


Open Access Article

 <https://doi.org/10.55463/hkjss.issn.1021-3619.60.78>

Prevention of Money Politics through a Closed-List Proportional Election System

Lusia Indrastuti

Faculty of Law, Universitas Slamet Riyadi Surakarta, Indonesia

Received: September 18, 2022 ▪ Reviewed: November 15, 2022

▪ Accepted: December 16, 2022 ▪ Published: February 15, 2023

Abstract:

Legislative elections using an open list proportional system raise almost the same controversy in every general election season: the emergence of dishonest individuals from both the legislative candidates themselves and the success team. This problem becomes latent during each general election season. It results in some negative consequences, including cost politics or high campaign costs, which result in the practice of corruption and poor political education for the community. The closed list proportional system is an option for a solution to prevent the practice of vote buying, also known as money politics. This research used normative legal research that employed a statute approach, a conceptual approach, and a case approach. In this research, two types of legal materials were used. First, primary legal materials, specifically Law No. 2 of 2011 Concerning Amendments to Political Parties and Law No. 7 of 2017 Concerning General Elections. This research focuses on the significance of reviewing the application of a closed proportional system in legislative elections to prevent money-politics fraud, which has been a latent problem in every general election in Indonesia.

Keywords: money politics, legislative elections, campaign costs.

通过封闭名单比例选举制度防止金钱政治

摘要:

使用公开名单比例制的立法选举在每个大选季节都会引发几乎相同的争议：立法候选人本身和成功团队中都会出现不诚实的人。这个问题在每个大选季节都会潜伏。它会导致一些负面后果，包括成本政治或高昂的竞选成本，从而导致社区的腐败和政治教育不足。封闭式名单比例制是一种解决方案，可以防止贿选行为，也称为金钱政治。本研究采用规范法研究，采用法规方法、概念方法和案例方法。在这项研究中，使用了两种类型的法律材料。第一，主要法律资料，具体是 2011 年第 2 号法关于政党修正案和 2017 年第 7 号法关于换届选举。本研究的重点是审查封闭比例制在立法选举中的应用对于防止金钱政治舞弊的意义，这是印度尼西亚每次大选中的潜在问题。

关键词：金钱政治、立法选举、竞选成本。

1. Introduction

Every general election in Indonesia is always disrupted by the application of money politics by certain individuals to gain public support. If left unchecked, it will affect the democratic system as a whole in the process of fulfilling public positions legally, starting with the impact that causes people to become accustomed to the practice of buying votes to corruption under the pretext of reimbursing campaign costs in the implementation process. The reality is that an open-list proportional system based on the majority vote has produced an unhealthy competition model between candidates that only aims to gain as many votes as possible from voters by depending on money and popularity. Therefore, in this system, election fraud is more dominated by money politics in various forms ranging from candidates giving cash, and credit, distributing insurance policies, and distributing necessities, to repairing public infrastructure to gain constituent sympathy before the election (Alfiantoro et al., 2022). This voting method has consequently made elections in Indonesia exceedingly expensive, at least compared with the closed list proportional electoral system based on serial numbers used in the New Order era and the reform era elections in 1999 and 2004 (Abdullah, 2009).

The election of legislative candidates, which involves many candidates competing to become representatives of the people in parliament, will undoubtedly have a very obvious flaw because it involves many individuals from various political parties with an open proportional system that refers to the vote count to the candidate who reaps the most votes in its implementation to be elected as a member in parliament, causing many legislative candidates to do everything possible to be elected and get the most votes.

This open proportional system, in addition to making money politics rampant, will result in political dealers for legislative candidates who lack financial resources who will compete for representative seats but only on the condition that if they are elected as legislative candidates, the people who finance them demand rewards in the form of projects or legalization products that will benefit both individuals and groups.

The longer it goes on, it appears that money politics is becoming more and more ingrained in society because there is still a lack of commitment from officials or employees as well as some individuals in upholding the values of faith, including the moral principles of honesty, maintaining shame (iffah), and maintaining self-respect. The lack of a leader who can be looked up to and emulated causes people to believe that whoever will become a leader will not be able to change their circumstances, which leads them to buy and sell votes for interested parties (Kamil, 2013).

To strengthen the study in this research, the author

used Putra's (2018) research to be comprehensive about the open and closed proportional system to overcome money politics in simultaneous regional head elections.

The distinction in this research is in the political system perspective on the recruitment of legislative candidates based on an open proportional system and to determine the application of an open proportional system to the quality of legislative members. The results of this study indicate that the function of political parties in recruiting legislative candidates based on an open proportional system is insufficient if they just have good intentions to become people's representatives. The most essential thing is intellectuality and integrity in understanding both laws and the fundamental goals for the benefit of all people to generate politicians who have a culture of politicians with dignity, self-respect, and a clear way of thinking. Considering the poor quality produced by legislative members from various parties, political parties are irrelevant in recruiting candidates for legislative members.

According to this study, the open-list proportional electoral system that receives the most votes has both positive and negative effects on society. The benefits of an open-list proportional electoral system with votes can produce logical voters who create a democratic atmosphere in the community, resulting in numerous options for figures as representatives in parliament and providing fairness for candidates in obtaining votes in the community. Meanwhile, the weaknesses of the open list proportional electoral system with the most votes can push people toward pragmatic behavior during legislative elections, particularly in people who can easily be rewarded in determining their choices, so that elections with an open proportional system have an explicit positive impact but are wrapped in a vulgar weakness, namely money politics (Bukhari, 2009).

Students from the Syari'ah faculty of the Sunan Ampel Surabaya State Islamic Institute's siyasah jinayah department wrote a paper titled "Fiqh Siyasah Review of the Open Proportional Election System in Strengthening the Membership of the DPR RI," which explained that the open proportional system gave Indonesians the freedom to vote openly with no elements of coercion from any party.

Satjipto Rahardjo stated that law is the art of interpretation⁶, which means that the law is determined by how the art of interpretation is applied. With this, there is visible evidence of the fraudulent behavior of money politics that occurs in the community in every election, indicating that the interpretation of the law governing open proportional elections needs to be reviewed so that this latent problem does not reoccur (Rahadjo, 2000).

Article 284 of Law Number 7, 2017, Concerning General Elections is more relaxed in terms of sanctions

for money politics violations, which exclude criminal penalties for those who violate it, as mentioned in the article: if it is proven that the implementer and election campaign team promise or give money or other materials in exchange for campaign participants, directly or indirectly, not to use their voting rights by choosing election candidates certainly so that the ballots are invalid, choosing certain candidate pairs, choosing certain political party participants and/or choosing certain DPD candidates, under Article 286 only imposed administrative sanctions (Supplement to Law No. 7 of 2017 Governing Concerning General Elections (State Gazette No. 5801)). Money politics is banned by Islam because these actions can be categorized into *risywah* (bribery). *Risywah* is anything that a person gives to a judge or others to get legal certainty or to fulfill his goals. Bribery is absolutely forbidden in Islam, whether to the briber, the bribe taker, or the intermediary. Bribery can inflict harm and injustice in society. Because bribery results in the legal game of twisting the correct facts into wrong, and the wrong becomes free. It prevents people from obtaining their rights as they should (bin Abd Muhsin, 2001). In contrast to the regulations in the 2018 regional head elections, which stipulate that each pair of candidates for the regional head and deputy's head may not give money to pay transportation costs or anything else, but must instead use vouchers. This is definitely a significant issue that must be addressed and debated for the sake of goodness and to strengthen the quality of democracy in Indonesia.

2. Method

This research was conducted using normative juridical research, which investigates the application of rules or norms in positive law. Normative juridical concept is an approach that uses a positive legislative conception. This approach considers law to be the written standards created and published by authorized institutions or officials. This conception regards law as a closed, independent, and separated normative structure from real life. This research technique employed a statute approach, a conceptual approach, and a case approach. A statute approach is a research approach that employed legal resources, namely laws, and regulations, as the basis for executing anything when inaccuracies or inconsistencies in the technical execution in the field are discovered. This approach is carried out by reviewing all laws and regulations related to the legal problems under consideration (Marzuki, 2010).

3. Discussion

3.1. Money Politics in Terms of Norms

Bribery or money politics is a kind of corruption that exists in Indonesia and must be handled directly by the government and in collaboration with the nation's constituents because it is difficult for some individuals

to abolish corruption that occurs in almost all sectors of life. Efforts have been made by the government since the old and new orders, various regulations, and a series of laws have emerged to try to abolish corruption. However, the incident has not yet given satisfactory results. Legal regulations that are more tangible in overcoming money politics are required, and punishment for offenders should include more than just administrative penalties to offer learning and deterrent effects on the perpetrators. Most of the eligible participants who attend open campaign events not only provide reimbursement for transportation, fatigue, and food but also get special T-shirts that indicate that the T-shirt or attribute is a sign or characteristic of the election candidate. Here, it still falls in the category of acceptable or not including money politics.

However, it will turn into an act of money politics if the voter accepts the T-shirt or attribute as a sign or characteristic of the candidate and is followed by the provision of additional supplies (staples) because the premise for permitted repayment of reimbursement from the election participants to the masses/voters is stated only in passing (reimbursement of transport money, fatigue money, and food money, whose nominal value has been determined) (Utami, 2016).

Hamzah (2010) stated that the law is divided into several categories with certain objectives, such as: 1. Law serves as a social teaching tool; 2. The law serves as a weapon for social control; 3. The law serves as the purpose of punishment; 4. The law serves as a deterrent effect on violators. According to Hamzah (2010), the latent conditions in Indonesia with the problem of money politics took root and then impacted the functioning of the government from corruption to the regulation of business orders that became financiers for members in the legislature.

Money politics has become a culture in every general election, although the public knows that the practice of buying and selling votes is illegal. With the enactment of these four norms, obviously the practice of vote trading violates all four of them, which must be immediately corrected by a review, either through judicial review, which is the judicial power of the Constitutional Court or through a revision of the law, which is the legislative power of the House of Representatives (DPR).

3.2. The Importance of a Law Review on General Elections

The law exists to adjust to the conditions and situation of society, not the other way around. This is why every law-making process begins with the proposal of a good law proposed by the executive government, which in this case is the central government whose power is held by a President and Vice-President. According to Law Number 12 of 2011 Concerning Regulations for the Formation of Legislation, the President can propose laws even under the mandate of the 1945 Constitution of the Republic of Indonesia, the President has the power to make

regulations different from the general provisions in making laws called Government Regulations in place of Laws that allow the President to form laws quickly on condition that the conditions and situations are precarious and compelling (Law No. 12/2011 on the Regulation of Law Formation).

Proposals can also be submitted by the legislative government, in this case, the House of Representatives, which constitutionally has powers in the fields of legislating, budgeting, and controlling. Then, the next process in the formation of laws and regulations is the Draft Law, Discussion, Determination, and finally enactment. This long process is part of the process of developing legislation that meets the demands of the people and country.

In addition to the process of forming laws, there is the process of making laws under the needs of the Judicial Review process, which is a review of laws that have already been enacted and are in effect in society but need to be reviewed because the implementation process has implications less effective in terms of benefits. This authority is exercised by the judicial government, of which the Constitutional Court is the authorized State Institution for judicial review of the hierarchy of laws to the top and the Supreme Court is authorized to investigate the hierarchy of Government Regulations to the bottom.

According to Rawls's (1971) philosophy of justice, when starting a competition, persons who have freedom and rationality, as well as the motivation to promote their interests, must acquire an equal position.¹⁶ Justice and fairness in elections must be prioritized, so this study seeks to provide answers to questions about justice for eligible participants and honesty that must be carried out by election participants in their participation in elections. Based on Rawls's concept of fairness, it is hoped that all eligible participants will start from the same place, receive the same treatment, and their actions must be under what has become a rule in the election.

Conforming to Soerjono Soekanto, whether the law is successful or not is decided by various benchmarks, including the legal factors, law enforcement factors, facilities and their factors, legal and environmental community factors, and cultural factors.

These benchmarks are a tool to see the performance and benefits of the law itself in society, if analyzed with the first point that the law can be said to have good effectiveness seen from the law itself, it can be said that Law Number 7 of 2017 concerning general elections does not have good performance and benefits as evidenced by the existence of several statements from academics or public officials such as former Vice President Jusuf Kalla, who said that the 2019 general election was one of the most complicated elections in the world and became one of the worst general elections in the history of Indonesian democracy.

In organizing elections, some principles must be carried out properly, namely the principles of direct, general, free, secret, honest, and fair. The author

believed that the five principles play the same role in producing officials with high integrity; however, in this case, the author is more specialized in writing about the implementation of honest and fair principles. Because it is well known that in several elections held since the first time it was held (1955) to date, the highest number of election violations is related to money politics. Thus, a method for overcoming the breach of money politics is required, so that the resulting officials are officials created by clean elections, have integrity, and adhere to the five general election principles. This is vital because if the right way (honest and fair) is not discovered, injustice would occur; candidates with significant money resources can defeat candidates with little financial resources.

The existing legal instrument as a prevention of money politics is actually good to overcome money politics in the election, but it still requires assistance in disseminating the MUI Fatwa (haram money politics in the election) is only limited to the dissemination of the contents of the MUI fatwa, it is not allowed for the appointed person to use the opportunity to campaign because the nature referred to by the author here is the dissemination of the fatwa Haram money politics Prioritizing voter socialization and counseling since not everyone understands the legality of money politics in elections, and in other circumstances, legal fiction applies in Indonesian laws. The Haram Fatwa from MUI on money politics is an instrument that can be used by organizers to prevent money politics. For most people in Indonesia who have a good religious culture, MUI's fatwa is a law or rule that they must obey and implement.

The practice of money politics is not directly related to the existence of law number 7 of 2017 which has been explained in article 168, paragraph 2, which reads, "Elections to elect members of the DPR, Provincial DPRD, and Regency/City DPRD are carried out with an open proportional system". Instead, money politics is carried out by the logic and psychology of a pragmatic society, particularly by individuals who lack qualifying characteristics and instead adhere to harmful political circumstances. In fact, the open proportional system impedes the political parties themselves. Due to the high number of votes given by the community to legislative candidates will be higher than the votes given by the political parties themselves. These might worsen the party's lack of influence in the election, when the party is only a political vehicle for legislative candidates. The science of law, particularly the science of legislation, has a premise that is widely used throughout the hemisphere, including in Indonesia; this principle is known as a legal fiction (*presumptio iuris de iure* or everyone is supposed to know the law that is in effect and binds him).

Thus, the above regulations governing the risk to recipients of money politics must be understood by all voters in the election; ignorance of the rules is not an excuse for voters who desire to be subject to these requirements, which is termed *ignoranceia jurist non*

excusat in Latin (ignorance of the law cannot be excused).

Jusuf Kalla stated that the general election in 2024 should not be equated again in format and technique where the election of the President and Vice President coincides with the legislative election; secondly, what makes this general election ineffective is the package between legislative and Presidential candidates, which creates a money politics package system that adjusts between legislative candidates and the party coalition that carries the President and Vice-President candidates.

This certainly needs to be highlighted, along with the various regulations governing money politics during the 2018 regional head elections and the 2019 general elections, which will increasingly result in more money politics at the beginning due to the euphoria of the presidential election defeating the legislative elections, so that the public chooses legislative candidates not based on credibility and integrity but rather on who has the most money (Soebagyo, 2011).

The second aspect is the law enforcement factor; of course, the flexibility of the rules would affect the performance of law enforcers, which causes cases of money politics to be increasingly uncontrollable. Law enforcement effectiveness is influenced by legislative products that have the quality and goal of preventing issues that develop in society so that the legal politics of the law has a position in society and enhances performance in quality and benefits for law enforcers.

The competition for seats in parliament is very strong; this is because the results of the election use the most votes. However, this system fosters rivalry among candidates for election, as not only candidates from other parties compete for votes, but also candidates from the same party compete for votes. As a result, the candidates have equal chances of winning seats in parliament.

In the early Islamic government, rulers were obligated to consult the public in all decisions. Deliberation is an obligation carried out by the rulers and the people. The rulers must conduct deliberations in every governmental, political, administrative, and lawmaking issue regarding the public good, let alone the individual good. In Islamic history, the first appointment of amirul mukminin was through deliberation. Ibn al-Athir's *Kitab Al-Kamil Fi Tarikh* tells the story of the appointment of Abu Bakr r.a as Khalifa (leader). There was a disagreement between the ansar and the muhajirin; the ansar argued that Saad bin Ubaidah deserved to be caliph, while the muhajirin believed that Abu Bakr deserved to succeed the Prophet as Khalifa. The long story short, they all held deliberations and made Abu Bakar the first Khalifa after the death of the Prophet.

The concept of checks and balances is already known by Islamic state administration; however, its implementation has not been thoroughly defined. Abdul Kadir Audah, on the other hand, cites the practice of Islamic state administration, namely: Al-sultah Al-tasyri'iyah (legislative) led by ulil amri, Al-sultah Al-

tanfihiyah (executive) led by the imam, Al-sultah Al-Qadla'iyah (judiciary) held by judges, Al-sultah Al-maalayah (central bank) led by the imam, Al-sultah Al-Mu'raqabah (supervisory institution) led by shura, fuqaha, and scholars (Bustamin & Jaya, 2019).

It is difficult to deny that the path to democratization in Indonesia might be impeded by factors that were first overlooked, such as money politics. If money politics cannot be avoided, reform may come to a halt, or even take a back seat. In the end, only those with money will have sovereignty and wield power, and popular sovereignty will be rendered obsolete on a practical basis. Money politics may drive political parties to become institutions of capital accumulation, without lessening the need for political funding for a party's success. Parties have evolved into a means of gaining political access and power rather than an institution that serves the interests of society as a whole (Ismawan, 1999).

The longer it goes on, it appears that money politics is increasingly ingrained in the midst of society because of the lack of commitment of officials or employees and some people in holding faith values, still lacking in holding moral values such as honesty and maintaining shame (iffah) and maintaining personal honor. The absence of a leader who can be exemplified and used as a role model so that the community considers that whoever will become a leader will not be able to change their fate ultimately leads the community to buy votes for candidates (Kamil, 2013).

4. Conclusion

The election of legislative candidates with an open-list proportional system needs to be examined in depth whether it is effectively used or on the other way. It is to improve the quality of democracy in Indonesia, while the system has the disadvantage of encouraging the widespread practice of money politics, which leads people to choose legislators not based on their qualifications or abilities but rather by buying votes.

The closed-list proportional system is one possibility for reducing money politics and preventing transactional transactions that occur every election season. Although it has several weaknesses, including the creation of a connective oligarchy within the body of political parties, it will at least encourage massive regeneration by political parties so that they will form cadres of good quality to be nominated for general elections, so that people vote based on how good the legislative candidates are rather than how much money they have.

Heretofore, the practice of money politics in Indonesia has not only come from the community but also from the way political parties nominate people to run for office in the legislature. Political parties prioritize nominating people who have a lot of money to buy votes from the public rather than producing cadres who are unquestionably of good quality and integrity so that the public can make the best decision when choosing their representatives in parliament.

References

- [1] ABDULLAH, R. (2009). *Mewujudkan Pemilu Yang Berkualitas (Pemilu Legislatif)*. Jakarta: Raja Grafindo.
- [2] ALFIANTORO, H., MAGASSING, A.M., AKUB, M.S., & JUDHARIKSAWAN. (2022). Legal Position of Criminal Act of Political Corruption as Part of Reflection Money Political Practice. *Journal of Hunan University Natural Sciences*, 49(6), 236-244. <https://doi.org/10.55463/issn.1674-2974.49.6.24>
- [3] BIN ABD MUHSIN, A. (2001). *Bribery in the Context of Islamic Law*. Jakarta: Gema Insana.
- [4] BUKHARI, A. (2009). *Tinjauan Fiqih Siyasah Terhadap Sistem Pemilu Proporsional Terbuka dalam Penguatan Keanggotaan DPR RI*. Thesis, Surabaya.
- [5] BUSTAMIN, & JAYA, R. (2019). Urgensi Checks and Balances Ketatanegaraan Indonesia dan Islam. *Jurnal Ilmiah Syari'ah*, 18(2), 221-232. <http://dx.doi.org/10.31958/juris.v18i2.1740>
- [6] HAMZAH, A. (2010). *Dasar Hukum Pidana*. Makasar: Unhas Press.
- [7] ISMAWAN, I. (1999). *Money Politic: Pengaruh Uang dalam Pemilu (cet. Ke-1)*. Yogyakarta: Media Presindo.
- [8] KAMIL, S. (2013). *Pemikiran Politik Islam Tematik*. Jakarta: Kencana Prenada Media Group.
- [9] MARZUKI, P.M. (2010). *Penelitian Hukum*. Jakarta: Kencana.
- [10] PUTRA, M.T.N. (2018). *Upaya Penanggulangan Politik Uang (Money Politic) Pada Tahap Persiapan dan Pelaksanaan Pilkada Serentak Di Provinsi Lampung*. Skripsi, Fakultas Hukum Universitas Lampung. Retrieved from <https://digilib.unila.ac.id/33046/14/SKRIPSI%20TANPA%20BAB%20PEMBAHASAN.pdf>
- [11] RAHADJO, S. (2000). *Ilmu Hukum*. Bandung: Citra Aditya Bakti.
- [12] RAWLS, J. (1971). *Theory of Justice*. Cambridge: Harvard University Press.
- [13] SOEBAGYO, F. (2011). *Menata Partai Politik*. Jakarta: Rajawali Press.
- [14] UTAMI, I.S. (2016). Pencegahan Politik Uang dan Penyelenggaraan Pilkada yang Berkualitas: Sebuah Revitalisasi Ideologi. *Seminar Nasional Hukum*, 2(1), 451-474.
- [3] BIN ABD MUHSIN, A. (2001). 伊斯兰法背景下的贿赂。雅加达：金玛英萨那。
- [4] BUKHARI, A. (2009). 反对开放比例选举制度的政治法学调查，以加强民主共和国研究所的成员资格。论文，泗水。
- [5] BUSTAMIN, & JAYA, R. (2019). 乌尔根西检查和平衡酮胺印度尼西亚和伊斯兰教。伊斯兰教杂志，18(2)，221-232。
<http://dx.doi.org/10.31958/juris.v18i2.1740>
- [6] HAMZAH, A. (2010). 达萨尔胡库姆比达纳。马卡萨：乌哈斯出版社。
- [7] ISMAWAN, I. (1999). 金钱政治：金钱对选举的影响（第1版）。日惹：媒体预案。
- [8] KAMIL, S. (2013). 专题伊斯兰政治思想。雅加达：肯卡纳普雷纳达媒体集团。
- [9] 马祖基，P.M. (2010)。佩内利蒂安胡库姆。雅加达：肯卡纳。
- [10] 普特拉，M.T.N. (2018)。努力克服金钱政治（金钱政治）在楠榜省同时进行地方选举的准备和实施阶段。楠榜大学法学院论文。取自 <https://digilib.unila.ac.id/33046/14/SKRIPSI%20TANPA%20BAB%20PEMBAHASAN.pdf>
- [11] RAHADJO, S. (2000)。伊尔穆胡库姆。万隆：西特拉·阿迪亚·巴克蒂。
- [12] RAWLS, J. (1971)。正义论。剑桥：哈佛大学出版社。
- [13] SOEBAGYO, F. (2011)。组织政党。雅加达：拉贾瓦利出版社。
- [14] UTAMI, I.S. (2016)。防止金钱政治和组织质量皮尔卡达：意识形态复兴。研讨会国民户库，2(1)，451-474。

参考文献：

- [1] 阿卜杜拉，R. (2009)。实现优质选举（立法选举）。雅加达：拉惹格拉芬多。
- [2] ALFIANTORO, H., MAGASSING, A.M., AKUB, M.S., & JUDHARIKSAWAN. (2022)。政治腐败犯罪行为的法律地位作为反思货币政治实践的一部分。湖南大学自然科学学报，49(6)，236-244。
<https://doi.org/10.55463/issn.1674-2974.49.6.24>