000.00 (one million rupiahs), while the highest was the Ruteng District Court Decision Number: 48/Pid.Sus/2019/PN Rtg, which imposed a prison sentence of 1 (one) year and a fine of IDR 10,000,000.00 (ten million rupiahs).

Based on these data, the small number of reports of election crimes that continue to the level of investigation, prosecution, and examination in court until the issuance of a permanent legal verdict (*inkracht van Gewisjde*) has not fulfilled the public's sense of justice. This matter shows that the handling of election crimes in the 2019 general election has not been effective, even though there are coordination channels between law enforcers in the Integrated Law Enforcement Centre (Gakkumdu)

(Darmawati et al., 2022). Problems in the enforcement of criminal acts of money politics in general elections: First, regulatory issues: not everyone is a legal subject; criminal sanctions only target the sender of money; the recipient does not commit a criminal offense; and the prohibition of money politics is limited by time and object. Second, law enforcement Based on the general election law, Gakkumdu was established to handle non-criminal elections, and its members consist of Bawaslu, the Police, and the Attorney General's Office. Third, due to social and cultural factors, people still believe that money politics in general elections is justified.

The general elections law, as a legislative policy in the enforcement of money politics, is epistemologically in the realm of administrative law, but some of its rules have criminal sanctions. In legal dogma, such a model is often referred to as administrative penal law, which encompasses all forms of regulations and their products that are within the scope or field of administration but have criminal sanctions; in such cases, criminal sanctions are typically made more severe. Referring to the doctrine of modern criminal law, which states that "punishment is equal and fit for the criminal" the weight of criminal sanctions in the General Election Law does not adhere to the character of administrative criminal law and the doctrine of modern criminal law. This results in low penalties for perpetrators of money politics that are contained in court decisions. Criminologically, money politics is a very despicable act because the act of bribery is used as a means to obtain power so that the level of despicability is higher than the crime of ordinary bribery.

To overcome the criminal act of money politics in general elections, a variety of simultaneous and continuous efforts are required, as well as a series of improvements, among others (Satria, 2019); Election regulations must be clear and firm in regulating the formulation of criminal acts of money politics, including providing criminal sanctions that can provide a deterrent effect through *strafmaat* in the form of indeterminate sentences, law enforcement officials with integrity who have credibility and commitment in carrying out their duties, and who are responsible for carrying out their duties. Sentra Gakkumdu, as a kitchen controlling the process of criminal acts of money politics, must not be infected by corruption viruses such as bribery or other fraudulent acts, and law enforcement must be carried out with the principle of due process, which is fair, objective, fast, and simple. Election organizers, especially Bawaslu, must be seen as partners of the General Election Commission (KPU) and the community. KPU must provide political education to the community by cooperating with political parties to educate them in terms of preventing money politics.

CONCLUSION

Money politics crimes still occur frequently in general elections in Indonesia. Money politics refers to the use of money or other material goods aimed at influencing voters or the results of general elections. To overcome this, the government has established a criminal law policy construction for money politics crimes in the law. The legal framework for the crime of money politics and the mechanisms for enforcement and punishment for the perpetrators of the crime of money politics is composed of statutory regulations, including the Criminal Code and Law No. 7 of 2017 concerning General Elections. However, the law is not effective in overcoming money politics crimes. A comprehensive improvement is needed to deal with criminal acts of money politics in general elections, among others: clear and firm regulations that contain deterrent legal sanctions, law enforcement officers with integrity, and political education for the public to prevent the practice of money politics in general elections.

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