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## THE QUERY OF THE SANCTIONS FOR ENFORCEMENT OF MONEY POLITICS IN INDONESIA

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### ABSTRACT

*General elections, which are held on a regular basis to elect leaders in a country, are a sign of a democracy. The ruling of the Constitutional Court, which specifies that elections in Indonesia be held concurrently, both national and local elections, undoubtedly produces dynamics and obstacles in election administration. It is evident that the practice of electoral fraud is inextricably linked to the conduct of elections in Indonesia. Starting with indirect elections, Indonesia has now moved on to direct elections. Because the execution is simultaneous and simultaneous, the concentration of election organizers and supervisors is split. Although there is already an Election LAW that regulates law enforcement for election offenses, the existence of these provisions is regarded ineffective and inefficient in areas where there are still numerous frauds in elections, including money politics. This paper will look at the regulation of vote buying (money politics) and how sanctions are used. Using primary, secondary, and tertiary legal texts, this study employs a normative legal writing technique. This study concludes that the regulation of criminal punishments in money politics fraud has been regulated in Elections Law Number 7 of 2017. Although infractions of legal politics are restricted under the a quo Law, these arrangements have not been totally effective in limiting the degree of election violations and crimes, particularly money politics. As a result, it should be reconsidered by considering other administrative fines for political parties or candidate candidates in order to offer a greater deterrent impact.*

**Keyword:** Election, Money Politics, Law Enforcement.

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### INTRODUCTION

*The ballot is stronger than the bullet*

*Surat suara lebih kuat atau luar biasa dibandingkan peluru*

*-Abraham Lincoln\_*

Several essences of democracy include massive public participation, involvement in public policy making, and the election of its leaders. Therefore, the existence of general elections, democracy, and political parties by this case inherently cannot be separated. The quality of each of these components affects and influences each other (inter-dependency element). The general election process in accordance with the principles of electoral justice. It cannot be separated from the performance of election organizers, election participants, and the community as the owner of essential sovereignty. Therefore, every fraud, violation and crime related to the general election should affect the quality of the election and ultimately affect the quality of democracy holistically since it shown its fails to put people who have the qualities to lead as a result of manipulative actions, fraud, violations and/or crimes in general election.

Indonesia is a country that adheres to the notion of democracy. It is further recognized as a country that adheres to the notion of constitutional democracy as stated in Article 1 Paragraph (2) *juncto* Article 1 Paragraph (3) of Indonesian Constitution. As a country that claims democracy, Indonesian Constitution guarantees the existence of political parties as a place to accommodate people's aspirations and regulates the implementation of general elections. Such provisions can be found in various articles in the Constitution. Among them are Chapter VII B concerning General Elections, Article 22E Paragraph (1), Paragraph (2), Paragraph (3), Paragraph (4), Paragraph (5), and Paragraph (6) *juncto* Article 27 Paragraph (1), Paragraph (2) *juncto* Article 28.

One of fundamental problem within the implementation of democracy in Indonesia is money politics, which became a forerunner to corruption in the work place. To create quality elections, it can not only be carried out through public participation and quality organizers. The possible prerequisites to realize this aim can be started from preparing a qualified contestant. Therefore, a tighter candidate selection mechanism and the formulation of electoral rules are needed to screen more assertive candidates.<sup>1</sup>

According to Burhanuddin Muhtadi, in 2019, the number of voters involved in money politics in the 2019 elections ranged from 19.4% to 33.1%. Furthermore, in his analysis, the range of money politics is relatively very high based on the standard of fraudulent money politics that occurs in the world. Placing Indonesia as the country with the third largest money politics ranking.<sup>2</sup> According to the results of a survey held by the Indonesian Institute of Sciences (LIPI) which stated that 47.4% of the public confirmed the existence of money politics that occurred in the 2019 Election. 46.7% are considered as money politics to be understandable.<sup>3</sup> Even this situation is like the tip of the ice in the mountains, where sometimes there are lack of awareness among society, or to be more exact is trying to be 'pretends' not to be aware that money politics is happening around them. There is a permissive nature that considers money politics carried out by the candidate or his winning team as a normal tradition that follows every event of democracy, both nationally and locally in Indonesia.

Money politics in general elections has become an endemic violation in elections that still lost the path to effective solution. Since the violation of money politics is very difficult to enforce the law and solve the problem. Phrases that are often used to illustrate money politics are like 'fart' which smells everywhere but when you want to find out who the culprit is, everyone is silently keep their mouth without any word.

Therefore, it is very difficult to find people who are willing to be witnesses and provide information on the occurrence of money politics. Besides, it is the real struggle to unravel the common thread of the law enforcement process, from time to time the modus operandi of money politics has also developed following the times. Thus, causing the existing legal rules in Law Number 7 of 2017 to not function effectively. In accordance with data on the results of 2019 election violations, based on data released by the Election Supervisory Body or hereinafter mentioned as Bawaslu, in 2019, there were around 6,649 registered findings, 548 criminal violations, and 107 violations of the code of ethics. The highest criminal offense is money politics. This massive election violation, including money politics, needs to find a way out and a solution.

In the scope of its regulation, the money politics process can be seen in various stages of the electoral process in Indonesia. First, during the campaign stage and during the quiet period, the

<sup>1</sup>Donal Fariz. (2020). "Pembatasan Hak Bagi Mantan Terpidana Korupsi Menjadi Calon Kepala Daerah". *Jurnal Konstitusi*, 17(2): 310.

<sup>2</sup>Lati Praja Delman, Aidinil Zetra, Hendri Koeswara. "Problematika dan Strategi Penanganan Politik Uang PEMILU Serentak 2019 di Indonesia". *Jurnal Tata Kelola Pemilu Indonesia Electoral Governance*: hlm 2

<sup>3</sup>*Ibid*, p. 2.

subject of giving money is regulated in the Election Law, only the executors, participants or campaign teams. At the voting stage, the subject of the giver is set more broadly to “everyone”. This will have an impact on not being entangled in actors outside the category of implementers, participants or campaign teams when conducting money politics during the campaign and calm periods.

Second, the Election Law only regulates the prohibition of the practice of money politics to givers or promises. While not explicitly regulated for the recipient. Article 228 of the Election Law requires the existence of a court decision with permanent legal force as the basis for applying administrative sanctions to political parties that make political dowries in the process of nominating the president and vice president. In addition, the Election Law does not regulate criminal sanctions related to political dowries. In fact, the phenomenon of political dowry is not only during the presidential and vice presidential elections. However, all elections, both legislative and regional elections, are very vulnerable to the occurrence of money politics.

Third, there are weaknesses and limitations in election regulations by Bawaslu in Districts or Cities to take action against election violations, especially money politics. This is confirmed from the aspect of proving money politics, which requires Bawaslu to have material evidence in the form of reporting witnesses, the perpetrators of money politics and other supporting evidence.

Fourth, according to Article 89 of Law Number 8 of 2012 Concerning General Elections, for Members of the legislatures, an action fulfills the elements of money politics if the campaign implementer gives money/materials as a reward to campaign participants (voters) for choosing or not choosing a political party. In order to prove that there was an election violation in the period prior to the voting related to money politics, the provisions of this article require the Regency or Municipal Bawaslu to track down material evidence that leads to the practice of money politics.

In fact, the effort to obtain evidence of money politics practices is not easy if witnesses are not willing to testify, even in many cases they are reluctant to testify for various personal reasons and evidence of the results of money politics transactions is not fulfilled. This condition causes the prosecution of violations of money politics that occurred before voting cannot be carried out optimally. If there is empirical evidence of the practice of giving money or materials to voters, it will be difficult for Bawaslu to get witnesses who are willing to be questioned.<sup>4</sup>

Therefore, through this paper, the author tries to formulate the discussion about the mechanism of money politics law enforcement according to Law Number 7 of 2017 Concerning Elections and the reason why is the enforcement of the money politics law in the regulation of Law Number 7 of 2017 concerning Elections has not been able to provide a deterrent effect.

## METHOD

This paper was written using the normative legal method by analyzing the law relating to money politics in Indonesia and conducting literature study to discuss and answer the formulation of the problem taken. The legal materials used in analyzing these issues consist of primary legal materials, namely applicable laws and regulations, secondary legal materials in the form of manuscripts, books and journals related to electoral issues and tertiary legal materials in the form of supporting and additional reading materials related to with the issues discussed such as encyclopedias, Indonesian dictionaries, magazines etc.

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<sup>4</sup>Topo Santoso. (2006). *Penegakan Hukum Pemilu, Praktik Pemilu 2004, Kajian Pemilu 2009-2014*. Jakarta: Perludem Press, p. 25.

## ANALYSIS & DISCUSSION

### Law Enforcement in Money Politics in General Elections

The democratic process is also realized through election procedures to elect representatives of the people and other public officials. The state government that is formed through these elections is that which comes from the people, carried out in accordance with the will of the people and dedicated to the welfare of the people. The government formed through elections will have strong legitimacy from the people. This rationale is an affirmation of the implementation of the spirit and soul of Pancasila and Indonesian Constitution.<sup>5</sup>

Elections that are held regularly are intended to ensure that citizens are not stuck with a leadership that is not working well. For this reason, they have the opportunity to replace incompetent leaders through free and fair elections. This free and fair principle provides an opportunity for every citizen to choose a leader according to their respective choices or decide to replace an unwanted leader so that he is not in power again.<sup>6</sup>

We can also observe the importance of the existence of elections in a democratic country from the election objectives as formulated by Jimly Asshiddiqie, namely:<sup>7</sup>

1. To allow for an orderly and peaceful transition of leadership;
2. To allow the change of officials who will represent the interests of the people in the representative institutions;
3. To implement the principle of popular sovereignty; and
4. To implement the principles of human and citizen rights.

Elections are very important in the life of the state because the people must choose candidates and parties that can truly bring their aspirations and interests into the formulation of government policies later. As a mechanism, elections are then expected to be held in a free and fair manner, where the electoral system guarantees individual rights and a control system exists for the management of the election. The success of the election is then determined by the acceptance of all election participants (political parties and candidates) unanimously (legitimate) and binding (binding).<sup>8</sup>

The acceptance of election results by all parties is of course very dependent on the quality of procedural democracy that occurs (the electoral process) itself. If the electoral process is filled with fraud, injustice, dishonesty, it will certainly degrade legitimacy and lead to electoral disputes.

Therefore, the elections that are held must aim to realize the ideals of justice from the implementation of elections. The concept of electoral justice according to the Institute for Democracy and Electoral Assistance (IDEA) is as follows:<sup>9</sup>

1. Ensure that all actions, procedures and decisions related to the electoral process comply with the legal framework;
2. Protect or restore voting rights; and

<sup>5</sup>Achmad Edi Subiyanto. (2020). "Pemilihan Umum Serentak yang Berintegritas sebagai Pembaruan Demokrasi Indonesia". *Jurnal Konstitusi*, 17(2): 357.

<sup>6</sup>Pan Mohammad Faiz. (2017). "Memperkuat Prinsip Pemilu Yang Teratur, Bebas, Adil Melalui Pengujian Konstitusionalitas Undang-Undang". *Jurnal Konstitusi*, 14(3): 675.

<sup>7</sup>Abdurrahman Satrio. (2015). "Kewenangan Mahkamah Konstitusi Memutus Perselisihan Hasil Pemilu Sebagai Bentuk Judicialization of Politics". *Jurnal Konstitusi*, 12(1): 121.

<sup>8</sup>Donal Fariz, *Op. Cit.*, p. 311.

<sup>9</sup>Oliver Josep & Frank McLoughlin. (2010). *Keadilan Pemilu: Ringkasan Buku Acuan Internasional*, Jakarta: IDEA Printer, p. 5.

3. Enabling citizens who believe that their voting rights have been violated to file complaints, attend trials, and obtain decisions.

In line with Ramlan Surbakti's opinion that election justice is not only limited to the availability of a legal framework, but also includes equality of suffrage, an independent governing body, voting integrity and resolution of violations or disputes. The United Nations Democracy Fund (UNDEF) identifies eleven principles of fair elections. The principles in question are integrity, participation, law enforcement, impartiality, professionalism, independence, transparency, timeline, non-violence, regularity, and acceptance.<sup>10</sup> The role of political parties is very important in the democratic state system that has grown and developed in Indonesia. Therefore, political parties are very important pillars for the strength of institutions in a democratic political system (the degree of institutionalization).<sup>11</sup>

Moreover, post-democratic reform continues to improve even though it is dynamically full of ups and downs. It is undeniable that the existence of political parties is inherent in democracy and elections. There is even an expression that says "*political party created democracy*", that shown political parties then determine the democracy of a country. Therefore, political parties are the spearhead of determining the quality of democracy in a country.

Although indeed in the development of the rapid practices of political parties that tarnish the dignity by committing criminal acts so as to make political parties viewed with skepticism which states that political parties are only a way for elites who willing to achieve power to fulfill their desires. In fact, this does not need to happen, because if community groups want to advance to occupy certain powers, especially legislative power, then those concerned need to maintain the dignity and morals of public officials for the creation of a holy democratic political system.<sup>12</sup>

The process of institutionalizing democracy is basically determined by the institutionalization of political parties as an inseparable part of the democratic system. Therefore, according to Yves Meny and Andrew Knapp that "*a democratic system without political parties or with a single party is impossible or at any rate hard to imagine*".<sup>13</sup> A political system in which there is only one political party is very difficult to obtain objective aspirations from the community since this situation will generate the thought of forcing power to perpetuate the position without going through a democratic political system, especially without political parties at all. So this is exactly showing the weakness of legitimacy of power for rising political officials in as much as there are no political opponents who are heterogeneous from other political parties.<sup>14</sup>

The term money politics may be a term that has been heard frequently. This term refers to the use of money to influence certain decisions either in elections or in other matters relating to important decisions.<sup>15</sup> According to Burhanuddin *et al*, the term money politics itself is unclear. On many occasions, this term used as a large container that encapsulates all practices and behaviors ranging from political corruption, to patron-klien, to vote buying, and crime. There is a kind of consensus among scholars who study Indonesian politics that money politics is corruption related to the electoral process. Therefore, money politics operates in two domains.<sup>16</sup>

<sup>10</sup>Khairul Fahmi, Feri Amsari, Busyra Azheri. (2020) "Sistem Keadilan Pemilu dalam Penanganan Pelanggaran dan Sengketa Proses Pemilu Serentak 2019 di Sumatera Barat". *Jurnal Konstitusi*, 17(1): 5.

<sup>11</sup>Jimly Asshiddiqie. (2006). *Kemerdekaan Berserikat Pembubaran Partai Politik dan Mahkamah Konstitusi*. Jakarta: Konstitusi Press, p. 52.

<sup>12</sup>*Ibid* p. 52.

<sup>13</sup>*Ibid* p. 442.

<sup>14</sup>*Ibid* p. 442.

<sup>15</sup>Siti Nurul Isnaini Wahidah, Robyan Endruw Bafadal, Saifurruhaidi. (2017). "Uang dan Kekuasaan Politik". *Jurnal Hamzanwadi*, p. 1.

<sup>16</sup>Burhanuddin Muhtadi. (2013). "Politik Uang dan Dinamika Elektoral di Indonesia: Sebuah Kajian Awal Interaksi Antara "Party-ID" dan Patron-Klien". *Jurnal Penelitian Politik*. 10(1): 47.

In other words, the dimensions of money politics are extensively varies. Not only what happened at the grassroots level in community within the form of buying and selling votes by giving some money, goods, basic food materials and others, moreover various money spent to facilitate the nomination of one candidate through the internal political process of the party. This situation is the upstream of high-cost politics in Indonesia which then leads to or leads to corruption committed by candidates to recover the huge political costs.

Theoretically, there are several factors that are thought to influence the highs and lows of money politics. One of the important factors believed to have contributed to the incidence of money politics is the design of political institutions, including extreme multi-party systems.<sup>17</sup> At the same time, most parties are relatively new without sufficient political credibility.<sup>18</sup> In general, the party also does not have ideological differentiation, so it does not foster a strong sense of ownership of the party. This situation causes the cadres offered by the party to anticipate electability by conducting money politics.<sup>19</sup>

In the implementation of elections, there are various types of electoral fraud, one of which is electoral corruption. Election corruption is part of the political corruption committed by politicians before gaining power. Politicians carry out illegal practices during elections to influence voters. The most conspicuous form of political corruption during elections is by bribing voters directly. In line with that, money politics does not always go hand in hand with direct elections of both the executive and the legislative respectively. Sukmajati and Aspinall's notes mention that money politics has even been heard when the regional head of the executive election is held by the legislative (indirect election by the DPRD).

Corruption in the Regional Head Election occurs in two ways. Firstly, the revenue side related to the aspect of collecting winning capital. The parties involved are candidates, parties and third-parties, especially entrepreneurs and business entities. The form is in the form of illegal donations and the use of resources of state funds. Secondly, the side of spending and expenses related to winning. This practice is carried out by candidates, parties and success teams with voters or election organizers such as Regional Election Commission and Supervisory Committee. The most commonly used form is money politics.

Even more deeply, electoral corruption occurs in various interlocking and intertwined relationships around the administration of elections. That is, it occurs in the relationship between political parties and candidates with contributors on the one hand and political parties with election administrators as well as voters on the other. The manipulation of political funds occurs in the relationship between donors and political parties and candidates and money politics occurs in the relationship between political parties and candidates with election administrators and also with voters. In certain cases, it is difficult to distinguish between both of them, for example when the donor gives a certain amount of money or 'kindness' to voters directly.

It can be said that the manipulation of political funding and money politics occurs simultaneously, because on the one hand, donations to candidates must be made through certain mechanisms regulated by law (eg through campaign fund accounts) so that there has been a violation of provisions and on the other hand vote buying has occurred. The same thing also happens when the contributors are candidates or party elites themselves.<sup>20</sup>

So it can be concluded that politics and money may be two different things but cannot be separated. Politics requires money and with money people can do politics. Although then

<sup>17</sup>As is known, post Soeharto lead, Indonesia has entered a multi-party era. In the 2019 legislative elections, 16 national parties competed for 575 seats at the central level, up from 12 parties in 2004, 38 parties in 2009, 24 parties in 2004 and 48 parties in 1999.

<sup>18</sup>Burhanuddin Muhtadi. (2019). "Politik Uang dan New Normal dalam Pemilu Paska-Orde Baru". *Jurnal Antikorupsi Integritas*. 5 (1): 57

<sup>19</sup>Ade Irawan. (2013). *Korupsi Pemilikada*. Jakarta: Indonesia Corruption Watch, p. 80.

<sup>20</sup>Donal Fariz, *Op.Cit*, p. 315.

various political movements without money emerged as campaigned by Denny Indrayana in his candidacy for regional head in one of the provinces on the island of Kalimantan. However, it cannot be denied that the practice of money politics still exists and occurs in almost all democratic processes in Indonesia as well as at the center or in the regions. Even though the implementation of the 2020 local elections simultaneously, although it was carried out in the midst of a non-natural disaster such as Covid-19, it did not reduce the occurrence of money politics practices carried out by the parties. This problem needs to be amputated by finding a legal solution through improving the electoral system in Indonesia.

### **Law Enforcement Institutions on Money Politics in Elections**

In theory and practice in many countries there are three types of electoral management models: independent; governmental; and mixed or combined. The independent model places the Election Management Body stand alone and separate from other branches of government institutions. It is directly responsible to the legislature, or judiciary. Or to the head of government. The individuals who are in this independent model institution do not come from the executive and legislative institutions.<sup>21</sup> The model of the government is in contrast to the independent model, it is under a certain ministry or department. Countries that use the model of government for national-level elections are usually led directly by a minister or official in the central government. As for the implementation of elections at the regional level led by local government officials.<sup>22</sup>

The mixed model is an Election Management Body that combines the independent model with the government model. In this model, there are two different structures in managing the administration of elections: an independent Election Management Body has the duties and functions to produce policies and supervision, while an Election Management Body with a government model is tasked with implementing these policies, including holding elections. However, this mixed model usually has a different share of authority between Election Management Bodies that come from independent or those from the government.<sup>23</sup>

In the legal politics of Law Number 7 of 2017 it is stated that there are at least three Election Management Body that have interrelated functions, duties and authorities, namely: the General Election Commission, the Election Supervisory Body, and the Election Organizing Honorary Council. These three institutions are the main organizers of elections both at the national and regional levels. These institutions act as implementers and supervisors of the implementation of elections in order to achieve the objectives of election justice. Although of course outside the implementing agency there are also other law enforcement agencies authorized to enforce electoral laws such as: the police, prosecutors, courts, and constitutional courts.

All of these institutions are electoral law enforcement systems and in Indonesia to achieve the goals of democracy and electoral law politics. Even to ensure that the performance of the election organizers is free from intervention and interference from other state powers. The state guarantees the existence of each of these election organizers. So that all forms of election violations including money politics can be resolved objectively and not biased by interests.

### **Regulation of Law Enforcement on the Practice of Money Politics in Elections**

Book 5 of Law Number 7 of 2017 Concerning General Election basically regulates about election crimes. Chapter I of the book includes provisions regarding the handling of election crimes. In connection with the articles that regulate the prohibition of money politics, it can

<sup>21</sup>Fadli Ramadhani, Heroik Mutaqin Pratama, Khoirunnisa Nur Agustyati. (2019). *Perlindungan Hak Memilih Warga Negara di Pemilu 2019 dan Keterwakilan Perempuan di Lembaga Penyelenggara Pemilu*. Jakarta: Perludem Press, p. 31.

<sup>22</sup>*Ibid* p. 31.

<sup>23</sup>*Ibid* p. 32.

be seen in several provisions. Among them, first, Article 515 includes criminal threats for any person who intentionally promises or gives money or other materials to voters during the voting period so that they do not use their voting rights or elect certain election contestants or use their voting rights in a certain way so that their ballots are invalid, shall be sentenced to a maximum imprisonment of three years and a maximum fine of thirty-six million rupiahs.

Second, Article 519, it regulates criminal threats for anyone who intentionally commits fraudulent acts to mislead someone, by forcing, promising or giving money and other materials to obtain support for the nomination of legislative members in the General Election as referred to in Article 183, imprisonment for a maximum of three years and a maximum fine of thirty-six million rupiah.

Third, Article 523 contains several formulations of criminal threats. First, Paragraph (1) stated that criminal threats are aimed at any election campaign implementer, participant, and/or election campaign team who intentionally promises or gives money or other materials in return for direct or indirect election campaign participants as referred to in Article 280 Paragraph (1) Letter (j) shall be sentenced to a maximum imprisonment of two years and a maximum fine of twenty-four million rupiahs.

Fourth, further in Article 523 Paragraph (2) it is regulated about threats directed at every election campaign implementer, participant, and/or team who intentionally during the Campaign Period promises or gives monetary rewards or other materials to voters directly or indirectly as referred to in Article 523 Paragraph (2). Article 278 Paragraph (2) shall be sentenced to a maximum imprisonment of four years and a maximum fine of forty eight million rupiahs.

Fifth, Article 253 Paragraph (3) threats are directed at any person who intentionally promises or gives money or other materials to voters not to exercise their right to vote or elect certain Election Contestants shall be punished with imprisonment for a maximum of three years and a fine of not more than three years a lot of thirty-six million rupiah.

Sixth, Article 525 also contains two criminal threats. In Paragraph (1), criminal threats are aimed at any person, group, company, and/or non-government business entity that provides Election Campaign funds exceeding the limit specified as referred to in Article 327 paragraph (1) and Article 331 paragraph (1) shall be subject to criminal sanctions and imprisonment for a maximum of two years and a maximum fine of five hundred million rupiah.

From the explanation from those articles, it can be seen that the Election Law has accommodated all arrangements in money politics at every stage of the election, it means that the regulation of money politics in the Election Law has been comprehensively drafted to prevent the intertwining of money politics from occurring. In addition, money politics arrangements are arranged in legal norms that contain criminal sanctions or can be categorized as election crimes. with imprisonment and fines. But unfortunately the law enforcement on money politics is only intended for money politics actors, both those who give and receive. Whereas in reality, money politics violations are not as simple as giving and receiving actors, but sometimes it also involves the active role of political parties. Unfortunately, the electoral law has not yet reached the point of imposing administrative sanctions on political parties.

In law enforcement cracking down on election violations including money politics, through a Memorandum of Understanding made by the RI Bawaslu, the Indonesian Police, and the Indonesian Attorney General's Office, a forum containing three institutions involved in handling election criminal cases is established, namely the Police, the Prosecutor's Office, and the Election Supervisory Body. To effectively handle cases of violations or crimes against

elections involving criminal matters, Bawaslu, the Police, and the Prosecutor's Office establish an Integrated Law Enforcement Center (Gakkumdu).<sup>24</sup>

This Gakkumdu Center has its own procedural law as stipulated in the Election Supervisory Body Regulation Number 9 of 2018 which was subsequently changed to the Election Supervisory Body Regulation Number 31 of 2018. This rule in the order and process of criminal justice is not much different from the general criminal procedure law. However, some administrative procedures and processes are subject to election supervisory bodies.<sup>25</sup>

The existence of the Gakkumdu center which is supposed to facilitate the handling of criminal acts often hinders the handling of election crimes. Judging from several cases of reports that were submitted to Gakkumdu related to alleged election crimes, only a few reports were processed and continued to the Court. Data for 2019 compiled by Bawaslu, the number of election violations was 6455 election violations, of which 555 were election criminal offenses and only 49 cases went to court, then 43 were *inkracht*. Although money politics is not the only type of violation in elections, the practice of money politics is a form of violation that often occurs.<sup>26</sup>

Although there is a Sentra Gakkumdu in the enforcement of election law, in fact this is not enough to reduce the number of violations of money politics practices in the implementation of elections in Indonesia. This shows that in fact, to unravel the tangled threads of election violations, it is not possible only to rely on the law enforcement sub-system (legal structure) but it is necessary to look at other sub-systems that are supporters of the electoral law system, as well as the legal theory proposed by Lawrence W Friedman. Another sub-system that needs to be considered is legal substance.

It is necessary to unravel and analyze the capacity or resilience and effectiveness of law enforcement arrangements for election violations contained in the Election Law, where the approach to resolving election violations prioritizes settlement through criminal law rather than administrative law. This means that the use of criminal sanctions in law enforcement of money politics is considered a solution in resolving money politics violations, but it turns out that the provisions of these norms have not been maximized in reducing the number of money politics violations. Therefore, the deterrent effect of criminal sanctions in money politics should be reviewed.

From the perspective of criminal law policy, actually the protection of various legal rules is a reasonable demand, because various behaviors that are prohibited by the provisions of the new legislation can be qualified as criminal acts, if the act fulfills the elements that form the basis for the prohibition of the rule. while the use of criminal sanctions only strengthens norms. However, in this case it should not be forgotten that the use of criminal law has limitations, appeal to the principle of *ultimum remedium*. If the definition of criminal law policy or penal policy is understood above, it is assumed that efforts and policies to make good criminal law regulations cannot be separated from the purpose of crime prevention. In a larger context, criminal law policies are also part of law enforcement efforts. Therefore, the criminal law policy is part of the law enforcement policy.

If the purpose of criminal law is to protect the interests of the state and society, then elections as part of the democratization of a country, including Indonesia should receive protection. This means that the state intends to regulate public order in the country. As with other fields of life, elections are one of the legal objects that are protected by criminal law. The reason is that

<sup>24</sup>Hasrul Fitriyadi, Pangeran, Amir Ilyas. (2020). "Penanganan Tindak Pidana Pemilihan Umum oleh Sentra Penegakan Hukum Terpadu (Gakkumdu)". *Jurnal Ilmu Hukum Fakultas Hukum Universitas Riau*. 9(1), p. 51.

<sup>25</sup>*Ibid.*

<sup>26</sup>Tim Peneliti Perludem. (2009). *Kajian Kebijakan Sistem Penegakan Hukum Pemilu (2009-2014)*. Jakarta: Perludem Press, p. 197.

criminal law does have advantages compared to other fields of law. As a negative sanction law, criminal law, inclusive of criminal sanctions can be used as a tool because it has coercive power so that people become obedient to the rules. In essence, criminal law functions to protect certain interests, and because of that, according to him, these interests can be individuals, communities, and state.

However, in fact, the imposition of criminal sanctions does not necessarily reduce the number of violations of money politics. The basic error could be in the low level of criminal sanctions imposed or it could be because the regulation of criminal sanctions in money politics violations does not target parties who should participate and are held responsible for the actions of cadres, member, and election candidates that they carry, namely the accountability of political parties in political violations of money.

### **Analysis of the Deterrent Effect in Imposing Sanctions in Money Politics**

Over all the explanation of the articles that contain the law enforcement of money politics, the *aquo* articles are designed using an electoral criminal law approach for perpetrators at every stage of the electoral process related to money politics. Both actors whose addresses are general, such as 'everyone' or whose perpetrators are specifically restricted by special address norms, are executors, organizers, campaign teams or candidates in elections. In the realm of legal science, criminal sanctions are considered an *ultimum remedium*, namely a last resort in providing deterrence to perpetrators. However, in reality, this criminal sanction has not been effective enough in resolving money politics violations in general elections.

Judging from the electoral criminal law enforcement process, especially in terms of proving it is quite difficult, plus the flow of the election criminal process is quite long and long, the criminal sanctions for this money politics election do not seem to deter the perpetrators, since the perpetrators never touch the elite level. So that the magnitude of the deterrent effect does not change significantly.<sup>27</sup>

The enforcement of money politics law should be followed by attaching administrative sanctions. It is undeniable that administrative sanctions are far more effective in providing a deterrent effect to candidates who carry out money politics, including the political parties that nominate them. As is known in administrative law, the expression in *cauda venonum* is known or there can be a tail. As a characteristic of the law and administrative sanctions. Therefore, administrative sanctions in the form of cancellation of candidacy, or other administrative sanctions against candidate candidates and/or political parties who carry out money politics are considered far more frightening for political parties and/or candidates compared to criminal sanctions that have so far been regulated in the Election Law.

Moreover, the criminal sanctions that have been imposed so far often do not directly affect the candidate candidates, let alone the political parties that carry them. It's only about people at the grassroots. Therefore, administrative sanctions must be regulated in the Election Law as a new model for handling and enforcing election law, especially in the practice of money politics.

The existence of administrative sanctions in the Election Law will certainly strengthen the prevention of the practice of money politics. Some of the reasons are because, first, it will facilitate the enforcement of these norms and in turn we will see the usefulness/effectiveness of the laws and regulations. In addition, the inclusion of sanctions is also an effort to make someone obey the provisions of the legislation. Second, to provide punishment for anyone who violates a norm of legislation. People who violate a norm should indeed be given a punishment

<sup>27</sup>Asnawi. (2016). "Penegakan Hukum Tindak Pidana Politik Uang Pemilihan Umum Legislatif Pada Kampanye di Kabupaten Serang". *Jurnal Mimba Justitia*. 2(2), p. 772.

according to the severity of the violation. The punishment becomes appropriate if the person intentionally violates a norm. Third, the person who commits a violation intentionally can be assumed that the person does have bad intentions, so that person deserves to be punished or rewarded accordingly. Third, to deter someone from violating the law again, by the imposition of sanctions, it is hoped that people will not repeat violations. In criminal law this is known as deterrence theory. Fourth, prevent other parties from violating the law. The threat of sanctions is hoped to make people would not violate the law. These are signs or warnings so that someone does not do something that is prohibited.<sup>28</sup>

Sanctions will facilitate the enforcement of these norms and in turn we will see the effectiveness of the laws and regulations. In addition, the inclusion of sanctions is also an effort to make someone obey the provisions of the legislation. Second, provide punishment for anyone who violates a statutory norm. People who violate a norm should indeed be given a punishment according to the severity of the violation. The punishment becomes appropriate if the person intentionally violates a norm.

Types of administrative sanctions can start from the lightest type to the heaviest. The heaviest administrative sanctions are likely to be more effective than the imposition of criminal sanctions. In accordance with the scope of its substance, a statutory regulation does not need to be forced to regulate sanctions because it will not necessarily be more effective. As stated above, it is possible that law enforcement on a statutory regulation is not always followed by sanctions.

However, in the context of money politics violations, according to the author, it is necessary to set up administrative sanctions that punish political parties that are proven to be cadres, members and pairs of candidates who are promoted to carry out this evil practice. As mentioned by John Braitwaite about responsive arrangements where the decrease under certain conditions the use of administrative sanctions will have a significant effect compared to criminal sanctions since the highest form of administrative sanctions is in the form of license revocation. This is the same as the death penalty which punishes certain entities that have had access to rights will lose their rights. This will have a deterrent effect. In the context of the practice of money politics, it is actually important to look at the possibility of punishing political parties whose cadres, members or election participants are carrying out money politics. In this way, parties will be very selective in choosing representatives from their parties and at the same time provide shock therapy for political parties to seriously carry out their functions in cadre and political education as mandated by the Law on Political Parties in conjunction with the Election Law.

## CONCLUSION

Based on the discussion, it can be drawn that: first, the regulation on money politics has been guaranteed in the Election Law, especially in Article 515, Article 519, Article 523, Article 525, and Article 253. The regulation on the prohibition of money politics in almost all stages of the election, it is arranged in the form of electoral criminal law norms because it can be punished with imprisonment and fines. Unfortunately, this regulation regarding the prohibition of money politics is only able to ensnare the perpetrators of giving and receiving money politics where the verification process is quite complicated. This arrangement has not been able to reach out and hold legal accountability to political parties whose cadres, members and candidates for election participants carry out money politics. Second, due to the settlement approach that uses criminal sanctions in money politics, this causes efforts to prevent money politics from an early age not being able to run optimally. It is proven by the high number of violations of

<sup>28</sup>Wicipto Setiadi. (2009). "Sanksi Administratif Sebagai Salah Satu Instrumen Penegakan Hukum dalam Peraturan Perundang-Undangan". *Jurnal Legislasi Indonesia*. 6 (4), p. 606-607.

money politics. The existing criminal sanctions in various provisions of the Election Law have not been able to significantly reduce the number of money politics violations.

### Recommendation

Regarding to the importance of improving the quality of democracy, every violation in the electoral process at this stage must be dealt with as effectively and efficiently as possible in order to maintain the quality of procedural democracy. The current state of election law politics in the applicable law, or also known as *ius constitutum*, has not been able to provide a deterrent effect for election participants so it is necessary to initiate new legal social engineering to have a significant impact on changes. The author suggests the existence of administrative sanctions in the form of failure of nomination and administrative sanctions to political parties whose being candidates, winning teams, or implementing parties, that carry out money politics. This administrative sanction can provide shock therapy for parties and candidates who carry out money politics since the sustainable affect that bringing impact to their candidacy process in general elections and the reputation of candidates and political parties. By the threat of administrative sanctions to political parties whose cadres, members and election participants are promoted, political parties will be serious in carrying out the process of regeneration and political education internally by the party.

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