

The Role of the State in Legal Vacuum in Money Politics in Village Head Elections

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Abstract

This study analyzes the legal vacuum in the village head election system using the rule of law theory approach. The village head election is an important part of a democratic village government system, where this process must reflect justice and applicable law. However, various legal vacuums often arise, such as unclear regulations, unfairness in the rules, and inconsistent law enforcement. The main problems discussed in this study are the factors that cause legal vacuums in village head elections and their impact on the sustainability of the principles of the rule of law, especially the supremacy of law, legal certainty, equality before the law, and access to justice. The method used in this study is a qualitative approach with document data analysis and literature studies. The rule of law theory is the basic framework for understanding the implications of legal vacuums on the stability of village democracy. The results of the study indicate that legal vacuums in village head elections can lead to injustice, abuse of power, and social conflict that damage the quality of village democracy. To overcome this problem, it is recommended to improve clearer regulations, training for stakeholders, and consistent law enforcement. This study is expected to contribute to legal reform and the improvement of a fairer, more transparent, and law-based village head election system.

Keywords: Love Scam, digital technology

INTRODUCTION

The practice of money politics in Indonesia is a problem that is quite serious and complicated to overcome (Zuhro, 2018). Several preventive measures, such as counseling to the village community that is the focus of the author's research, have been carried out. This counseling activity aims to provide an understanding to the village community about the dangers of money politics if it continues, because it can damage the principles of democracy and the rule of law. In other words, providing education about democracy and the village head election process is a practical strategy to reduce the possibility of such practices recurring (Suandi, 2021). However, repressive measures taken to punish the practice of money politics

appear to still be rare and have not been implemented effectively in real terms (Darmawan, 2012).

Weaknesses in the culture of democracy and politics in Indonesia are still visible in the dominant use of financial power in every election of legislative heads of the DPR and DPRD, as well as regional heads and village heads (Simamora, 2011). The culture of money politics in Indonesia has become a very inherent part of every general election process. The practice of money politics usually starts from the campaign stage, both in national elections and in village head elections, especially at the latter level which often does not receive serious attention from legal regulations and the central government (Wahyu, 2018). Therefore, every individual who has an interest in each candidate tends to carry out money politics by disguising it as a campaign activity carried out in the community. In this context, the crime of money politics that occurs in the election of village heads can create horizontal problems between the Village Head candidates and voters, namely the community (Nain, 2023). In other words, this problem makes the democratic process no longer a manifestation of public interest (the manifestation of democracy), but rather more of an economic interest (Muhtadi, 2020).

The election of village heads held by the village community is an implementation of the democratic system at the village level (Abidin & Kurnia, 2022). The principles of village head elections are based on legal provisions stipulated in the Regulation of the Minister of Home Affairs (Permendagri) No. 112 of 2014 concerning Village Head Elections, which was later amended in the Regulation of the Minister of Home Affairs No. 72 of 2020 (Huda & Djoko Purwanto, 2021). Political practices in the election of village heads in the village reflect efforts to create village communities that have independence and responsibility. In addition, through the process of electing village heads, village communities can better understand how to participate in developing democracy at the village level (Abidin & Kurnia, 2022). However, currently, an open democratic system also has negative impacts, such as the rampant acts of money politics that occur during general elections (Permata & Khasanah, 2020).

The democratic life system opens up wide opportunities for every individual who is willing and has the capacity to be involved in practical political life, especially in running for key positions in various regions in this country (Labolo & Ilham, 2015). This situation creates various strategies used to gain public support, one of which is the practice of money politics (Chandra & Ghafur, 2020). This practice often occurs before election day, whether it is a presidential election, legislative election, regional head election, or village head election, which can occur either at night or in the morning (Simatupang & Subekhan, 2018).

Many forms of democratic celebrations have been held in our current political life (Kustiawan et al., 2022). Presidential Election, Governor Election, Regent Election and Legislative Election, not to mention the Village Head Election. The Village Head Election is one form of democratic celebration that is very popular (Putri et al., 2020). This village-level election is a political competition event that is very effective if it can be used for political learning for the community (Mushthofa et al., 2023). In its implementation, the relationship between the parties involved in its implementation is so detailed. Thus, it requires thoroughness from each prospective voter in assessing the candidate for leader they will choose (Rumaisa, 2019).

However, the village head election feels more specific than the elections above. Namely, there is a closeness and direct connection between voters and candidates. Thus, the political temperature at the location is often more pronounced than during other elections. Introduction or socialization of prospective leaders is no longer absolutely important. Prospective candidates are usually well-known to every member of society who will vote. However, socialization of programs or visions and missions is often not used as a good campaign media or political education. Personal closeness will often be used by the community to determine their choice. Here the element of nepotism is still very strong in the culture. Likewise with collusion, good relationships in various positions are also often used as elements of determining voting rights. Likewise with the element of Money politics which is often used as a lure for encouragement in elections.

The view that money politics only occurs in high-level elections is not always true. Because in reality at the lowest level such as villages in the election of village heads, there are many acts of money politics, perhaps because the selection of village heads is rarely exposed in the mass media, making these political crimes not widely known by the public. As the Theory of Justice put forward by John Rawls, the behavior of rational society in a democratic and legal system always depicts that every human subject is not co-opted or determined in a process of segregation of their participation in an election (Rawls, 2020). With the continued prevalence of money politics in the general election system, both at the national level and at the lowest level, such as villages in Indonesia, the typography of Indonesian democracy is not yet rational and healthy.

That the segmentation of political money actions in this always gets a regulation from every election law or in regional elections. As in Law No. 7 of 2017 concerning General Elections, precisely in article 532 paragraph 1 which reads as follows:

“Every implementer, participant and/or Election Campaign team who intentionally promises or gives money or other materials as compensation to Election Campaign participants directly or indirectly as referred to in Article 280 Paragraph 1 letter j shall be punished with imprisonment for a maximum of 2 years and a maximum fine of Rp. 24,000,000.00 (twenty four million)”

Meanwhile, in Law No. 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 to Become Law. Precisely in article 187 A paragraph 1 which reads as follows:

“Any person who intentionally commits an unlawful act of promising or giving money or other material as compensation to Indonesian citizens 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 vote becomes invalid, to vote for a certain candidate, or not to vote for a certain candidate as referred to in Article 73 paragraph (4) shall be punished with imprisonment of at least 36 (thirty six) months and a maximum of 72 (seventy two) months and a fine of at least IDR 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 1,000,000,000.00 (one billion rupiah).”

In this case, it can be seen that the act of money politics violation has been regulated both in the Election Law and in the Regional Election Law, but it has escaped attention that similar

acts are not regulated in the election of Village Heads. In the Regulation of the Minister of Home Affairs No. 112 of 2014 concerning the Selection of Village Heads, there are no articles at all that regulate violations of money politics, there are only regulations regarding campaigns in Article 27. This indicates that there has been a legal vacuum in following up on violations of money politics that occur in the election of village heads.

That cases of money politics in the election of Village Heads have been rampant in every region but legal actions and legal regulations have not regulated these violations. The legal vacuum is axiomatic or the reason, talking about money politics in the election of Village Heads will have a broad impact on the ongoing democratic system in the village scope, not only that, the legal vacuum can also be used as an instrument for the interests of a handful of candidates for Village Heads to carry out money politics to the village community without being subject to any punishment. This is truly sad for the face of Indonesian democracy today, how these political crimes are not regulated in legal institutions, if there is a case of money politics in the election of Village Heads, it will not only harm the principles of democracy but can also create "mass blindness" in the village community towards how important an honest and fair Village Head election system is (Muhtadi, 2020).

From the problematic background of the problem that the author has put forward regarding the legal vacuum in the election of the Village Head. The democratic system grows from the circulation of the leader's power and also honesty and justice in every implementation of the democratic party in a wide space such as national and village scope. Fraud after fraud in the election of the Village Head makes the election system a banality from the nest of "political brokers". The absence of regulations in the election of the Village Head has injured the Indonesian legal and democratic system and is plagued by deep sorrow, because the principle of freedom and justice of every society cannot be bought with some amount of money. Based on the explanation in this background, the author wants to analyze and analyze the problem of the Role of the State Against the Legal Vacuum in Money Politics in the Election of the Village Head? and the problem that will be studied is about How is the practice of money politics in the election of the village head in Indonesia in the provisions of positive law and what policies are carried out by the State regarding money politics in the election of the village head in Indonesia?

METHOD RESEARCH

This study uses an empirical legal method approach or sociolegal research to analyze the legal vacuum in village head elections. Data collection was carried out directly through interviews and observations during the implementation of village head elections in several villages as case studies. Interviews were conducted with stakeholders, including village officials, village head candidates, election committees, and village communities, in order to gain a comprehensive perspective on village head election regulations and practices. Field observations were also conducted to directly observe the election process and potential legal vacuums that emerged, such as unclear rules, unfairness in election procedures, and money politics practices. These field data were then analyzed to highlight the impact of legal vacuums on the principles of the rule of law, including the supremacy of law, legal certainty, equality before the law, and access to justice. Through this empirical approach, the study is expected to provide a more concrete picture of how legal vacuums affect the quality of village democracy and pose challenges in maintaining legal stability at the village level. The results of this study also aim to provide practical recommendations for reforming the village head election system

to be fairer, more transparent, and consistent with the principles of the rule of law (Koto, I, 2024).

DISCUSSION

1. Factors Causing Money Politics That Occur in Village Head Elections

It is not known for sure when politics began to exist in the election of heads, but in the past, the determination of a person's choice to choose a candidate for Village Head was greatly influenced by close kinship ties and good social relationships with other members of the community. The candidate for Village Head who had the most siblings or relatives and the most social relationships would usually win the nomination process. Moreover, the candidate for Village Head who was socially close to the young villagers would have more supporters because the young people gathered and organized in the community. At that time, not many people were educated so that the campaign models of the vision and mission of each candidate for Village Head were not yet known to the surrounding community.

The results of an interview with Mas Wawan (pseudonym) conducted on June 14, 2024 regarding the implementation of the village head election (pilkades) in Tangerang Regency in 2020 illustrate the various challenges and dynamics that occurred during the process. One thing that stands out is the tension related to voter data, which is a source of problems in the field.

Mas Wawan explained that there were times when the recorded voter data was still being processed, but had already been entered into the system. This caused confusion and anger among the committee, because data that was not final should not have been used. He emphasized that data accuracy was very important, especially considering the consequences if a candidate felt disadvantaged and reported the issue to the court.

He added that each candidate must receive a copy of the voter data to verify their supporters. If there were names that were not listed, candidates could face problems on election day. This shows the importance of clarity and openness in the election process.

Mas Wawan also noted unusual voter arrangement practices, such as deliberations to determine who could vote if there was more than one wife in a household. This highlights how social and traditional norms can influence the election process, even though there are no formal rules governing it.

He revealed that the presence of the monitoring team was sometimes seen as just a complement, not as a party with real power to supervise. This created a situation where many things went without adequate supervision, raising suspicions about the integrity of the election.

Mas Wawan also explained that there was pressure from candidates who had influence and financial power. Some committee members even came from the circle of these people, creating the potential for conflicts of interest. With the great influence of certain candidates, the election process often felt unfair to those who did not have the same support.

Continuing from the results of the previous interview, Mas Wawan also highlighted the political complexity involved in the village head election (pilkades) process. He explained that although all parties tried to maintain conduciveness, political reality often made the situation uncomfortable. "If neutral, yes neutral, but this has been found out," he said, emphasizing that partisanship among the committee was often clearly visible.

He added that deliberation was indeed often used to resolve various problems. However, he questioned, "If everything is resolved through deliberation, then what's the point of the election?" This showed his surprise at the existence of elections that seemed to be a formality, while decisions had often been taken beforehand.

Mas Wawan also explained that to run the election, there were funds allocated from the APBD. The honorarium for the committee, including the supervisory team, came from this budget. However, he felt that the financial management process was not completely transparent, and the committee often managed funds without involving all members fairly.

He further explained about the location of the polling station (TPS), where each village only has one TPS determined through agreement. However, there are several considerations, such as the safety and comfort of voters. The selection of the location is carried out through deliberation, although there are often certain interests that influence the final decision.

Mas Wawan recounted how the atmosphere around the TPS often became an arena for candidate supporters to gather. Food and drinks were provided, creating an atmosphere that was more like a festival than a serious election. This added complexity and could potentially lead to questionable practices.

He also shared experiences from previous village head elections, where political situations and tensions between candidates were commonplace. He noted that despite changes in regulations, many aspects of the election process remained unchanged, and friction between candidates still often occurred.

Overall, the interview with Mas Wawan revealed how the implementation of the village head election was filled with complex challenges and dynamics. From issues of voter data transparency to strong political influence, all of this created an environment where the fairness and integrity of the election could be questioned. Mas Wawan tried his best to carry out his duties, although he was aware of the many challenges that had to be faced.

Overall, this interview shows the major challenges faced in implementing the village head elections, including data issues, suspicions about the integrity of the election, and the strong influence of money politics. Mas Wawan tried to carry out his duties as best as possible, despite facing various obstacles and uncertainties in the field.

Democracy, which is a system that is widely favored and used as a system of modern countries, experiences various problems. The democratic system that is always idealized to be able to minimize the hegemony of power that is homogeneous in nature actually causes its own polemics such as in the process of general selection or selection of regional or village heads in Indonesia. Openness to general selection leads citizens who have been stated by law to be able to become voters, this configures an unhealthy game system in democracy, namely money politics, which in this case has become an acute disease that is difficult to cure in the Indonesian election system. Often, election fraud only occurs at the national, provincial, city/district levels, but there are real cases of money politics in the selection of village heads. In reality, money politics in the selection of village heads has become a culture that continues to repeat itself in every selection of village heads. Money politics in the election of village heads is often not highlighted seriously by either the government or the village community itself, according to which the money politics that occurs cannot endanger the village government system in the future. For this reason, the author in this case explains several factors that cause money politics in the selection of village heads as follows:

1. Poverty

As we know, the poverty rate in Indonesia is quite high. Poverty is a condition where there is an inability to meet basic needs such as food, clothing, shelter, education, and health. Poverty can be caused by the scarcity of basic needs fulfillment tools, or the difficulty of access to education and work (Setiono, 2014). The poor condition seems to force and pressure some people to get money immediately. Money politics has become an arena for people to fight over money (Supriansyah, 2017). Those who receive money sometimes do not think about the consequences that will be received, namely, acts of bribery and vote buying which are clearly against the law. The most important thing is that they get money and can meet their life needs (Rahim, 2024).

The cause of the low quality of education owned by the community. Of course this is inseparable from the low economic factors that make people not have the opportunity to get a better education, so this affects their mindset and behavior when doing

something (Fitriani et al., 2019). The low quality of education ultimately causes the public to have low knowledge of politics and violations that occur in elections. This public ignorance affects their behavior in responding to the practice of money politics that occurs, this can be seen from the ease with which people accept a number of rewards given, then it is very easy to be influenced by certain parties to choose political candidates or contestants, until the pragmatic attitude in society makes them increasingly indifferent to the violations that occur, and finally has an impact on low political awareness to political participation which is still very low (Selian, 2020).

2. Low Public Knowledge About Politics

Not everyone knows what politics is, what forms it takes, and what politics causes. This can all be caused by the lack of political education in schools or by the community itself, which is indeed indifferent to politics in Indonesia. So when there is a political party, such as an election, the community will be indifferent to the election. Not knowing the party, no problem. Not knowing the legislative candidates, no problem. Maybe, not participating in the election is not a problem at all (Begovic & Cuan, 2021). Conditions like this cause rampant money politics. People who are indifferent to elections easily accept gifts from election participants. Money politics is also considered not a problem for them. They will not think far ahead that the money given will one day be 'withdrawn' by the candidates who will later be elected. They are not aware of the political game that is actually detrimental to themselves (Nabila Amrie, 2020).

The practice of money politics will also be difficult to stop if cooperation between the community and related parties is still lacking in supervising the practice of money politics, especially approaching election day. This weak supervision focuses more on individual adaptation to the regulations that supervise the practice of money politics itself, where due to low education factors also affect the mindset of the community, so that they have not been able to understand and internalize properly the supervision regulations carried out to prevent the practice of money politics in society (Ismail, 2022).

3. Culture

Giving to each other and if you get a fortune, you must not refuse it. That is an expression that seems to have stuck in the Indonesian nation. Money and all forms of money politics from election participants are considered as fortune for the community that must not be refused. And because it has been given, automatically the community must also give something to the election participants, namely by voting, becoming a successful team, and even helping to make money politics a success in order to win the election participants. This is done solely as an expression of gratitude and a sense of gratitude from the community towards the giver who gave the money (Hamson, 2020).

The practice of money politics that often occurs in society, if it is allowed to continue, will become a continuous habit. This impact is caused by the practice of money politics that has occurred so far, due to the low level of supervision carried out and the lack of knowledge and awareness of the community who do not know the practice of money politics that occurs in elections. The public's ignorance of this makes this practice of money politics continue to occur repeatedly, even becoming a habit in elections, and makes people think that this is a common thing. The public's mindset

about this causes the practice of money politics to be carried out frequently, especially during election periods (Marlina et al., 2024). The process of giving money politics to the community is carried out in various ways, both directly and indirectly by other parties involved in providing money politics practices in the community. The process of giving money politics has so far used strategies to influence and mobilize the community with various modes, then the form of compensation given, to the location and time of giving money politics, is considered carefully and carried out in stages over a certain period of time, thus opening up greater opportunities for success for certain political candidates or contestants in winning the election (Baehaki, 2021). The impact caused by this money politics is a long-term impact, meaning that if it is allowed to continue, it will harm everyone, not only harming society as a whole, but it can even harm the country with various new problems that may occur due to this money politics practice. The impact of this money politics can also damage the democratic order in a country, so that if it is allowed to continue, it will cause various new problems in society and even the country and can damage the mentality of the next generation which will have a negative impact on the welfare of society and the progress of a nation in the future (Triadityansyah et al., 2023). So that the practice of money politics must be stopped immediately by looking for various possible causes of its occurrence and then looking for a gradual solution to eradicate the practice of money politics itself. The importance of economic factors for each person ultimately makes every individual in society try to find and do various ways to obtain these economic resources, both in positive ways and using negative ways just to gain profit (Salsabila, 2023). Exchange theory has an assumption that every individual is a rational being and always considers the advantages and disadvantages obtained from the behavior to be carried out. Based on the results of the study, it can be explained that in the practice of money politics carried out by certain political candidates or contestants, they certainly have a goal to be achieved, namely trying to get support from the community and succeed in winning the election, so that in order to get this benefit, the candidate or political contestant tries to carry out a money politics strategy to achieve this goal. While in this case, the community as the recipient of the reward given by the candidate or political contestant tries to take advantage of the election momentum, to get benefits where they get a number of rewards that are a separate benefit for the community (Fitriani et al., 2019).

2. 2. The Perspective of the Theory of the Rule of Law in Viewing the Case of Legal Vacuum of Money Politics Actions in Village Head Elections

In the context of village head elections (pilkades), the application of the theory of the rule of law plays a crucial role in ensuring that all stages of the process run in accordance with the principles of justice, legal certainty, and openness that are essential for a rule of law. The theory of the rule of law, which emphasizes the supremacy of law, equality before the law, and protection of individual rights, requires a clear, transparent, and binding regulatory framework to maintain the integrity of the democratic process at the village level. Every element in the implementation of the village head election, from the campaign period to voting, should be regulated in written regulations that not only prohibit practices that damage the election process but also ensure effective enforcement of sanctions against violations. In particular, the

phenomenon of money politics in village head elections is a major challenge in the implementation of the theory of the rule of law. Money politics not only damages the credibility of the election but also violates the principles of justice and equality before the law. In the view of the theory of the rule of law, money politics must be prevented and given strict sanctions because it violates democratic norms and opens up opportunities for injustice between candidates who compete honestly and candidates who use material to influence the election results. However, although Law No. 7 of 2017 concerning Elections has regulated strict sanctions against money politics at the national level, similar regulations do not exist in the context of village head elections. The applicable regulations such as the Regulation of the Minister of Home Affairs Number 72 of 2020 only regulate the prohibition of money politics in the context of campaigns without providing specific limitations or sanctions for such actions outside the campaign period. As a result, if money politics occurs outside the campaign or on voting day, there is no clear legal basis for prosecuting the perpetrators, creating a legal vacuum that is contrary to the principles of legal certainty and justice. Within the framework of the theory of the rule of law, this legal vacuum violates the principle of "equality before the law" because it creates a gap where some actions do not receive the sanctions they should. This also contradicts the "supremacy of law," which should ensure that the law is binding in its entirety without exception, especially in democratic processes involving the voting rights of village residents. In the absence of strict regulations, villagers involved in money politics in village head elections can avoid sanctions, even though these actions damage the integrity of the election process. This legal vacuum results in inconsistency in the application of the principle of the rule of law at the local level and opens up opportunities for abuse of power and injustice that can impact the social stability of the village.

In addition, from the perspective of the rule of law, legal regulations must have strong preventive power and effective enforcement power (repressive). In this case, the legal vacuum related to money politics in the village head elections not only violates the repressive aspect due to the absence of strict sanctions but also weakens the preventive aspect that should prevent money politics from occurring from the start. Without regulations that strictly regulate and prohibit all aspects of money politics, both during and outside the campaign period, there is no strong prevention to minimize the risk of abuse of power and vote manipulation. In the view of the theory of the rule of law, preventive efforts are very necessary so that every individual and party involved in the village head elections are aware of the legal consequences of actions that violate democratic ethics.

Therefore, the arrangement of village head election regulations in accordance with the principles of the rule of law is very urgent to be carried out. This arrangement must include the formulation of clear sanctions for violations of money politics, both during and outside the campaign period, and an effective monitoring mechanism. The principle of the rule of law demands that the rules of the village head election be inclusive, clear, and leave no room for uncertainty. Thus, the application of the theory of the rule of law in the village head election is not only aimed at maintaining legal order but also at strengthening the foundation of a just and transparent democracy at the village level, where every citizen has the same right to choose a leader without being influenced by material or money politics manipulation. This is also in line with the goal of the rule of law to achieve sustainable public welfare and prevent social conflicts that may arise due to injustice in the village head election process.

Conclusion

There are three factors that cause money politics in village head elections. The poverty rate in a village is still very high, the low level of public knowledge about politics, especially the dangers of money politics, and the cultural factor, that money politics in village head elections has become a custom in every democratic process that occurs in the village government structure. These three factors are factors that often become the background for the

rampant money politics in village head elections. The perspective of a state of law in this case is clear in reading the phenomenon of legal vacuum regarding money politics in village head elections. In the concept of a state of law, the law is assumed to always be equivalent to changes in the state of society and also phenomena in society that require regulations, because if there is an action but there is no regulation that regulates it, as in the case of money politics in village head elections, it will cause injustice, inefficiency, and legal uncertainty.

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