

THE EFFORTS TO PREVENT AND OVERCOME CRIMINAL ACTS OF MONEY POLITICS

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ABSTRACT

One of the problems that often plagues the Indonesian nation is related to the crime of money politics. The crime of money politics is one of the ironies that has never been resolved to this day. In fact, the occurrence of these crimes is carried out simultaneously by the community. The type of research used in this study is sociological legal research using a qualitative approach. The results of the study state that the legal construction of the crime of money politics in the concept of legal certainty has been regulated in Government Regulation in Lieu of Law (Perpu) No. 1 of 2022 concerning Amendments to Law No. 7 of 2017 concerning General Elections and Law No. 6 of 2020 concerning Perpu No. 2 of 2020 concerning the Third Amendment to Law No. 1 of 2015 concerning the Stipulation of Perpu No. 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law. While efforts are being made to combat the occurrence of money politics, it is necessary to reconstruct that recipients should be allowed to receive money politics, but what is prohibited is only related to openly saying to choose a candidate for leader because it is contrary to the principle of secrecy.

A. INTRODUCTION

The history of the discussion of election law in Indonesia has in principle begun since 1948 with the enactment of Law No. 27 of 1948 concerning Elections. The final provisions on the construction of election law are regulated in Law No. 7 of 2017 concerning General Elections. According to Ali Moertopo, elections are one of the means available to the people to exercise their sovereignty in accordance with the principles contained in the 1945 Constitution. In line with that, Syamsudin Haris also explained that elections are a form of political education for the people, which is direct, open, mass, which is expected to improve political understanding and increase public awareness of democracy.¹

The implementation of elections in Indonesia since 2004 until now has used a direct election system. The implementation of direct general elections certainly causes a lot of commotion both in terms of financing and the effectiveness of its implementation. In terms of financing, the

1 Putu Eva Ditayani Antari., Interpretation of Democracy in the Open Mechanical System of General Elections in Indonesia, *Jurnal Panorama Hukum*, Vol. 3, No. 1, 2018, page. 87.

implementation of simultaneous direct elections as has been implemented since 2004 until now also incurs very high costs. According to CNBC Indonesia, the estimated need for election funds in 2024 is estimated to reach 76 trillion. On the other hand, public participation in the election in 2019 as stated by election data also only reached 81.97% in the 2019 Presidential Election (Pilpres). Meanwhile, participation in the legislative election in 2019 reached 81.69%. Although the election participation rate has reached more than 80%, there are still 20% of people who do not participate in the election. Another weakness in the implementation of money politics from year to year.²Bawaslu's Enforcement Division Coordinator Ratna Dewi Pettalolo at the 2020 Pilkada Supervision Results Evaluation National Coordination Meeting in East Java explained that in 2019 there had been as many as 1,000 cases of money politics. 262 cases have reached the stage of assessment and investigation, there are 197 public reports and 65 cases are Bawaslu findings.³The issue of money politics has often been heard in ordinary society (the people), which is carried out by parties who want to win the election. It is also often heard of various efforts made by candidates to win the fight.⁴According to Sarah Brich (2009) political corruption in elections is usually done through the practice of money politics. This will result in the 'wrong' person as the winner.⁵

Of course, seeing the condition of the Election where money politics often occurs is one of the ironies that has never been resolved until today. In fact, the occurrence of these criminal acts was carried out simultaneously by the community. Based on such provisions, it is certainly necessary to make the community aware so that participation in the Election is higher and money politics can also be stopped. considering that Indonesia follows the principle of legal fiction. The principle of legal fiction is that when a regulation has been enacted, at that time everyone is considered to know (presumption *iures de iure*) and the provisions are binding so that a person's ignorance of the law cannot free/excuse him from legal prosecution.

B. RESEARCH METHODS

The type of research used in this study is sociological legal research using a qualitative approach. The types and sources of data used in the study are primary data and secondary data which will later be analyzed using qualitative data analysis.

2 Mada Sukmajati and Aditya Perdana., *Election Financing in Indonesia, Election Supervisory Body of the Republic of Indonesia*, 2018, page. 26.

3 <https://www.bawaslu.go.id/id/berita/partisipasi-community-tinggi-dari-262-case-politik-uang-197-report-community>, accessed on May 29, 2023 at 15:28.

4 Zuly Qadir, Money Politics in the 2014 Regional Elections: Mode and Resolution, *Journal of Regional Government Administration*, Vol III, No. 2, 2012, page. 43.

5 Moch Edward Trias Pahlevi, Azka Abdi Amrullobbi., Political Education in Preventing Money Politics Through Village Community Movements, *INTEGRITAS: Anti-Corruption Journal*, Vol. 6, No. 1, 2018, page. 145.

C. RESULTS AND DISCUSSION

1. Construction of Political Money Crimes in the Concept of Legal Certainty

One of the important things that cannot be missed in the study of a country is about the election of leadership. The election of leadership is an important instrument, considering that the leader is an instrument that determines the direction of a country. Indonesia is one of the countries that uses the Election system (General Election) as a way to determine the leader. The election is carried out as a real manifestation of the means to show the sovereignty of the people in determining the future leader.⁶

The history of elections in Indonesia has basically existed since 1955. This year was the first time it was held in Indonesia. However, the election that was held was to elect members of the People's Representative Council (DPR) and members of the Constituent Assembly. Efforts to elect a president after President Soekarno's leadership were carried out through the MPRS which appointed President Soeharto as Acting President on March 12, 1967. In line with that, the fall of President Soeharto was replaced by Baharudin Jusuf Habibie. Furthermore, after President Habibie's leadership, he was then replaced by Abdurrahman Wahid through the decree of the MPR RI No. II/MPR/2001.⁷ Meanwhile, the simultaneous general elections for the election of the President and Vice President carried out by the people have been held since 2004 until now.

Efforts to establish an election system that can later be implemented by preventing fraud in the implementation of the election must certainly be realized through legal politics. In the context of the implementation of legal politics, in turn, it has implications for the realization of laws and regulations that can be obeyed by all groups. This is important to realize considering that the law has a regulatory and coercive nature.⁸ In the context of implementing the implementation of such elections, the government since 2008 has made several changes to form Government Regulation in Lieu of Law (Perpu) No. 1 of 2022 concerning Amendments to Law No. 7 of 2017 concerning General Elections.

In the provisions contained in the provisions, there are various criminal provisions that are regulated to prevent and overcome criminal acts related to the election. One of the crimes that still often occurs during the General Election is related to the occurrence of criminal acts of money politics. Quoting Bunke's opinion, basically the term money politics does not have a standard definition. However, this term is often used to indicate political corruption, including vote buying. Sarah Brich is

6 Lina Ulfa Fitriani, L. Wiresapta Karyadi, and Dwi Setiawan Chaniago., *The Phenomenon of Money Politics in the Election of Legislative Candidates in Sandik Village, Batu Layar District, West Lombok Regency, Resiprocal*, Vol. 1, No. 1, 2019, page. 54.

7 General Election Commission, *History of the General Elections of the Republic of Indonesia*, page. 1-3

8 Frence M. Wantu., *Introduction to Legal Science*, Gorontalo, UNG Pers, 2015, page. 3.

of the view that the occurrence of political corruption through money politics is certainly a form of fraud that has the potential to produce the wrong person as the winner.⁹

Speaking related to legal certainty, Van Apeldorn stated that legal certainty means things that can be determined by law concretely so as to provide guarantees to those entitled to obtain protection from the law. In line with that, France M. Wantu in this case also explains that law without certainty value will lose its meaning because it can no longer be used as a guideline for a person's behavior.¹⁰ Therefore, in relation to efforts to implement legal certainty in legislation, Gustav Radbruch stated that legal certainty requires that the law can function as a regulation that must be obeyed, so that the material contained therein must contain basic principles regarding law.¹¹

The criminal construction contained in the Election Law is in principle divided into five categories. First, criminal acts committed by election organizers are regulated in 24 articles including: Articles 489, 499, Articles 501 to 508, Articles 513-514, Articles 518, Articles 524, Articles 537-539, Articles 541-543, Articles 545 and 546, Articles 549 and 551. Second, election crimes committed by the general public are regulated in 22 articles, namely Articles 488, 491, Articles 497-498, Articles 500, Articles 504, Articles 509-511, Articles 515-517, Articles 519-520, Articles 531-536, Articles 544, and Article 548. Third, election crimes by government officials are stipulated in 2 articles, namely Articles 490 and 494. Third, election crimes elections conducted by state administrators or public officials, are stipulated in 2 articles, namely Article 522 and 547. Fourth, election crimes committed by corporations, are regulated in 5 articles including: Article 498, Article 525 paragraph (1), Article 526 paragraph (1), Article 529-530. Fifth, election crimes committed by campaign implementers and election participants consist of 9 articles, namely Article 495, 496, Article 521, Article 523, Article 525 paragraph (2), Article 526 paragraph (2), Article 527 and Article 528, Article 550. Fifth, election crimes by presidential and vice presidential candidates, consist of 2 articles, namely Article 552 and Article 553.¹²

Discussion related to the crime of money politics is regulated in Article 523 of the Government Regulation in Lieu of Law (Perpu) No. 1 of

9 Moch Edward Trias Pahlevi and Azka Abdi Amrullobbi, Political Education in Preventing Money Politics through Village Community Movements, *Integrity; Anti-Corruption Journal*, Vol. 6, No. 1, page. 142.

10 R Toni Prayogo., Implementation of the Principle of Legal Certainty in Supreme Court Regulation No. 1 of 2011 concerning the Right to Material Review and in Constitutional Court Regulation No. 6/PMK/2005 concerning Guidelines for Proceedings in the Review of Laws, *Indonesian Legislation Journal*, Vol. 13, No. 2, 2016, page. 193.

11 Siti Halilah., Principles of Legal Certainty According to Experts, *Siyasah; Journal of Constitutional Law*, Vol. 4, No. 2, 2021, page. 58.

12 Hariman Satria, Legal Politics of Money Politics Criminal Acts in General Elections in Indonesia, *Journal of Anti-Corruption Integrity*, Vol. 5, No. 1.

2022 concerning Amendments to Law No. 7 of 2017 concerning General Elections. In this article, it is stated that:¹³

- a. Every implementer, participant and/or election campaign team who intentionally promises or gives money or other materials as compensation to election campaign participants directly or indirectly as referred to in Article 280 paragraph (1) letter j shall be punished with imprisonment for a maximum of 2 (two) years and a maximum fine of IDR 24,000,000.00 (twenty four million rupiah).
- b. Every implementer, participant and/or election campaign team who intentionally during the quiet period promises or gives money or other material rewards to voters directly or indirectly as referred to in Article 278 paragraph (2) shall be punished with a maximum imprisonment of 4 (four) years and a maximum fine of IDR 48,000,000.00 (forty-eight million rupiah).
- c. Any person who intentionally on the day of voting promises or gives money or other materials to voters not to exercise their right to vote or to vote for a particular election participant shall be punished with imprisonment for a maximum of 3 (three) years and a maximum fine of Rp. 36,000,000.00 (thirty six million rupiah).

On the other hand, provisions related to money politics are also regulated in Article 187A of Law No. 6 of 2020 concerning Perpu No. 2 of 2020 concerning the Third Amendment to Law No. 1 of 2015 concerning the Stipulation of Perpu No. 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law. In this article, it is stated that:¹⁴

- a. Any person who intentionally commits an unlawful act of promising or giving money or other material as compensation to Indonesian citizens either directly or indirectly to influence voters not to exercise their right to vote, to exercise their right to vote in a certain way so that the vote becomes invalid, to vote for a certain candidate, or not to vote for a certain candidate as referred to in Article 73 paragraph (4) shall be punished with imprisonment of at least 36 (thirty six) months and a maximum of 72 (seventy two) months and a fine of at least IDR 200,000,000.00 (two hundred million) rupiah and a maximum of IDR 1,000,000,000.00 (one billion) rupiah.
- b. The same penalty applies to voters who intentionally commit unlawful acts by accepting gifts or promises as referred to in paragraph (1).

Based on these provisions, the legal construction of the crime of money politics in the concept of legal certainty has been regulated in Government Regulation in Lieu of Law (Perpu) No. 1 of 2022 concerning

13 West Sulawesi Provincial Election Supervisory Agency, Pocket Book of Election Crime Elements in the 2019 Election Stages, West Sulawesi, page. 23-24.

14 Adithiya Diar., Comparison of Settlement of Corruption Cases of Bribery Crimes Between Indonesia and the Netherlands, Bandung, Publisher Cv. Azka Pustaka, 2021, page. 101.

Amendments to Law No. 7 of 2017 concerning General Elections and Law No. 6 of 2020 concerning Perpu No. 2 of 2020 concerning the Third Amendment to Law No. 1 of 2015 concerning the Stipulation of Perpu No. 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law. Parties who carry out money politics can be subject to criminal sanctions, both the giver and the recipient.

2. Efforts to Prevent and Overcome Criminal Acts of Money Politics

The crime of money politics as discussed above certainly often occurs when the General Election is held. The occurrence of this crime is part of the irony that is considered commonplace in society. This is because almost all levels of society actually commit the crime of money politics. In fact, the commonness that occurs causes many people to choose to abstain from voting when they do not get money or material from the parties who are running. Furthermore, many even think that the General Election is part of the democratic party, so it is natural that when there is a party there are many people who get material.

The phenomenon of increasingly widespread political money crimes in society certainly creates a dilemma in law enforcement. This is because referring to the provisions of Article 187A of Law No. 6 of 2020 concerning Perpu No. 2 of 2020 concerning the Third Amendment to Law No. 1 of 2015 concerning the Stipulation of Perpu No. 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law, the parties who give and receive can be subject to criminal sanctions.

The problem is, when law enforcement against perpetrators of money politics is carried out, especially against the recipients, of course there are many parties who can be subject to criminal sanctions. Law enforcement against recipients of money politics can of course cause a burden of state financial losses and can cause prison overcapacity, so that law enforcement will actually harm the state itself. Meanwhile, if law enforcement efforts against recipients and givers of money politics are carried out, it will have implications for the absence of a deterrent effect which ultimately results in the crime being considered commonplace and having no effect.

In relation to this, it is necessary to make efforts to prevent and overcome the occurrence of money politics crimes. The earliest effort to prevent money politics crimes is to make the public aware considering that Indonesian law recognizes the principle of legal fiction. The meaning of the principle of legal fiction is the enactment of a regulation by an authorized agency assuming that everyone knows the regulation, so that there is no reason for lawbreakers to deny allegations of violations on the grounds of not knowing the law and its regulations.¹⁵

In line with that, preventive efforts are also needed to minimize the occurrence of criminal acts of money politics. In fact, in the context of accepting money politics, no criminal sanctions can be given. So that

15 Ali Marwan., Criticizing the Implementation of the Theory of Legal Fiction, *De Jure Legal Research Journal*, Vol. 16, No. 3, 2016, page. 251.

in the context of accepting and giving candidates to voters, it does not cause any legal effects. What should be criminalized is someone who says in public about their choice to choose a leader. Because explicitly, in our election system we use the principles of direct, general, free, secret, honest, and fair. The meaning of the principle of *luber jurdil* is explained by Ratna Herawati as follows:¹⁶

- a. The direct principle means that a voter must vote directly and cannot be represented by anyone.
- b. general principle, meaning that every citizen has the same right to vote and be elected.
- c. The principle of freedom means that there is freedom to choose, without any coercion from anything or anyone.
- d. The principle of confidentiality means that people who use their voting rights will be guaranteed confidentiality regarding what they choose.
- e. The principle of honesty means that everyone involved in the election must be honest, so that this principle is used from start to finish.
- f. The principle of fairness means that everyone involved in the election must have the same rights.

In line with that, of course, seeing the conditions of massive money politics like this, a breakthrough needs to be carried out so that the implementation of the election is free from fraud. The parties who can be prosecuted are not the parties who receive money politics, but those who are prosecuted are the parties who openly state their choice, considering that this is contrary to the principle of confidentiality as referred to in Article 2 of the Government Regulation in Lieu of Law (Perpu) No. 1 of 2022 concerning Amendments to Law No. 7 of 2017 concerning General Elections. With the prohibition that someone may not openly say this, when someone receives money from a candidate for leader, the recipient will not say that they will choose the giver of such money politics.

D. CONCLUSION

The legal construction of the crime of money politics in the concept of legal certainty has been regulated in Government Regulation in Lieu of Law (Perpu) No. 1 of 2022 concerning Amendments to Law No. 7 of 2017 concerning General Elections and Law No. 6 of 2020 concerning Perpu No. 2 of 2020 concerning the Third Amendment to Law No. 1 of 2015 concerning the Stipulation of Perpu No. 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law. Meanwhile, efforts to overcome the occurrence of money politics, it is necessary to reconstruct that recipients should be allowed to receive money politics, but what is prohibited is only related to saying openly to choose a candidate for leader because it is

16 Risdiana Izzaty and Xavier Nugraha., Realization of a Free and Fair Election through the Validity of the Permanent Voter List, *Suara Hukum Journal*, Vol. 1, No. 2, 2019, page. 161.

contrary to the principle of confidentiality as stated in Article 2 of Government Regulation in Lieu of Law (Perpu) No. 1 of 2022 concerning Amendments to Law No. 7 of 2017 concerning General Elections

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