

## **Reformulation of Money Politics Crime in Electoral Law as a Corruption Criminal Action**



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### **ABSTRACT**

Money politics is directly related to corruption crime since it has an element of bribery that can harm state finances if the doer occupies his political office. Money politics occurs during political campaigns until general elections day. Indonesian electoral law or regulation have not included money politics in corruption crime. This research examined and deeply discussed how the formulation of money politics crime in current election, what are the legal issues in election crimes, and how the reformulation of money politics in electoral law as a corruption criminal act. This study used a normative-judicial research method. Based on this research results, it is known that the formulation of money politics crime in current election can only be interpreted implicitly. Legal issues in election crimes are still rampant today as exemplified by the author through political crime cases in regional and legislative elections. The reformulation can be carried out by including a corruption clause as special offense in electoral law.

**KEYWORDS:** reformulations, money politics, corruption, criminal act

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### **I. INTRODUCTIONS**

The term of politic came from Arabic called siyasah, which was then translated into tactics, meanwhile in English politic means clever and wise. In daily conversation, this term is interpreted as a way to realizing the goal (Abdul Manan 2018: 1), Indonesian Dictionary (Kamus Besar bahasa Indonesia, 2019: 72) defines politics as knowledge about state administration (such as government system and government's foundation). Indonesian Encyclopedia (Hasan Shadili, 1983: 2739) explains that politics is a concept related to the government affairs. Since the origin of politics is from the word polis, which means city state, politics means that there was a special relationship between people lived in the city so that rules of authority, government behavior, legality of power, and the power itself arised. Politics can also be determined as policy, strength, government power, and conflict management that becomes the national consensus and the power of people (Abdul Manan, 2018: 2).

Politics participation is not such a brand new thing in political science, it is showing how far the citizen participation in politics, either conventionally or unconventionally. According to Hebert Mc Closky, politics participation is citizen voluntary activities done by directly taking part in the process of election or indirectly in the process of forming public policies. (Herbert MCCLOSKEY, 1981: 1). Meanwhile, Huntington and Nelson said that politics participation is activity done by citizen as individuals with the intention of influencing the decision-making by government. Participation itself can be done individually and also colectively, sustainable or sporadic, peacefully or violently, legal or illegal, efective or ineffective (Samuel P. Hutington dan Joan M. Nelson, 1977: 3). According to Miriam Budiarjo, politics participation is an individual activities in political party. It is including every voluntary activities which a person participates in the process of electing political leaders and wether directly or indirectly participates in the formation of public policy (Herbert MCCLOSKEY, 1981: 52). Politics participation in Indonesia is closely related to the Indonesian Democracy Index (Indeks Demokrasi Indonesia – IDI) which is political freedom that can be measured by several aspects, such as civil liberties, political rights, and democratic institution in Indonesia (Ibrahim, 2017: 137). IDI political freedom in Indonesia can be seen from statistic below:

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Development of the 2009-2018 National IDI Aspect Index



Source: Cabinet Secretary of the Republic of Indonesia (Sekretaris Kabinet Republik Indonesia: 2018).

The dynamics of IDI can be seen from each aspects fluctuation. Back to politics participation in Indonesia, it can be concluded that the concept of politics participation refers to the activities of citizen (as private) on two main points, first the process of selecting the elected leader, and the second is influencing public policy processes (Amatullah Shafiyah, 2003: 42). Activities that are considered as a form of politics participation include: voting in general election, becoming a member of political party, and so on.

General elections as a form of politics participation is the most appropriate and ideal form of democracy for all modern political and social organizational system nowadays (Laurensius Arliman S, 2016: 227). Democracy as the basis of state life generally implies that at the last level, it is the people who provide provisions in basic matters concerning their lives, including in assessing public policies since those policies determine their lives. As for a democratic state is a state that is organized based on people will and power, or if viewed from an organizational point of view it means as a state organizing carried out by the people themselves or with the people's consent because sovereignty is in the people hands (Moh. Mahfud MD, 1993: 3). Countries that proclaim themselves as democratic countries usually conduct general elections to elect public officials in the executive and legislative circles, which are also held at the central and regional levels. Democracy and general elections are mutually "qonditio sine qua non", the one cannot exist without the others (Abdul Mukthie Fadjar, 2009: 4)

The electoral system in political science can be divided into two, namely: a district representative system (single member constituency) and a multi member constituency system (Jean Blondel, 1954: 177-206). The aim of general elections is to elect people's representatives and regional representatives to form a democratic, strong government and get support in order to realize national goals. The principle of general election is implemented effectively and efficiently based on the principles of direct, public, independent, confidential, honest, and fair. Indonesia as one of democratic state conducts general elections directly from its people to their representatives wheter in executive and legislative institutions. The implmmentation of general elections in Indonesia is the manifestation of Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Several regulations regarding to general elections in Indonesia such as Law Number 1 of 2015 concerning the Stipulation of Perppu Number 1 of 2014 concerning the Election of Governors, Regent, and Mayors into Law as has been amended several times, and most recently by Law Number 10 of 2016 concerning the Second Amandment to Law Number 1 of 2015 concerning the Stipulation of Perppu Number 1 of 2014 concerning he Election of Governors, Regent, and Mayors into law (Regional General Election (Pilkada) Law), as the legal basis for implementing local elections some time ago; Law Number 7 of 2017 General Elections (General Election Law), as the legal basis for the implementation of the presidential and legislative elections, which is a reflection of Law Number 42 of 2008 concerning the General Election of the President and Vice President, Law Number 8 of 2012 concerning the General Election of the People's Representative Council (DPR), Regional Representative Council (DPD), and Regional People's Representative Council, (DPRD) Members, and also Law Number 15 of 2011 concerning the Implementation of General Elections.

In fact, the democratic slogan "from people, by people, and for people" must be paid an expensive price for a political contestation through clean and fair elections to produce the desired leaders. The amount of costs for holding general election is also

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accompanied by the high costs that may be incurred by the candidates (Handoko Alfiantoro, 2018: 936). It all started from the nomination process through the political bearers to obtain recommendations and party facilities, to the efforts for seizing potential voters through various persuasive approaches, there is a great potential for the practice of money politics. The money politics can be started as humanitarian aid, to the incessant “a dawn raid” is a hidden variant of modifying the practice of money politics.

Money Politics is an effort to affect people using material rewards and can be interpreted as buying and selling activities in political process and dominion. It comes with the act of handing out money, whether private or parties property to influence people votes. In other words, money politics is an effort to influence other people’s behavior using certain rewards. Some interpret money politics as the act of trading votes in political process and power (Thahjo Kumolo, 2015: 155). The practice of money politics can be said to be the forerunner of political corruption because that political transaction has the potential to destroy the sustainability of the government order. Whether executive or legislative officials in both at the central and regional levels who carried out money politics in order to be elected are likely to find ways to recover the fund that was spent during the practice of money politics in the previous election process (Agus Riwanto, 2015: 91).

Money politics has become a variant concept for new types of corruption that are not specifically regulated in statutory regulation but are currently familiar to mention. Corruption and politics have always been interesting to talk about, but until now, even though money politics has the potential to cause corruption, General Election Law has not included money politics in a separate Article. Even though we know that money politics as a criminal act of corruption deserves to be a separate offense in a material criminal law. This is what makes author interested in studying more about how the formulation of money politics crime in current election, what are the legal issues in election crimes, and how the reformulation of money politics in electoral law as a corruption criminal action.

## **II. RESEARCH METHOD**

The research method used in this article is normative juridical method with the problem approaches through statute approach, comparative approach, and conceptual approach (Peter Mahmud Marzuki, 2008: 93). Ronny Hanitijo Soemitro stated that the juridical approach is an approach that refers to the positive law and regulation (Ronny Hanitijo Soemitro, 2010: 20), meanwhile normative approach is an approach that is carried out by examining library materials or secondary data considering on legal principles, and also from case studies which in other words are often referred to as library law research (Soerjono Soekanto dan Sri Mamudji, 2011: 13). The source of legal materials used are primary legal materials in the form of related laws and regulations, secondary legal materials in the form of books, and non-legal material in the form of books outside the law (Soerjono Soekanto dan Sri Mamudji, 2011: 141-143). Also, the analysis method used in this paper is the deductive method, which is based on basic principles and then presents the object to be studied, in other words, from general principles to specific principles (Soerjono Soekanto dan Sri Mamudji, 2011: 42).

## **III. RESULTS AND DISCUSSION**

### **A. The Formulation of Money Politics Crime in Current Election**

In Indonesian, money politics is included in bribe. It is the exchange of money with the intention of determining a person’s position, upcoming policies, and political decisions on behalf of interests of the people but in fact it is only for personal, group or political party interests. Money politics is an effort to affect people using material rewards and can be interpreted as trading activities in political process and dominion and also the act of giving money to influence the voters (Thahjo Kumolo, 2015: 155). It can also be said that money politics are all actions taken by someone on purpose. The existing mode is usually by giving, promising money or other materials to someone in hope that they will exercise their voting rights in a certain way or to influence someone not to use their voting rights to elect certain candidates. It can also be done by deliberately receiving or giving campaign funds from or to certain parties. Money politics thus is a form of giving or a promise to bribe someone either so that that person does not exercise their right to vote or so that he or she runs in a certain way during an election, gifts can usually be in the form of money and goods (Amaru Muftie Holish, Rohmat, Iqbal Syarifudin, 2018: 231).

The act of doing money politics can only be interpreted implicitly (not directly mentioned an act of money politics), for example in the Criminal Code (KUHP), Law Number 20 of 2001 concerning the Eradication of Corruption Crime (UUTPK), and Law Number 11 of 1980 concerning the Bribery Crime (UUTPS). In Law Number 7 of 2007 concerning General Elections, the regulation of money politics can be seen in several Articles as follows:

#### **Article 515**

“Anyone who deliberately promises or gives money or other materials to voters at the voting periods so that they do not use their voting rights or elect certain candidates or use their voting rights in certain ways so that their ballot papers are invalid, shall be punished with imprisonment of 3 (three) years and fines at most Rp36.000.000,00 (thirty six million rupiah).”

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### Article 519

“Anyone who deliberately commits fraudulent acts to mislead someone by forcing, promising or giving money or other materials to obtain support for the voting of DPD members in the General Election as referred to in Article 183 shall be sentenced to imprisonment of 3 (three) years and a maximum fine of Rp. 36,000,000.00 (thirty six million rupiah).”

### Article 523

- 1) Any implementer, participant, and / or Election Campaign team who deliberately promises or gives money or other materials in return for the Election Campaign participants directly or indirectly as referred to in Article 280 paragraph (1) letter j shall be sentenced to imprisonment a maximum of 2 (two) years and a maximum fine of Rp. 24,000,000.00 (twenty four million rupiah).
- 2) Any implementer, participant, and / or Election Campaign team who deliberately promises or gives compensation for money or other materials to voters directly or indirectly as referred to in Article 278 paragraph (2) as referred to in Article 278 paragraph (2) shall be sentenced to imprisonment at the longest 4 (four) years and a maximum fine of Rp. 48,000,000.00 (forty eight million rupiah).
- 3) Every person who deliberately promises or gives money or other materials to voters on the voting day not to exercise their right to vote or elect a certain election candidates shall be sentenced to imprisonment of up to 3 (three) years and a maximum fine of Rp. 36,000,000. 00 (thirty six million rupiah).

In Law Number 10 of 2016 concerning Regional Election, the meaning of money politics is derived from Article 73 paragraph (1). This article regulates the prohibition of candidates and/or campaign teams from promising and/or giving money or other materials (excepted in terms of consumption and transportation costs for campaign participants as well as campaign material based on fairness values) to influence election organizer and/or voters. From the law also, the practice of money politics can be categorized as an election administration violation and an election crime, so that the perpetrator can be sentenced into two sanction, both administrative and criminal sanction. Referring to Article 73 paragraph (2), administrative sanctions can be applied to pairs of candidates, in which if they are proven to have committed money politics, Bawaslu can cancel them as a pair of candidates for regional head. Meanwhile, criminal sanctions can be given not only to candidates or pairs of candidates but also members of political parties, campaign teams and volunteers or other parties. The next paragraph also emphasizes that administrative sanctions cannot remove criminal sanctions. Criminal provisions regarding money politics are stated in article 187A paragraph (1) that anyone who deliberately promises or gives money or other materials as a reward to influence voters not to use their right to vote, uses their right to vote in a certain way so that the vote becomes invalid, chooses certain candidates, or failing to vote for certain candidates, are threatened with a maximum of 72 (seventy two) months and a maximum fine of Rp1,000,000,000.00 (one billion rupiah). Meanwhile, the next paragraph provides a clear indication that the criminal sanction does not only apply to the giver, but also the recipient of money politics.

Meanwhile General Election of DPR, DPD, and DPRD Members Law regulates money politics in several articles, which are:

### Article 89

“If it is proven that the Election Campaigner promises or gives money or other materials in return for the Election Campaign participants directly or indirectly for:

- a) Not using their voting rights;
- b) Exercise their voting rights by electing Election Candidates in a certain way so that the ballot papers are invalid;
- c) Electing certain political party candidates;
- d) Electing certain candidates for members of DPR, Provincial DPRD, Regency/Municipal DPRD; or
- e) Electing certain candidates for DPD member; is subjected to sanction as regulated in this Law”

### Article 297

“Anyone who deliberately commits fraudulent acts to mislead someone, by coercing, by promising or by giving money or other materials to obtain support for the nomination of DPD members in the General Election as referred to in Article 13 shall be sentenced to imprisonment of a maximum of 3 (three) . ) years and a maximum fine of Rp. 36,000,000.00 (thirty six million rupiah).”

### Article 301

- (1) Any Election Campaign organizer who deliberately promises or gives money or other materials as compensation to Election Campaign participants directly or indirectly as referred to in Article 89 shall be sentenced to imprisonment of up to 2 (two) years and a maximum fine of Rp24. 000,000.00 (twenty four million rupiah).
- (2) Every organizer, participant, and / or election campaign officer who deliberately promises or gives compensation for money or other materials to the voters directly or indirectly as referred to in Article 84 shall be sentenced to imprisonment of a maximum of 4 (four) years and a maximum fine of Rp. 48,000,000.00 (forty eight million rupiah).



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- (3) Every person on voting day who deliberately promises or gives money or other materials to voters not to use their right to vote or elect certain election contestants will be sentenced to imprisonment for a maximum of 3 (three) years and a maximum fine of Rp.36,000,000. 00 (thirty six million rupiah).

### B. Legal Issues in Election Crimes

Legal issue about money politics in general election that will be discussed in this study is related to the executive and legislative election. First, the decision to be discussed is Decision Number 96/Pid.Sus/2018/PNTMG with the defendant SUPRIYONO alias KAPREK bin RUSMAN. This problem began with the use of money to facilitate the general election in the executive sector, Regent and Deputy Regent of Temanggung, in 2018 on Wednesday, 27 June 2018. DEFENDANT SUPRIYONO alias KAPREK bin RUSMAN came to WITNESS DEVI BAGAS PRAKOSO's house through the kitchen door, then WITNESS DEVI BAGAS PRAKOSO met DEFENDANT SUPRIYONO alias KAPREK bin RUSMAN in the kitchen room and was delivered to WITNESS DEVI BAGAS PRAKOSO while showing 2 (two) envelopes each contains 1 (one) banknote of Rp. 20,000, - (twenty thousand rupiah) by saying, "where are your grandmother and grandfather, there's some money to buy gasoline but later when you come to the polling station, please vote for regent candidate number 3 (three)", which was the pair of candidates for Regency and Deputy Regent of Temanggung in 2018 namely the pair of AL KHADZIQ and HERI IBNU WIBOWO. Furthermore, DEFENDANT SUPRIYONO alias KAPREK bin RUSMAN gave 2 (two) envelopes containing money to WITNESS DEVI BAGAS PRAKOSO, after that DEFENDANT SUPRIYONO alias KAPREK bin RUSMAN left. Since WITNESS DEVI BAGAS PRAKOSO's grandmother had already vote, one of those two envelope was given to her grandfather, Mr. Purwito, by saying, "Sir, here some money from SUPRIYONO for yo to vote/cast the numer 3 (three) of Regent Candidates." In this decision, the judge gave the following consideration:

#### a. The Element of "Everyone";

"Considering, that basically the word "everyone" refers to who the person is responsible for the accused act/incident. -----

---DEFENDANT SUPRIYONO alias Kaprek who is included in the category of other parties as stipulated in the provisions of Article 73 paragraph (4) Regional General Election (Pilkada) Law, so that the element of "everyone" has been fulfilled."

#### b. The Element of "intentionally committing an act against the law by promising or giving money or other materials in return to Indonesian citizens either directly or indirectly to influence voters";

"Considering, that the word "or" contains an alternative meaning in the formulation of the sentence in this element, that is if the act of giving has been proven then the act of promising does not need to be proven, and if what was promised was in the form of money has been proven then other materials as a reward to citizens do not need proven anymore. Likewise, if it has been proven directly, it does not need to be proven indirectly and vice versa. -----

----- Considering, that because this element is an alternative, with the fulfillment of the element of intentionally committing an unlawful act of giving money to Indonesian citizens either directly or indirectly to influence voters, it is also proven automatically that the element of deliberately committing acts against the law promises or gives money or other materials as compensation to Indonesian citizens either directly or indirectly to influence voters."

#### c. The Element of "so as not to use the right to vote, to use the right to vote in a certain way so that the vote becomes invalid, to choose a certain candidate, or not to choose a certain candidate";

"Considering, whereas the elements contained in the 3rd element in this article are alternative, so that if one of the elements has been proven, the 4th element of this article is declared proven; -----

----- Considering, that because HM AL KHADIZQ and R. HERI IBNU WIBOWO were the pair of Temanggung regent and deputy regent candidate number 3, then when they handed over an envelope containing Rp. 20.000,00 (twenty thousand rupiah) to the witnesses (WITNESS DEVI BAGAS PRAKOSO, WITNESS ANIK FIKAWATI (read), WITNESS KUAT DAMWAN) and the defendant said to elect a candidate number 3 for Regent and Deputy Regent of Temanggung. The invitation showed the voters (witnesses) cast their votes for candidate number 3, thus the elements of electing a particular candidate have been fulfilled. -----

----- Considering, that with the fulfillment of all the elements in Article 187A paragraph (1) jo. Article 73 paragraph (4) of the Regional General Election (Pilkada) Law. Therefore, the Defendant must be legally and convincingly proven to have committed the criminal act of general election as indicted in single indictment of the Prosecutor. -----

----- Considering, that on the other hand, it is reviewed from a juridical aspect of legal certainty, the threat of criminal punishment for the indictment, in Article 187A paragraph (1) jo. Article 73 paragraph (4) of the Regional General Election (Pilkada) Law, has determined the minimum punishment of 36 (thirty six) months and a maximum of 72 (seventy two) months and a fine of at least Rp200.000.000,00 (two hundred million rupiah) and a maximum of Rp1.000.000.000,00 (one billion rupiah)."

From these considerations, the judge gave the following decisions:

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- a. Declare that the DEFENDANT SUPRIYONO alias KAPREK bin RUSMAN has been legally and convincingly proven guilty of criminal act: “intentionally giving money to Indonesian citizens to influence voters to elect certain candidates.”;
- b. Sentenced the DEFENDANT SUPRIYONO alias KAPREK bin RUSMAN to imprisonment for 3 (three) years and a fine of Rp. 200.000.000,00 (two hundred million rupiah) provided that if the fine is not paid then it will be replaced by a substitute imprisonment for 1 (one) month;
- c. Determine the entire period of arrest and detention that the Defendant has been passed, is deducted from the sentence imposed;
- d. To stipulate that the Defendant would remain in detention;
- e. To determine the evidence in the form of:
  - i. An envelope of 110 x 70 mm shall be destroyed
  - ii. A banknote of Rp. 20.000,- (twenty thousand rupiah) confiscated for the State
  - iii. A white XIAOMI phone with a blackgold softcase returned to the Defendant
- f. Charged the Defendant to pay a court fee of Rp. 2.000,00 (two thousand Rupiah).

The second case is Decision Number: 77/Pid.Sus/2014/PN.Msh. with the defendant JUNUS HEUMASSE alias UNU alias NUS. This case started with DEFENDANT JUNUS HEUMASSE alias UNU alias NUS on Wednesday, April 9th 2014 at around 10.00 WIT, at his house in Kamarian Village RT 18, Kec. Kairatu, West Seram, deliberately on voting day promised or gave money or other materials to voters not to use their right to vote or vote for certain election candidate. In the beginning, WITNESS NIKODEMUS TUPESSY began communicating with DEFENDANT JUNUS HEUMASSE alias UNU alias NUS since March 2014 when the defendant came to the witness house in order to inform him about the proposal for fishing boat assistance for the city Fishery Office. At that time, the defendant gave his phone number to the witness then they started to communicate via short message service (SMS). Ahead of the Legislative Election in April 9th, 2014, WITNESS NIKODEMUS TUPESSY, WITNESS ALFRETS PUTTIRULAN, and WITNESS YUSA HEUMASSE who are close friends agreed that if someone gave money on voting day, it would be divided by the three of them.

On Wednesday, April 9th, 2014, WITNESS NIKODEMUS TUPESSY was contacted by the DEFENDANT JUNUS HEUMASSE alias UNU alias NUS by repeated phone calls. Because the witness did not hear the defendant's voice, the WITNESS NIKODEMUS TUPESSY sent a message to the DEFENDANT JUNUS HEUMASSE alias UNU alias NUS, “**what is there to do**”, and then the DEFENDANT JUNUS HEUMASSE alias UNU alias NUS answered “**Niko, I wait for you in front of my house**”. WITNESS NIKODEMUS TUPESSY received that message at 08.15 WIT, then he went to the defendant's house. After he arrived at DEFENDANT JUNUS HEUMASSE alias UNU alias NUS at around 10.00 WIT, the defendant gave him some money of Rp. 200.000,- (two hundred thousand rupiah) and ordered him to vote for ISMAIL MARASABESSY. Because he remembered the previous agreement between him and other witnesses, ALFRETS PUTTIRULAN and YUSA HEUMASSE, then he asked the defendant to add an additional of Rp. 400.000,- (four hundred thousand rupiah) to be given to WITNESS ALFRETS PUTTIRULAN and WITNESS YUSA HEUMASSE, each for Rp.200.000,- (two hundred thousand rupiah). So that DEFENDANT JUNUS HEUMASSE alias UNU alias NUS also gave him 2 (two) candidate name card of ISMAIL MARASABESSY, SPD who was the District Legislative Council Candidate of West Seram District, for election area 1, sub-district Kairatu and Kairatu Barat, in hope that the witnesses vote for ISMAIL MARASABESSY. As WITNESS NIKODEMUS TUPESSY alias NIKO, WITNESS ALFRETS PUTTIRULAN and WITNESS YUSA HEUMASSE received money for Rp. 200.000,- (two hundred thousand rupiah) each, from DEFENDANT JUNUS HEUMASSE alias UNU alias NUS, they did not vote for the candidate of choice and were moved to vote for ISMAIL MARASABESSY according to the request of the DEFENDANT JUNUS HEUMASSE alias UNU alias NUS. In the decision, the judges considered that the defendant's actions were regulated and punishable under Article 301 paragraph (3) of General Election of DPR, DPD, and DPRD Members Law, which have the following elements:

### a. The Element of “Everyone”;

“Considering, whereas according to the Guidelines for the Implementation of Duties and Administration of Book II of the Supreme Court, Revised Edition 2003, page 209, the word “everyone” is meant as anyone who must be the defendant / dader or everyone as a legal subject (supporters of rights and obligations ) who can be held accountable for all their actions. Thus “everyone” can be interpreted as a person or anyone as a legal subject who can be held accountable for the criminal act he has committed; -----  
-----Considering that according to the law, the element of “Everyone” has been fulfilled.

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### b. The Element of “deliberately promises or gives money or other materials to voters on voting day”;

“Considering, that this element substantively requires an objective act committed by the defendant in the form of an act that is giving or promising money or other material to someone and the a quo act is carried out on purpose;-----

-----Considering, that based on the description and considerations above, the judges had opinion that this element has been fulfilled according to law.”

### c. The Element of “not to use their voting rights or to elect certain election candidate”;

“Considering, that the complete elements of this article if examined grammatically are general, because this element is still a suggestion that lead to the characteristics of attitudes and/or actions which consist of:

Not to use their voting right;

2. Elect certain election candidate;

-----  
Considering, whereas everything that happened at the trial, for the sake of brevity of this decision, the judges shall designate it in the examination report of the case concerned and are deemed to be an integral part of this decision; -----

Considering, Article 301 paragraph (3) General Election of DPR, DPD, and DPRD Members Law, jo Article 197, jo Article 193 paragraph (1), jo. Article (2) alphabet a, jo. Article 222 Criminal Procedure Code and other related rules;

#### From these considerations, the judges gave the following decisions:

- 1) Declare that the DEFENDANT JUNUS HEUMASSE alias UNU alias NUS, was legally and convincingly proven guilty of committing a criminal act “Deliberately on voting day gave money to voters to elect certain election candidate” as the prosecutor’s indictment;
- 2) Sentenced the DEFENDANT JUNUS HEUMASSE alias UNU alias NUS, with imprisonment for 3 (three) months and a fine of Rp. 2.000.000,- (two million rupiah);
- 3) Determine if the fine is not paid by the defendant, it will be replaced by a prison sentence of 10 (ten) days of confinement;
- 4) Determine the evidence in the form of:
  - A sheet of Rp. 100.000 (one hundred thousand rupiah) with serial number of BHM222810;
  - A sheet of Rp. 100.000 (one hundred thousand rupiah) with serial number of YDF590116;
  - A sheet of Rp. 100.000 (one hundred thousand rupiah) with serial number of JL2450639;
  - A sheet of Rp. 100.000 (one hundred thousand rupiah) with serial number of GF0769852;
  - A sheet of Rp. 100.000 (one hundred thousand rupiah) with serial number of AEC436576;
  - A sheet of Rp. 100.000 (one hundred thousand rupiah) with serial number of XOK785097;

#### Deprived for the State;

2 (two) sheets of district legislative candidate name cards of ISMAIL MARASABESSY, S.Pd.,;

#### Seized to be annihilated;

Charge the defendant to pay the court fee of Rp. 1.000,- (a thousand rupiah).

### C. The Reformulation of Money Politics in Electoral Law as a Corruption Criminal Act

Money politics is not such a brand new thing in Indonesian General Election. In the first election in 1955, money played an important role in the winning process of political parties. The parties paid the influencer, such as the subdistrict head, the headman, foreman to use their influence to make the parties won the election. It was usually done in the final stages of the campaign. The main funding source of the parties came from political corruption. They used ministerial positions to flow money into parties or use patronage to gain indirect influence or funding. It can also come from the business of parties members. PNI had additional source of income from Indonesian and Chinese business groups, meanwhile PKI got it from Chinese business groups, and Masyumi from landowners and batik entrepreneurs (Ade Irawan, Abdullah Dahlan, Donal Fariz, dan Almas Ghalia Putri, 2014: 47).

Money politics in Indonesia has indeed become a tradition and complementary flavor in Indonesian General Election. Since the past, the practice of money politics in Indonesia has been around for a long time, namely since the New Order era where money politics had a great opportunity to be practiced because during that time the President was appointed by the MPRS/DPRD which consisted of several members. In addition, in regional election during the New Order era, the regional heads were not directly elected as they are now, but they were appointed by the President, whose election mechanisms in DPRD were also controlled by the President. So that in practice there was a great chance that the President could do money politics with DPRD, as the result each

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region would have the same understanding with the central government (Jonasmer Simatupang, Muhammad Subekhan, 2018: 13004-1305).

Money politics is a problem that endangers the morality of a nation, although economically it can provide some assistance to the people in short term. However, whether short-term goals that are beneficially in economic must sacrifice the long-term goals in the form of democratization efforts and the formation of national morality. Demoralization caused by money politics will be very dangerous both from a deontological (intent) and theological (consequence) perspective. Because its destructiveness in nature, that is intending to influence a person's political choices with certain rewards, or influence the vision and mission of a party so that political policy can no longer be accounted for in the interest of the people.

Money politics in general elections can also be called bribery. The bribery comes originally from the Criminal Code. In Criminal Code, the bribery itself is divided into two groups, the crime of giving bribes and the crime of accepting bribes. The first group, which is commonly referred to as active bribery, the legal subject of which is paying bribes is published and is part of crimes against the general authorities, mentioned in Article 209 and Article 210 of the Criminal Code. Second group, which is commonly referred to as passive bribery, the legal subject of which is civil servants who accept bribes. Containde and become part of an occupational crime, mentioned in Article 418, Article 419, Article 420 of the Criminal Code (Anis Widyawati, 2018:390).

A bribe is a giving in the form of a gift given to another person with expectation of receiving a certain reward of greater value (Wisnu Pratama Iryanto, 2018: 259). Article 2 dan Article 3 of the Crime of Bribery Law, stated that what is meant by bribery is, "...give or promise something to someone with the intention of persuading that person to do something or not do something in his duties, which is contrary to his authority obligation relating to the public interest...", "...accepting gift or promise, whereas he knows or should be able to suspect that the gift or promise is intended to make him do something or not do something in his duties, which contrary to his authority or obligations relating to the public interest..." Based on those definitions, it can be concluded that an action can be classified as bribe if it fulfills several elements, which are (Hepi Riza Zen, 2015: 533): a. the existence of a gift or promisee that aims to attract the sympathy of others; b. the giving or promise have the aim of canceling the haq, realizing falsehood, seeking unjustified partiality, getting something that is not his right or winning his case.

The formulation of corruption crime as regulated in Article 1 of Law Number 30 of 2002 concerning Corruption Eradication Commission (KPK) states that corruption is a criminal act as referred to Corruption Crime Eradication Law. Literally, corruption is something that is rotten, evil, and destructive. If we discuss about corruption, we will find such facts because corruption involves moral aspects, rotten circumstances, government position, abuse of power, economic and political actors, and also the family placement into governmental position under the authority of his office. Thus it can be concluded that corruption actually has a very broad meanings those are (Evi Hartanti, 2005: 21):

- 1) Corruption, misappropriation or embezzlement (state or company money, etc.) for personal or other people's interests;
- 2) Corrupt, rot, broken, tendency to use entrusted goods or money, can be bribed (through his power for personal gain).
- 3) The provision of bribes in electoral practice is regulated in Article 149 of the Criminal Code, which is, everyone at the time of an election which is held based on regulations by giving or promising something, bribing someone so that he does not exercise his voting rights or exercising that right in a certain way, will be punished with imprisonment at the longest of nine months or a maximum fine of Rp 4.500.
- 4) Sanctions for money politics doer have also been specifically regulated in Article 5 of Corruption Crime Eradication Law, which are:
  - 5) Shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and/or a fine of at least Rp 50.000.000,00 (fifty million rupiah) and a maximum of Rp 250.000.000,00 (two hundred and fifty million rupiah) for every person who:
    - a) Gives or promises something to civil servant or state administrator with the intention of making the civil servant or state administrator do or not do something in his position, which is contrary to his obligations; or
    - b) Gives something to civil servant or state official because of or related to something that is contrary to his obligations, done or not done in his position.
- 1) For civil servants or state officials who receive the gift or promise as referred to in paragraph (1) letter a or letter b, will be subject to the same punishment as in paragraph (1).

Generally, money politics will lead to corruption, where corruption that is rife is a form of regional expenditure budget fraud where there is cooperation between the executive and the legislature. The presence of the legislature with a control or supervisory function does not function optimally. This point is related to the second points above where the motivation for corruption is to return the losses incurred during the campaign where the candidate has committed money politics in order to fool the people for the sake of getting votes (Jonasmer Simatupang, Muhammad Subekhan, 2018: 1310).

In order to strengthen the legal position of general elections, it is time for lawmakers to reformulate the crime of money politics in the election law as a criminal act of corruption (I Ketut Seregig, 2018: 228). This can be done by including a clause about criminal acts of political corruption as a special crime in the General Election Law so that it can become a stronger legal basis for law



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enforcement officials to take preventive or repressive steps to achieve clean and corruption free political election (Supriardoyo Simanjuntak dan Kornelius Benuf, 2020: 31).

The law enforcement and the imposition of strict and indiscriminate sanctions are something that absolutely must be enforced if we want to eliminate the practice of money politics. This is related to the public trust in the election organizers, especially the Supervisory Committee and other law enforcement official. So it is appropriate that there is a need for a clear and decisive definition or formulation of money politics as part of criminal act of corruption in the laws and regulations, especially the laws on general elections. Thus at a minimum, the ambiguous interpretations of money politics can be avoided.

### IV. CONCLUSION

The formulation of money politics criminal acts in the current election can only be interpreted implicitly (not directly mentioning the term of money politics), for example in the Criminal Code (KUHP), the Corruption Crime Eradication (UUTPK), and the Crime of Bribery Law (UUTPS). In the General Election Law we can see the crime of money politics in Article 515, 519, 523. In the Regional Election (Pilkada) Law the meaning of the practice of money politics is obtained from Article 73 paragraph (1) and (2), as well as Article 187A paragraph (1). And the last is Law Number 8 of 2012 concerning General Election of Members of the People's Representative Council (DPR), Regional Representative Council (DPD), and Regional People's Representative Council (DPRD) regulates it in Article 89, 297, and 301.

Nowadays, legal issues in election crimes are still rampant, but in this study the author only wrote about political crimes in the regional election (Pilkada) and the legislative election. Criminal action in district head election can be seen in the Decision Number: 96/Pid.Sus/2018/PNTMG with the DEFENDANT SUPRIYONO alias KAPREK bin RUSMAN. Meanwhile, political crimes in legislative election can be seen from the Decision Number: 77/Pid.Sus/2014/PN.Msh. with the DEFENDANT JUNUS HEUMASSE alias UNU alias NUS.

Reformulation of the money politics crime in the General Election Law as a criminal act of corruption can be carried out by including a clause on political corruption as a special crime in the General Election Law itself. So that it can become a stronger legal basis for law enforcement officials to take preventive steps or even repressive to achieve clean elections and politics that are free of corruption.

#### Notes:

It is necessary to reformulate the crime of money politics in the Election Law as a criminal act of corruption. This can be done by placing a clause regarding corruption as a special crime in the General Election Law. This is intended so that the perpetrator of money politics can be overcome and prevent corruption in Indonesia.

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