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RESEARCH ARTICLE

THE LEGAL ASPECT OF MONEY POLITIC IN THE ELECTION OF REGIONAL HEAD IN INDONESIA

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Abstract

Money politic in regional head election in Indonesia is the serious crime. Money politic perpetrators can be sentenced to prison. The practice of money politic harms democracy in Indonesia. For this who is proven to have committed the criminal act of money politic in the criminal event, repressive criminal law enforcement effort can be imposed on the person concerned. The procedure for repressive law enforcement against perpetrators of money politic in it is by referring to the Indonesian Criminal Law.

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Introduction:-

Democracy has necessitated that sovereignty is in the people. Based on this thought, the position of the people in the perspective of democracy is seen as having the highest power in determining the policy wheels of the country. The people should have the biggest share to participate in determining whether the policies issued by the organizers have been in favor of the people or not. The general election held by countries that adhere to democracy is the monumental event and is seen as very strategic as a mechanism carried out by politicians to ask for the blessing of the people, so that these politicians can become elites who sit in the centers of power. as a representative of the people's representatives who sit in the provincial, city, and district legislatures. Elections have also become popular, as in Indonesia, which have become an important mechanism for the people to elect heads of government, such as presidents, governors, regents or mayors.

The election in the perspective of democracy is the most fundamental mechanism for choosing people's representatives who sit in the legislature, the Indonesian nation, which also adheres to the democracy-based government system, has begun to practice direct election of regional head in various regions, from governors to regents and mayors in Indonesia¹.

The practice of money politic is the most dominant form of fraud in the regional head election in Indonesia. According to the report of the General Election Supervisory Agency, 311 cases of money politic were found in the 2015 regional head elections. This also reported that the practice of money politic is massively, spread over 21 regencies and 10 provinces during the 2015 election campaign. , the Institute for General Elections Supervisory also recorded at least 311 cases of money politic in 25 regencies/cities and 16 provinces. A similar practice also occurred

¹Ibid.

during the voting, which found 90 cases spread across 22 cities/districts and 12 provinces. The money politic cases mentioned occurred in 2015².

This paper conducts the legal analysis of money politic in regional head elections in Indonesia.

The Method of Research:-

This research is normative legal research. According to the explanation of Peter Mahmud Marzuki³, normative legal research, is research that intends to find the truth of coherence, namely the truth that is determined based on the conformity of the norm with what is stated in the written legal rules. The truth of this coherence also examines the conformity of norms with what is contained in certain legal principles. That is, it is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues at hand. In accordance with the prescriptive character of legal science⁴

The Result of Research:-

Money politic in general terms, is defined as a fee aimed at protecting certain business or political interests by buying support from political parties or buying voters' votes in exchange for financial rewards.⁵ Gary Goodpaster defines money politic as part of corrupt behavior that occurs in the general election process which includes the election of presidents, regional heads and legislative voters, so it can be concluded that money politic is a bribery transaction carried out by actors for the benefit of voting in elections⁶.

The formulation of money politic is not explicitly stated in Law of 7 of 2017 on General Election in Indonesia, Article 523 Paragraph (1) of this law, it regulates the prohibition of election campaign teams who intentionally promise or give money, with the provisions as follows: Any election campaign executors, participants, and/or election campaign teams who intentionally promise or provide money or other materials in return for election campaign participants directly or indirectly shall be subject to a maximum imprisonment of 2 (two) years and a maximum fine of IDR 24,000,000 (twenty four million rupiah)

For example, the practice of money politic in the 2015 regional head election, namely in the Depok election in West Java, the Voter Education Network for the People, has found that Rp. 50,000 to 150 voters by the candidate of Dimas-Babay. Meanwhile in South Tangerang, it was found that Rp. 1, 800, 000 by Airin-Benyamin as candidate.⁷

The provisions in the Indonesia Criminal Law (*KUHPidana*), also stipulate provisions regarding criminal acts that can qualify money politic as a crime that is included in the category of bribery, namely Article 153 paragraph (2) in conjunction with Article 35 to 3 of the Indonesia Criminal Law.

The provisions in the Indonesian criminal law, that money politic in it contains elements of criminal act that can be categorized as bribery. However, the practice of money politic in general elections still causes polemic from many participants because there are those who think that money politic isa necessity of democratic system that makes elections the most important part to get the sympathy of the voters, as stated by Jacobson Money is not sufficient, but it is necessary for a successful campaign. Money is necessary because campaign do have impact on election results and campaign cannot be run without it.

According to WahyudiKumorotomo, there are various ways to carry out money politic in direct election, namely: (1) Direct money politic can be in the form of cash payments from the "success team" of certain candidates to potential

²John Smooth, "Attitude of Voters towards Candidate Pairs Ahead of Direct Pilkada in Bitun City", Journal of Political Research, Volume 4, Number 1, 2007 Edition, LIPI, Jakarta, p. 35.

³Peter Mahmud Marzuki, *LegalResearch*, Revised Edition, 8th Printing, KencanaPrenada Media Group Publisher, Jakarta, 2013, p. 93.

⁴*Ibid.*

⁵Teddy Lesmana, "Money Politics in Indonesia", *quoted from elib.pdii.go.id.katalog/index/.php/searchkatalog/.../pdf*, p.10, downloaded on 23 January 2018.

⁶Gary Goodpaster, *Reflections on Corruption in Indonesia*, USAID, Jakarta, 2001, p. 14

⁷Abdul Aziz, "Beware of Massive Money Politics", *quotedfromhttps://tirto.id/mewaspadai-masifnya-politik-uang-bSP*, datedOctober 7, 2016, downloadedJanuary 23, 2018.

constituents, (2) donations from candidates to political parties, who have supported it, or (3) "mandatory donations" required by a political party to party cadres or prospective candidates who wish to run for regent or mayor. Meanwhile, money politic indirectly can take the form of distributing prizes or door prizes, distributing food to constituents, distributing cement in certain electoral districts, and so on. Candidates cannot even calculate exactly how much they have spent on donations, gifts, banners, and so on, apart from official fees for membership registration, paying witnesses, and other administrative needs.⁸.

The practice of money politic when observed in regional head elections in Indonesia, what appears to be the act of giving a certain amount of money with the intention of influencing someone's mind and will to do something, the practice of giving money or other benefits to voters to support certain candidates or to election organizers as incentives, to manipulate election results. Giving money or generally consumer goods by candidates or political parties to voters as a form of exchange for the recipient's vote. Voters feel they have an obligation to vote for a candidate or party who has given them something, which is generally in the form of money.

Observing these facts, the practice of money politic, in the perspective of Indonesian criminal law, can normatively be categorized as a crime of bribery. This means, according to the normative argument of the researcher, the practice of money politic in the facts of general elections in Indonesia, *lex generalis* can be categorized as illegal giving of money or constitutes a crime of bribery whose provisions are regulated in Article 149 paragraph (1) of the Indonesian Criminal Code.

The Closing

Money politic qualifications that can be subject to criminal liability, by referring to Law Number 10 of 2016 Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning Election of Governors, Regents, and Mayors to become Laws - Law (State Gazette of the Republic of Indonesia Year 2016 Number 130), namely if the perpetrator has fulfilled the element of committing an act of persuasion with the lure of a certain amount of money in return for influencing voters regarding the authority of their voting rights over the candidate for regional head to be elected.

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⁸Wahyudi Kumorotomo, "Intervention of Political Parties, Money Politics and Corruption: Public Policy Challenges After Direct Pilkada", Paper, Presented at the State Administration Conference, Surabaya, 15 May 2009.