



The Rationale for Reconstruction of Money Politics Crimes in the General Election

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<http://dx.doi.org/10.18415/ijmmu.v8i12.3141>

Abstract

The provision of necessities which were originally purely as a form of social solidarity to the poor or as souvenirs just to fulfill the appropriateness of eastern culture in visiting, when proven effective in gaining votes, became a new mode by candidates in approaching constituents, which such practice is commonly called with the practice of money politics. This research aims to find out and analyze the rationale for the reconstruction of money politics in the general election. The method used in this study is a normative juridical research method with a statute approach and a conceptual approach. The results of this study indicate that the rationale for the reconstruction of money politics in the general election is that giving something in the form of money or goods at the time of the election becomes a close causal relationship between the occurrence of corruption, both pre-gift and post-giving.

Keywords: *Reconstruction; Money Politics Crimes; General Election*

Introduction

High-cost political issues should be a serious concern among intellectuals and political elites. This is the cause of the culture of corruption among state administrators. However, in reality, studies on high-cost politics are generally not complete. Usually, only produce conclusions and recommendations that the problem threatens the existence of democracy. Very few continue to formulate an action program as a solution (Daryanto, 2019).

From the electoral journey, it can be seen that the political costs incurred by political participants, both institutionally and individually, are increasingly expensive. The consideration of everyone entering the arena of political competition in the general election tends to be viewed based on financial support, not based on the drive to struggle that demands dedication to an ideal. When money becomes the most crucial factor in winning contestations in the general election, the result will be state officials who tend to hunt the money.

Political policies produced by such a system may not fully serve the interests of the societies. There will always be an ongoing process of cause and effect, namely, if political positions are achieved based on the power of money, political positions must generate money, so it will be difficult for the state

to pursue progress quickly if the bearers of power cannot dedicate their power based on the interests of the nation. In addition, if political support is synonymous with money, the state's power resulting from a democratic general election will only be filled by rich people or leadership figures controlled by sponsors. The rise of money politics is a *condition sine qua non* that seems to occur naturally and usually even though it is prohibited. The prohibition of money politics is very clearly stated in all political laws that are always updated before each election stage. However, in law enforcement, there are still gaps and weaknesses that must be improved.

Since implementing an open system with the most votes in the general election, individual competition between candidates has become increasingly fierce. Initially, the competition between candidates took place normatively within the corridors of democracy, where they socialized themselves by peddling ideas, visions, programs, and political promises to gain popular support. After that, new creations emerged from the candidates to win the competition, including providing souvenirs and/or necessities to constituents.

The provision of necessities which were originally purely as a form of social solidarity to the poor or as souvenirs just to fulfill the appropriateness of eastern culture in visiting, when proven effective in gaining votes, became a new mode by the candidates in approaching constituents.

Furthermore, there was a transformation of the souvenir approach into the main approach for candidates to their voters, rather than a program to socialize the concepts and ideas of the candidates to demonstrate their quality and competence. This shift has unwittingly led to an increasingly competitive use of money in political competition and ultimately eliminates the existence of true political purity.

The use of money in the general election took place more openly, no longer in necessities or souvenirs but in vote-buying and selling transactions. This motive occurs among people whose socio-economic class is low and penetrates the middle and upper classes with the nominal value of money getting bigger.

Economically, suppose the voter's vote becomes a commodity, while the need for voter's vote is always a bone of contention in the five-year general election, according to market law. In that case, the price to be paid has no upper limit depending on the ability of the money being competed. Some of the owners of capital are directly involved in the game by forming a political party as a participant in the election.

Methodology

The method used in this research is normative legal research. There is no need to support data or social facts (Nasution, 2008). The materials used in this research are primary legal materials in statutory regulations and secondary legal materials in legal literature relevant to the issues discussed (Marzuki, 2011). In legal research, several approaches aim to obtain information from various aspects sought answers (Ibrahim, 2008). In this connection, in writing this article using a statutory approach and a conceptual approach.

Result and Discussion

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Increasingly expensive political costs make political parties controlled by the rich or figures who strong capital owners support. State officials resulting from expensive political processes are easily tempted to hunt for money for political purposes. This will undoubtedly affect the quality of political

decisions that will be or have been taken. As a result, many political decisions are not in favor of the public interest. State officials who essentially get office through people's choices do not feel they have a moral responsibility to defend their interests because they won the election by buying votes.

According to Totok Daryanto, changes in the subsystem in the implementation of democracy, even though they have a firm rational basis, do not necessarily produce a quality democratic system. Changes in the electoral system are open and directly elected candidates. The ultimate goal is that the elected officials have total dedication to fighting for the people who voted for them instead of producing state officials who have many corruption problems. In addition, every subsystem change requires compatible changes to other subsystems. Subsystem changes in the general election that allow the people to choose a leader figure directly should be accompanied by improvements to the electoral subsystem regarding how to obtain the people's mandate in elections (Daryanto, 2019).

Currently, voices are starting to emerge questioning the electoral subsystem with open and directly elected candidates as the primary source of strengthening the domination of money in politics. If the solution chosen to eliminate the root causes tends to reconsider the old electoral system, it is an unintelligent retreat. The change that is needed now is how to improve other subsystems, one of which is law enforcement to minimize the practice of money politics in elections closely related to corrupt practices in the future.

Money politics is also a phenomenon that cannot be separated from the patron-client culture in Indonesia. According to Muhtadi, quoting Omobowale, patron-client is a socio-cultural product where groups that have certain privileges (patrons) give money or profits in return for the loyalty of their followers (clients) (Muhtadi, 2013).

Economic capital finally has an essential meaning as a driving force and lubricant for the political machine used. For example, during the campaign season, large amounts of money are needed to cover various needs, such as printing posters, printing banners, paying for advertisements, renting a vehicle to transport supporters, and other necessities, including security.

In general, political parties in carrying out cadre recruitment to fill internal structural positions and cadre recruitment to recruit candidates to compete in general elections tend only to use two parameters: character and financial ability. Today's hegemony and domination of money in politics have blocked the entry of figures who have the right mentality and self-awareness and are very much needed in the political profession.

There must be a mentality or political awareness and motivation that can be an impetus to create a counter-hegemony against the practice of hegemony and the domination of money politics. The right political reason as instilled by Haji Agus Salim (The Grand Old Man) to Kasman Singodimedjo that "Leiden is Lijden!", to lead is to suffer. Leading is trust, not a gift. Leading is sacrificing, not demanding (Roem, 1977).

Transactional and money politics will be an unpleasant experience if such behavior is rewarded or expected in the form of social sanctions and optimal law enforcement. It is also hoped that it will open people's hearts and minds that transactional politics and money politics only produce people's representatives who are ignorant, who never meet and serve their constituents, who are opportunists, who are not dedicated to the interests of the people, and carry out money politics, must be stigmatized negative and strict sanctions.

The mechanism of democracy through the general election as an instrument of recognition of the people's sovereignty allows the work of society as a system. If this system uses the right to elect its members (one man, one vote), it will produce credible leaders whose quality is constantly increasing.

Choosing is an activity to determine something that is considered suitable and under the wishes of a person or group, and is an activity to decide decisions directly or indirectly.

When no choice stands out as a differentiator between the candidates or parties to be elected, society seems to be hit by the disease of apathy. Apathy is individual indifference in which society has no interest or inattention to certain aspects. It is further explained in the hopelessness theory introduced by Abramson, Seligman, and Teasdale that it is demonstrated that the condition of despair is a situation in which an expectation that the desired outcome will not occur or the undesirable will happen and that the person concerned will not provide a response to be able to change the situation. The General Election that has been held repeatedly with participants from political parties who both rely on money as an essential strategy to gain voter support, while there are no political aspects that can be considered by voters, undoubtedly put voters in a position to face conditions that cannot be changed as explained by the hopelessness theory (Daryanto, 2019).

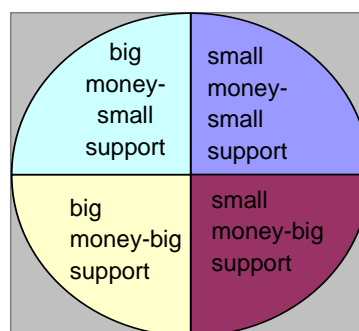
In the campaign stage, there are at least nine types of expenditures to win the electoral process, including (1) the cost of the successful team (campaign team); (2) the cost of surveys and political consultants; (3) the cost of procurement of campaign attributes; (4) costs for holding open-closed campaigns including mass mobilization; (5) campaign costs in print and electronic media; (6) fees for making donations to voters' pockets; (7) fees for buying votes; (8) fees for paying witnesses in the voting process; and (9) other campaign costs. The higher and more varied the candidate's costs to win the electoral process, the longer the candidates will apply money politics in the process (Daryanto, 2019).

The political powerlessness experienced by this nation due to the domination of money in politics hypothetically will eventually reach a crisis point that requires the emergence of a new direction of change as a solution that all components of the nation can accept. There is an extreme suspicion that the corrupt behavior of state officials is a *conditio sine qua non* with the dominance of money in politics. To avoid a bigger political victim, the current condition should be considered a crisis point. The domination of capital in politics is immediately ended, and the presence of a concept or movement that carries the theme of anti-money domination in politics is sure to get a positive response.

Money politics is essentially another form of instant culture, a culture of shortcuts, which is born from the lazy attitude of political actors to carry out political functions correctly. When the tradition built by political parties and their candidates only cares for the people and gives promises at the time of the general election, the people's trust for them will remain low, so money politics becomes their only consideration in making choices in the general election.

There are four specific relationships between the magnitude of the influence of money used in political financing and the amount of people's political support obtained from the use of the money, as seen in the diagram. Big money-small support, small money-small endorsement, big money-big endorsement, and small money-big endorsement. The concept of winning the general election that is developing today departs from an analysis based on the diagram to determine how much it will cost to win a candidate in the general election (Daryanto, 2019).

Diagram 1.



With a feasibility study approach, money in supporting political success today is not feasible or cannot be done. However, because politicians' lust for power is so great, what is not possible is still being done. As a result, political office is only to cover the loss of money that has been used up in competitions for political office, so the only way is to commit corruption. This fact is currently happening in the dynamics of politics in Indonesia. There is not a single party whose cadres are institutionally 100 percent free from corruption cases (Daryanto, 2019).

When viewed more deeply, the essence of the context of money politics is in principle the same as bribes or gratuities. Whereas in the current development of gift-giving practices in Indonesia, there has been a change in the gift-giving mechanism in modern Javanese society, which uses it to achieve goals for government officials and economic elites. Giving gifts, in this case, turned into a tendency towards bribery (Komisi Pemberantasan Korupsi, 2014).

In the context of Indonesian culture, where there is a common practice of giving gifts to superiors and an emphasis on the importance of personal relationships, the culture of gift-giving is more likely to lead to bribery. However, there is also a pattern of giving gifts that have nothing to do with the superior-subordinate relationship but as a sign of love and appreciation for someone who is considered to have provided services or gave pleasure to the gift giver.

This gift-giving was later developed into a commission so that many officials in authority considered that this was their right. This phenomenon is finally the same as the voting community as the voting authority in elections, tending to think that giving money from candidates for legislative and executive leaders in the election process to elect specific candidates is also their right for the voting community.

Sending parcels during celebrations of major religious holidays or outside those sent to smooth out a particular project or political interest is a form of gratification practice. Likewise, with the celebration of a democratic party entitled the general election, sending gifts to the voting community to make it easier for someone to occupy a particular political position is essentially a form of gratification practice.

The description above at least provides an overview of the tendency to give gifts given by candidates or their teams to the voting community. When viewed from a habit, the tradition of giving-and-take thrives in people's habits. This is positive as a form of solidarity, cooperation, and togetherness in society.

However, when this practice is adopted in a democratic system, the positive practice turns into an obstacle in building good and clean governance in the future. The gifts given to the voting community tend to have strings attached. In the long term, they can potentially affect the performance of the elected public officials later, create a high cost economy, and affect the quality and fairness of services provided to the community itself.

In essence, the meaning of the regulation of criminal acts of gratification in the Corruption Crime Act is to prevent wider and larger corruption crimes. The act of gratification will eventually cause the recipient of the gift to feel happy if the gift is often given and the person he helps so that in the end, he will only want to help someone if he gets a reward or benefits from the assistance he provides. In the end, it was not the attitude of help and tolerance that underlies his support to others, but he expected something from the service he gave. Again, this will be the same as the practice of money politics in the general election. The practice of money politics will provide the voters with a sense of pleasure. The feeling and hope will come again every time there is a democratic party. On the other hand, the gift is not the hope of choosing a particular candidate in the general election.

In line with gratification, the giving of money politics in the general election can also be viewed from cultural values. The cultural values referred to here are the principles of cultivating favors and the culture of reciprocation, which can be described as follows (Mulyono, 2016):

a. Principles of Cultivating Mind

Planting the mind is also called making the mind or sowing the reason. The person who cultivates the mind is called the cultivator. Planting the mind that the cultivator does aim to do good. The cultivator gives something he sees as worthy, accompanied by a sincere intention to provide something to someone considered excellent. The types of kindness usually given include objects, energy, politeness, speech or language, greetings, visiting visits, borrowing and borrowing, souvenirs, picking up food, asking while, asking for a broker, asking for sharing, and asking.

In the twelve interaction situations mentioned above, a person has the opportunity to instill his mind in others. The twelve situations can be divided into two categories, namely (a) gifts given by the cultivator; and (b) the gift requested by the person who wishes to receive the favor. In the first category, planting the mind actively comes from the recipient of the mind. This category includes giving objects, energy (given or asked), manners, speech and greetings, visits, borrowing, souvenirs, and picking up food. In the second category, planting the mind is asked intentionally by the recipient of the mind. Types that fall into this category include asking for a while, asking for a broker, asking for sharing, and asking for money. Objects that are usually given as cultivation tools are food, fruits, crops, marine products, hunting products, and souvenirs. Giving must pay attention to quality, scarcity, feeling of togetherness, and memory. Quality factors need to be considered so that the shape, taste, and appearance of the objects are in good condition.

b. Reciprocity Culture

The culture of reciprocation comes from the Japanese culture known as "on" or "ongaeshi" which means "returning the favor". Japanese people feel indebted for all the good they receive from others. For that, they will refuse as much as possible the kindness that they receive. If we have to be "forced" to accept the offer, he will remember it until he can repay the kindness he received.

Japanese people still pay attention to culture even though it has become a developed country. The culture is not then eroded and faded away. Any kindness he receives must be immediately repaid. Also, when we accept any kindness from other people, our self-esteem falls and is "captured" until then, we can repay the kindness.

The teaching of reciprocation embodies the concepts of "Giri" and "Ninjou" which are characteristic of Japanese culture. The word Giri has several meanings "the right way to do something, manners". This concept originated from the teachings of Confucianism, which is the basis. In Shintoism, the idea of Giri is used in interpersonal relationships and is a tradition that has long been embedded in Japanese society, especially in rural farming communities.

When planting rice, if a person gets help from another person, he has an "obligation" to repay it. The concept of Giri is the root of the feeling of being indebted. While Ninjou means kindness, compassion, and tolerance as human nature. Ninjou describes the understanding of human life in this universe. Experts argue that Giri and Ninjou are one entity, but some argue that Giri and Ninjou are reciprocal. The opposite placement of Giri and Ninjou is interpreted as a reciprocal relationship between private and public in the structure of Japanese society. The concept of Giri is placed higher than that of Ninjou. The concept of Giri and Ninjou is what gave birth to the moral obligations contained in the social life of Japanese society. For the relationship to run harmoniously, if someone gets kindness from another person, he has a moral obligation to reciprocate.

Cultural values such as the principle of planting a favor and the principle of returning the favor are part of the values of local cultural wisdom in Indonesia. Almost all local cultural structures contain these values. The majesty of these cultural values characterizes the life of the nation and state. This cultural value is also what gave birth to a value system of tolerance and cooperation. Implementing this cultural value system to cultivate kindness and reciprocity, if carried out in the work environment of government, civil servants, and state administrators, can be interpreted as a form of *modus operandi* and practice of gratification. If it is carried out to voters during the general election, it is categorized as money politics. Terms such as thanking someone by giving something to another person as a form of return for assistance and cooperation that are considered to provide benefits for that person are a form of expression of the value of reciprocation. However, in formulating the elements of gratification or the practice of money politics, it fulfills the elements as a criminal act.

Giving gifts to power holders in Indonesia is not a new thing. At the time of the Srivijaya Kingdom, Chinese and Champa traders gave silver coins to the guard soldiers when they met with relatives of the Sriwijaya Kingdom who handled trade issues. The gift was allegedly intended to facilitate communication. The giving of silver coins then became a separate habit among traders from Champa and China when dealing with the Sriwijaya Kingdom to establish good relations and make their identity known by the Sriwijaya kingdom (Komisi Pemberantasan Korupsi, 2010).

If we look further, there are similarities in the mindset and pattern of action between gratification, bribery, and the practice of money politics in the general election, although each has its characteristics. Black's law dictionary defines the bribe (Black, 1990), namely any money, goods, right in action, property, thing of value, or any preference, advantage, privilege or emolument, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to induce or influence action, vote, or opinion of the person in any public or official capacity, which means any money, goods, rights in action, property, valuables, or preferences, advantages, privileges or honoraria, or any promise or attempt to give, be asked, given, or received, with a corrupt intent to induce or influence action, giving voice or opinion of people in public or official capacity.

Gratification can be called a bribe if the gift is given to a civil servant or state administrator to influence a decision or policy to be taken by an authorized civil servant or state administrator. In the laws and regulations in Indonesia, it is still not clear to separate the act of bribery from acts and gratification because acts of gratification can be considered as a bribe if it is given in relation to the position and contrary to the obligations or duties of the civil servant or state administrator who receives the gift.

Eddy Omar Syarif stated that the difference between gratification and bribery lies in the presence or absence of a meeting of mind at the time of receipt. In the crime of bribery, there is a meeting of mind between the giver and the recipient of the bribe, while in the crime of gratification, there is no meeting of mind between the giver and the recipient. Meeting of mind is another name of consensus or transactional thing (Mulyono, 2016).

On the other hand, Adami Chazawi explained the difference between the crime of gratification and bribery. There was no malicious intent (*mens rea*) of the recipient when the money or gift was received in the provisions on gratification. Malicious intent is judged to exist when the gratification is not reported within 30 working days. After this time has passed, it will be considered as a bribe until proven otherwise. Meanwhile, in the provision regarding bribes, the recipient has bad intentions when the money or goods are received.

Furthermore, Djoko Sarwoko explained that Bribery and Gratification are different. In the case of arrests carried out by the KPK, when a suspect reports after being arrested by the KPK while an act that indicates a meeting of mind has occurred before, it cannot be called gratification. Gratification reporting within 30 days must emphasize awareness and honesty in good faith. In a bribe, the acceptance of something is related to doing or not doing something related to his position. Meanwhile, gratification can

be equated with the concept of self-assessment, such as a tax case based on someone's honesty (Mulyono, 2016).

So gratification is a gift from one person to another, either to a civil servant, or a state official, as a reward for an act done or not done that benefits the gift giver. This understanding is an understanding of bribery. What distinguishes it is a meeting of mind wherein the act of bribery has an agreement or intention and request from the recipient of the bribe and is usually carried out before the act is committed. Whereas in gratification, usually, the gift initiative comes from the gift giver as a return of gratitude and a sign of gratitude for the help he has received. The pressure point that is prohibited in the case of gratification is the act of receiving gifts, not giving gifts.

Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption is a step forward by the government by criminalizing granting gratuities to civil servants or state officials. The criminalization of accepting gifts by civil servants or state administrators in the criminal law as a criminal act of accepting gratification is a form of awareness that gratification can negatively impact and be misused.

In line with that, being between bribes and gratification, the practice of money politics in the general election is regulated in Law Number 7 of 2017 concerning General Elections and Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government regulation in lieu of law Number 1 of 2014 concerning The election of governors, regents, and mayors becomes a law, which criminalizes the giving of gifts in the form of money or other materials to voters not to vote or to vote for specific candidates.

Another rationale that is the basis for the author to shift the pattern of handling money politics practices from the general election crimes is that many cases of alleged money politics cannot be continued or stop in the middle of the road. In 2003, during the 2004 general election for members of the DPR, DPD, and DPRD, there were 439 (four hundred and thirty-nine) violations that contained elements of general election crimes, 181 (one hundred and eighty-one) violations occurred during the nomination stage for members of the DPR and DPRD, and 196 (one hundred and ninety-six) violations happened during the campaign stage, and 55 (fifty-five) violations occurred during the voting stage and vote counting. From the violation data above, there were 64 (sixty-four) cases related to money politics, and all of them could not be followed up at the court level. However, a total of 13 (thirteen) money politics cases were successfully sentenced to court (Pujatmiko, 2020).

One of the obstacles to law enforcement on money politics cases is the law that is so loose and very multi-interpretative. The East Java Election Supervisory Committee has drafted a Perppu (Government Regulation in Lieu of Law) related to money politics crimes, based on emergency considerations or urgent situations related to the rise of money politics and limited regulations in handling money politics violations, but by the Central Election Supervisory Committee not submitted to the government (Pujatmiko, 2020).

One of the problems with general election law enforcement is that if the investigator or public prosecutor passes the handling time limit stipulated by law, the case will automatically expire. By rules and regarding legal certainty and the procedural law has been regulated separately which is not guided by the Criminal Procedure Code, it can be interpreted as expired. However, when considering the aspect of justice, the act of terminating the case because it has expired violates the community's sense of justice because there has been a violation that can be qualified as a crime, then should it be left alone.

Robert Klitgaard stated that the main cause of corruption is the giving of customary gifts. The habits of giving gifts, especially for countries with eastern cultures, continue to be carried out to be considered something natural. In their development, they develop into bribes as if entrenched. Not only that, the habit of giving gifts in its development can become a criminal act of corruption for gratification

(Rohim, 2008). A paradigm similar to the phenomenon of money politics in the general election, giving and or receiving money or goods is considered a natural thing as a reward for choosing one candidate.

The process of giving something in the form of money or goods at the time of the general election becomes a close causal relationship between the occurrence of criminal acts of corruption, whether carried out before giving or after giving. The description above is the background for the author to provide a solution in the form of reconstruction of the pattern of handling the general election crimes from the realm of general election crimes to become a clump of corruption, under modern legal theory, namely maximum and measurable repressive efforts to be effective preventive efforts.

Conclusion

In principle, there are similarities in thought patterns and action patterns between gratification, bribery, and the practice of money politics in general elections, although each has its characteristics. In the context of general elections, the process of giving something in the form of money or goods at the time of the election becomes a close causal relationship between the occurrence of criminal acts of corruption both pre-giving and post-giving. Therefore, it is necessary to reconstruct the pattern of handling election crimes from the realm of election crimes to become a cluster of corruption crimes, under modern legal theory, namely maximum and measurable repressive efforts to be effective preventive efforts.

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