



# A Legal and Criminological Analysis with Prevention Measures in Mind for the General Elections

Nestia Lianingsih<sup>1\*</sup>, Setyo Luthfi Okta Yohandoko<sup>2</sup>, Grida Saktian Laksito<sup>3</sup>

<sup>1,2</sup>*Master's Program of Mathematics, Faculty of Mathematics and Natural Sciences, Universitas Padjadjaran, Jatinangor, West Java, Indonesia*

<sup>3</sup>*Faculty of Business, Economics and Social Development, Universiti Malaysia Terengganu, 21030 Kuala Nerus, Terengganu, Malaysia*

*\*Corresponding author email: nestia23001@mail.unpad.ac.id*

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## Abstract

The crime of money politics is a serious challenge in the election system, affecting the integrity of democracy and public trust. This article analyzes the phenomenon of money politics from a legal and criminological perspective and identifies the driving factors and their impact on the political process. Apart from that, the article also offers prevention strategies that involve strict regulations, law enforcement officials with integrity, fair trials, the active role of the Election Supervisory Agency (Bawaslu), and comprehensive political education. It is hoped that these steps can help overcome and prevent criminal acts of money politics to ensure clean and democratic general elections.

**Keywords:** Money Politics Crimes, General Elections, Election Law.

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## 1. Introduction

Money politics, or what is often referred to as electoral corruption, is a phenomenon that has taken root in the political context in Indonesia. In this article, the author considers these two terms to have the same essence, referring to fraudulent acts in the General Election (Pemilu) whose essence is comparable to acts of corruption. The phenomenon of money politics is nothing new in Indonesian political history. In fact, history records that a truly democratic, honest and fair election occurred only once, namely in 1955. At that time, the parties participating in the election fought by putting forward the idea of Indonesianness, without relying on money and power (Septiadi et al., 2021; Umagapi, 2023).

However, during the New Order (Orba) era, the political paradigm changed drastically. Money politics is something that is rarely heard and recorded, because elections are often influenced by the use of power to win over the government party. All forces united to win the Golongan Karya Party, so that the election became just a mere democratic ceremony (Aminuddin and Attamimi 2019). Campaigning was restricted, many candidates were disqualified, and various regulations were applied disproportionately against the government's political opponents.

After the New Order era, in the reform era, elections actually became a hotbed for the phenomenon of money politics. This practice is often carried out on a massive scale in society. As a result, money politics becomes a cheap spectacle that damages the quality of democracy. In this context, the aim of elections to create a democratic, just and prosperous country is increasingly being shifted.

Regarding money politics, this phenomenon is not exclusive to Indonesia. In the United States, which is often considered the champion of democracy, money politics is also a difficult reality that is difficult to avoid. In fact, when the US Presidential Election (Pilpres) was held two years ago in 2016, a law teacher at Harvard Law School named Adrian Vermeule called the US Presidential Election a "Dollartocracy". He considers that democracy in the US is experiencing acute pain because it is infected by various money politics scandals which can be equated with electoral corruption (Reuter, 2015). As a result, President Trump's victory was perceived coldly and full of pessimism by various groups. This indicates that money politics is a disease of democracy that pervades any country, including the US.

However, if we examine it more deeply, money politics actually contradicts and is not in line with the three main objectives of holding elections, namely: first, strengthening a democratic constitutional system. Second, realizing elections that are fair and have integrity. Third, achieving effective and efficient elections. Money politics cannot

strengthen the constitutional system because democracy will be cheated through electoral corruption. Apart from that, electoral corruption cannot create elections that are fair and have integrity, nor are they effective and efficient. Because, through money politics, there is the possibility of election disputes which could result in the need for re-elections or regional elections, which in the end will result in a waste of the state budget. Thus, money politics actually destroys democracy in any constitutional system. Clearly, money politics is a contradiction or even the opposite of the aim of holding elections, especially in Indonesia (Khairi, 2020; Aspinall and Rohman, 2017).

The legality of elections in Indonesia is regulated in Law no. 7 of 2017 concerning General Elections (Election Law). Systematically, provisions regarding money politics can be found in Book V Chapter II with the title Election Criminal Provisions, in Article 523 paragraphs (1-3). In this context, two main problems will be answered in this text, namely first, from a criminal law perspective, are the provisions governing money politics adequate? Second, what can be done to prevent the increasingly widespread practice of money politics? In relation to this problem, there are two fundamental objectives of writing this manuscript, namely first, theoretically, to provide a complete description and discourse regarding the concept of criminal acts of money politics as regulated in the Election Law, as well as in various literature, especially its relationship to political corruption. Second, practically, so that this text can be used as reference material by election organizers, anti-corruption activists and the general public.

In order to enrich the discourse and strengthen the academic aspects of this text, the author will explain a literature review. This is important because it will be the foundation for explaining the main variables in the theme of this manuscript. In this context, there are two variables that will be described, namely:

## 2. Concepts of Legal Politics.

From this definition, there are four important things that can be concluded. First, from the phrase "contained in society", it is clear that its scope is very broad, covering various aspects of national and state life, such as politics, economics, social and culture. Second, related to the phrase "establishing the desired regulations", this is related to positive law or *ius constitutum*. Third, the phrase "can be used to express" is related to the concept of *ius operatum*. Fourth, the phrase "to achieve what is aspired to" shows the correlation of legal politics with *ius constituendum*. Thus, in Sudarto's perspective, legal politics includes three main aspects: *ius constitutum*, *ius operatum*, and *ius constituendum*.

Further explanation of legal politics was put forward by Mahfud MD, who stated that legal politics is legal policy or official policy lines regarding law that will be enforced either through making new laws or replacing old laws, with the aim of achieving state goals. Based on the definition of legal politics given by Mahfud MD and Sudarto, the essence of legal politics lies in four important points. First, legal politics is an official state policy that will establish a legal regulation (*ius constitutum*). Second, the policy is related to laws that can be operationalized (*ius operatum*). Third, policies are also related to the desired law (*ius constituendum*). Fourth, legal politics aims to regulate national and state life (Harahap et al., 2023; Braus et al., 2019).

In this context, legal politics can be linked to efforts to prevent crime in society, which is known as criminal law politics (criminal policy). Ancel asserts that this is the rational organization of the control of crime by society. G. Peter Hoefnagels then described criminal policy as the rational organization of social reactions to crime, as well as the science of crime prevention. From this explanation, three meanings of criminal law politics can be identified. First, it includes society's rational efforts in responding to crime. Second, it includes policies that define human behavior as criminal. Third, it is the science of crime prevention (Wicaksono, 2022; Hidayaturrahman et al., 2022).

Thus, the essence of criminal law politics is determining what actions should be considered criminal acts, what sanctions should be applied to violators, and the legal procedures that will be followed if there is a violation of criminal provisions, so that the perpetrator can be subject to criminal sanctions. In the political and legal context of regulating criminal acts of money politics in elections, we will look at how these acts are formulated, the formulation of criminal sanctions, and the legal processes available when a criminal act of money politics occurs in the Election Law (*ius constitutum* and *ius operatum*).

## 3. Regulation of Money Politics Crimes in Indonesia

When discussing money politics in general elections (Pemilu), we look at the Election Law from a criminal law perspective. In this context, there are three important elements which are often referred to as the triad of criminal law, namely criminal acts, criminal responsibility and sanctions systems. Regarding the regulation of criminal acts of money politics, we will focus on criminal acts, criminal liability and the applicable sanctions system (Putra et al., 2021).

Regarding criminal acts in the Election Law, criminal provisions are systematically regulated in Book V with the title Election Crimes, namely in Book II from Article 488 to Article 554. Thus, election crimes are regulated in a total of 66 articles. Anatomically, election crimes are divided into several categories, including:

- a). In paragraph (1), criminal acts of money politics are committed during the campaign. In paragraph (2), criminal acts are committed during the quiet period. Meanwhile, in paragraph (3), criminal acts are committed while voting is taking place.

- b). There are similarities in the elements of criminal acts of money politics in elections in paragraphs (1), (2) to paragraphs (3), namely the elements of *actus reus* (criminal act) and *mens rea* (mistake).
- c). The elements of *actus reus* in paragraph (1) include: a) promising, b) giving money or other materials, c) as a reward for participating as an election campaign participant, d) carried out either directly or indirectly. Meanwhile, the *mens rea* element uses the phrase "intentionally".
- d). In paragraph (2), the *actus reus* element consists of: a) during the quiet period, b) giving or promising monetary or other material rewards, c) to voters, d) either directly or indirectly. Meanwhile, the *mens rea* element uses the phrase "intentionally".
- e). In paragraph (3), the *actus reus* element consists of: a) every person, b) promising or giving money or other materials, c) to voters not to exercise their right to vote or to elect certain participants.
- f). In paragraphs (1) and (2) of this article, it is regulated to whom criminal acts of money politics can be directed, namely to every implementer, participant and/or election campaign team. Meanwhile, paragraph (3) can be directed at anyone who commits criminal acts of money politics at the time the voting is carried out, which is indicated by the use of the element "everyone".
- g). There are differences in the threat of imprisonment. In paragraph (1), the penalty is 2 years, in paragraph (2) it is 4 years, while in paragraph (3) it is 3 years. This shows that lawmakers punish perpetrators of money politics crimes more severely during the quiet period than during the campaign or during voting.
- h). The element of *mens rea* or error is formulated uniformly in both paragraphs (1), (2) and paragraph (3), namely in the form of intent. By using this phrase, the theory of intent has been implicitly adopted in criminal law, whether intent as intent, possibility or certainty. Thus, to be punished according to this article, the error must be intentional, and must not be negligence, whether aggravating or mitigating negligence.
- i). Regarding criminal sanctions threatened with perpetrators of criminal acts, this article uses the maximum criminal threat. This is the same as the regulation of criminal threats in the Criminal Code (KUHP). This system is known as the indefinite sentence system, namely a system where each criminal act has its own weight or quality, by determining the minimum and maximum criminal threat for each criminal act.

In conclusion, this article provides detailed and varied regulations regarding criminal acts of money politics in elections, focusing on the elements of criminal acts (*actus reus*) and mistakes (*mens rea*), as well as providing strict criminal threats. This shows a serious commitment to preventing and punishing the practice of money politics in the election process in Indonesia.

The author proposes that in the future, criminal threats in the Election Law be revised and constructed using an indeterminate sentence pattern or special minimum criminal threats. With this model, legislators will determine specific minimum and maximum limits for the punishment that can be imposed by a judge. The consideration is to provide legal certainty, because the minimum criminal threat will be clear, and also provide a deterrent effect as one of the objectives of imposing a penalty (Utami et al., 2020). This is in line with the deterrence effect theory which emphasizes that criminals do not repeat their actions (special prevention) and also to prevent other people from committing similar crimes (general prevention).

From an epistemological perspective, the Election Law is in the realm of administrative law, but some of its rules have criminal sanctions. In legal dogmatics, this model is often referred to as administrative criminal law, which includes all forms of regulations and administrative equipment products with criminal sanctions. In situations like this, criminal sanctions are usually strictly enforced. This is in accordance with the doctrine in modern criminal law which states: "Punishment is equal and fit of the criminal." However, the weight of criminal sanctions in the Election Law is not yet in accordance with the character of administrative criminal law and modern criminal law doctrine. This can have an impact on the pattern of giving sanctions by the panel of judges, so that it has the potential to have no deterrent effect on the perpetrator (Bayo and Santoso 2019).

When violations occur regarding election actions, especially money politics, a legal enforcement process must be carried out. This procedure is regulated in Book Five, Chapter I, concerning Handling Election Crimes, from Article 476 to Article 487 of the Election Law. The essence of this law enforcement process is to refer to Law no. 8 of 1981 concerning the Criminal Procedure Code (KUHP), unless the Election Law expressly determines itself in certain matters, for example regarding the establishment of an Integrated Law Enforcement Center as regulated in Article 486 and Article 487. In other words, in certain cases, the Election Law is placed as a special law (*lex specialist*) of the Criminal Procedure Code which is general law (*lex generalist*).

## 4. Discussion

### 4.1. Money Political Crimes as a Threat to Democracy

The crime of money politics is not only a legal problem, but also a serious threat to democracy. Democracy requires the participation of informed and autonomous citizens to make intelligent political decisions. However, if the electoral process is colored by the practice of money politics, then it is likely that political decisions will be influenced by financial interests, not considerations of the best policy.

Apart from that, money politics can also trigger political inequality. Candidates or parties that have greater access to financial resources will have a significant advantage in the electoral process. This can ignore the aspirations and needs of financially disadvantaged people, thus threatening the principle of equality in democracy.

Money politics crimes can also hamper the ability to run a clean and efficient government. If electoral corruption occurs, then the election of leaders will no longer be based on integrity and competence, but on financial ability to win the election. As a result, the decision-making process can be influenced by personal interests and certain groups, rather than the public interest. A healthy democracy requires strong social control and law enforcement to ensure that the political process runs transparently, fairly and free from corruption. Therefore, there needs to be real efforts to prevent and prosecute criminal acts of money politics to ensure that democracy can function as it should in realizing the interests of society at large.

Regulations in the Election Law that address campaign financing, prohibitions on bureaucratic involvement, prohibitions on election organizers favoring certain candidates, as well as prohibitions on political parties and candidates manipulating campaign funds are very important steps in preventing electoral corruption. By carefully regulating these issues, the Election Law aims to create an election process that is fair, transparent, and free from financial influences that undermine its integrity.

These steps also create a stronger legal framework to uphold the principles of clean democracy. This is all the more important given the close relationship between electoral corruption and political corruption, where one can function as an enabler of the other. However, despite strong regulations, it is also important to ensure effective law enforcement and firm action against money politics crimes. Only by consistently applying the law and applying it fairly can electoral and political corruption be truly suppressed, and democracy can function as it should in the interests of the people. Thus the relationship between money politics, electoral corruption and political corruption forms a cycle that needs to be broken so that the democratic system can run well. Preventive measures and strong law enforcement are key in maintaining the integrity of elections and the democratic system as a whole.

Efforts to overcome money politics or electoral corruption are a very important step in maintaining the integrity of democracy and clean government. The negative impacts of electoral corruption that is not eradicated in general elections can be very damaging to democracy and government, as you mention in *Money in Politics's Handbook*. Here are some steps that can be taken to tackle electoral corruption:

- a). **Improvement of Legal Substance:** There needs to be changes or improvements in the laws and regulations relating to elections, especially in terms of dealing with criminal acts of money politics. This includes increased penalties and stricter regulations to control campaign financing and transparency in campaign finance reporting.
- b). **Political Education:** The public needs to be given a better understanding of the dangers and impact of money politics in general elections. Political education can help people to be more critical of the practice of money politics and understand why this can damage the democratic process.
- c). **Political Party Accountability:** Political parties must be responsible for money politics practices carried out in general elections. If it can be proven that the party was involved in manipulating campaign finance reports, then they must also be subject to sanctions. This can be done by identifying the role of political parties as directing minds and will or controlling personnel in these actions.
- d). **More Detailed Campaign Fund Regulations:** Regulations regarding campaign funds must be more detailed, including small aspects. This can help reduce the potential for fraud in campaign finance reporting by candidates or political parties.
- e). **PPATK and KPK participation:** Institutions such as the Financial Transaction Reports and Analysis Center (PPATK) and the Corruption Eradication Commission (KPK) must be strengthened and involved in supervising campaign funds and examining potential criminal acts of money politics. They can help ensure the integrity of the election process.
- f). **Objectivity and Transparency:** Ensuring that law enforcement officials operate with objectivity, transparency and accountability is critical. This requires strong regulations and oversight mechanisms to ensure they work within the law and carry out their duties without external pressure.

All these measures must be implemented together to achieve effective results in fighting money politics and electoral corruption. With a holistic approach and improvements in the legal and supervisory systems, democracy can continue to operate with integrity and justice.

## 4.2. prevent money politics crimes

Preventing criminal acts of money politics is a very important effort in maintaining the integrity of general elections and democracy. To achieve effective prevention, a criminological approach can help identify the factors driving money politics crimes and provide a deeper understanding of the roots of the problem. The following are ways to prevent money politics crimes from occurring:

Prevention Through Abolitionistic and Moralistic Systems:

- a). **Abolitionistic System:** This approach focuses on eliminating the factors that motivate crime. In the context of money politics, this could include changes to campaign and election regulations that reduce

opportunities for corruption, tighten oversight of campaign finance, and increase transparency in political financing. The goal is to create a system that is less tempting to engage in money politics.

- b). **Moralistic System:** This approach focuses on promoting moral values in society. This can include moral and ethical education, as well as strengthening religious values that encourage ethics and good behavior. By strengthening moral values in society, it is hoped that people will be more inclined to reject money politics.

#### Optimizing Law Enforcement:

- a). **Good Police Systems and Organization:** Effective law enforcement requires good police systems and organizations. This includes good training for police officers in handling money politics cases and preventing corruption.
- b). **Effective Administration of Justice:** An effective justice system is key in ensuring that perpetrators of money politics receive appropriate punishment. This includes a fair, speedy and impartial judicial process.
- c). **Authoritative Law:** An authoritative law is a law that is enforced fairly and firmly. This includes adequate punishment for perpetrators of money politics, as well as monitoring the implementation of the law.
- d). **Coordinated Oversight and Prevention:** Good coordination between law enforcement agencies, election supervisors, and oversight bodies is required. This will help in detecting money politics and preventing them before the general election takes place.
- e). **Community Participation:** Community participation in monitoring general elections is important. The public can help detect money politics practices and provide reports to the competent authorities.

#### Prevention Through Primary, Secondary, and Tertiary Approaches:

- a). **Primary Prevention:** Focuses on preventing people from committing or engaging in money politics practices. This can be done through education, increasing awareness, and efforts to reduce motivation to get involved in money politics.
- b). **Secondary Prevention:** Focuses on identifying and predicting potential money politics by understanding social reality. This allows for more effective preventive measures.
- c). **Tertiary Prevention:** Efforts to reach an agreement with perpetrators of money politics so that they do not repeat their actions. This can include legal action and sanctions that can prevent perpetrators from engaging in money politics again in the future.

Preventing money politics crimes is a complex effort and requires the collaboration of various parties, including civil society, law enforcement agencies, and election monitoring bodies. With a holistic approach and a better understanding of the driving factors, we can achieve cleaner and more democratic elections.

A criminological approach in preventing money politics crimes is very important. In this case, the factors driving crime and the law enforcement process after the crime occurs must be the main focus. Several important points to prevent the recurrence of money politics crimes can be outlined as follows:

- a). **Clear and Firm Election Regulations (lex certa and lex stricta):** Regulations are needed that clearly and firmly regulate criminal acts of money politics, including criminal sanctions. The regulatory model must ensure that criminal sanctions provide a deterrent effect through a strategy in the form of an indeterminate sentence.
- b). **Law Enforcement Officials with Integrity:** Law enforcement officials must have integrity, credibility and commitment in carrying out their duties and responsibilities. The Gakumdu Center as an institution that controls the law enforcement process against money politics must be free from corruption or other unethical practices.
- c). **Fair and Objective Justice:** Law enforcement against criminal acts of money politics must be carried out according to the principle of due process of law, namely by fair, objective, fast and simple justice. This will give the public confidence in the justice system.
- d). **The Role of the Election Supervisory Body (Bawaslu) as a Community Partner:** Bawaslu must be a partner not only for the General Election Commission (KPU), but also for the community. Bawaslu must actively engage with the community to predict and prevent potential money politics early on.
- e). **Political Education by the KPU:** The KPU must provide political education to the public by involving political parties. Political education must go beyond a formalistic approach and include specific approaches such as tertiary and secondary approaches. The public must be empowered to have healthy political awareness, which will ultimately produce leaders whose integrity is protected from corruption.

Using primary, secondary and tertiary approaches, along with abolitionistic and moralistic approaches in relation to the factors driving crime and law enforcement efforts will be very beneficial in preventing money politics crimes. In this way, a cleaner and more democratic general election system can be achieved.

## 5. Conclusion

Based on the description above, it can be concluded that criminal acts of money politics are a serious problem in the context of general elections. This phenomenon has broad negative impacts, including undermining the integrity of democracy and weakening public trust in the political process. To overcome and prevent money politics crimes, several steps can be taken:

- a). Revision of Election Regulations: It is necessary to revise election regulations to regulate criminal acts of money politics more clearly and firmly. Criminal sanctions must have a deterrent effect and be in accordance with the needs and development of society.
- b). Integrity of Law Enforcement Officials: Law enforcement officials must have high integrity, credibility and commitment in enforcing the law against money politics. Gakumdu Centers and similar institutions must be free from corruption and unethical practices.
- c). Fair and Objective Trial: The judicial process for money politics crimes must ensure due process of law, namely fair, objective, fast and simple. This is important to build public trust in the justice system.
- d). Active Role of Bawaslu: The Election Supervisory Body (Bawaslu) must be an active partner for the community in preventing and detecting potential money politics. Effective Bawaslu involvement can minimize the practice of money politics.
- e). Comprehensive Political Education: The General Election Commission (KPU) must provide political education to the public by involving political parties. Political education approaches must include moral and abolitionist aspects, as well as build healthy political awareness.

Through these steps, it is hoped that general elections can be held more cleanly, democratically and transparently. The public will be more involved and have high trust in the political process, and will be able to elect leaders based on integrity and appropriate qualifications.

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