

# Reconstruction\_of\_Law\_Enforcement

*by* D 18 02 2021 Pak Imawan

---

**Submission date:** 18-Feb-2021 08:21AM (UTC+0700)

**Submission ID:** 1511912929

**File name:** Reconstruction\_of\_Law\_Enforcement.pdf (301.61K)

**Word count:** 8231

**Character count:** 43300



# Reconstruction of Law Enforcement in Money Politics in the Election of Regional Heads Based on Progressive Law

Imawan Sugiharto<sup>a\*</sup>, Mohamad Khamim<sup>b</sup>, Muntoha Nasuha<sup>c</sup>, Imam Asmarudin<sup>d</sup>, Moh Taufik<sup>e</sup>, Azhari<sup>f</sup>, Roslina<sup>g, a,b,d,e</sup> Faculty of Law, Universitas Pancasakti Tegal, Indonesia, <sup>c</sup>Faculty of Teacher Training and Education, Universitas Pancasakti Tegal, Indonesia, <sup>f,g</sup>Universitas Sembilanbelas November Kolaka, Sulawesi Tenggara, Indonesia, Email: <sup>a\*</sup>[imawan.sugiharto57@gmail.com](mailto:imawan.sugiharto57@gmail.com)

Law enforcement prohibiting the giving of money or other material to influence voters in both the legislative and regional head elections, although in practice is invisible and is no longer a public secret, is very weak. Rarely may it even have never happened, law enforcement is carried out against regional head candidates and deputies who are found to be giving money or other material, known as money politics to win their partners, it is done transparently, and it is not done until the court stage. During this time, the matter happened only to certain individuals, who were caught red-handed giving money or distributing groceries from prospective regional head pairs to the community. They had to undergo legal proceedings, while the intellectual actor was never revealed. So it is deemed necessary to have a reconstruction of Law Number 8 of 2015.

**Key words:** Reconstruction of Law Enforcement, Money Politics, Progressive Law

## Introduction

At present, in public life, the law has been used as a justification tool in achieving the goals of a group of people, groups and political elites, in this case to justify any means in achieving a certain goal. Including the practice of giving money or other material, the purpose of which is to influence voters so that they are elected as Regional Heads/Deputy Regional Heads in the Election of Regional Heads (Wijaya et al., 2020).

The practice of giving money or other material, which came to be known as money politics, in the current global era, has entered all areas of life in a society, nation and state. This starts from being able to occupy positions by bureaucrats through to holding positions in certain political elites, for example the DPR, DPRD, and Regional Heads. A similar opinion was also conveyed by Moh. Mahfud MD, who argues that in reality the direct elections, which are now rife in various regions, in addition to causing money politics (Alamsyah et al., 2020). It turns out this raises other problems, namely the existence of horizontal conflicts (clashes between candidates, and between candidate supporters, chaos at the Election Commission, etc.), and statements of attitude of not wanting to accept a defeat, by way of mass mobilisation.

The practice of money politics is certainly very contrary to democratic principles which imply the exercise of basic rights such as the right to express opinions, the right to gather and associate (Alamsyah & Mahmudah, 2020), all of which require a statutory regulation that can be used as legal protection. Prohibition against money politics practice in the election of Regional Heads is regulated in Article 47 and Article 73 of Law Number 8 of 2015.

Article 47 of Law Number 8 of 2015 regulates:

- (1). A Political Party or a mix of Political Parties are prohibited from receiving compensation in any form during the nomination process of the Governor, Regent and Mayor.
- (2). In the model of a Political Party or a mixed combination of Political Parties proven to receive compensation as referred to in verse (1), the Political Party or a combination of the Party concerned shall be prohibited from nominating candidates in the next period in the same area.
- (3). A political party or a mixed combination of political parties that receive compensation as referred to in verse (2) must be proven by a court decision that has obtained permanent legal force.
- (4). Every person or institution is prohibited from giving rewards to a Political Party or a combination of Political Parties in any form in the process of nominating a Governor, Regent, and Mayor.
- (5). In the case of a court decision that has permanent legal force, it states that each person or institution is proven to be rewarded in the nomination process of the Governor, Regent, or Mayor, the consequence is the cancellation of the determination as a candidate, elected candidate, or as Governor, Regent, or Mayor.

Article 73 of Law Number 8 Year 2015 regulates:

- (6). Candidates and / or Campaign teams are prohibited from promising and / or giving money or other materials to influence Voters.



- (7). Candidates who are proven to have committed violations as referred to in paragraph (1) then based on a court decision that has legal force, will still be subject to sanctions for cancellation as candidates by the Provincial General Election Commission and Regency / City General Election Commission and subject to criminal sanctions in accordance with applicable laws and regulations.
- (8). The Campaign Team which is proven to have committed violations as intended and which is proven to have committed violations as referred to in paragraph (1) then based on a court decision that has legal force, will still be subject to criminal sanctions in accordance with the provisions of the legislation.

Law enforcement prohibits the giving of money or other material to influence voters. This is both in legislative and regional head elections, even though in practice it is invisible and is no longer a public secret, but law enforcement is very weak (B. Pedell., 2006). It is very rare, maybe even unprecedented, that law enforcement is carried out against candidates for regional heads and their representatives who are found to be giving money or other material, known as money politics to win their partners, carried out transparently, let alone in court (Rufaidaha et al., 2018).

During this time, it is only certain individuals who happen to be caught red-handed giving money or distributing groceries from prospective regional head pairs to the community, who undergo legal proceedings. This was the case in Pemalang District in case number: 209 / Pid.B / 2005 / PN.Pml and Case Verdict Number: 207 / Pid.Sus / 2010 / PN.Pml, while the intellectual actor who ordered the distribution of money was never revealed.

### Research Problem

Based on the description above, the problems in this study include:

- (1). What are the factors that influence the enforcement of money politics in the current regional head elections?
- (2). What are the lacks when enforcing money politics in the current regional head elections?
- (3). How is the reconstruction of money politics law enforcement in the progressive regional head election based on law?

### Method

This research was conducted by obtaining information that occurs in the community. In addition literature studies in the form of books and journals were also carried out to strengthen theory and also as a reinforcement of allegations on the results and research discussions.



## Results and Discussion

There are various factors that influence the enforcement of money politics in the current regional head elections, including:

### *Factors of Weak Legal Material of Law Enforcement in Money Politics*

Lately, money politics has become the main weapon of some politicians to realise their political ambitions. They assume that everything (votes and position) can be bought directly with money. The forms of money politics are various, and there are ways to directly bribe voters with a certain amount of money. Rp. 10,000, - (ten thousand rupiah) to Rp. 100.000, - (one hundred thousand rupiah) can be used, and with a number of groceries such as tea, sugar, rice, instant noodles and prayer tools. Also contributions with a political purpose, promising something to get money illegally for political capital, and others.

The General Election Law, both the <sup>5</sup> Election of President and Vice President, DPR, DPD and DPRD as well as the Election of Regional Heads, <sup>27</sup> prohibits money politics or giving money and other material (Cetin, O., & Tortop, H. S. (2018). Law Number 42 Year 2008 concerning the Election of President and Vice President as referred to in Article 215 uses the terms promising or giving money or other material in return for campaign participants directly or indirectly, it calls for that person not <sup>24</sup> exercise the right to vote, or choose a specific candidate pair (Huda et al., 2020). Likewise, Law Number 8 of 2012 concerning General Elections of Members of the People's Legislative Assembly, Regional Representatives Council, and Regional People's Representative Council, in article 301 paragraph (3) states in terms of promising or giving money or other material to voters (Azhari et al., 2019).

<sup>39</sup> Law Number 32 Year 2004 in article 117 paragraph (2) uses the term of giving or promising money or other <sup>2</sup> material (Dilulio, J. D. 2017). However, this Law is no longer valid, and in return there is Law Number 1 Year 2015 in conjunction with the Law Number 8 Year 2015 in article 73 paragraph: (1) uses the term <sup>16</sup> promising and / or giving money or other material. Law enforcement of money politics in the election of Regional Head and <sup>38</sup> Deputy Regional Head, both in the election of Regional Head-Deputy Regional Head based on Law Number 32 Year 2004 concerning Regional Government, during the Regional Head General Election from 2005 to 2012. The application of the law is still very weak and it is also unable to prevent or even negate the existence of money politics.

Likewise, the provisions of Article 73 <sup>2</sup> of Law Number 1 of 2015 in conjunction with Law Number 8 of 2015 states as follows:





- (9). Candidates and / or Campaign teams are prohibited from promising and / or giving money or other materials to influence Voters.
- (10). Candidates who are proven to have committed violations as referred to in verse (1) based on a court decision that has legal force will still be subject to sanction of cancellation as a candidate by the Provincial Election Commission and Regency / City Election Commission and will be subject to criminal sanctions in accordance with statutory regulations -invitation.
- (11). The Campaign Team which is proven to have committed violations as referred to in verse (1) based on a court decision that has legal force, he / she is still subject to criminal sanctions in accordance with the provisions of the legislation.

Weak regulations regarding law enforcement, both criminal and state administration, are apparently still compounded by the Election Regulations made by the Election Commission. The intended regulation is for example Regulation No. 7 of 2015 concerning the Election Campaign for the Governor and Deputy Governor, the Regent and Deputy Regent, And / or the Mayor and Deputy Mayor (Ferizko, A. 2012). This is evident in Article 26 which has permitted Candidate Pairs and / or Campaign Teams to make, print and distribute campaign material which includes shirts, hats, mugs, calendars, business cards, pins, ballpoints, umbrellas and / or stickers with a maximum size of 10x5 cm. However, if it is converted to the form of money the highest value is Rp. 25,000 (twenty five thousand rupiah). According to Article 27, the dissemination of the above mentioned campaign material is carried out at limited meeting campaigns, face-to-face meetings and dialogues, and / or in public places (Ghaniy, N., & Hastiadi, F. F. 2017).

#### ***Moral and Ethical Humility Factors of the Law Enforcement Officials***

Weak law enforcement in Indonesia, if it is captured and mapped, it appears as follows: (1) Making legislation, that is making legislators who do not pay enough attention to whether the rules made can be carried out or not, and often the contents of the rules are not realistic; (2) The community seeking victory is not justice, that is, if faced with legal proceedings, the community makes various efforts so as not to be defeated or avoid punishment; (3) Money colours law enforcement, namely in every line of law enforcement (I. S. Mokhtar, et al. 2019), law enforcement officials and supporters, are very vulnerable and open to corrupt or bribery practices; (4) Law enforcement as a political commodity, namely law enforcement can be regulated, dictated and even intervened by the authorities; (5) Enforcement of discriminatory laws, namely the different treatment and sanctions between the rich and the poor; (6) Weak quality and integrity of human resources, namely high integrity; and (7) Advocates know that law versus advocates know connections, that is, advocates often become case brokers by promising victory to clients who are willing to pay a sum of money according to law enforcement officials (J. D. Dilulio. 1994).

<sup>12</sup> To realise the principle of supremacy of law, law enforcement by law enforcement agencies such as the Judiciary, Police, Prosecutors' Office, Corruption Eradication Commission must be carried out and function in accordance with the principles and objectives of the establishment of law enforcement agencies. The Integrated Law Movement Centre (Gakumdu), was formed by the Government based on Law Number 08 of 2012 concerning the General Elections of the DPR, DPD and DPRD, as well as Law Number 32 of 2004 concerning Regional Government and Law Number 1 of 2015 and Law Number 8 of 2005 concerning Regional Head Election. In the context of law enforcement in the General Election including the Regional Head General Election, it cannot function optimally. The Centre for the Integrated Legal Movement consists of the Police, Attorney General's Office and Election Supervisors (L. America, et al.2019).

According to Herie Purwanto, Kasat Reskrim Magelang Kota Police, the difficulty of the Integrated Law Enforcement Centre in investigating the existence of money politics in the Election of Regional Head-Deputy Regional Head in 2015, was partly due to the provisions of Article 134 Paragraph (2) and (3) of the Law No. 8 of 2015. This article regulates the time limit for the Supervisory Committee to hold a plenary meeting to continue, or not suspect the election crime. The meeting which involved the Prosecutors and Investigators in the Integrated Law Enforcement Institution (Gakkumdu) was then faced with obstacles when presenting at least two pieces of evidence. The investigator will reject the two pieces of evidence, namely the two witnesses and the object, if they are not presented together. Electoral criminal investigators will follow up on reports / findings of the Supervisory Committee only if the evidence is clearly in plain sight. The Supervisory Committee also does not have the authority as an investigator to enforce an effort. Even the witnesses who are asked for classification cannot be prosecuted. This means that if the witness is asked for a classification and does not want to come and if the time for the summons expires (seven days) and has been missed after the crime is known, it will be difficult for the Supervisory Committee to complete the formal and material information of the event (M. A. A. Muhsin and N. Ahmad. 2019).

In addition to the malfunctioning of the Centre for Integrated Legal Movements in handling money politics cases, the enforcement of money politics law is coloured by the arrest of the Chairman of the Constitutional Court, Akil Mochtar. He was arrested by the Corruption Eradication Commission on 2 October 2013 at his home in the State Official Housing Complex Widya Chandra Jakarta, in relation to bribery in the case of the regional head of Gunung Mas Regency, Central Kalimantan Province.

#### ***Cultural Factors of Community Law against Law Enforcement in Money Politics***

The Regional Head General Election is basically a process to achieve formal legal authority which is carried out on the participation of candidates and voters (constituents). It is controlled



by the supervisory body in order to obtain legitimacy from the community which is validated by applicable law.

In order to win the vote count various attempts to attract and obtain votes are permitted and carried out, as long as they do not violate the law (M. Mitprasat, P. Horakul, and R. Umam, 2019). Various attempts were made by candidates for regional head-deputy regional head candidates to attract the sympathy of the community with the aim that the community would vote for them. This was done by conducting socialisation before the registration stage and then proceeding in other ways, such as campaigns leading up to the general election. Socialisation, blusukan and campaigns, and other efforts carried out by candidates for the regional head-deputy regional head candidates are always accompanied by the net pointer, which is known by the term - successful team. The successful team is formed by the candidates themselves through the political parties that carry them. The money-sharing culture is commenced when regional head candidates begin to introduce themselves through political parties that will carry them as regional head candidates (M. T. Rock. 2009). During this time the Political Party Management, especially at the Branch level, both Regency and City, is not formally determined that the regional head candidate must be the Chairperson of the Political Party Branch or a cadre of political parties, although there is a possibility that the number is not much. Because the regional head candidates are not the management or cadres of the relevant political parties, when they introduce themselves to the Political Party Administrators at the Regency or City Branch Level, in principle they have prepared funds as their dowry to qualify for the selection of prospective regional head candidates. In the general elections of regional heads-deputy regional heads during the period of 2005-2014, the money used as a dowry or vehicle rental by the regional head candidates-deputy head of the area in question, are respectively to be withdrawn by the Central Board of the Political Party concerned Jakarta. This does not rule out the possibility that the dowry money is handed over to the Branch Management in the Regency or City where the Political Party is located. The amount of dowry or boat money can range from hundreds of millions to billions of Rupiah depending on the potential and progress of the area (N. Ghaniy and F. F. Hastiadi. 2017).

Until two weeks before the voting scheduled for December 9, 2015, the atmosphere in 21 (twenty one) districts / cities in Central Java which held a simultaneous regional head election (pilkada) was seemingly quiet. The socialisation of regional head elections is still lacking. In addition to fears of declining voter participation, the scent of money politics is still everywhere. The paradigm that occurs in today's society is that if voters are not given an instrument they are reluctant to vote or participate. The instrument is then given on the grounds as a substitute for transportation to come to the polling station (TPS), as a substitute for not working for a day. The instrument is in the form of cash, the amount of which is adjusted to the financial capability of the prospective regional head-deputy regional head, usually in the range of Rp. 50,000, - (fifty thousand) to Rp. 100.000, - (one hundred thousand). The money is distributed by the





success team of the candidates for the regional head-deputy regional head. The distribution is usually in the morning on the day of the election and is known as the daybreak attack (R. Jaimes, 2019).

The term or community jargon "nek ora ono dhuwite ora nyoblos" for the area of Semarang and its surroundings or "ola uik ola obos" according to the people of Tegal City and its surroundings has become entrenched. The people choose not to because they know the candidate, let alone understand and know his vision and mission if the candidate becomes the regional head in leading his region in the next five years. But they chose to take the money even without knowing who the candidate is.

Legal culture as said by Friedman is a tool to reinforce the fact that law is best understood and described as a system consisting of structural elements, substance, and legal culture. The birth of a legal culture originated from an internal process during the development of the community. During that time interactions between citizens and between citizens and others from outside take place to form increasingly patterned behaviour and finally the pattern of action by most people is considered as right and used as guidelines for action by most citizens. Thus the legal culture can be interpreted as a shared value. The legal culture of the Indonesian people does not support the existence of law enforcement in regional head elections, or other general elections due to low awareness and legal observance.

### ***Factors of Low Level of Welfare***

Ahead of the simultaneous regional head elections in several regions on December 9, 2015, it is not new for the possibility of money politics to occur. That is because money politics is synonymous with elections. It cannot be denied that this has become a corrupt tradition for the Indonesian people. There are several causes of money politics, i.e.:

First, the lack of closeness between political parties and the community. Based on a survey conducted by the Indonesian Political Indicators, that as many as 85.5 percent of people do not have a close relationship with political parties. Furthermore, the problem is that the lower the level of closeness of the community with political parties, means it is more easy to become involved in the game of money politics. This is considered normal by the community itself, but contrary to the values of an honest and fair democracy.

Second, one's level of education also greatly influences people's involvement in money politics. Because the higher the level of one's intelligence, the more intelligent in choosing leaders a person will be regardless of money politics.



Third, Indonesia is a country that has a relatively low level of community welfare. This is the foremost factor that is usually the reason for people to get caught up in the game of money politics, so that they can be assured that they will be easily lured with short-term profits.

The current situation of the Indonesian people is still very alarming. Many people have not received adequate welfare for their survival, and this is one of the reasons for money politics in every election held, both for the presidential and vice presidential elections, the DPR and DPRD, Regional Heads-Deputy Regional Heads and Village Heads. The lack of employment opportunities, uneven development and population density in each region are also one of the examples of the causes of unemployment in Indonesia.

The problem of Indonesia's backwardness compared to other countries in ASEAN. For example with countries that started development at almost the same time as Indonesia, as seen from the Human Development Index (HDI) Indicator or Human Development Index, Indonesia is still at level 107 in 2008. Indonesia is behind with Malaysia ranked (63), Thailand (78), even below the Philippines (105). The low level of HDI means that basic services such as education, health, clean water, and public purchasing power are still relatively low compared to other ASEAN countries.

According to the Economist of the Institute for Development of Economics and Finance (Indef), Fadhli Hasan's estimates that the poverty rate increased from 10.96 to 11.5 percent in the period March 2014-March 2015. In that period, unemployment also increased from 7 percent to 7.5 percent. The wages of farm labourers and industrial workers decreased by 3.5 percent quarter to quarter. The level of inequality between the rich and the poor has also increased.

#### ***Deficiencies of Law Enforcement in Money Politics in the Current Regional Head Election***

- (1) <sup>2</sup> Law Number 1 Year 2015 conjunction with Law Number 8 Year 2015 which regulates the prohibition of money politics in Articles 47 and 73 verse (1). Article 47: (1) Candidates and / or Campaign teams are prohibited from promising and / or giving money or other materials to influence Voters.
- (2) Candidates who are proven <sup>1</sup> to have committed violations as referred to in paragraph (1) based on a court decision that has legal force are still subject to cancellation as a candidate by Provincial General Election Commissions and Regency / City General Election Commissions and subject to criminal sanctions in accordance with statutory regulations
- (3) <sup>1</sup> The Campaign Team that is proven to have committed violations as referred to as proven to have committed violations as referred to in verse (1) based on <sup>43</sup> court decision that already has legal force is still subject to criminal sanctions in accordance with the provisions of the legislation.

35  
The weaknesses contained in this Article are that Law Number 1 of 2015 in conjunction with Law Number 8 of 2015 is not expressly regulating sanctions against violations of money political crimes or giving money or other material, whether carried out by Regional-Deputy Candidates The Regional Head and the campaign team. This article is only set sanctions based on the applicable laws and regulations. Criminal sanctions in Law Number 1 Year 2015 in conjunction with Law Number 8 Year 2015 is not expressly regulating either the minimum or maximum sanctions of imprisonment for money politicians and the minimum financial sanctions and maximum penalty that must be paid by money politicians who was proven guilty. Thus, the provisions of sanctions in Law Number 1 Year 2015 in conjunction with Law 8 Year 2015 is even more indecisive compared to Law Number 32 Year 2004.

31  
On the other hand administrative sanctions in the form of cancellation as a Regional Head Candidate-Deputy Regional Head is also apparently never applied to the occurrence of money politics. Cases that occurred in Pemalang District on case number: 209 / Pid.B / 2005 / PN.Pml and Case Decision Number: 207 / Pid.Sus / 2010 / PN.Pml. although each of them has permanent legal force by punishing money politicians, but in fact the Decree of the Panel of Judges does not cancel the Candidate Pair of Numbers in the Election of Pemalang Regents in 2005 and 2010 by the Regency House of Representatives Pemalang. Also the Panel of Judges of the Pemalang District Court who examined the case could not prove that the perpetrators of the money politics were the Regional Head Candidates or the Campaign Team as stipulated in Article 82 paragraph (1) of Law Number 32 of 2004. Likewise, the Decision of the Assembly Pemalang District Court Judge Number: 45 / Pid.Sus / 2015 / PN.Pml. which has convicted the defendant and has permanent legal force, because it is indeed not a crime of money politics, but it leads to the crime, the Pemalang District Election Commission also did not make an annulment. Weak regulation regarding sanctions in enforcing transactional political law or money politics in every general election of regional heads, is an obstacle for law enforcement of such violations.

#### ***Reconstruction of Law Enforcement in Money Politics in Election of Regional Heads Based on Progressive Law***

6  
Article 47 of Law Number 8 Year 2015 regulates the prohibition of political parties or a combination of political parties as well as any person or institution to provide compensation in any form in the nomination process of the Governor, Regent and Mayor. If it is proven that prohibition is violated either by a political party, a combination of political parties, individuals or institutions, based on a court decision that has permanent legal power, then the determination as a candidate, elected candidate, or as a Governor, Regent, and Mayor is cancelled.



Article 73 of Law Number 8 Year 2015 regulates the prohibition of Candidates and/or Campaign teams to promise and / or provide money or other material to influence voters. Candidates who are proven to have committed the offense based on a court decision that has permanent legal force, will be subject to cancellation as a candidate by the Provincial Election Commission and the Regency / City Election Commission and subject to criminal sanctions in accordance with statutory regulations.

Even though the issue of punishment for money politics is regulated in Law Number 8 of 2015, in the 2015 regional head elections it is not yet heard that there are money politicians who are prosecuted and get sanctions. This is due to the absence of norms that explicitly regulate sanctions for the practice of money politics in the law. In addition, none of the pairs of regional head candidates were disqualified from their participation in the regional head elections. The reason underlying the problem according to Nasrullah, Chairperson of the General Election Commission is because the law enforcement of money politics actors is not yet clear. Administrative sanctions in the form of disqualification of candidates' participation is difficult to apply because it can only be decided after a court decision states that the candidate is proven to have committed money politics.

Mixed sanctions, namely the existence of criminal sanctions mixed with administrative sanctions in the form of cancellation of candidates for regional heads that have been there, both in Article 82 of Law Number 32 of 2004 and Article 73 of Law Number 8 of 2015 is very ineffective and impossible to do. Because it requires procedures and takes a long time to litigation procedures in our country. To obtain evidence that the Candidate Pair and / or Campaign Team is proven to have committed a violation of money politics as regulated in Article 82 above, it must begin with an investigation by the local State Police. If the file has enough evidence, then the file will then be sent to the Prosecutor's Office for prosecution. The process may stop at both the Police and Prosecutor level if there is a game at that level by the suspect or his legal counsel with an investigator or prosecutor.

Accordingly, lawmakers should be consistent with separating sanctions for violating the administration of money politics practices with sanctions for violating criminal practices of money politics. This means that each violation, even if it was committed by the same person, is different. Administrative sanctions are directly imposed on money politicians in the form of cancellation of a candidate pair of regional heads by the Provincial, Regency and City Election Commission on the recommendation of the Provincial Election Supervisory Board, the local Regency or City Election Supervisory Committee. Thus there is no need to wait for sanctions in the examination criminal offenses whose mechanism is carried out by the general court. For this reason, it is necessary to carry out a reconstruction of the provisions of Article 47 and 73 of Law Number 8 Year 2015 so that the mechanism of money politics law enforcement can be seen more effectively and efficiently than what has happened.



Briefly the reconstruction of Law Number 8 Year 2015 can be carried out in Article 47, namely:

**Table 1:** Reconstruction of Article 47 of Law Number 8 Year 2015

Contents of Article 47 of Law No.8 Year 2015 Before Reconstruction	Weaknesses Article 47	Contents of Article 47 of Law No.8 Year 2015 After Reconstruction reads
<p><sup>16</sup> (1) Political Party or a mixed combination of Political Parties are prohibited from receiving compensation in any form during the nomination process of the Governor, Regent and Mayor.</p> <p><sup>20</sup> (2) In the event that a Political Party or a mixed combination of Political Parties is proven to receive compensation as referred to in verse (1), the Political Party or a combination of the Party concerned shall be prohibited from nominating candidates in the next period in the same area.</p> <p><sup>6</sup> (3) Political Party or a mixed combination of Political</p>	<p>- The provisions stipulated in Article 47 consist of 5 (five) verses, where each verse is apparently ineffective to be applied both with regard to administrative sanctions in the form of cancelling candidates for regional</p> <p>Where the evidence is that it must go through a criminal justice process whose procedure is too long and it is uncertain when it will end, is especially if there is an appeal, and appeal from the suspect of money politics. Therefore, the reconstruction of the paragraph in this Article is sufficiently made up to only consist of 3 (three) verses and is separated from administrative sanction which is in the form of cancelling candidates for regional head-deputy regional head by the local Election Commission on the recommendation of the Election Supervisory Board</p>	<p><sup>16</sup> 1) Political Party or a mixed combination of Political Parties and Individual Candidates are prohibited from receiving compensation in any form in the process of nominating a Governor, Regent, and Mayor</p> <p>(2) In case Political Polity or a combination of Political Parties and Individual Candidates are proven to receive compensation as referred to in verse (1), based on the findings of the Provincial Election Supervisory Board, Regency / City Election Supervisory Committee, Provincial, Regency / City Election Supervisory Commissions then they are authorised to cancel candidates submitted by a Political Party or a combination of the Political Parties and Individual Candidates concerned.</p> <p>(3) The criminal investigation process for violations as</p>





<p>Parties receiving compensation as referred to verse (2) must be proven by a court decision that has obtained permanent legal force.</p>	<p>or the local Election Supervisory Committee. While criminal sanctions are carried out through criminal legal processes as regulated in the Criminal Code.</p>	<p>40 referred to in verse (1) shall be carried out based on the provisions of the criminal procedure law;</p>
<p>(4) Every person or institution is prohibited from giving rewards to a Political Party or a combination of Political Parties in any form in the process of nominating a Governor, Regent, and Mayor.</p>		
<p>(5) In the case of a court decision which has legal force is still stated that each person or institution is proven to be rewarded in the process of nominating a Governor, Regent, or Mayor, then it is determined as a candidate, elected candidate, or as Governor, Regent, or Mayor is cancelled.</p>		

**Table 2:** Reconstruction of Article 73 of Law Number 8 Year 2015

Contents of Article 73 of Law No.8 Year 2015 Before Reconstruction	Weaknesses Article 73	Contents of Article 73 of Law No.8 Year 2015 After Reconstruction reads
<p>(1) Candidates and / or campaign teams are prohibited from promising and / or giving money or other materials to influence voters.</p>	<p>- The weakness in this paragraph is that the prohibition promises and / or is only directed at Candidates and / or the Campaign Team for Prospective Regional Head-</p>	<p>(1) Candidates and / or Campaign Teams or Success Teams and others who are instructed by Candidates and / or Campaign Teams or Success Teams are prohibited from promising and / or giving</p>



	<p>Deputy Regional Head. In fact, in practice the Regional Head Candidate-Deputy Regional Head is rarely or even will not promise and / or directly give money or other material to influence voters. Usually it is giving money or other material given by people who are told by Candidates or the Campaign Team or Candidate Success Team. In Criminal Case Cases Number: 209 / Pid.B / 2005 / PN.Pml and Case Number: 207 / Pid.Sus / 2010 / PN.Pml in the Court Negeri Pematang, those examined and used as prisoners are precisely the people who are instructed by the Regional Head Candidates-Deputy Regional Head or Campaign Team or Success Team. Therefore, there is no seriousness in the examination of the case, so it does not continue and the examination of the case is only to stop the person and never touch the Candidate Regional Head-Deputy Regional Head or the Campaign Team or the Success Team</p> <p>- Another problem is that a candidate proven to have</p>	<p>money or other materials to influence voters.</p>
--	---	--



	<p>committed a violation promising and / or giving money or other material is still subject to sanctions in the form of cancellation as a candidate by the Provincial Election Commission and Regency / City Election Commission and he is subject to criminal sanctions in accordance with statutory regulations. Mixing or making one administrative sanction and criminal sanction in this Article is making the provision ambiguous and ineffective. Moreover, to impose sanctions in the form of cancellation as a Candidate by the Provincial Election Commission and the Regency / City Election Commission must go through the criminal trial process first until the verdict becomes permanent. How many years the case will be completed becomes unclear especially if there is an appeal and appeal. For this reason, there is a need to separate administrative sanctions in the form of cancelling candidates who are proven to have committed money politics and do not need to use the criminal process as</p>	
--	---	--



	<p>regulated in paragraph (2), but the process of cancelling candidates is directly imposed by the Provincial / Regency / City Election Commission. As in Pemalang Regency Election Commission Decree Number: 85 / Kpts / Election Commission-Kab.021.3293 dated November 3, 2015 Regarding the Cancellation of Candidates for Election of Pemalang Regent and Deputy Regent of Pemalang on Behalf of Mukti Agung Wibowo-Afifudin's Pair, is that although it is not proven violating money politics but that is a violation of the administration of tax matters, the Pemalang Regency Election Commission has dared to firmly cancel the couple, even though the decision was overturned by the Pemalang Regency Election Supervisory Committee.</p>	
<p>(2) Candidates who are proven to have committed violations as referred to in paragraph (1) based on a court decision are those who have legal force are still subject to sanction of cancellation as a candidate</p>		<p>(2) Candidates and / or Campaign Teams or Success Teams and others who are instructed by Candidates / Campaign Teams / Success Teams proven to have committed violations as referred to in paragraph (1) are</p>



<p>3 by the Provincial General Election Commission and Regency / City Election Commission and subject to criminal sanctions in accordance with statutory regulations applicable.</p>		<p>based on recommendations from the Provincial, Regency / City Election Supervisor<sup>47</sup> Board subject to administrative sanctions in the form of cancellation as a Candidate Pair of Governor-Deputy Governor, Regent-Deputy Bupati/Walikota– Wakil Walikota.</p>
<p>(3) The campaign<sup>1</sup> team which is proven to have committed violations as referred to in verse (1) based on a court decision that has legal force is still subject to criminal sanctions in accordance with the provisions of the legislation.</p>	<p>- Weaknesses in this verse are the absence of strict sanctions for the Campaign Team and Success Team or other people from the Candidate, Campaign Team and / or Success Team who are suspected of carrying out political practices in providing criminal sanctions. This paragraph should provide strict sanctions in the form of imprisonment and fines for the Campaign Team, Success Team or others who were ordered by the Campaign Team or Success Team to commit violations of money politics.</p>	<p>(3) Criminal sanctions against Candidates, Campaign Teams, Success Teams or other people who have promised, provided money or<sup>31</sup> other materials as regulated in paragraph (1) are carried out in accordance with the applicable procedural Law and are threatened with fines and imprisonment.</p>

## Conclusion

Based on a theoretical study and the results of the research the authors conclude:

1. Various factors that influence the law enforcement of money politics practices in the current regional head elections are composed of (1) factors of weak legal material, it is a legal provision governing the prohibition<sup>2</sup> of giving or promising money or other material to influence someone to electing or not electing candidates for regional head-deputy regional



- head or commonly referred to as money politics as regulated in Article 82 and Article 117 verse(2) of Law Number 32 Year 2004 concerning Regional Government and subsequently revoked by Law Number 1 Year 2015 in conjunction with Law Number 8 Year 2015, is related to the ineffectiveness of sanctions contained in the provisions of that Article.
2. Mixed criminal sanctions and administrative sanctions is the fact that it makes law enforcement inefficient. Likewise with Article 47 and 63 of Law Number 8 of 2015 which replaces the provisions of Article 82 and Article 117 (2) of Law Number 32 of 2004, it turns out that it also contains weaknesses in law enforcement. Especially in the provision of Article 63 of Law Number 8 of 2015 which does not explicitly regulate criminal sanctions, this is further weakening the provisions of Law Number 8 of 2015. Other influential factors are (3) regarding the lack of awareness and compliance with community law. As is known that is the attitude of people who do not obey the law and the low awareness of the community who have assumed that the problem of money politics is a common thing that happens when the election takes place, this is adding to the increasingly complex law enforcement law enforcement of money politics practices in regional elections. Likewise, (4) is a factor in the low morale and ethics of law enforcement officials also influences the law enforcement of money politics practices. There is an impression that law enforcement officials do not seem to be serious in handling the money enforcement process. Basically, they are aware of the practice of distributing money or other material that aims to influence voters to choose certain candidates in the regional head election, but they are deliberately silent and do not take much initiative. Another influential factor is related to the low level of welfare of the community, so they really hope for the distribution of money or other material when the regional head election takes place. The impression is that law enforcement officials have never had the intention to investigate and process the practice of money politics, even though if they are indeed serious, it is not a difficult job to look for actors behind the scenes who are deliberately asking someone to distribute envelopes or other material.
  3. Deficiencies in law enforcement of money politics in regional elections include:
    - a. The existence of unclear sanctions arrangements, mixed administrative sanctions and criminal sanctions against money politicians as stipulated in Article 82 and Article 117 paragraph (2) of Law Number 32 Year 2004, which is then revoked and replaced with Article 47 and Article 63 of the Law Law No. 8 of 2015, apparently also has no effect on the quality of law enforcement in money politics.
    - b. Law Number 1 Year 2015 jo Law Number 8 Year 2015 is not expressly regulating sanctions against violations of money politics or giving money or other material, whether committed by the Regional Head Candidate-Deputy Regional Head or the campaign team. This article only sets sanctions based on the applicable laws and regulations. Criminal sanctions in Law Number 1 Year 2015 in conjunction with Law Number 8 Year 2015 are not expressly



- regulating either the minimum or maximum sanctions of imprisonment for money politicians, and the minimum financial sanctions and maximum penalty that must be paid by money politicians who was proven guilty.
- c. Administrative sanctions are in the form of cancellation as a Regional Head Candidate-Deputy Regional Head apparently has never been applied to the occurrence of money politics.
- d. Factors are not serious from law enforcement officers. This is the Centre for Integrated Movement which is expected to be the spearhead of law enforcement in violation of regional head elections, including money politics crime, apparently its role is not in line with expectations. The existing paradigm of the Integrated Legal Movement Centre is working to wait for the arrival of the ball, meaning that once there are money politicians who are caught, they will immediately proceed, whether it can be followed up or not, until it gets a court decision that has permanent legal force. Weak legal provisions governing money politics in regional elections are causing these provisions to be carried out with progressive legal review so that their implementation becomes effective and is at least reducing the practice of money politics in every regional head election activity as has occurred so far. Because there is no learning and deterrent effect both from those who distribute and those who receive it.
4. The reconstruction of money politics law enforcement in regional head elections is necessary so that law enforcement against the perpetrators of money politics practices in regional head elections no longer occurs during regional head elections. Reconstruction is carried out by separating administrative sanctions in the form of cancelling candidates for regional heads-deputy regional heads who are proven to have practiced money politics by Provincial, Regency and City General Election Commissions on the recommendation of the Provincial, Regency or City General Election Supervisory Board where the regional head elections take place and it does not need to wait for the criminal process. Whereas the process of examining criminal violations against money politicians in the election of regional heads is carried out in accordance with the provisions stipulated in the Criminal Procedure Code as well as other criminal proceedings.



## REFERENCE

### Journals

- Alamsyah, & Mahmudah, S. (2020). The urgency of cultural tradition approaches (‘ URF ) in determining fatwas of the Indonesian Ulema Council ( MUI ) Universitas Islam Negeri Raden Intan Lampung , Indonesia. *Talent Development & Excellence*, 12(2), 3520–3530.
- Alamsyah, Mahmudah, S., & Huda, S. (2020). The contextualization of hadith in indonesia: Nusantara ulema’s response to islamists. *International Journal of Psychosocial Rehabilitation*, 24(7), 1548–1558.
- Azhari, Roslina, Asad, M. U., Karim, A. T. B. A., Jermisittiparsert, K., & Umam, R. (2019). Benchmarks of authority in suruhanjaya perkhidmatan awam and the commission of state civil services ( KASN ). *International Journal of Innovation, Creativity and Change*, 8(8), 351–362.
- B. Pedell, (2006). Regulatory risk and the cost of capital: Determinants and implications for rate regulation. Vol. 3823: *Springer Science & Business Media*.
- Cetin, O., & Tortop, H. S. (2018). The role of image analysis in revealing family experiences and future drafting of gifted children. *Journal of Gifted Education and Creativity*, 5(1), 108–129.
- Dilulio Jr, J. D. (1994). Principled agents: The cultural bases of behavior in a federal government bureaucracy. *Journal of Public Administration Research and Theory*, 4(3), 277–318.
- Ferizko, A. (2016). Pelaksanaan kewenangan kepala daerah dalam penentuan mutasi pegawai negeri sipil dalam jabatan struktural. *Jurnal Niara*, 8(2), 30–37.
- Ghaniy, N., & Hastiadi, F. F. (2017). Political, social and economic determinants of corruption. *International Journal of Economics and Financial Issues*, 7(4), 144–149.
- Huda, Muawanah, Munifah, Syazali, M., Palupi, E. K., Umam, R., & Tortop, H. S. (2020). Islamic education in supply chain system by prioritizing manners as a success factor of millennial generation on socializing. *International Journal of Supply Chain Management*, 9(2), 853–863.
- Mokhtar, I. S. et al. (2019). The Development of training participation conceptual framework among academic staff: a qualitative study based on training officers perception at Malaysian public universities, *International Journal of Psychosocial Rehabilitation*, Vol 23, (3), pp. 544–572.



- 17 Dilulio, J. D. (1994). Principled agents: The cultural bases of behavior in a federal government bureaucracy, *Journal of public administration research and theory*, Vol 4, 3, pp. 277-318.
- 34 America, L. et al.(2019). Tensión entre democracia y autoritarismo en Latinoamérica y el rol del poder judicial, *Utopia Y Praxis Latinoamericana*, Vol 24, 3, pp. 75-100.
- 23 Muhsin, M. A. A. and Ahmad, N. (2019). The emergence of education 4.0 trends in teaching Arabic Islamic finance curriculum design: A case study, *International Journal of Psychosocial Rehabilitation*, Vol 23, 4, 123-147.
- 37 Rock, M. T. (2009). Corruption and democracy, *The Journal of Development Studies*, Vol 45, 1, pp. 55-75.
- 8 Ghaniy, N. and Hastiadi, F. F. (2017). Political, social and economic determinants of corruption, *International Journal of Economics and Financial Issues*, Vol 7, 4, pp. 144-149.
- Jaimes, R. (2019), Democracia y administración pública en Venezuela, *Utopia Y Praxis Latinoamericana*, Vol 24, (3), pp. 10-29
- 7 Rufaidaha, E., AtIrsyadib, K. A., Saregar, A., & Umam, R. (2018). The effect of HALAL label to increase domestic and International tourism : Case Study In Lombok, Indonesia. *International Journal of Management and Business Research*, 8(4), 29–36.
- 14 Sriyakul, T. & Jernsittiparsert, K. (2020). Disastrous impact of corruption, political instability and expropriation risk on quality of education: Evidence from Asian Countries. *Journal of Security and Sustainability Issues*, 9(J), 228-239. DOI: 10.9770/jssi.2020.9.J(17).
- 28 Wijaya, A., Ahid, N., & Irsyady, K. A. (2020). Being islam out of fanaticism: Uncovering arguments of arabs in embracing Islam. *International Journal of Psychosocial Rehabilitation*, 24(7), 1533–1547.

# Reconstruction\_of\_Law\_Enforcement

## ORIGINALITY REPORT

19%

SIMILARITY INDEX

18%

INTERNET SOURCES

8%

PUBLICATIONS

%

STUDENT PAPERS

## PRIMARY SOURCES

1

[jpplawyer.com](http://jpplawyer.com)

Internet Source

2%

2

[id.portalgaruda.org](http://id.portalgaruda.org)

Internet Source

1%

3

[ijmmu.com](http://ijmmu.com)

Internet Source

1%

4

[www.aceh-eye.org](http://www.aceh-eye.org)

Internet Source

1%

5

[journal.uinjkt.ac.id](http://journal.uinjkt.ac.id)

Internet Source

1%

6

Budhy Prianto, Dwi Suharnoko, Mardiyono -. "Political Parties and the Recruitment Process of Local Government Heads in Malang Raya", Journal of Public Administration and Governance, 2018

Publication

1%

7

[www.growingscience.com](http://www.growingscience.com)

Internet Source

1%

[ojs.wsb.edu.pl](http://ojs.wsb.edu.pl)



8	Internet Source	1 %
9	unand.ac.id Internet Source	1 %
10	sinta3.ristekdikti.go.id Internet Source	<1 %
11	mafiadoc.com Internet Source	<1 %
12	www.jurnal-umbuton.ac.id Internet Source	<1 %
13	jurnal.unissula.ac.id Internet Source	<1 %
14	jssidoi.org Internet Source	<1 %
15	dinamikahukum.fh.unsoed.ac.id Internet Source	<1 %
16	download.atlantis-press.com Internet Source	<1 %
17	sro.sussex.ac.uk Internet Source	<1 %
18	www.produccioncientificaluz.org Internet Source	<1 %
19	www.tandfonline.com Internet Source	<1 %

20	<a href="http://www.neliti.com">www.neliti.com</a> Internet Source	<1 %
21	<a href="http://journal.uin-alauddin.ac.id">journal.uin-alauddin.ac.id</a> Internet Source	<1 %
22	<a href="http://www.psychosocial.com">www.psychosocial.com</a> Internet Source	<1 %
23	<a href="http://hamdardislamicus.com.pk">hamdardislamicus.com.pk</a> Internet Source	<1 %
24	<a href="http://semnas.untidar.ac.id">semnas.untidar.ac.id</a> Internet Source	<1 %
25	<a href="http://www.venice.coe.int">www.venice.coe.int</a> Internet Source	<1 %
26	José Roberto Ferreira Savoia, José Roberto Securato, Daniel Reed Bergmann, Fabiana Lopes da Silva. "Comparing results of the implied cost of capital and capital asset pricing models for infrastructure firms in Brazil", Utilities Policy, 2019 Publication	<1 %
27	<a href="http://repository.ub.ac.id">repository.ub.ac.id</a> Internet Source	<1 %
28	<a href="http://repository.iainponorogo.ac.id">repository.iainponorogo.ac.id</a> Internet Source	<1 %
29	<a href="http://www.mahkamahkonstitusi.go.id">www.mahkamahkonstitusi.go.id</a>	

<1 %

30

[espace.library.uq.edu.au](https://espace.library.uq.edu.au)

Internet Source

<1 %

31

"The International Conference on ASEAN 2019",  
Walter de Gruyter GmbH, 2019

Publication

<1 %

32

Muh Haris, Yuwanto Yuwanto, Teguh Yuwono,  
Nur Hidayat Sardini. "The dynamics and  
existence of Islamic party in 2019 general  
election: case study of Prosperous Justice Party  
(PKS)", Indonesian Journal of Islam and Muslim  
Societies, 2020

Publication

<1 %

33

[aacc-asia.org](https://aacc-asia.org)

Internet Source

<1 %

34

[dialnet.unirioja.es](https://dialnet.unirioja.es)

Internet Source

<1 %

35

[garuda.ristekdikti.go.id](https://garuda.ristekdikti.go.id)

Internet Source

<1 %

36

[www.anayasa.gov.tr](https://www.anayasa.gov.tr)

Internet Source

<1 %

37

[www.law.harvard.edu](https://www.law.harvard.edu)

Internet Source

<1 %

[www.ccourt.go.kr](https://www.ccourt.go.kr)

38

Internet Source

&lt;1 %

39

Siti Nursanti, Susanne Dida, Mien Hidayat, Irvan Afriandi. "Health Political Communication After the Issuance of Presidential Regulation No. 18 Year 2016: a Case Study in RSUD Kabupaten Karawang", International Journal of Engineering & Technology, 2018

Publication

&lt;1 %

40

[www.idea.int](http://www.idea.int)

Internet Source

&lt;1 %

41

L Ariefianto, M I Hilmi, A T Hendawijaya, D T Indrianti, L Fajarwati. "Community empowerment of limestone mountain area: community development program PT Semen Puger Tbk.", IOP Conference Series: Earth and Environmental Science, 2020

Publication

&lt;1 %

42

[ejournal.mahkamahkonstitusi.go.id](http://ejournal.mahkamahkonstitusi.go.id)

Internet Source

&lt;1 %

43

[docplayer.net](http://docplayer.net)

Internet Source

&lt;1 %

44

[www.atlantis-press.com](http://www.atlantis-press.com)

Internet Source

&lt;1 %

45

[www.st-hum.ru](http://www.st-hum.ru)

Internet Source

&lt;1 %

46	Sheila Kusuma Wardani Amnesti. "Juridical Review against Incumbents Leave in Law Number 10 of 2016 on the Election of the Governor, Regent, and Mayor", Varia Justicia, 2018 Publication	<1 %
47	<a href="http://www.macrothink.org">www.macrothink.org</a> Internet Source	<1 %
48	<a href="http://es.scribd.com">es.scribd.com</a> Internet Source	<1 %
49	Hendi Yogi Prabowo. "Sight beyond sight", Journal of Financial Crime, 2016 Publication	<1 %
50	Muhamad Yasin, Syamsul Huda, Fredi Ganda Putra, Muhammad Syazali, Rofiquul Umam, Santi Widyawati. "IMPROVE Learning Model and Learning Independence: Influence and Interaction on Mathematics Problem-Solving Abilities in Islamic Boarding School", Journal of Physics: Conference Series, 2020 Publication	<1 %
51	<a href="http://repository.radenintan.ac.id">repository.radenintan.ac.id</a> Internet Source	<1 %
52	<a href="http://journal.umy.ac.id">journal.umy.ac.id</a> Internet Source	<1 %



---

Exclude quotes Off

Exclude matches Off

Exclude bibliography Off