

## DYNAMICS OF MONEY POLITIC LAW ENFORCEMENT BY SENTRA GAKKUMDU IN THE E-MONEY ERA

Oleh:

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### ABSTRACT

The operation of a democratic system with the implementation of general elections to search for and elect candidates for leaders and public officials cannot be separated from the issue of criminal violations committed. The issue of support is a problem for candidates for office who run in electoral contests, both in holding elections and elections, so that many try to gain votes instantly to influence voters by providing material rewards, be it money or other materials, so that their choice is given to a particular candidate. Integrated Law Enforcement Centers which are mandated by law, both by election and election laws, to carry out handling of criminal violations often have difficulty in proving cases of money politics. Today's problems are increasingly becoming because transactions are carried out not only by carrying out conventional transactions but have entered the era of electronic transactions. The issue of limited authority is an obstacle in itself because the complexity of proof in electronic transactions cannot be easily carried out.

Keywords: Law Enforcement, Money Politics, Electronic Transactions.

### ABSTRAK

*Berjalanya system demokrasi dengan dilaksanakannya pemilihan umum untuk mencari dan memilih calon-calon pemimpin dan pejabat publik tidak terlepas dari persoalan pelanggaran pidana yang dilakukan. Persoalan dukungan menjadi masala dari para calon pejabat yang maju dalam kontestasi pemilihan baik dalam penyelenggaraan pemilu dan pemilihan segingga banyak yang mencoba untuk meraup suara secara intstan untuk mempengaruhi pemilih dengan cara memberikan imbalan berupa materi baik itu uang atau materi lainnya agar pilihanya dijatuhkan kepada calon tertentu. Sentra Penegakan Hukum terpadu yang diamanati oleh Undang-Undang baik oleh Undang-unang pemilu ataupun pemilihan untuk melaksanakan penanganan pelanggaran pidana kerap kesulitan untuk membuktikan kasus-kasus money politik. Masalah hari ini semakin menjadi sebab transaksi dilakukan tidak hanya dengan melakukan transaksi konvensional tetapi sudah masuk pada era transaksi elektronik. Persoalan kewenangan yang terbatas menjadi hambatan tersendiri sebab kompleksitas pembuktian dalam transaksi elektronik tidak dengan mudah dapat dilakukan.*

Keywords: Penegakan Hukum, Money Politic, Transaksi Elektronik.

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## INTRODUCTION

Indonesia is a rule of law country that adheres to democratic ideology in its political system. One of the consequences of a country adopting a democratic system is that there is a division of power and placing that power in the hands of the people, which according to Miriam Budiarto is called government rule by the people<sup>3</sup>. Elections have the function of converting the will of the people into positions in State institutions. As a consequence, state officials resulting from the election will work to carry out the people's mandate. In order for the process of converting the will of the people to produce representatives of the people or officials who are in accordance with the will of the people, the election process must be carried out honestly and fairly<sup>4</sup>.

The issue of general elections as a form of expression of democracy cannot be separated from the legal issues that follow. It can be said that compared to issues within the scope of other legal regimes, election law issues can be said to be more complex. Apart from the many categories of problems, the implementation of handling election legal problems also involves many institutions/institutions. In Law Number 7 of 2017 concerning the Election of Members of the DPR, DPD and DPRD, at least six types of election legal problems are recognized, namely: violations of the code of ethics of election organizers, violations of election administration, election disputes, election criminal acts, disputes over election state administration, and disputes over election results. Likewise, what is regulated in Law Number 10 of 2016 concerning the Election

of Governors, Regents and Mayors is also regulated in the same way, even though in practice there are several technical differences and differences in regulations between these elections and general elections often experience overlap which is a problem.

As a rule of law, enforcing election law for the sake of upholding justice and the aim of implementing democracy is a necessity, according to Jimly Asshiddiqie, who states that there are at least 11 basic principles contained in a democratic rule of law, including the necessity of a mechanism for resolving disputes and violations based on the mechanism for jointly adhered to rules and the limitation of power through the mechanism of separation and sharing of powers accompanied by a mechanism for resolving constitutional disputes between state institutions both vertically and horizontally<sup>5</sup>.

Indonesian political history records that every time a general election is held, protests and doubts always arise regarding the process and results of the implementation, especially from the losing participants<sup>6</sup>. This can be seen from how elections were held in the past, for example the 1999 elections and the 2004 presidential elections until the most recent simultaneous elections in 2019 and the simultaneous regional elections in 2021, protests and disturbances marked the course of the elections. Even the 1955 election, which was known as the cleanest election, was not devoid of protests. The existence of dissatisfaction and protests can be caused by the many violations against election regulations that have not been resolved completely, which is caused by many factors.<sup>7</sup>

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<sup>3</sup> Miriam Budiarto, *Dasar-Dasar Ilmu Politik* (Gramedia Pustaka, 2009).

<sup>4</sup> Yusril Ihza Mahendra, *Dinamika Tata Negara Indonesia, Kompilasi Aktual Masalah Konstitusi Dewan Perwakilan Dan Sistem Kepartaian* (Jakarta: Gema Insani Press, 1996).

<sup>5</sup> Sirajuddin and Winarda, *Hukum Tata Negara Indonesia* (Malang: Setara Press, 2015).

<sup>6</sup> Iwan Satriawan and Firdausy Shabrina Ramadhani, "The Impact of Money Politics to the Indonesian Democratic System: With Special Reference to South Kalimantan Governor Election 2020," *Atlantis Press*, 2022, 316.

<sup>7</sup> Lily Yunis, "The Meaning of Money Politics for Constituents in the Legislative Election," *Indonesian Journal of Social Sciences* 11, no. 1 (2019): 811.

In the aspect of criminal law, criminal election violations are the main point in handling criminal election violations. Handling of criminal violations in elections and post-conflict local elections/Pilkada is an effort to carry out the process of enforcing criminal law. This law enforcement is carried out in order to test criminal law norms that were violated in the implementation of general elections and regional head elections. The most important aspect that must be improved is a law enforcement system that is clear and has a philosophy, not just enforcement that does not have the effectiveness and purpose of law enforcement itself<sup>8</sup>.

One type of criminal act that often occurs in election contests and elections is the crime of money politics. This political money is carried out with the aim of getting a number of votes from voters through transactions, whether in the form of money in general or other materials<sup>9</sup>. Political money itself at a technical level is actually quite difficult to prove, it requires really clear issues to prove that a transaction occurred. buying and selling to influence voters to choose a particular candidate. The Gakkumdu Center, which is a special working group in handling election crimes, often has difficulties in terms of proving oney politics. Today's problems are becoming increasingly complex because in the era of money transactions that are not only carried out conventionally, but are also carried out with electronic money, this will increasingly mean that many modus operandi in the practice of money politics are being carried out<sup>10</sup>.

This contemporary phenomenon and technological advances should be able to

reflect on the Gakkumdu Center which has been given the mandate to handle cases of criminal acts of money politics to be given authority in accordance with current developments. A very positive legal system means that action against violations must be in accordance with applicable regulations, so that when changes occur in social phenomena, the law must first be enacted in order to be implemented.

## **METHODOLOGY**

Based on the explanation of the problem above, the research method used in this research is a type of qualitative research. The method used in this paper is normative juridical research which is carried out by explaining the doctrine or principles of legal science. This method is often also called library research, namely research by examining books, articles and statutory regulations related to this research.

## **RESEARCH RESULTS AND DISCUSSION**

In general, money politics is a term to describe the use of money or other material as a reward to influence someone to vote or vote in the general election process with the aim of winning the vote of the giver of the material. Ibrahim Z. Fahmy Badoh and Abdullah Dahlan define money politics as a practice at every stage of an election that can be influenced by money or other materials so that it results in an advantage for one of the candidates or political parties in an election<sup>11</sup>.

According to Wahyudi Kumorotomo, there are various ways that can be used to carry out the practice of money politics in direct election contestations, namely;

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<sup>8</sup> Topo Santoso, *Tindak Pidana Pemilu* (Jakarta: Sinar Grafika, 2006).

<sup>9</sup> Tjahyo Kumolo, *Politik Hukum Pilkada Serentak* (Bandung: Mizan Publika, 2015).

<sup>10</sup> Muslihannisa Muslihannisa, Ismansyah Ismansyah, and Nani Mulyati, "Law Enforcement Against Criminal Acts Local Elections by Gakkumdu," *Journal of Social Research* 2, no. 4 (2023): 131725.

<sup>11</sup> Almas Ghaliya Putri Sjafrina, "Dampak Politik Uang Terhadap Mahalnya Biaya Pemenangan Pemilu Dan Korupsi Politik," *Jurnal Anti Korupsi INTEGRITAS* 5, no. 1 (2020): 48.

1. Direct money politics in the form of cash transactions (in the form of money or other materials) from candidates or winning teams/success teams to potential constituents;
2. Contributions from prospective candidates to political parties that have supported them;
3. Mandatory contributions made by a political party to the team/cadre or to the candidate nominating<sup>12</sup>.

The opportunity for the practice of money politics in the implementation of elections in Indonesia is quite large, this can be seen from the high political costs of being able to advance in an election contest. This identification can be seen from the start. First, to be able to advance in an election event, candidates need to prepare "seat rental" costs to at least get a place and position. Second, interests outside political parties, such as support from private parties who have policy interests that can support the existence of private parties, which usually private parties dare to "sponsor" for the candidate's victory<sup>13</sup>.

The occurrence of money political behavior is a moral problem in the electoral process, even Machavelli, Montesquieu and Rousseau consider that immoral practices in political transactions are a form of political corruption which is characterized by moral problems between those in power. This is characterized by bribery behavior driven by ambition and greed to gain control. Of course, money politics as a form of political corruption is a result of unhealthy power struggles.

### **Regulation of Money Politics in Indonesia**

When discussing money politics in terms of elections and voting, money

politics is actually a form of criminal offence. Regarding the crime of money politics, there are actually different regulations due to different regimes<sup>14</sup>. Elections and elections also have different basic regulations. The more detailed regulations regarding criminal acts of money politics in the Election Law are the regulations regarding the implementation of the election of candidates for legislative members and president and vice president which are regulated in Law Number 7 of 2017 concerning the implementation of general elections regulated in book V under the title No Criminal election<sup>15</sup>.

The crime of money politics itself is regulated in Article 523. The text of this article is:

Article 523 paragraph (1) reads: "every Election Campaign organizer, participant and/or team who deliberately promises or provides money or other materials as compensation to Election Campaign participants directly or indirectly as intended in Article 280 paragraph (1) letter j shall be punished with a maximum imprisonment of 2 (two) years and a maximum fine of IDR 24.000.000,00 (twenty four million rupiah)."

Article 523 paragraph (2) reads: "Every election campaign organizer, participant and/or team who deliberately during the quiet period promises or provides monetary or other material rewards to voters directly or indirectly as intended in Article 278 paragraph (2) shall be punished." with a maximum imprisonment of 4 (four) years and a maximum fine of IDR 48,000,000.00 (forty eight million rupiah)."

Article 523 paragraph (3) reads: "Any person who deliberately on voting day promises or gives money or other materials

<sup>12</sup> Wahyudi Kumorotomo, "Intervensi Parpol, Politik Uang Dan Korupsi; Tantangan Kebijakan Publik Setelah Pilkada Langsung" (Surabaya, 2011).

<sup>13</sup> Firman Noor et al., "The Implementation of Direct Local Election (Pilkada) and Money Politics Tendencies: The Current Indonesian Case," *Politik Indonesia, Indonesia Political Science Review* 6, no. 2 (2021): 22746.

<sup>14</sup> Linlin Maria and Dion Marendra, *Buku Pintar Pemilu Dan Demokrasi* (Bogor: Komisi Pemilihan Umum Kota Bogor, 2020).

<sup>15</sup> Ramon Azmi Pratama and Dheny Wahyudi, "Problematika Penyelesaian Perkara Tindak Pidana Politik Uang (Money Politic) Dalam Pemilihan Umum," *PAMPAS: Journal of Criminal* 1, no. 2 (2020): 15275.

to voters not to exercise their right to vote or elect certain election participants shall be punished with imprisonment for a maximum of 3 (three) years and a fine maximum IDR 36,000,000.00 (thirty six million rupiah)"

If you look at the regulations, the crime of money politics in the election regime as regulated in Law Number 7 of 2017 differentiates the time when money politics violations are committed. In paragraph (1) of article 253, criminal acts of money politics are committed during or during the campaign. In paragraph (2), the crime of money politics is carried out during the quiet period, namely 3 (three) days before voting day or after the completion of the campaign stage. Meanwhile, in paragraph (3) the crime of political money is committed on voting day.

The author provides criticism of the formulation of legal subjects in article 532 paragraph (1) and (2) which only limit the subject to implementers, participants and/or election campaign teams. This will only open up new *modus operandi* by using other "hands" outside the campaign implementation team to carry out criminal acts of money politics. As a result, religious actors will hide behind their status as mentioned in article 523 paragraphs (1) and (2) because the legal subject is limited to campaign implementers and not to everyone.

The regulation of criminal acts of money politics in the electoral or regional election regime is regulated in Law Number 10 of 2016 in Article 187A which reads "Anyone who intentionally commits an unlawful act by promising or giving money or other material in exchange for an Indonesian citizen, either directly or indirectly to influence voters not to exercise their right to vote, to exercise their right to vote in a certain way so that the voting becomes invalid, voting for a particular

candidate as intended in Article 73 paragraph (4), shall be punished with imprisonment for a minimum of 36 (thirty-six) months and a maximum of 72 (seventy-two) months and a minimum fine of Rp. 200,000,000 (two) hundred million rupiah) and a maximum of Rp. 1,000,000,000 (one billion rupiah)". Furthermore, Article 187A paragraph (2) "The same penalty is applied to voters who deliberately commit unlawful acts of accepting gifts or promises as intended in paragraph (1)".

The visible difference is that the regulation of money political crimes in the regional election regime does not have a separation in the time when money political crimes are committed as regulated in Law Number 7 of 2017. Another difference is in the legal subject where in the election Law there is no separation between organizers, campaign participants, campaign teams or others, every person is the same legal subject in the eyes of the law and is prohibited from carrying out criminal acts of money politics. Meanwhile, in the election or regional head election law, the legal subject is imposed on the giver and recipient.

The similarities are that in Law Number 7 of 2017 and Law Number 10 of 2016 which regulate criminal acts of money politics as explained in the articles above, they are regarding criminal sanctions that are threatened against perpetrators. If we look at the settings of the two election and election regimes, both use maximum criminal threats. Based on the theory of the use of maximum criminal threats, it is known as the independent sentence system, namely a criminal system where each criminal act is determined by its respective weight or quality while simultaneously determining the minimum and maximum criminal threats for each criminal act.<sup>16</sup>

<sup>16</sup> Hariman Satria, "Politik Hukum Tindak Pidana Politik Uang Dalam Pemilihan Umum Di Indonesia," *Journal Antikorupsi Integritas* 5, no. 1 (2019): 2.

## Latent Dangers of Money Politics Crimes

Money politics is a disturbance in the political process where participants or cadres or success teams as well as parties supporting candidates carry out unlawful actions by providing rewards or material and/or rewards in other forms to influence the votes cast by voters. Money politics is not legally permissible<sup>17</sup>. If we look at this understanding, there is actually no difference if we interpret that the practice of money politics or money politics is an act of bribery to get votes in the general election.

In the context of understanding that money politics is a bribe in political life, it will damage the democratic order, especially the principles of elections themselves. Money politics destroys people's sanity to adhere to their objective choices by choosing leadership candidates who display honesty and ideals reflected in the vision and mission they carry, becoming choices that are driven solely by the investment of money given without looking at how it is done. This choice is credible enough to choose<sup>18</sup>.

Apart from that, the danger of the practice of money politics is the danger of horizontal conflict that results, because it causes people to become suspicious of each other, accuse each other and create conflict within society. Not only that, the practice of money politics also damages party cadres and makes political competition, which is basically noble, unhealthy and dirty. Because candidates at any level of election will predominantly consider their financial aspects, not the quality and personality of the candidate. This also shows that to advance in political contestation requires high costs or large capital. Therefore, it is natural to say that money politics is another form of electoral corruption and is the

precursor to political corruption. It is not surprising that we see that many leaders who are elected through this political mechanism use their positions solely to gain personal and group profits, harming the State's finances because they are born from a dirty process. At this point, political corruption will occur by trading influence and abusing power. Therefore, the presence of regulations governing the handling of money politics violations in elections and legal political elections is very clear; maintaining the greatness of democratic values and maintaining the goal of politics itself, namely for the greatest good and prosperity for the public<sup>19</sup>.

The practice of money politics in Indonesia seems to be ingrained and embedded in every election contestation at all levels, from village to national level. This is like giving rise to an adage which emphasizes that "it is not perfect if the election is not colored by the practice of money politics." In the process of the 2014 and 2019 legislative elections, for example, the Indonesian Survey Institute (LSI) stated that the practice of money politics reached 33% in 2014 and 33.1% in 2019. The upward trend is seen especially in the period leading up to the election or often known as the "dawn attack." If you add up the numbers, 33.1% of the total DPT is 192 million people, meaning there are around 63.5 million people who are exposed to money politics.

## E-Money Phenomenon

As time goes by, advances in technology and the rapid development of habit after habit spread and shift according to trends, this has become one of the factors in the emergence of the use of r-money or electronic money as a means of transaction in society.

<sup>17</sup> I Wayan Febrianto, Ida Ayu Putu Widiati, and Luh Putu Suryani, "Analisis Penanganan Politik Uang Ditinjau Dari Undang-Undang Pilkada," *Jurnal Interpretasi Hukum* 1, no. 2 (2020): 11015.

<sup>18</sup> Herman, "Money Politic as The Bribery in The Election for Regional Head in Indonesia," *Technium Social Sciences Journal* 35 (2022): 312.

<sup>19</sup> Inda Sari Palinrunji, "Penegakan Hukum Tindak Pidana Politik Uang (Money Politik) Pada Penyelenggaraan Pemilihan Umum Anggota Legislatif" (Universitas Hasanuddin, 2021).

If we look at the development, in the pre-modern era, the system used in transactions was a barter system between goods, until today people recognize money as a valuable tool, a valuable tool for making transactions. Transactions from this money model are now evolving again into paper-based non-cash payments such as giro bills and checks. Apart from that, card-based payments are also known which can store a certain amount of money, such as ATM cards or credit cards. Today this payment tool has also developed into electronic money<sup>20</sup>.

Electronic money is an electronic means of payment that is obtained by first depositing a certain amount of money to the issuer, either directly through issuing agents, or by debiting an account at a bank, and the value of the money is entered into the value of money in electronic money media, which is expressed in Rupiah units used to carry out payment transactions<sup>21</sup>. In principle, e-money is money without physical form, in e-money the actual form is still the money, the money is deposited and then converted electronically into certain electronic media that provide e-money services<sup>22</sup>.

### **Shifting Political Money Transactions from Conventional to Electronic Money**

In the current era of industry 4.0, technological progress is a necessity, this digital era is slowly shaping people's culture to change conventional culture towards a more practical digital culture. The proliferation of financial technology (fintech) businesses has been followed by the emergence of advanced companies in

the digital finance sector. So it is natural that nowadays, electronic money has become part of modern lifestyle choices that cannot be separated from society. Not to mention the development of increasingly easy access to computers and the internet with a very wide reach, which also encourages this culture to run. In line with the phenomenon of the existence of e-money or electronic money, this phenomenon is followed by the development of various online and electronic money-based transactions and services, such as the existence of Gojek, Grab, OVO, Gopay, Shopee Pay and others, which are phenomena that cannot be denied and are part of supports the existence of electronic money. The convenience and effectiveness presented by the existence of e-money is a special attraction for the public<sup>23</sup>.

E-money has a payment mechanism that can be used non-cash with various denominations so that it can provide various functions in the use of electronic money (e-money), namely speed, more practicality and security. This use of e-money has been widely used by many groups, especially in big cities. This is related to the crime of money politics. The e-money phenomenon has also become a *modus operandi* whose existence cannot be denied in carrying out bribes to buy and sell votes or influence other people to determine their voting rights for certain candidates or pairs. Of course, this should be of greater concern because uncovering and proving the criminal practice of money politics is very different from the transaction process

<sup>20</sup> Riska Widya Abiba, "Pengaruh Penggunaan Uang Elektronik (E-Money) Berbasis Server Sebagai Alat Transaksi Terhadap Penciptaan Gerakan Less Cash Society Pada Generasi Milenial Di Surabaya," *Jurnal Ekonomi Dan Bisnis Islam* 4, no. 1 (2021): 196206.

<sup>21</sup> Elsa Lisnawati, Zaini Abdul Malik, and Eva Misfah Bayuni, "Tinjauan Fiqh Muamalah Terhadap Biaya Isi Ulang (Top Up) Produk E-Money Bank Syariah Mandiri KC Bandung Dago," *Prosiding Hukum Ekonomi Syariah* 4, no. 2 (2018): 43137.2

<sup>22</sup> Jona Benedit, Ojak Nainggola, and Kasman Siburian, "Tinjauan Yuridis Penggunaan Uang Elektronik (E-Money) Dalam Pembayaran Sistem Transportasi Online Sesuai Peraturan Bank Indonesia Nomor 20/6/2018," *Patik: Jurnal Hukum* 1, no. 3 (2019): 21728.

<sup>23</sup> Hendra Kusuma and Wiwiek Kusumaning Asmoro, "Perkembangan Financial Teknologi (Fintech) Berdasarkan Perspektif Ekonomi Islam," *Istithmar: Journal of Islamic Economic Development* 4, no. 2 (2020): 14163.

in money politics which is still traditional and conventional<sup>24</sup>.

This shift in habits and phenomena that occurs in society should be a reflection for law makers to be able to create a special formulation that can cover existing problems. Because it can be seen that the practice of money politics, which still carries out conventional and traditional transactions, is very difficult to prove, especially if the phenomenon of the presence of e-money is not balanced by regulations clear regulations containing authority that can overcome this problem for the sake of upholding electoral justice.

It can be seen from several issues regarding the modus operandi of using electronic money for the practice of money politics. Even Firman Shantyabudi, Deputy for Eradication of the Financial Transaction Reports and Analysis Center (PPATK), stated that in 2019 his agency discovered a new mode of practicing money politics. One of these methods is by luring potential voters to choose a certain partner or candidate with the promise of insurance and electronic money<sup>25</sup>.

### **Efforts to enforce the law on the crime of money politics by the Gakkumdu Center**

Bawaslu in enforcing election crimes is assisted directly by elements of the Police and Prosecutor's Office who are members of the Integrated Law Enforcement Center (Sentra Gakkumdu), where in this Gakkumdu Center Bawaslu, the police and the Prosecutor's Office jointly handle violations of election crimes including money crimes. politics. Sentra Gakkumdu carries out a series of handling election criminal violations in accordance with the criminal justice system in Indonesia<sup>26</sup>.

The authority to handle general election crimes falls under the authority of the Gakkumdu Center. On a legal basis, in Law Number 10 of 2016, the authority of the Gakkumdu Center to handle election crimes is regulated in article 152 which reads:

Paragraph (1):

*"To equalize understanding and patterns of handling election crimes, Provincial Bawaslu, and/or Regency/City Panwas, Regional Police and/or Resort Police, and High Prosecutor's Office and/or District Prosecutor's Office form an integrated law enforcement center."*

Paragraph (2):

*"The integrated law enforcement center as referred to in paragraph (1) is attached to Bawaslu, Provincial Bawaslu, and Regency/City Panwas"*

The Gakkumdu Center itself was basically formed as a center for law enforcement activities for election crimes carried out jointly by Bawaslu, the Police and the Public Service. The law enforcement pattern carried out by the Gakkumdu Center itself has an integrated handling pattern that unites various law enforcement elements in the criminal justice system in Indonesia<sup>27</sup>.

Handling of criminal acts of money politics can come from findings or reports. The findings themselves mean that the alleged violation of money politics was based on the results of supervision carried out by Bawaslu itself as the election monitoring agency. Meanwhile, reports are allegations of violations of political crimes submitted by election participants, election observers or people who have the right to vote according to their legal standing and the authority to convey allegations of

<sup>24</sup> Erwin Wijaya and M Rachman Mulyadi, "Tren Penggunaan Uang Elektronik Terhadap Generasi Milenial," *Jurnal Manajemen Bisnis* 18, no. 1 (2021): 4352.

<sup>25</sup> Iqbal Tawakal Lazuardi, "PPATK Ungkap Modus Baru Politik Uang: Beri Asuransi Dan E-Money," *Tempo.co*, 2019, <https://nasional.tempo.co/read/1192803/ppatk-ungkap-modus-baru-politik-uang-beri-asuransi-dan-e-money>.

<sup>26</sup> Binov Handitya, "Peran Sentra Penegakan Hukum Terpadu (Gakkumdu) Dalam Penegakan Tindak Pidana Pemilu" (Semarang, 2018).

<sup>27</sup> Heri Joko Setyo, "Problematika Penegakan Hukum Tindak Pidana Pemilu Di Indonesia" (Universitas Islam Indonesia, 2016).



violations in general<sup>28</sup>.

In simple terms, the handling of money politics crimes carried out by Bawaslu, the Police and the Prosecutor's Office in the Gakkumdu Center is: (1) Bawaslu receives reports or findings related to allegations of money politics crimes (2) an initial study from Bawaslu to determine whether a report meets the material requirements and a formal report so that it can then be registered (3) after being registered, the Gakkumdu Center carries out discussions with the Gakkumdu Center (SG) I to determine the application of the article and the next stage is to provide clarification to the parties (4) after the clarification has been completed with the parties Bawaslu carries out study of paloran or findings based on the results of clarification and existing evidence to be further discussed in Discussion II of Sentra Gakkumdu (5) discussion II of the Gakkumdu Center to determine whether reports or findings of alleged criminal acts of money politics can be escalated to the investigation stage or completed in discussion II. (6) If it is decided that restrictions II can be increased then Bawaslu then accompanies the reporter to carry out and make a report to the police SPKT for the next investigation process to be carried out. (7) After the investigation process is complete then the discussion will be carried out again together by the Gakkumdu Center in the third discussion to determine whether or not the report that has been submitted to the police and has gone through the fingerprint process is appropriate to be submitted to the prosecution process by the public prosecutor. If it is decided to move to the prosecution stage, the Gakkumdu team from the investigative element will immediately compile a file to be submitted to the Gakkumdu element from public prosecutor (8) The prosecutor from the

Gakkumdu Center carries out the prosecution at the District Court for trial (9) The Gakkumdu Center takes a stand regarding the court's decision whether to accept the decision and implement the decision or whether to take legal action to appeal the decision<sup>29</sup>.

It is hoped that the limited time in handling election crimes can be overcome by the presence of the Gakkumdu Center so that handling performance can be carried out effectively. But in reality, the existence of the Gakkumdu center is only an extension of the mechanism for handling election crimes, because if you look at it at a practical level, the existence of elements such as the police who serve as investigators cannot carry out the investigation process once a report or finding of a money political crime occurs. The reason is because the handling stage is still in the period of receiving reports which are then reviewed by Bawaslu to determine whether the findings and reports related to alleged criminal acts of money politics are sufficient to meet the formal material elements. If the armpit has met the formal material requirements and at least 2 (two) sufficient pieces of evidence are found, Bawaslu then registers the findings or report of alleged election crime, then after that Bawaslu and Sentra Gakkumdu still have to hold a first discussion followed by a clarification process or something like a BAP (Investigation Minutes) over a certain period of time, how the implementation was carried out in the election or electoral regime. After that, Bawaslu and the Gakkumdu Center still have to hold a second discussion to decide whether or not the report or findings are appropriate for investigation. Meanwhile, at that stage investigators only follow Bawaslu's work pattern and do not have the authority to investigate or investigate carry out searches or seizures as per the duties of investigators.

<sup>28</sup> "Peraturan Badan Pengawas Pemilihan Umum Nomor 4 Tahun 2023 Tentang Pengawasan Pemutakhiran Data Dan Penyusunan Daftar Pemilih Dalam Pemilihan Umum" (n.d.).

<sup>29</sup> Peraturan Badan Pengawas Pemilihan Umum Nomor 4 Tahun 2023 tentang Pengawasan pemutakhiran data dan Penyusunan Daftar Pemilih dalam Pemilihan Umum.

Not to mention the issue of lack of evidence because Bawaslu itself cannot force people to confiscate other people's property as evidence. In this situation, there is actually a gap for parties who commit alleged money politics violations to remove equipment or evidence. So it is not surprising that we find many cases of alleged violations of criminal acts involving politics, many of which did not go up to the second discussion stage of the Gakkumdu Center because the problem of proof was difficult because the Gakkumdu Center itself, at the stage of receiving reports and clarifications, was not given authority to its investigators who were members of the central team. Gakkumdu to be able to move freely according to his authority. Clearly this is a real problem that we find from implementation to implementation<sup>30</sup>.

Another problem that arises from the difficult evidentiary process in handling money politics crimes is that at the clarification stage the presence of the invitees, both the reporter, the accused and the witness, does not have an element of coercion. This means that when the person concerned does not wish not to attend, the Gakkumdu Center does not have the authority to present the reporter, the reported party or witnesses. This will also provide time for many changes to the position of the matter. This is different from the authority in investigations and investigations in article 112 of Law Number 8 of 1981 concerning Criminal Procedure Law where at that stage the presence of witnesses and parties to convey their statements is mandatory and if the person concerned is not present during two appropriate summons then investigators can forcefully do so. Meanwhile, in the clarification stage, this does not apply so that the presence and taking of information from the parties and the evidence available at the Gakkumdu Center is only static<sup>31</sup>.

Then, regarding the quality of testimony and statements, the clarification process only opens the way for investigations, and that has no value in the eyes of the judiciary. It could be that in the clarification process a reported person or witness gives different information before the court and the quality of the clarification is not of any value so its function is only to seek initial information, apart from that during the investigation process a BAP is also carried out again for the parties which may have the same content. just. So looking at this problem, if there really is political will to enforce election law, then the authority of the Gakkumdu Center itself must be clearer and more active and must be simpler and more effective.

### **Challenges and Hope**

From the implementation of administration, both elections and even elections to villages, the behavior of bribery, buying and selling votes in the form of money politics seems to be commonplace. The conditions faced should be a reflection in enforcing election law, especially regarding money politics which has complex problems in society.

The Gakkumdu Center, which is staffed by law enforcement components, namely the police and prosecutors and also Bawaslu from election supervisors, must be able to answer challenges and problems by enforcing election crime laws. At least Bawaslu has the authority to draw up technical regulations can also be called its own procedural law in enforcing election law, it must be able to provide technical regulations that simplify technical handling and maximize authority, if not, it is better that Bawaslu's authority remains as a supervisor, which when finding or receiving reports related to election crimes is sufficient to provide recommendations and report directly to the police to follow up

<sup>30</sup> Joko Setyo, "Problematika Penegakan Hukum Tindak Pidana Pemilu Di Indonesia."

<sup>31</sup> Ojsadmin, "Problematika Penegakan Hukum Tindak Pidana Pemilu 2019," Electoral Research: Jurnal Tata Kelola Pemilu Indonesia, 2020, 118.

on them. This means that Gakkumdu is quite a separate part but is still within the pattern of handling special election crimes.

Good law is dynamic law, law that is able to keep up with the times and the conditions that underlie it, as the principle states that law is born from society, so what happens is that law always lags behind the development of society. In fact, LJ van Apeldoorn stated that the purpose of law is to regulate peaceful coexistence<sup>32</sup>. In this regard, technological advances that cannot be rejected should be followed by positive legal adjustments which are the basis for enforcing election criminal law, especially in relation to criminal acts of money politics through e-money transaction modes. Therefore, it is necessary to have political will from legislators to make regulations that support maximum authority to uphold election law and justice, so that the assumption that the existence of the Gakkumdu Center is indeed made is blunted.

## CONCLUSION

Money politics which has become the culture of our democratic elections is a dirty culture that must be broken. The process of breaking culture must be followed by legal regulations governing it. Today's money political arrangements still have problems that must be addressed, both in the voting and election regimes. Apart from that, the

existing law today does not reflect the legal phenomena that exist in society where advances in communication technology have greatly changed people's behavior, especially in carrying out taxes. Today, the use of e-money is widely used for various community needs and this has also become a new modus operandi in carrying out the practice of money politics. The Gakkumdu Center itself, which has the authority to take action against alleged money political criminal violations, still often experiences difficulties in terms of evidence and the reason is that it is very complex and the most frequently encountered is the problem of proof which is caused by the limited authority of the Gakkumdu Center and the technical handling of it which is too complicated. The complicated and technical nature of the short handling period means that the handling of money political crimes is not optimal and there are many loopholes to pass the case without being proven. The issue of the modus operandi of carrying out the practice of money politics using e-money or electronic money, which has become a recent phenomenon, needs to be a reflection for all law enforcers, for the government if it really wants to enforce election law, especially in relation to money politics. That answer must be answered by all parties, Gakkumdu must be more lively and not tend to be static and regulations must strengthen institutions by giving them maximum authority.

<sup>32</sup> Mochtar Kusumaatmadja, *Pengertian Ilmu Hukum* (Bandung: PT. Alumni, 2013).

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