



Law enforcement of money politics in general election in Indonesia

Toni Wibisono^{1*}, Widodo Tresno Novianto², Hari Purwadi³

¹⁻³ Faculty of Law, University of Sebelas Maret, Surakarta, Central Java, Indonesia

Abstract

In organizing the General Election, many still involve money politics, even carried out on a massive scale. Money politics is a criminal act regulated in Act Number 7 of 2017 concerning the General Election. Law enforcement and prevention of this crime are performed to produce clean and integrated officials and authority. To analyze these problems, socio-legal research was conducted. This research used a qualitative approach with data sources of primary and secondary data. Data obtained by researchers were analyzed qualitatively and presented descriptively by explaining, describing and narrating problems and their solutions. The results showed that law enforcement of money politics has not met the goal. Viewed from the 5 factors including legal, law enforcement, infrastructure facilities, community, and cultural factors and other factor like poverty, prevention of money politics can be done by looking at the driving factors and processes of law enforcement until after the crime occurred.

Keywords: general election, law enforcement, criminal act, money politics

1. Introduction

An election is a vital necessity in democratic civilization as it becomes a dominant requirement that must be possessed by the state in international relations ^[1]. The mechanism for filling the position is regulated through legislation that directly involves the community as a determinant of a person who is considered fit to occupy a certain political position such as the president, legislative members, or regional heads.

The term general election system has a highly strict definition of a series of activities regulated according to statutory regulations containing 2 (two) major aspects. Those aspects include first, voters express their political choices. Second, votes from the voters can be interpreted as a particular power or position/seat ^[2]. In the context of general election in Indonesia, it is as a series of activities conducted by the General Election Commission (KPU) to produce particular political positions (President/vice president, Governor/deputy governor, Regent/deputy regent, mayor/deputy mayor, and members of the legislature both from central to regional, district/city).

The practice of money politics is performed on a massive scale as can be seen in the 2019 elections. Seen from various measurements, money politics ranged from 19.4% to 33.1%. In the 2019 election, Permanent Voter List (DPT) in Indonesia reached around 192 million people. A range between 19% and 33.1% indicates an estimation that between 37.3 million to 63.5 million voters are exposed to the illicit practices of money politics ^[3]. Therefore, it can damage the quality of democracy. Consequently, general elections lose their orientation to create a democratic, fair, and prosperous state. In some elections which have been conducted since it was first held in 1955 until now, the highest number of election violations is related to money politics ^[4]. In the 2019 elections, Election Oversight Organisation (Bawaslu) received around 7,132 alleged violations, including 343 criminal violations, 5,167 administrative violations, and 121 violations of the code of

ethics. According to Bawaslu, 100 criminal violations had entered the trial process. Among them were 84 inkrachts, while 16 more were in the appeals process. Based on the verdict, money politics dominated 25 decisions. Furthermore, the prohibition of campaigning was 20 decisions, then, the village head who carried out acts to benefit particular candidates of 17 decisions. The rest was about media advertisements of 2 decisions, campaign outside the schedule, using government facilities, and involving people who were prohibited from campaigning and such ^[5].

Law Number 10 Year 2016 concerning Second Amendment to Law Number 1 Year 2015 concerning Stipulation of Government Regulations Substituting Law Number 1 of 2014 concerning Election of Governors, Regents and Mayors to be Act in Article 187A states that both the giver and recipients of money politics are threatened with a criminal penalty. Transportation fees for campaign participants must also be in the form of vouchers, not cash. It is different from Law Number 7 Year 2017 Regarding General Elections. In the Law of General Elections concerning the case of money politics in Article 284 states that in the case where the election organizers and campaign teams are proven to promise or provide money or other material in return to campaign participants directly or indirectly for not using their voting rights, using their voting rights by electing election participants in a particular way so that their ballots are invalid, elect certain candidates, select particular Participant Political Parties and/or elect particular DPD candidate members, in accordance with Article 286 are imposed by administrative sanctions only.

Besides, the Law of General Election allows the provision of fees for food/drink, transportation costs/fees, costs/fees for the procurement of campaign materials to campaign participants at special meetings and face to face with the election participants. It is based on attachment to Article 286 of the Election Law that is not included in other material categories. Moreover, the rules for campaign

materials listed in the Election Commission Regulation Number 28 Year 2018 amendment to the Election Commission Regulation Number 23 Year 2018 Concerning the Election Campaign in Article 30 states that the value of each campaign material when converted into forms of money is Rp. 60,000 at the highest. In fact, in the 2018 regional head election, the value of campaign materials when converted was Rp. 25,000 at the highest.

Therefore, it means that this Law of General Election has weaknesses in ensnaring the actors of money politics when compared to the Law of General Election. Thus, it is necessary to know about law enforcement of money politics and it needs several things to be able to prevent money politics, so that the officials produced are clean and integrated. It is essential because if the proper way is not found, then it will lead to the potential for abuse of power, dishonesty, to injustice. Election candidates can use high financial power to defeat a weak candidate in financial matters.

Based on the explanation, this article discusses the problem of law enforcement of money politics and the prevention of criminal acts of money politics.

2. Research methods

This article was compiled from the results of a socio-legal study. The nature of the research used is prescriptive research. This research used a qualitative approach with data sources of Primary and Secondary data. Data obtained by researchers both secondary and primary data were analyzed qualitatively and presented descriptively by explaining, describing and narrating the problems and their solutions that are closely related to this research.

3. Discussion

3.1 The Law Enforcement of Money Politics

The law enforcement can run well if some factors are met. Those factors are legal factors, law enforcement, infrastructure, society and culture. First is the legal factor (Law). Although the Election Law states that one of the tasks of the Election Supervisory Agency or Bawaslu is to prevent the practice of money politics. However, in the law, there is no understanding of money politics. Therefore, in practice, it is not clear whether giving gifts such as gloves, bicycles, etc. is considered as money politics.

Besides, if it is compared to Election Law Number 7 Year 2017, criminal sanctions for violations of money politics in Law Number 10 Year 2016 concerning Second Amendment to Law Number 1 Year 2015 concerning Establishment of Government Regulations in lieu of Law Number 1 Year 2014 concerning Election of Governors, Regents and Mayors to Act (Election Law) are more assertive. In Article 187A of the Local Election Law, both the giver and recipient of money politics are both threatened with criminal sanctions. Whereas in the election law, criminal sanctions are only threatened by the money giver. In addition, there are provisions in the Election Law that transportation costs for campaign participants must be in the form of vouchers not in the form of cash. Election law based on the explanation of Article 286 paragraph (1) states that the prohibition of promising and/or providing other material to influence the implementation of elections and/or voters, among others, does not include the provision of transportation costs, food and drink to campaign participants. This provision makes it difficult for election

observers to distinguish between campaign costs and money politics. These provisions also show weaknesses in ensnaring perpetrators.

The second is factor of law enforcer. In Election Law, integrated law enforcement centers (*Gakkumdu*) have an important role in handling election criminal acts including money politics. Article 486 of the Election Law states that the *Gakkumdu* is formed to equalize the understanding and pattern of handling election criminal acts by *Bawaslu*, the police, and the prosecutor's office.

With the weakness of Election Law, *Bawaslu* is not only monitoring election stages and prevention of election violations, but also as case breakers. In the implementation of elections, not all problems or election violations, including money politics, can be prevented and handled properly. When there is campaign, limited meetings or face to face, the election participant give money with the reason that the money is for transportation costs, food/drink costs and areas affected by the disaster. It has potential to be used to win voters' sympathy by making a donation or some money/funds. Election supervision is one of the keys to success in realizing quality elections and integrity without the existence of money politics.

The third factor is infrastructure. From 3 agencies which have policy in corruption investigation, in one hand, The Police and the Prosecutor's Office, aside from not having the authority as large as the KPK (Corruption Eradication Commission)'s authority, also do not have the infrastructure as the KPK. On the other hand, although the KPK has HKI (Intellectual property rights). There are personnel limitations and KPK has not had representatives in each province. However, KPK has greater authority than the Police and Attorney General's Office. The difference in infrastructure owned by the three institutions will certainly affect the law enforcement. In this case, KPK does not need to fulfill "special procedures" such as written permission from the superiors of suspects that often hinder the Police and Prosecutors' Office. In conducting investigations and criminal investigations, in carrying out the investigative and prosecuting duties, KPK also does not need to ask permission from the Chief of the Court if they will confiscate evidence and tap someone's phone.

The fourth is factor of society. In some researchers, people still consider "reasonable" if there is money politics in elections.^[6] It was seen that during the election period the people instead took advantage of the opportunity by asking for costs to the election participants on the grounds of assistance in the public interest as well as following the campaign in the hope of being given some money. In this way, the society can encourage the practice of money politics and the community is thus no longer sensitive to the dangers that will arise due to the practice of money politics. Therefore, the occurrence of money politics is not only the responsibility of *Bawaslu*, the Police, the Attorney General's Office and the Corruption Eradication Commission to enforce the law, but also requires the role of the community. The community can play a role in preventing and eradicating money politics, including conducting surveillance and not being involved in money politics.

The fifth is culture factor. It is an important factor in law enforcement money politics cases. Regarding culture, money politics often occurs in many areas. There are the term or jargon of Semarang people "*nek ora ono dhuwite ora nyoblos*" (if we do not receive the money, we won't

vote you) and Tegal's people with "*ola uik ola obos*" (if we do not receive the money, we won't vote you). They reveal that it has been the culture. The people chose not because they know the candidate, understand and know his vision and mission if the candidate became the regional head in leading the region for the next five years, however, they choose on the basis of money without knowing who and how the candidate [7].

Related to this culture factor, there is still money politic because there is no shame, the low morality of the giver and receiver, unsafe, dishonest, and others. Therefore, it is necessary to have corrective measures, including awareness and fostering national morality. Thus, the implementation of elections can run well. Improvement steps can also be conducted through the initial recruitment of candidates in each political party to obtain candidates who are honest and trustworthy about their duties and authority.

According to the author, there are other factors in this case which can affect law enforcement, such as poverty. Money politics will target places where the target region is economically lower-middle class, poverty can be a crucial factor because money politics will be able to appeal to the lower middle class in society in this democratic party. Thus, the factors in law enforcement affect and support one another. The provisions of the law must be supported and enforced by law enforcement properly and correctly. Law enforcement must also be supported by adequate facilities and infrastructure. Therefore, law enforcers can quickly and appropriately conduct prevention and eradication of money politics.

Furthermore, the role of society is needed to realize elections which are free from money politics. Creating a culture to comply with laws and regulations is also important in law enforcement efforts for money politics. One example of areas which conduct prevention and enforcement of money politics is the Lampung area, efforts to prevent money politics preventively carried out by the Lampung Provincial Election Commission, the Election Supervisory Agency and the Lampung Regional Police is by way of socializing to all candidates not to do money politics (Money Politics) is quite heavy, such as cancellation as a candidate.[8]

3.2 Crime Prevention of Money Politics

The topic of crime prevention is, in fact, the domain of criminology. Likewise, with the crime prevention of money politics, the approach that can be used is a criminological approach so that the root of the problem can be identified, including ways to eradicate it. This is one of the advantages of criminology compared to criminal law. Criminology can serve before a crime is committed while the criminal law can only be used if a criminal act has occurred [9].

According to Dennis Chapman that there are 2 ways to prevent criminal acts, namely, First, finding the causes of crime. Thus, there are 3 (three) things that must be considered. First, through the abolitionistic system that is eliminating the factors that drive criminal acts. Second, through a moralistic system, namely prevention through religious spiritual activities. This system will strengthen moral values so that they are expected to be able to suppress human evil instincts. Third, optimize law enforcement [10]. A similar opinion was stated by Walter C. Reckless, that there are five things that must be done to prevent crime, among others are:

1. Good policing system and organization.
2. The effective implementation of justice.
3. Authoritative law.
4. Coordinated crime supervision and prevention.
5. Public participation in the efforts of crime prevention [10].

Further analysis on crime prevention was proposed by Steven P. Lab who stated that crime prevention can be divided into 3 (three) approaches namely primary, secondary and tertiary [11]. Primary prevention is focused on community prevention that starts from the household environment, workplace, and activities outside the environment. Secondary prevention, more inclined to efforts to identify and predict the potential for crime by looking at social reality. While tertiary prevention is an effort to make a kind of agreement with the perpetrators so that they no longer repeat their actions [11].

In association with the rampant phenomenon of money politics in general elections or local elections, several theories of crime prevention that have been mentioned before can certainly be used as a reference. In connection with that matter, there are at least 5 (five) important things to prevent the recurrence of money politics. First, it needs clear (*Lex certa*) and strict (*Lex Stricta*) [12] electoral regulations in regulating the formulation of money politics criminal acts including criminal sanctions which must also be maximized. It is no longer possible to use the conventional regulatory model as in the Election Law which still uses the Penal Code model namely the provisions concerning the general elections are still adopted from the Criminal Code Act (KUHP). The thing that needs to be emphasized is that criminal sanctions must be able to provide a deterrence effect through a *strafmaat* in the form of an indeterminate sentence.

Second, law enforcement officials who have integrity, credibility, and commitment are needed in carrying out their duties and responsibilities. In this context, the *Sentra Gakkumdu* as the "Cook Room" in controlling the process of political crime is certainly free from corrupt practices such as bribery or other foul acts. Third, related to the second thing, judicial crimes of money politics demand to carry out the due process of law principle which is characterized by fair, objective, fast and simple justice. In this condition, law enforcement is more authoritative. Fourth, in holding elections, the Election Supervisory Agency (Bawaslu) must be placed not only as a partner of the General Election Commission (KPU) but also as a community partner. The Election Supervisory Agency (Bawaslu) cannot be an exclusive organization in doing supervision but they must be able to integrate with the surrounding community so that the potential for money politics can be predicted in advance and can be prevented as early as possible. Therefore, Election Supervisory Agency (Bawaslu) commissioners are also needed who can later maintain their integrity so they are not easily bought by Democratic officials.

Fifth, the General Election Commission (KPU) must be able to provide maximum political education to the public by cooperating with political parties to educate the public in terms of preventing money politics. The methods of political education that have seemed formalistic need to be changed. Community as a subject and objects in the election need to make a special approach, such as the tertiary approach. In

this context, it requires public awareness, so that they are able to understand that a healthy democracy will only be born from the minds of people who are clean of corruption. The community must have a sense of ownership over their region or country so that it will not be easily persuaded in transactional and corrupt behavior, this is what is called a secondary approach.

Therefore, based on the doctrine that has been mentioned before which was started by Chapman, Rekless, and Lab, it can be said that when talking about crime prevention or criminal act basically cannot be separated from the driving factors and the law enforcement process until after the crime occurred. Thus, the position of law enforcement officers, effective justice, and authoritative law can be a powerful instrument for preventing money politics. In addition, community participation and responsive efforts in identifying potential crimes by law enforcement officials are important.

4. Conclusions

Law enforcement against the criminal act of Money Politics has still not reached its goal, even though there are regulations that govern it. Based on the 5 factors namely legal factors (Laws) which are still considered to be weak, law enforcement factors, infrastructure facilities, community factors, and cultural factors, as well as other factors that the writer found, are poverty, poverty can be a crucial factor because money politics can attract the lower-middle-class people in the democratic party.

Crime prevention of money politics in general elections can be done by looking at the causes or driving factors and the law enforcement process until after the crime occurred. Therefore, the position of law enforcement officers, effective justice, and authoritative law can be a powerful instrument for preventing money politics. Additionally, community participation and responsive efforts in identifying potential crimes by law enforcement officials are important.

5. References

1. Gaffar Abdul. *Pemilu: Sebuah Token of Membership*, Yogyakarta: Laboratorium JIP UGM, 2009.
2. Riwanto Agus. *Hukum Partai Politik dan Hukum Pemilu di Indonesia*, Yogyakarta: Thafa Media, 2016.
3. Muhtadi Burhannuddin Muhtadi, *Politik Uang dan New Normal dalam Pemilu Paska-Orde Baru*, *Jurnal Antikorupsi INTEGRITAS*, 5 (1).
4. Bawaslu, *Pencegahan Politik Uang juga Butuh Partisipasi Masyarakat*, <http://www.beritasatu.com/politik/46570-bawaslu-pencegahan-politik-uang-juga-butuh-partisipasi-rakyat.html>. 20 November 2019.
5. Firdaus, Randy Ferdi0 *Serba Serbi Dugaan Kecurangan di Pemilu 2019, Politik Uang Mendominasi*, 2019. <https://m.merdeka.com/politik/serba-serbi-dugaan-kecurangan-di-pemilu-2019-politik-uang-mendominasi.html>. 14 February 2019
6. Simatupang Jonasmer. *Pengaruh Budaya Politik Uang dalam Pemilu Terhadap Keberlanjutan Demokrasi Indonesia*, *Journal Unnes*, 2018, 4(3).
7. Sugiharto, Imawan. *Rekonstruksi Penegakan Hukum Politik Uang dalam Pemilihan Kepala Daerah Berbasis Hukum Progresif*, *Jurnal Pembaharuan Hukum*, 2016, 3(1).

8. Putra AT, Tetuko Nadigo M. *Upaya Penanggulangan Politik Uang (Money Politik) pada Tahap Persiapan dan Pelaksanaan Pilkada Serentak di Provinsi Lampung, Bandar Lampung*. *Jurnal Fakultas Hukum Universitas Lampung*, 2018.
9. Adler, Freda, Gerhard Mueller, and William S. Laufer, *Criminology*, New York: Mcgraw Hill, 2010.
10. Dirdjosisworo Soedjono. *Sosio Kriminologi*, Bandung: Sinar Baru, 1984.
11. Lap Steven P. *Crime Prevention: Approaches, Practices, and Evaluations*, New York: Lexis Nexis Group, 2010.
12. Boot, Machteld. *Nullum Crimen Sine Lege and the Subject Matter Jurisdiction of the International Criminal Court: Genocide, Crimes Against Humanity, War Crimes*, New York Oxford: Intersentia, Antwerpen, 2001.
13. *Election Commission Regulation Number 28 Year Concerning Campaign Election*, 2018.
14. *Republic of Indonesia Law Number 7 Year Concerning General Election*, 2017.
15. *Republic of Indonesia Law Number 10 Year concerning Second Amendment to Law Number 1 Year 2015 concerning Stipulation of Government Regulations Substituting Law Number 1 of 2014 concerning Election of Governors, Regents and Mayors*, 2016.