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# Reformulation of the Regulation on Money Politics in the Regional Head Election Law in the Context of Criminal Law Reform in Regional Head Elections

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## Abstract

Direct regional head elections (Pilkada) in Indonesia, implemented since 2005, have not fully guaranteed the realization of democracy due to the widespread practice of money politics. Money politics, involving the exchange of money or material goods for votes, undermines the integrity of elections and distorts democratic processes. This study aims to examine the regulation of prohibitions and sanctions related to money politics within the Election Law and to formulate a concept for criminal law reform regarding money politics in Pilkada. Using a normative juridical method with a qualitative approach, the research analyzes existing legal provisions, identifies gaps and ambiguities, particularly concerning Article 73 of the Election Law, and explores the scope of subjects covered by the regulation. The findings indicate that although legal reforms have been made several times, ambiguities and loopholes remain, especially the unclear explanation of Article 73 and limited subject coverage. Therefore, this study proposes reformulating the legal norms to clarify prohibitions, broaden the scope of subjects beyond just candidates and campaign teams, and introduce protections for whistleblowers. The results of this research are expected to serve as a reference for policymakers and stakeholders in improving the legal framework for elections to ensure democratic integrity and legal certainty.

**Keywords:** criminal law, regional head election, money politics, legal reform.

## Introduction

The principle of popular sovereignty is the cornerstone of democracy, realized through the active involvement of citizens in determining who governs and who supervises governance. This involvement is typically manifested through elections, which serve as the primary mechanism for public participation in democratic governance. At the local government level in Indonesia, this democratic participation is institutionalized through Regional Head Elections, commonly known as Pilkada.

Historically, the election of regional heads in Indonesia underwent a significant transformation starting in 2005, when direct regional head elections were first implemented based on Law Number 32 of 2004. Prior to this, regional heads and their deputies were elected indirectly



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by the Regional Representative Council (Dewan Perwakilan Rakyat Daerah, DPRD). The shift to direct elections marked a pivotal milestone in Indonesia's democratic development, aimed at enhancing public participation and legitimizing local leadership. Furthermore, starting in 2015, Indonesia introduced simultaneous Pilkada in 269 regions across 9 provinces, 36 cities, and 224 regencies, followed by subsequent rounds in 2017, 2018, and 2020. This institutional reform was designed to streamline the election process and improve governance efficiency at the regional level.

The fundamental goal of Pilkada is to facilitate a democratic selection system that elects qualified regional leaders who are aspirational, capable, and legitimate in the eyes of their constituents. The election process ideally encourages voters to base their decisions on candidates' visions, missions, and proposed programs (rational voters). However, there also exists a significant segment of voters who decide based on emotional factors, such as sympathy toward a candidate's personality or charisma (emotional voters). These emotional voters tend to be more susceptible to influence and can easily change their voting preferences when candidates appeal to their feelings.

Despite these democratic intentions, Pilkada in practice has yet to fully guarantee the realization of a clean and fair democracy. In fact, the electoral process has sometimes distorted democratic principles due to the pervasive influence of pragmatism among candidates, voters, and election organizers alike. One of the most significant challenges faced during Pilkada is the widespread practice of money politics — the use of financial or material incentives to secure votes. Money politics undermines the fairness and transparency of elections, distorts voter choice, and threatens the integrity of the democratic process.

The prevalence of money politics is closely linked to political parties' roles in candidate recruitment, where monetary exchanges often occur. According to Mahfud MD, money politics has been a persistent issue in regional head elections regardless of whether they were held through DPRD or direct elections. The primary difference lies in the mode of transaction: during DPRD elections, money politics occurs in bulk transactions between candidates and council members, while in direct elections, it is conducted in smaller, individual transactions directly between candidates and voters. These practices can occur at various stages of the electoral process — from candidacy registration and campaigning to election day and vote counting.

The persistence of money politics is also fueled by societal attitudes that are permissive toward such practices. At the grassroots level, including village head elections (pilkades), money politics thrives because many voters consider it a normal part of the political process and are not fully aware of its detrimental effects. Some voters expect material rewards from candidates as a prerequisite for their participation in campaign events or for casting their votes. This mindset not only perpetuates money politics but also hinders efforts to build a culture of ethical voting behavior.

Given this context, the issue of regulating the prohibition and sanctions against money politics in Pilkada is of critical importance. Effective regulation is necessary to curb the practice and restore the integrity of elections. However, current legal frameworks still contain ambiguities and limitations. For instance, Article 73 of the Pilkada Law includes explanations that are often



interpreted variably, leading to legal uncertainties. Moreover, the scope of subjects covered by the law — traditionally limited to candidates and campaign teams — may not fully encompass all actors involved in money politics.

This paper seeks to address two main questions: how is the prohibition and sanction of money politics currently regulated in the Pilkada Law, and what should be the conceptual framework for reforming criminal law related to money politics in regional elections? The objective is to identify the strengths and weaknesses of existing regulations, propose necessary reforms, and provide policy recommendations that ensure effective enforcement and legal certainty.

By conducting this study, it is hoped that the results will offer a valuable reference for lawmakers, election administrators, law enforcement agencies, and other stakeholders involved in safeguarding the democratic process. Improving the legal framework surrounding money politics will not only enhance the quality of Pilkada but also contribute to the broader goal of strengthening democracy in Indonesia.

## Literature Review

### The Concept and Definition of Money Politics

Money politics, while widely discussed in both academic and practical political contexts, lacks a single, universally accepted legal definition in Indonesian legislation. This ambiguity has led to varied interpretations across legal scholars, policymakers, and electoral authorities.

In its broadest sense, money politics refers to the practice of exchanging material benefits such as cash or goods in return for political support, particularly votes during elections. Etzioni-Halaevy, as cited by Robi Cahyadi Kurniawan and Dedy Hermawan, defines money politics as the exchange of political support for personal material gain or the use of money and direct benefits to influence voters. Similarly, Gary Goodpaster conceptualizes money politics as a form of corruption occurring within electoral processes, involving bribery aimed at securing votes.

M. Abdul Kholiq categorizes money politics into three types: (1) vote buying, which entails the direct exchange of votes for money, goods, or services; (2) vote brokering, involving intermediaries who facilitate the purchase of votes on behalf of candidates or political parties; and (3) political corruption, where individuals offer bribes to politicians to secure favorable policies.

Money politics is recognized as a criminal offense within the electoral context. According to Topo Santoso and Ida Budiati, electoral crimes include any active or passive acts violating electoral regulations, punishable by law. These acts undermine the fairness and transparency essential to democratic elections.

### Legal Framework Governing Money Politics in Pilkada

The legal regulation of money politics in Indonesia's regional elections has evolved through several legislative milestones. The initial regulation appeared in Law No. 32 of 2004, which governed the first direct regional elections in 2005. This law contained provisions



prohibiting money politics and stipulated criminal sanctions, including imprisonment and fines, aimed at both candidates and their campaign teams.

Despite the presence of such provisions, enforcement remained weak, partly due to institutional constraints. For example, the Regional General Elections Commission (KPU) at provincial and municipal levels reported to regional parliaments (DPRD), affecting their independence in adjudicating violations.

In 2015, the legal framework changed with the enactment of Law No. 1 of 2015, which reinstated direct elections on a larger scale but introduced a critical gap: while prohibitions on money politics were maintained, the law did not include corresponding criminal sanctions for such violations. This omission resulted in a lack of legal deterrence against money politics.

To address this shortfall, Law No. 10 of 2016 was enacted, which reintroduced criminal sanctions against money politics in Article 187A, prescribing imprisonment ranging from three to six years and fines between 200 million and 1 billion rupiah. The law also expanded the scope of subjects subject to sanctions to include not only candidates and their campaign teams but also political party members, volunteers, and other involved parties.

### **Ambiguities and Challenges in Regulation**

One of the main issues in the current legal framework is the ambiguity found in the explanation of Article 73 of Law No. 10 of 2016. This provision exempts certain expenses—such as food and drink for campaign participants, transportation costs, and reasonable gifts—as long as they conform to regional standards set by the KPU, from being classified as money politics.

However, this exemption has been widely criticized. Legal scholars such as Bustanuddin argue that the explanatory notes in legislation should serve only as interpretative aids, clarifying the intent of the norm without creating additional legal ambiguity or exceptions. Jimly Asshiddiqie emphasizes that explanations in laws should prevent misinterpretations, maintain consistency in enforcement, and guide judicial understanding. The current practice, however, results in loopholes that candidates exploit to disguise money politics under permissible expenses.

The variation in regional standards for campaign expenses leads to inconsistent application of the law across different jurisdictions, causing uncertainty for election supervisors, law enforcement, and judicial bodies. This legal uncertainty diminishes the effectiveness of regulatory enforcement and undermines public confidence in the electoral process.

### **Subjects of Money Politics and Legal Responsibility**

Legal provisions traditionally focus on candidates and their official campaign teams as the primary actors responsible for money politics. In reality, however, money politics involves a broader network, including political parties, intermediaries (vote brokers), volunteers, and even some voters.

The inclusion of recipients (voters) as potential subjects of sanctions presents a double-edged sword. On one hand, it aims to deter voters from accepting illicit inducements, thereby breaking the transaction cycle. On the other hand, scholars caution that punishing voters may



discourage them from reporting violations for fear of self-incrimination, thus hindering law enforcement efforts.

### **The Role of Criminal Sanctions in Ensuring Electoral Integrity**

In criminal law theory, sanctions serve as a coercive tool to enforce legal norms and deter unlawful conduct. Apeldoorn's framework divides criminal offenses into objective elements (the unlawful act) and subjective elements (the actor's culpability). Penalties provide the necessary coercive force to uphold these norms.

Lawrence M. Friedman highlights that legal certainty, achieved through clear regulations and consistent enforcement, is crucial to realizing justice. Criminal sanctions related to money politics thus function not only as punishment but also as preventive measures, signaling societal disapproval and discouraging malpractice.

### **Need for Legal Reform and Protection of Whistleblowers**

The dynamics and challenges of regulating money politics necessitate a reformulation of the criminal law provisions within the Pilkada legal framework. Recommendations include removing ambiguous explanatory clauses, expanding the scope of subject liability to encompass all actors involved in money politics—not limited to election day but including the campaign period—and introducing protective measures for witnesses and whistleblowers.

Protection for whistleblowers is vital to encourage the reporting of violations without fear of retaliation or criminal prosecution. This approach aligns with global best practices in combating electoral corruption and enhancing transparency.

### **Method**

This research employs a normative juridical method with a qualitative approach, focusing on legal analysis within the framework of positive law. The normative juridical method is appropriate for examining the legal provisions regulating money politics in the Regional Head Election Law and for formulating concepts of criminal law reform. This method involves an in-depth study and interpretation of legal texts, doctrines, regulations, and related literature to assess their effectiveness and identify gaps or ambiguities.

Data sources for this research are secondary in nature, obtained through a comprehensive literature review of relevant laws, regulations, legal commentaries, scholarly articles, and official documents related to election laws and criminal sanctions for money politics. The primary legal materials analyzed include the Indonesian Regional Head Election Law (Undang-Undang Pilkada) and its amendments, the Indonesian Criminal Code (KUHP), and supporting regulations issued by election supervisory bodies.

The data collection process consisted of systematic gathering of legal texts and scholarly writings that discuss the regulation of money politics and its enforcement in Pilkada. These materials were critically reviewed to understand the current legal framework, the challenges in enforcement, and the effectiveness of existing sanctions.



Data analysis was conducted qualitatively, focusing on interpretive analysis of the legal norms, statutory provisions, and doctrinal perspectives to identify inconsistencies, ambiguities, and areas requiring reformulation. The qualitative approach allows for a nuanced understanding of how the law operates in practice and how it can be improved to better serve its purpose in curbing money politics.

The research's normative juridical nature means it does not involve empirical data collection through surveys or interviews but relies on rigorous legal reasoning and theoretical examination to propose normative recommendations for legal reform.

### Definition and Understanding of Money Politics

Money politics, although commonly discussed in electoral contexts, is not explicitly defined in Indonesian legislation, leading to diverse interpretations. Generally, it refers to the practice where candidates or their agents distribute money or material benefits to voters in exchange for electoral support. This practice undermines the principles of fair and democratic elections by distorting voter choice and compromising electoral integrity.

At the beginning of Indonesia's reform era, money politics was often associated with legislative bribery during indirect regional head elections by DPRD. Over time, the term evolved to describe the direct distribution of money or goods to voters during direct elections. This transactional nature aligns money politics closely with vote buying and electoral corruption.

Scholars such as M. Abdul Kholiq classify money politics into vote buying, vote brokering, and political corruption. Vote buying involves direct exchange of money for votes, vote brokering entails intermediaries purchasing votes on behalf of candidates or parties, and political corruption involves bribes to politicians for policy favors. Money politics is thus a criminal offense within electoral laws, subject to sanctions.

### Legal Provisions on Money Politics in Pilkada

The legal regulation of money politics in Pilkada has evolved significantly. The initial legal framework under Law No. 32 of 2004 prohibited money politics and prescribed criminal sanctions, including imprisonment and fines, targeting candidates and campaign teams. However, institutional constraints limited enforcement effectiveness.

With Law No. 1 of 2015, which reinstated direct elections on a broader scale, prohibitions remained but criminal sanctions for money politics were absent, weakening legal deterrence. Law No. 10 of 2016 remedied this by reintroducing criminal sanctions under Article 187A, imposing imprisonment from 3 to 6 years and fines from 200 million to 1 billion rupiah.

This law also broadened the scope of liable subjects to include candidates, campaign teams, political party members, volunteers, and others. It also introduced administrative sanctions alongside criminal penalties.



## Ambiguities in Article 73 and Its Explanation

A critical challenge arises from the explanation clause of Article 73 in Law No. 10 of 2016, which excludes from the definition of money politics certain expenses such as meals, transportation, campaign materials, and reasonable gifts, provided these conform to standards set by the KPU. This exemption is problematic for several reasons.

Firstly, it creates legal ambiguity and inconsistent enforcement, as regional standards differ, leading to disparities in what is deemed acceptable. Election supervisors, law enforcement officers, and the judiciary face difficulties in uniformly interpreting these provisions, resulting in varied case outcomes.

Secondly, this exception is often exploited by candidates who disguise money politics under permitted campaign expenses, undermining the prohibition's effectiveness. Legal scholars argue that explanations in legislation should clarify norms, not create hidden exceptions that dilute the law's intent.

## Scope of Subjects and Legal Liability

While the law expands subjects liable for money politics beyond candidates and campaign teams, practical challenges remain. Money politics often involves a network including vote brokers and local influencers, who may operate outside the formal campaign structures.

The inclusion of voters as potential subjects liable for accepting money politics presents enforcement dilemmas. While it aims to reduce demand for illicit inducements, penalizing voters may deter reporting violations, thus hampering prosecution efforts.

## The Role of Criminal Sanctions and Legal Certainty

Criminal sanctions serve a dual function: punishing offenders and deterring future violations. According to legal theory, sanctions are essential to give normative force to prohibitions and to maintain social order.

Legal certainty is a fundamental principle in law enforcement. Ambiguities in the law, such as those in Article 73's explanation, undermine this certainty and public confidence. Clear and consistent legal provisions are necessary to ensure equal application of the law and to avoid arbitrary enforcement.

## Need for Reform and Whistleblower Protection

Given the challenges outlined, reformulation of money politics regulation in Pilkada law is imperative. Proposed reforms include:

1. Removing ambiguous explanatory clauses that create exceptions, thereby clarifying the scope of prohibited acts.
2. Expanding the scope of subjects to encompass all actors involved in money politics, including vote brokers and other intermediaries, during both campaign and voting phases.



3. Implementing protective measures for whistleblowers and witnesses to encourage reporting of violations without fear of retaliation or criminal liability. This is crucial for effective enforcement and breaking the cycle of money politics.

### Implications for Democratic Integrity

Effective regulation and enforcement against money politics are vital for the integrity of Pilkada and Indonesia's democratic development. Reducing money politics promotes fair competition, encourages voter independence, and strengthens public trust in electoral institutions.

Legal reforms must therefore balance deterrence with fairness, ensuring that laws are clear, enforceable, and accompanied by support systems such as witness protection. Only through comprehensive legal and institutional reform can money politics be meaningfully curtailed.

### Conclusion

The regulation of money politics within Indonesia's Regional Head Election Law has undergone significant changes since the implementation of direct regional elections in 2005. Despite multiple legislative reforms, challenges remain, particularly regarding the ambiguity of Article 73 and its explanatory clauses, which create legal uncertainties and loopholes that undermine enforcement efforts.

Current regulations limit the scope of subjects liable for money politics mostly to candidates and their campaign teams, excluding other key actors involved in the practice. Additionally, the exemption of certain campaign-related expenses from the definition of money politics has been exploited, causing inconsistent application of the law and weakening its deterrent effect.

To strengthen the legal framework and enhance the integrity of regional elections, it is necessary to reformulate the criminal law provisions on money politics by eliminating ambiguous explanatory notes, broadening the scope of legal responsibility to cover all persons involved in money politics throughout the electoral process — including the campaign period and voting day — and providing legal protection for witnesses and whistleblowers. Such reforms would improve legal certainty, encourage public participation in reporting violations, and ultimately reduce the prevalence of money politics.

This comprehensive approach is essential to foster a more democratic, transparent, and just electoral environment in Indonesia. The findings and recommendations of this study aim to support policymakers and stakeholders in crafting more effective laws and enforcement mechanisms to uphold electoral integrity and public trust in the democratic process.

### References

- Bustanuddin. "Analisis Fungsi Penjelasan Dalam Pembentukan Peraturan Perundang-Undangan Di Indonesia." *Inovatif: Jurnal Ilmu Hukum* Vol 6, no. 7 (2013): 79–90.



- Candra, Septa. “Perumusan Ketentuan Pidana Dalam Peraturan Perundang-Undangan Di Indonesia.” *Jurnal Hukum PRIORIS* Vol 3, no. 3 (2013). Accessed January 5, 2022. <https://www.trijurnal.lemlit.trisakti.ac.id/prioris/article/view/371>.
- Fitriani, Lina Ulfa, L Wiresapta Karyadi, and Dwi Setiawan Chaniago. “Fenomena Politik Uang (Money Politic) Pada Pemilihan Calon Anggota Legislatif di Desa Sandik Kecamatan Batu Layar Kabupaten Lombok Barat.” *RESIPROKAL: Jurnal Riset Sosiologi Progresif Aktual* 1, no. 1 (September 11, 2019): 53–61.
- Fitriyah. “Fenomena Politik Uang Dalam Pilkada.” *Politika: Jurnal Ilmu Politik* 3, no. 1 (May 7, 2013): 5–14.
- Friedman, Lawrence M. *Sistem Hukum Perspektif Ilmu Sosial*. terjemahan M. Khozim. Nusa Media, Bandung, 2009.
- Hanafi, Ridho Imawan. “Pemilihan Langsung Kepala Daerah Di Indonesia: Beberapa Catatan Kritis Untuk Partai Politik.” *Jurnal Penelitian Politik* Vol 11 (Desember 2014): 16.
- Hawing, Hardianto, and Nursaleh Hartaman. “Politik Uang Dalam Demokrasi Di Indonesia (Studi Kasus Pemilukada Kabupaten Enrekang Tahun 2018)” (2021): 9.
- Hermanto, Bagus, Nyoman Mas Aryani, and Ni Luh Gede Astariyani. “Penegasan Kedudukan Penjelasan Suatu Undang-Undang: Tafsir Putusan Mahkamah Konstitusi.” *Jurnal Legislasi Indonesia* vol 17, no. 3 (September 29, 2020): 251.
- Kristiyanto, Eko Noer. “Pelaksanaan Pemilihan Kepala Daerah Serentak di Indonesia: Studi di Batam.” *Jurnal Penelitian Hukum De Jure* Vol 17, no. 1 (March 29, 2017): 48–56.
- Mahfud MD, Moh., Djoko Suyanto, Gamawan Fauzi, Achmad Sodiki, and Maria Farida Indrawati. *Demokrasi Lokal Evaluasi Pemilukada Di Indonesia*. Jakarta: Konstitusi Press (Konpress), 2013.
- Pardede, Marulak. “Legitimasi Pemilihan Kepala/Wakil Kepala Daerah dalam Sistem Pemerintahan Otonomi Daerah.” *Jurnal Penelitian Hukum De Jure* 18, no. 2 (June 28, 2018): 127–148.
- Sinaga, Dahlan. *Tindak Pidana Pemilu Dalam Perspektif Teori Keadilan Bermartabat*. Bandung: Nusa Media, 2018.
- Soekanto, Soerjono. *Pengantar Penelitian Hukum*. 1st ed. Jakarta: UI Press, 1986.
- Sugiyono. *Metode Penelitian Pendidikan Pendekatan Kuantitatif, Kualitatif Dan R&D*. Bandung: Alfabeta, 2013.
- Suprianto, La Ode, Muh. Arsyad, and Megawati A. Tawulo. “Persepsi Masyarakat Terhadap Politik Uang Pada Pilkada Serentak (Studi Di Desa Ronta Kecamatan Bonegunu Kabupaten Buton Utara).” *Jurnal Neo Societal* Vol 2, no. 1 (n.d.): 1–10.
- “Mahfud MD Sebut Politik Uang Selalu Ada Di Setiap Pilkada.” Accessed February 4, 2022. <https://www.cnnindonesia.com/nasional/20200905211752-32-543196/mahfud-md-sebut-politik-uang-selalu-ada-di-setiap-pilkada>.
- Undang-Undang Republik Indonesia Nomor 1 Tahun 2015 Tentang Pemilihan Gubernur, Bupati, Dan Walikota Sebagaimana Telah Diubah Beberapa Kali Terakhir Dengan Undang-Undang Republik Indonesia Nomor 6 Tahun 2020 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2020 Tentang Perubahan Ketiga Atas Undang-



Undang Nomor 1 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 Tentang Pemilihan Gubernur, Bupati, Dan Walikota Menjadi Undang-Undang Menjadi Undang-Undang, n.d.

Undang-Undang Republik Indonesia Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan, n.d.

