

# THE PRACTICE OF MONEY POLITICS IN THE IMPLEMENTATION OF PREFECTIVE ELECTIONS OF ISLAMIC CRIMINAL LAW

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**Abstract:** *Regarding criminal acts in elections act. Systematically, the criminal provisions in the electoral law are regulated in Book V under the title of Election Crime Book II from Article 488 to Article 554. So that the criminal act of election is regulated in 66 articles. Violations of electoral acts, especially money politics, must then be carried out by law enforcement. Regarding this matter, it can be found in the Fifth Book of Chapter I on Handling Election Crimes – the first part of Article 476 to Article 487 of the Election Law. The essence of the law enforcement process is to refer to Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP), unless expressly specified in the Election Law, for example regarding the establishment of an Integrated Law Enforcement Center regulated in Article 486 and Article 487. In other words, in certain cases the Electoral Law is placed as a specificity (*lex specialis*) of the Criminal Procedure Code as its general provision (*lex generalis*). As has been stated before that the purpose of the passing down of Shari'a is to achieve benefit and avoid omnipresence on two different dimensions of time, the world and the Hereafter. This means that all aspects of Islamic teachings, must lead to the achievement of these goals, including the economic aspect. Therefore, Islamic Economics must be able to become a pan-acea and a solution to the acute problems of the current economy. The logical consequence is, that to construct an Islamic Economic building it cannot be separated from the Maqashid theory as previously explained. Even Shaikh Muhammad Thahir ibn 'Assyria once said that "Forgetting the importance of the maqasid side in Islamic sharia is the main factor causing stagnation in fiqh.*

**Keywords:** *Money Politics, Election Law, Islamic Criminal*

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## 1. Introduction

Democracy is a form of freedom of a person or citizen to participate in conveying his aspirations and participation guaranteed in the constitution. The real form of democracy is the General Elections (Elections). Pemilu can be a good representation in terms of the will of the people, so the principles in the conduct of elections must also be formulated in accordance with the standards for conducting elections with integrity and dignity as stated in Article 22E paragraph (1) of the 1945 Constitution covering the principle (LUBER) of direct, general, free, confidential, and (JURDIL) honest, and fair.

The regulations governing general elections in Indonesia are contained in Undang-Undang Nomor 7 of 2017 concerning General Elections. One form of electoral crime is to practice money politics (*money Politic*). Political acts of money and political dowry are regulated in Article 228 paragraphs 1,2,3,4 and are prohibited in Article 280 paragraph (1)

letter J: Promising or giving money or other materials to Election Campaign Participants and their criminal provisions are regulated in Article 523 Paragraphs 1, 2 and 3.

Money laundering or often known as money laundering, is a method of hiding, moving, and using the results of a criminal act, the activities of a criminal organization, economic crime, narcotics trafficking, and other activities that are criminal activities. Money Laundering in the poko there is a linkage of assets (income / wealth) that are disguised or obscured with the purpose that the property can be used without being detected that the assets come from illegal activities. Through money laundering, income or wealth derived from unlawful activities is converted into financial assets that seem to come from legitimate sources (sutedi, 2007).

In general, criminal offenders try to hide or disguise the origin of wealth that is the result of criminal acts in various ways so that the wealth from their crimes is difficult to trace by law enforcement officials. So that they can freely use the wealth for both legitimate and unauthorized activities. Therefore, the Money Laundering Act (TPPU) not only threatens the stability and integrity of the economic system and financial system, but can also endanger the joints of social, national, and state life based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

The term money laundering has been known since 1930 in the United States, when the Mafia bought a legitimate and official company as one of its strategies. The biggest investment was a laundry company or called Laundromat, which was then famous in the United States. This clothing laundering business developed forward, and various proceeds of crime money such as from other branches of the business were invested into this clothing laundering company. Previously, in the 1900s Alphonso Capone, better known as Al Capone, America's greatest criminal of yesteryear, laundered black money from his criminal efforts by using the genius Meyer Lansky, a Pole. Lansky, an accountant who launders Al Capone's crime money through a laundry business. Thus the origin of the name *Money Laundering* (Sahetafy, 2011).

in this study will describe the Act of Money Laundering in the Perspective of Law No. 7 of 2017 concerning Elections and Islamic Criminal Law.

## 2. Literature Review

Direct elections by the people are a means of promoting popular sovereignty to produce a legitimate and democratic state government. The holding of elections directly, publicly, freely, confidentially, honestly, and fairly can be held if carried out in accordance with applicable legal rules. Chapters and articles in the 1945 Constitution regulate elections specifically or non-specifically. Chapter VII B and article 22E contain specifically about the election of members of the House of Representatives, the Regional Representative Council, the President and Vice President and the Regional House of Representatives. Elections are held directly, publicly, freely, confidentially, honestly, and fairly every five years.

In general elections, whether legislative elections, regional elections, or presidential elections are not imaginary in which there is a buying and selling of votes or we can call money politics that can hurt the democratic system itself. In its implementation democracy is

always littered with unkind means. *Money politics* is now not only happening at the central government level, but has reached remote areas far from the center of government. It is familiar indeed, even the culprit is no longer stealthy but has dared to blatantly. According to Susno Duaji, there are three practices of money politics in elections, namely;

- a. Buying seats, in the form of dowries against political parties.
- b. Buying opportunities and impunity, so that election organizers, witnesses and law enforcement do not blame the money practice activities they carry out.
- c. Buying popular votes or *vote buying*.

*Money politics or money politics* is any act of intentionally giving or promising money or other materials to a person in order not to exercise his or her right to vote or to vote for a particular election participant, or to exercise his or her right to vote in a certain way so that his ballot becomes invalid or intentionally gives campaign funds from or to parties prohibited under the provisions of the Act or knowingly misrepresents in campaign finance reports elections.

In the Regulation of the General Election Supervisory Agency of the Republic of Indonesia, article 42 states "Implementers and/or Campaign Teams are prohibited from promising or giving money or other materials in return to Campaign participants, the value of money is a maximum of Rp. 60,000.00 (sixty thousand rupiah). Directly or indirectly, this campaign is expected to reduce the *money politics* that occurs in the community during the election period. Mentioning campaigns, campaign funds, and so on is a form of communication from the candidate's spouse to the public aimed at getting support. The understanding of *money politics* and *political costs* must be distinguished very sharply. If money politics is indeed highly forbidden, but political funds must exist, political funds must be there to buy campaign materials and advertisements.

### 3. Method

The research method is one of the factors of a problem that will be discussed, where the research method is the main way it aims to achieve scientific research level (Hanifah, 2020). The type of research used in this writing is library research. Library research means research that uses written documents as data, and the data sources used in this research include primary legal materials, secondary legal materials and tertiary materials. (Lubis, 2021).

### 4. Result and Discussion

#### A. The Practice of Money Politics in the Perspective of Law No. 7 of 2017 concerning General Elections

A criminal act is an act prohibited by a rule of law, where the prohibition is accompanied by certain criminal sanctions for whoever violates the prohibition. According to Wiryono Prodjodikoro, the term criminal act comes from the Dutch "*strafbaar feit*" which is the official term in the straf wetboek or criminal code that is now in force in Indonesia. The term "*strafbaar feit*" is translated by jurists according to his understanding. P.A.F. Lamintang, formulates the main points of criminal acts or acts into three properties, namely *wederrechtjek* (breaking the law), *aan schuld te wijten* (has been done intentionally or unintentionally), and *strafbaar* (punishable) (Lamintang, 1990).

Regarding criminal acts in the electoral law. Systematically, the criminal provisions in the electoral law are regulated in Book V under the title of Election Crime Book II from Article 488 to Article 554. So that the criminal act of election is regulated in 66 articles.

Violations of electoral acts, especially money politics, must then be carried out by law enforcement. Regarding this matter, it can be found in the Fifth Book of Chapter I on Handling Election Crimes – the first part of Article 476 to Article 487 of the Election Law. The essence of the law enforcement process is to refer to Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP), unless expressly specified in the Election Law, for example regarding the establishment of an Integrated Law Enforcement Center regulated in Article 486 and Article 487. In other words, in certain cases the Electoral Law is placed as a specificity (*lex specialis*) of the Criminal Procedure Code as its general provision (*lex generalis*).

Specifically regarding the criminal act of money politics, it is regulated in Article 523 paragraphs 1-3, which reads as follows:

- (1) any executor, participant, and/or election campaign team who intentionally promises or gives money or other materials in return to the election campaign participant directly or indirectly as referred to in Article 280 paragraph (1) letter j shall be punished with a maximum imprisonment of 2 (two) years and a maximum fine of Rp24.000.000,00 (twenty-four million rupiah).
- (2) Any executor, participant, and/or election campaign team who intentionally during the quiet period promises or provides monetary or other material rewards to the Voter directly or indirectly as referred to in Article 278 paragraph (2) shall be punished with a maximum imprisonment of 4 (four) years and a maximum fine of Rp48,000,000.00 (forty-eight million rupiah). Article 523
- (3) Any person who knowingly on the day of voting promises or gives money or other materials to the Voter not to exercise his or her right to vote or vote for a particular Election Participant shall be punished with imprisonment for a maximum of 3 (three) years and a maximum fine of Rp36,000,000.00 (thirty-six million rupiah).

As in the article presented above that in paragraph 1 criminal sanctions related to money politics are intended for conditions during campaigning, paragraph 2 is intended for quiet periods and paragraph 3 is intended for voting conditions. There are relatively common elements of money politics in elections in paragraphs (1), (2) to (3), namely the *actus reus* (criminal act) and *mens rea* (error) elements. The elements of *actus reus* in paragraph (1), include: a) promising. b) provide money or other materials. c) in exchange for participating as a participant in the Election campaign. d) conducted either directly or indirectly.

Meanwhile, the *mens rea* element, or *schuld*, uses errors that take the form of intentionality through the phrase "intentionally". In subsection (2) the elements of *actus reus* consist of: a) in a period of calm. b) give or promise monetary or other material rewards. c) to voters. d) either directly or indirectly. Meanwhile, the *mens rea* element uses *farasa* "deliberately". In subsection (3) the element of *actus reus* consists of: a) each person. b) promising or giving money or other materials. c) to the electorate not to exercise his or her right to vote or to vote for a particular participant. In paragraphs (1) and (2) of article a quo, a special adresat of criminal acts is regulated, namely to each executor, participant, and/or election campaign team. Meanwhile, paragraph (3) is addressed to anyone who commits a criminal act of money politics at the time the vote is conducted. It can be characterized from the use of elements: everyone. Then there is the difference in the threat of imprisonment. In paragraph (1) the threat of imprisonment is 2 years, in paragraph (2) for 4 years while in

paragraph (3) it is 3 years. The point is that the framers of the law punish perpetrators of money politics more severely during quiet times than during voting or during campaigns. Similarly, regarding the amount of fines, it is more when money politics crimes are committed during quiet times than during campaigns or during voting.

The element of mens rea or error is formulated uniformly in both paragraphs (1), (2) and in paragraph (3) which is in the form of intentionality. Through this phrase it has implicitly adopted the theory of intentionality (*dolus*) in criminal law, with all its shades be it intentionality as intent (*opzet als oogmerk*), intentionality as possibility or intentionality as certainty or *opzet bij noodzakelijkheids of zekerheidsbewustzijn* (Moeljatno, 2008).

## **B. The Practice of Money Politics In The Perspective Of Islamic Criminal Law**

Islamic criminals in fiqh terms are called *jinayah*, sedangkan *jarimah* comes from the word *جهد* and *جرم*, meaning that *جهد* works, the definition of effort here is specifically for efforts or deeds that are not good and efforts that are hated by humans (Abu Zahrah, t.t.h: 22). The term *jinayah* refers to the result of a person's prohibited deeds, as explained by 'Abdul Qadir 'Audah that *jinayah* is a term for an act forbidden by the *syara'* whether the deed is about soul, property, or something else (Audah, 1963). Meanwhile, the definition of *jarimah* according to the term as expressed by al-Mawardi (al-Mawardi, 1973) is an act forbidden by the *syara'* which is threatened with the punishment of *had* or *ta'zir*.

According to Ahmad Hanafi, an act is seen as a *jarimah* if the act can harm the existing rules in society or its beliefs, harm the lives of members of society or its objects, its good name, its feelings or other considerations that must be respected and maintained, the basis for the prohibition of doing something *jarimah* is the maintenance of the interests of the community itself (Ahmad Hanafi, 1993). A new act can be considered as a criminal act if all the elements of the *jarimah* have been fulfilled. The general elements of the *jarimah* as described by 'Abdul Qadir Audah are as follows:

1. The fulfillment of the formal element (*rukun syar'i*), namely the existence of *nash* (provisions) that prohibit acts and threaten them with punishment;
2. The fulfillment of material elements (*rukun madhi*), namely the existence of behavior that forms a *jarimah*, both in the form of real deeds (positive) and attitudes of not doing (negative);
3. The fulfillment of the moral element (*rukun adabi*), namely that the perpetrator is a *mukallaf* person, which is a person who can be held accountable for the criminal acts he committed.

The practice of Money Politics in Islamic law is not explained textually in the Qur'an or as-Sunnah, but the Qur'an reveals general principles in anticipation of the times, whereby in new cases it can be granted its legal status, the grouping of its fingers, and the sanctions to be given. In this case, Islam pays great attention to clarity in the acquisition of one's property. Islamic law in detail never mentions the prohibition of money laundering, because this term did not exist in the time of the Prophet. In general, however, Islamic teachings have forbidden the search for fortune in ways that are not his property, such as robbery, theft, or murder of which there is a victim and inflicts harm on others or the victim himself. However, departing from the unsettling, dangerous, and destructive reality, Islamic criminal law needs to discuss it, that this crime can be classified as *jarimah ta'zir* (Sumadi, 2017).

As mentioned above, the Criminal Practice of Money Politics in Elections is not explicitly stated in Al-Qur'an or Al-Hadith, so the practice of money politics falls into the category of *ta'zir*. But Allah through Al-Qur'an has arranged for clarity in obtaining property as Allah Almighty says in Sura Al-Baqarah verse 188: And let not any part of you eat the

treasure of the other part of you in the same way and (do not) you bring (the business of) the property to the judge, that you may eat part of the other person's property by (the way of) sin, Even though you know. As well as the hadith narrated from Abu Hurairah, he said: The Messenger of Allah said: "O all men, verily Allah is thayyib (good). Allah will not receive anything but from the thayyib (good). And indeed God has commanded the believers as He commanded the Apostles. He said, 'O Apostles! Eat good food (halal) and do charity shalih. Verily I am all-knowing what you do.' And God also said: 'O people of faith! Eat the good sustenance that we have sustenance to you.'" Then the Prophet SAW told about a man who had traveled a long way, so that his hair was tangled, masai and dusty. The man raised his hand to the sky as he prayed: "O my Lord, O my Lord." In fact, the food is from the illegitimate, the drink is from the illegitimate, the clothes are from the illegitimate and fed from the illegitimate, then how will Allah allowan do'anya?" (al Tirmidzi, 2012). From the above verses and hadiths it is clear that money laundering belongs to the category of despicable deeds and can harm the life of mankind. In addition, money laundering activities are very far from the spirit of Maqasidu al-Sharia. As has been stated before that the purpose of the passing down of Shari'a is to achieve benefit and avoid omnipresence on two different dimensions of time, the world and the Hereafter. This means that all aspects of Islamic teachings, must lead to the achievement of these goals, including the economic aspect. Therefore, Islamic Economics must be able to become a pan-acea and a solution to the acute problems of the current economy. The logical consequence is, that to construct an Islamic Economic building it cannot be separated from the Maqashid theory as previously explained. Even Shaikh Muhammad Thahir ibn 'Assyria once said that "Forgetting the importance of the maqasid side in Islamic sharia is the main factor causing stagnation in fiqh

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