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Progressive Constitutional Law Strategies to Combat Money Politics in Simultaneous Elections

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Abstract

The simultaneous legislative and presidential elections in Indonesia in 2019 offer a defining opportunity to gauge the maturity of political elites and the electorate in practicing democracy. Transparent and integrity-rich elections can solidify Indonesia's democratic consolidation, while their failure may jeopardize the democratization process. Money politics, a pressing issue in Indonesian elections, undermines electoral integrity, breeds corruption, and erodes democratic principles. This paper explores the multifaceted issue of money politics and presents a progressive approach to mitigate it through constitutional and legal reforms. The study identifies key problems, such as the undue influence of wealth, the weakening of political parties, and campaign funding opacity, proposing a series of progressive regulatory measures, including transitioning to a more competitive electoral system that empowers political parties, limiting campaign funding sources to curtail the influence of affluent donors, regulating electronic campaign money transactions for enhanced transparency, prohibiting corrupt candidates from participating in elections, advocating for more inclusive and transparent coalition-building among political parties, and suggesting the revocation of election winners by the Constitutional Court in cases of election fraud like money politics. These reforms aim to address the entrenched issue of money politics, fostering fairer, more democratic, and transparent electoral processes that empower political parties and engage the electorate in the quest for democratic ideals.

Keywords

Constitutional Law, Money Politics, Elections, Campaign, Political Party.

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1. Introduction

The legislative and presidential elections in 2019 in Indonesia will be held simultaneously, a first in the country's political history. This election is seen as a crucial moment to assess the maturity of political elites and the electorate in practicing democracy. If the 2019 elections are conducted transparently and with integrity, it can serve as a strong foundation for the consolidation of democracy in Indonesia towards a fairer, more prosperous, and civilized nation. However, if these elections fail, it could set a negative example for the democratization process in Indonesia.

One of the crucial unresolved issues in Indonesian elections is the problem of money politics, as described by Winters (2016). Money politics refers to political efforts to influence voters to choose specific political parties and candidates by providing rewards such as money, goods, or services at polling stations. The practice of money politics opens the door to corruption during elections, including violations, manipulation, and fraud. This is undemocratic, as elections should be a fair process without the influence of corrupt financial practices (Birch, 2012).

According to Sule & Sambo (2020), money does play a significant role in winning electoral competitions, especially for campaign and logistical purposes. However, other factors such as party management, candidate integrity, party platforms, and programs also play a crucial role in winning elections. History has shown that money politics damaged the legitimacy of the 2014 elections. The practice of money politics dramatically increased to 33 percent of all polling stations in 25 provinces, compared to 10 percent in the 2009 elections.

Based on samples analyzed by Voter Education Network for the People (*Jaringan Pendidikan Pemilih untuk Rakyat* or JPPR) in 25 provinces, the practice of money politics in the 2014 elections involved 1,005 polling stations. The modus operandi included distributing money ranging from IDR 20,000 – 200,000, distributing necessities, providing mobile phone credit, insurance policies, clothing, and religious items. Moreover, various forms of cheating, including money politics, were almost committed by all political parties participating in the 2014 elections. A survey conducted by Independent Election Monitoring Committee (*Komite Independen Pemantau Pemilu* or KIPP) in 31 provinces and 60 districts or cities showed that some political parties were involved in violations, with Golkar at 11 percent, Gerindra 11 percent, PAN 10 percent, and PKB, PKS, PDIP, and PPP each at 9 percent. This data shows that the 2014 election competition was not fair due to irregularities (Warburton & Aspinall, 2019).

On March 24, 2014, Institute for Economic and Social Research, Faculty of Economics, University of Indonesia Jakarta released the results of their research on the expenses incurred by candidates for the House of Representative (*Dewan Perwakilan Rakyat* or DPR). The results revealed that candidates for the DPR spent between IDR 787 million and IDR 9.3 billion, candidates for provincial DPR spent between IDR 320 million and IDR 3 billion, while candidates for DPR at the district/city level spent between IDR 250 million and IDR 2 billion. On average, each candidate spent around IDR 1.18 billion. This money was used for various purposes, including campaign materials, textiles, transportation and communication, media services, and gathering supporters (Riewanto, 2019).

All this data highlights how extravagant and irrational the costs involved in the electoral democracy were during the 2014 elections. It became the most expensive election in Indonesia's electoral history. With a total of 2 million candidates for the DPR, if they spent an average of

IDR 1.18 billion each, the total money circulated during the 2014 elections amounted to IDR 227 trillion throughout Indonesia.

Furthermore, Reuter (2015) demonstrated that nearly all candidates in the 2014 elections in Indonesia were involved in spending money, and money had become a crucial element in political transactions during the elections. Other research also shows that vote-buying practices in elections are often associated with other manipulative forms of social relationships, such as clientelism, patronage, and sometimes intimidation (Priyono & Hamid, 2014).

The history of money politics in the 2014 elections must be avoided from recurring in the 2019 elections. This is an important lesson to be learned. One relevant approach is through the establishment of progressive constitutional law. In addition to strong law enforcement, preventive measures are also needed to address the practice of money politics in simultaneous elections before it happens. However, preventive measures through conventional constitutional law have not been widely and systematically implemented. In the context of constitutional law, preventive actions against money politics need to be implemented progressively from the early stages to the end. Therefore, this paper aims to propose a strategy of progressive constitutional law in preventing the practice of money politics in simultaneous elections.

This research identifies two main issues: what is meant by the prevention of money politics in general elections (*Pemilihan Umum* or Pemilu) from the perspective of progressive constitutional law, and how to develop a model for preventing money politics in Pemilu based on the perspective of progressive constitutional law. By formulating these questions, this research has the specific objective of providing a theoretical description of the prevention of money politics in Pemilu from the perspective of progressive constitutional law and designing a model to prevent money politics in Pemilu based on the approach of progressive constitutional law. In this research, two theories will be used to address the formulated issues: (1) the theory of progressive constitutional law and (2) the theory of money politics in general elections.

2. Theoretical Review

2.1 Progressive Constitutional Law Theory

Progressive constitutional law is a law that (1) moves towards progress and (2) is oriented towards improving the situation (Hirschl, 2009; Hartoyo, 2022). This concept is in line with Rahardjo's (2010) view of progressive law, which emphasizes the importance of a law that can evolve with the changing times, address emerging issues in society, and be based on moral values (Aulia, 2018). Strategies in the field of constitutional law to prevent the practice of money politics involve the search for new ways and creative innovation if the usual and normative methods cannot achieve the goal of simultaneous elections quickly.

The fundamental message of progressive constitutional law is to ensure that the law does not become trapped in rigidity, stagnation, and excessive formalism. Therefore, this law must be able to accommodate diversity, originality, and creativity in society. This idea should be the driving spirit behind the management of constitutional law. The main characteristic of progressive constitutional law is that it is more democratic and responsive. Progressive law should focus on the welfare and happiness of the people and should create a system that is adequate for as many

people as possible, with a greater emphasis on listening and understanding. This means supporting a more democratic system (Sadono, 2010:6).

In the context of progressive law, people are encouraged to always seek the truth because it makes them curious about the truth. Because progressive law prioritizes humanity, it does not simply accept existing laws as they are but is critical of them. In this regard, progressive legal science shares similarities with movements such as Legal Realism in the United States and *Freie Rechtslehre* in Europe. In the United States, John Chipman Gray emphasized the importance of non-logical factors over logical ones, which contradicted the dominant analytical positivism that legislated and empowered the courts. This approach aims to show that an approach that only follows regulations must be replaced by progressive creativity (experience logic). Progressive law and legal science tend to be more open to creativity and reject routine application of rule logic (Rahardjo, 2010; Harun, 2019).

Thus, progressive law is a way of legal thinking that places morality above the law, where morality becomes the primary foundation of the legal system. This is in line with Dworkin's (1986) thinking, which asserts that the essence of the constitution is morality because the constitution reflects the basic principles in governing political power towards an ideal state based on the moral values embraced by society. Therefore, morality is the main reference in policymaking by the government (Ginsberg, 2003).

2.2 Theory of Money Politics in Elections

During the electoral process, various forms of deviations, violations, and manipulations, often driven by economic interests and financial incentives, can be observed. These actions, collectively termed as election fraud, have been categorized into three primary groups by Birch (2012). The first category involves the manipulation of the legal framework governing elections, which can encompass changes or alterations to electoral regulations. The second category relates to the manipulation of voter choices, which aims to influence or modify the preferences of voters through various manipulative methods. Finally, the third category concerns the manipulation of the administrative aspects of elections, including the processes of vote casting, vote counting, and the announcement of election results.

These manipulative activities can occur at various stages throughout the electoral process, with common occurrences during voter registration or updates, election campaign periods, the casting and counting of votes, as well as the aggregation of vote counts beyond the Polling Stations (*Tempat Pemungutan Suara* or TPS) or the Polling Station Administrators (*Kelompok Penyelenggara Pemungutan Suara* or KPPS). Election fraud can be further divided into two categories. The first involves manipulations that directly impact the outcome of elections, such as altering seat distributions or changing the election winners. The second category encompasses election violations that, while still significant, do not ultimately affect the distribution of seats or the election results. It is important to note that these deviations from fair electoral practices represent actions that violate the law and should be addressed through appropriate legal channels and regulations (Lopez-Pintor, 2010).

3. Research Method

This study falls within the category of normative legal research or doctrinal research with an exploratory analytical nature. The data used in this research consist of secondary data, including primary legal materials and secondary legal materials. Primary legal materials encompass legislative regulations related to issues of political legislative law, while secondary legal materials include various journals, books, and mass media news relevant to political legislative issues. Secondary data were obtained through library research, and data analysis was conducted using the method of legal interpretation. Data validation was carried out by critiquing the data sources based on the facts, theories, and values contained within them.

This research builds upon the findings of previous studies. Earlier research by Riewanto (2015) showed a strong correlation between the regulation of the proportional voting system based on the most votes and the high prevalence of political corruption in the 2014 elections in Indonesia. Another study conducted by Riewanto (2018) found that political corruption can be prevented through changes in the model of political party systems and electoral systems with various systemic engineering. Therefore, this research represents a continuation of the previous studies aimed at exploring the model of preventing political financing in elections from the perspective of progressive constitutional law.

4. Results and Discussion

2.1 Transitioning from a Liberal Electoral System to Promote Competitive Politics

The root cause of the practice of political money in Indonesian elections lies in the electoral system that has been in place for years, as seen in the 2009 and 2014 elections, which is a proportional system with candidates being elected based on the most votes. This system ultimately results in a liberal electoral system that emphasizes the role of individual legislative candidates and overlooks the role of political parties. In this system, political parties are mainly seen as tools to achieve political goals, and most of the competition takes place among the candidates. However, the principle of a proportional electoral system is to strengthen the role of political parties. In such a system, the competition should be between political parties, and therefore, the main theme of the campaign should revolve around the debate on the ideology, ideas, vision, mission, and programs of the political parties. It should not only be a strategy for candidates to gain as many votes as possible by relying on personal funds and popularity.

Competition in the 2014 elections became free among candidates because the role of political parties weakened, without clear control from the parties themselves. When the role of political parties is weakened in elections, democracy will not thrive. Healthy democracy is closely related to the strong role of political parties in elections. The reduction of the role of political parties in elections can also be considered a violation of the constitution. This is because Article 22E Paragraph (3) of the 1945 Constitution after the amendment states that the participants in general elections to elect members of the DPR and DPRD are political parties, not individual candidate.

The electoral system applied in Indonesia differs from many proportional electoral systems in the world, especially in new democracies, which use variants of closed lists. In such a system, winners are determined based on the order on the list of candidates selected through strict and democratic selection within the political party itself. This model aims to strengthen the role and

power of political parties because participants in proportional representation elections are political parties, not individuals (Evendia et al., 2020).

According to Mietzner (2015), the system of determining elected candidates based on the most votes has made elections very expensive and resulted in complex issues. The complexity of the problems arising from the practice of the liberal electoral system that has been in place for years includes the emergence of two detrimental political cultures in Indonesian elections: cartel politics and political materialism.

Cartel politics refers to the use of economic terms to analyze the development of the political party system. In this context, cartel in economics refers to coordination among members to reduce competition, control prices, and maximize collective profits. In other words, in cartel politics, competition takes place superficially among political elites who seek to ensure that competition only occurs among those with financial resources. They design various political activities that benefit each other while systematically preventing other groups from competing (Young, 2011:12).

Political materialism refers to a way of thinking that emphasizes material aspects, such as money and economically valuable items. In this political culture, there is a tendency to overlook aspects like ideology, values, vision, mission, platform, slogans, and work programs in politics. This is because in political materialism, what is considered most relevant are political activities that can provide material gains, whether individually or collectively (Carstensen et al., 2022; Paulson, & Büchs, 2022; Schlosberg, 2020; Schlosberg & Craven, 2019).

The impact of cartel politics and political materialism, resulting from a liberal electoral system, even if their quality is low. This systematically displaces candidates with fewer financial resources. This situation is highly detrimental to the practice of electoral democracy in Indonesia. Therefore, it is not surprising that the 2019 elections will likely be dominated by candidates from backgrounds such as business, entertainment, and incumbents. This further strengthens the argument that our electoral system fails to create a competitive political party system and tends to become a cartel-based political party system. This phenomenon is reinforced by social and cultural norms that prioritize material success as a measure of achievement in various aspects of life, including politics. Therefore, during elections, there is hardly any public debate or discussion about the programs and ideologies of political parties to gain voter support, reflecting the high level of political materialism.

The liberal and transactional nature of these elections must be transformed into a more competitive system in the 2019 elections. It is time to consider a more cost-effective, effective, and efficient electoral system that can enhance the productivity of democracy. One option is to revise the Party Law and Election Law by changing the electoral system to a district-based system with a winner-takes-all principle or returning to a proportional system with numbered lists through systematic improvements to create a more competitive, rooted, and institutionalized political party system. Additionally, it is necessary to design a more open, democratic, and accountable model for selecting candidates within political parties to reduce oligarchic systems and patron-client relationships in candidate recruitment (Riwanto, 2015).

4.2 Progressive Limitations on Campaign Funding Sources

One of the weaknesses that can be identified in Law No. 7 of 2017 regarding Elections is related to the potential for fostering the practice of political money, especially in the context of regulating the nominal campaign funds that come from individual party members, political party organizations, and candidates. Typically, political parties obtain funding from three main sources: contributions from party members, donations from third parties such as individuals or businesses, and income received from the government (Mamonto & Gani, 2022). This weakness is related to the prevalence of political corruption carried out by political parties in Indonesia. This is due to the imbalance between the political costs incurred by political parties for organizational and campaign activities, which often exceed the income they receive. As a result, political parties often resort to unlawful means according to the law and lack accountability and transparency in managing party funds (Sousa, 2004; Biezen, 2003; Yap et al., 2022).

Law No. 7 of 2017 regarding Elections stipulates that sources of funding for presidential election campaigns can come from candidate pairs, political parties, or coalitions of political parties that support them, and legally permissible contributions from other parties. Similarly, for legislative election campaigns, campaign funds can come from political parties, candidates for the people's representative council and regional people's representative council, and legally permissible contributions from others. However, in this Law, there are no provisions limiting the nominal amount of campaign funds that can be given by individual party members, presidential/vice-presidential candidates, DPR/DPRD candidates, or political party organizations. In Article 327 paragraph (1), the limit for individual campaign funds is set at IDR 2,500,000,000.00 (two billion five hundred million Indonesian Rupiahs), and in Article 331 paragraph (1), a similar limit is set at IDR 2,500,000,000.00.

The lack of clear regulations regarding nominal campaign fund limitations has created a situation where campaign funding sources become difficult to control. Consequently, individual party members, presidential/vice-presidential candidates, DPR/DPRD candidates, and political party organizations can provide campaign funds in unlimited amounts, especially for campaign activities aimed at influencing voters. This is the main reason why political parties are ultimately dominated by those who contribute the most money. In this context, political parties are no longer collectively managed organizations by all their members but are more controlled by a handful of political elites. Thus, political parties lose their democratic nature in managing their organizations. The impact is that not all citizens and party members can actively participate in the life of political parties, which should be a manifestation of their right to speak and participate freely and reasonably.

4.3 Progressive Regulation on Electronic Campaign Money Transactions

One progressive step to consider in preventing the practice of political money in elections is the regulation of electronic transactions for presidential and vice-presidential candidates, legislative candidates, and political party organizations during the period before and during the campaign. This progressive concept aims to facilitate the Financial Transaction Reports and Analysis Centre (*Pusat Pelaporan dan Analisis Transaksi Keuangan* or PPATK) in identifying the source of campaign funds, monitoring the flow of money, and tracking its use during the campaign. Additionally, it aims to reduce the use of cash in government activities in the future.

Up to now, the Election Law has not explicitly addressed electronic campaign money transactions. Because many campaign transactions still involve cash, PPATK faces challenges in detecting, monitoring, and tracing campaign funds originating from individual party members, presidential/vice-presidential candidates, legislative candidates, and political party organizations.

Several countries known for their low levels of corruption, such as Singapore, Malaysia, Hong Kong, Switzerland, Denmark, Germany, and Australia, have long established limitations on cash transactions. This approach has proven effective in preventing corruption among political elites and bureaucrats. With cash transaction limitations, all transactions must be conducted through the banking system. These banking services have adopted computerized technology that is easy, effective, and efficient. With this computerized system, anti-corruption agencies in these countries can easily trace suspicious transactions between individuals, even between institutions and government officials.

Limiting cash financial transactions also has psychological effects that make people reluctant to engage in certain financial transactions, especially if the amount exceeds a rational threshold for income and specific needs. Many major cases in various countries have been uncovered through these cash transaction limitations, including the type of transactions, the purpose of transactions, and the parties involved. Therefore, early detection of corruption conspiracies can be easily monitored and prevented through anti-corruption agencies in these countries.

A model for limiting cash financial transactions that can be adopted is setting a maximum limit of IDR 100 million. If the transaction amount exceeds this limit, the financial transaction must be conducted through a banking institution. Unfortunately, to date, limitations on cash transactions have not been detailed in electoral regulations in Indonesia.

4.4 Progressive Regulation on the Prohibition of Corrupt Candidates

Progressive regulations to prevent political money can be implemented through a ban on legislative candidates who have been convicted of corruption from participating in general elections. The General Election Commission (*Komisi Pemilihan Umum* or KPU) attempted to implement this provision through KPU Regulation No. 20 of 2018 regarding the nomination of DPR, DPRD, and DPD. This was seen as a progressive effort to prevent the practice of political money in simultaneous elections (Riewanto, 2018). However, this provision was later overturned by the Supreme Court (*Mahkamah Agung* or MA) through a constitutional review filed by some former convict legislative candidates on corruption charges, with the argument that the regulation was allegedly in conflict with the Constitutional Court (*Mahkamah Konstitusi* or MK) Decisions No. 4/PUU-VII/2009, MK Decision No. 46/PUU-XIII/, and Article 240 of Law No. 7/2017 on Elections.

Nevertheless, this regulation represents a middle ground that aims to address four interests simultaneously in the context of conducting fair and democratic elections. First, it provides protection to voters so that they do not have to doubt the integrity of the legislative candidates they will choose in the upcoming 2019 elections. This is especially relevant for voters living in remote areas who may have limited information about specific candidates. Second, it encourages political parties to be more cautious in screening and nominating candidates to the KPU, with the hope that only candidates with true integrity will be put forward. Thus, this regulation can be seen as a test for political parties to demonstrate their commitment to the nation's agenda to

systematically combat corruption. This is important because corrupt individuals often have significant influence and economic power within political parties. Third, this effort will ensure that legislative bodies at all levels maintain their authority and aspirational capacity, as elected legislative members in the 2019 elections will not be burdened by past criminal cases. Fourth, it promotes ethics and morality within the nation's framework, by presenting candidates with integrity as an example of the nation's commitment to creating ethically sound political leaders systematically.

To avoid controversies in the future, it is recommended to revise the Election Law to clearly regulate the prohibition of former corruption convicts from becoming candidates. Additionally, regulatory measures that allow judges to include the revocation of political rights as an additional punishment for corrupt individuals in corruption cases are needed (Riwanto, 2014).

4.5 Progressive Regulation on Political Party Coalitions and Democratic Presidential/Vice-Presidential Candidate Selection

The phenomenon that occurred in the coalition relationships between political parties and the nomination of presidential and vice-presidential candidates for the 2019 Presidential Election has unique characteristics. There are two pairs of candidates competing in the 2019 presidential election: Joko Widodo-K.H. Ma'ruf Amien and Prabowo Subianto-Sandiaga Uno. The process of forming coalitions between political parties and the nomination of Vice-Presidential candidates is considered undemocratic because it is highly exclusive and does not reflect a rational, open, and more broadly participatory selection model.

The formation process of coalitions between political parties and the nomination of the candidates was marked by tension and intrigue among the coalition's political elites. These coalitions were divided into two: one consisting of PDIP, Golkar, PPP, PKB, Hanura, Nasdem, and PSI, which nominated Jokowi-KH Ma'ruf Amien, and the other consisting of Gerindra, PKS, PAN, and Demokrat, which nominated Prabowo Subianto-Sandiaga Uno.

Dramatic events related to coalition-building among political parties and the nomination of the presidential candidates, from the perspective of constitutional law and democratic principles, are considered incompatible with the state-building process aimed at creating a quality and cultured nation. The reason is that in the process of forming coalitions among political parties and nominating the candidates, it should not be considered solely an internal matter of party elites. Political parties are public legal entities subject to the provisions of Law No. 2 of 2011 on Political Parties, which emphasizes that political parties are national organizations established voluntarily by a group of Indonesian citizens. Their purpose is to fight for and defend the political interests of their members, the public, the nation, and the state, as well as to uphold the unity of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

The process of coalition-building between political parties and the nomination of presidential and vice-presidential candidates should adhere to the constitutional mechanisms outlined in Article 6A Paragraph (1) and (2) of the 1945 Constitution (UUD 1945). This article emphasizes that the President and Vice President are directly elected by the people as a pair. The pairs of presidential and vice-presidential candidates are proposed by political parties or coalitions of political parties participating in the general elections. From this, it can be interpreted that the

process of coalition-building between political parties and the nomination of the candidates should be a public right open to all, not the exclusive right of political parties alone.

If the process of forming coalitions among political parties and the nomination of presidential and vice-presidential candidates becomes the exclusive right of political elites without involving public participation, then the design of our Presidential Election system is not in line with the spirit of democracy as stated in the constitution. This is because the coalition process and the nomination of candidates are state events that should involve broad public participation. This principle is based on Article 1 Paragraph (2) of the UUD 1945, which emphasizes that sovereignty is in the hands of the people and is exercised in accordance with the constitution. Therefore, the process of coalition-building among political parties and the nomination of the candidates is an integral part of state events that should accommodate public participation because the highest sovereignty in a democratic state, as stipulated in the UUD 1945, rests with the people.

Furthermore, the process of coalition-building among political parties and the nomination of candidates also reflects the essence of a democratic system of government. Therefore, it must be well-regulated to ensure that the public can assess the selection process, nomination, and determination of coalitions among political parties and the selection of candidates in accordance with public aspirations. The process that occurred at that time did not seem appropriate because it took place in a closed environment of political elites, and the public only played the role of democracy observers without the right to participate by expressing their opinions or preferences. This situation even led to the emergence of issues related to campaign funding.

In a broader perspective, democracy should encourage strong public participation in policymaking and state processes. There should not be a single point in the process where the public is excluded from its role. The practice of coalition-building among political parties and the nomination of the candidates in the recent presidential elections seems to indicate that we are still practicing a facade of democracy. Despite democracy being a complex system, behind that complexity lies noble values, including the broad participation of the public. This is because the difference between democratic and non-democratic states lies in the extent to which public participation is allowed and how willing political elites are to open space for the participation of all citizens in every stage and planning of state affairs, not just as an exclusive right. This is also a fundamental principle of a democratic system.

Therefore, if we want to create a nation that thrives on the pulse of true democracy and a high level of political civilization in the future, it is time to regulate a model of public participation in the process of coalition-building among political parties and the nomination of the candidates. This should be done through stringent, systematic, and transparent legal provisions, as exemplified in the revision of Article 223 of Law No. 7 of 2017 on General Elections. This way, all stages of the presidential election can take place with strong public oversight and participation while reducing the desire of political elites to arbitrarily control the process of coalition-building among political parties and the nomination of the presidential candidates

4.6 Progressive Regulation on the Revocation of Election Winners by the Constitutional Court

In the context of progressive constitutional law reform ideas, there needs to be a design of a system that allows the practice of political money in elections to serve as a basis for filing

complaints with the Constitutional Court (MK). Currently, the process of filing election complaints with the MK is restricted by Law No. 23 of 2004 on the MK, which was amended into Law No. 8 of 2011 on the MK. This limitation only covers election disputes between legislative candidates and political parties with KPU. Therefore, the MK needs to be open to creating more progressive legal breakthroughs by boldly considering the annulment of the victories of the political parties and candidates in elections if they are proven to be involved in wrongdoing, such as money politics, intimidation, and unethical and illegal voter mobilization.

We must acknowledge that, until now, acting against the practice of money politics in elections has been very challenging legally, not only due to the complex procedures but also because of the difficulty in gathering sufficiently strong evidence. Therefore, it has been nearly impossible to prosecute the candidates involved in money politics during the 2014 elections. Consequently, there is still hope for MK to issue fair, dynamic, and progressive legal rulings that could lead to the annulment of the victories of certain the candidates if proven to be engaged in money politics fraud.

In Thailand, the practice of nullifying the victories of candidates in elections by the courts has been applied when they are found to be involved in money politics fraud. At least five political parties were dissolved in Thailand, namely Thai Rak Thai, Democrat, Phaen Din Thai, Pattana Chart Thai, and Prachathippatai Kao Na, on the grounds of violating the constitution, undermining the foundations of democracy, and breaking party laws. The court decisions in that country were well-received by the political system and proved effective in discouraging the candidates and political parties from engaging in dirty politics in election competitions. Therefore, the Indonesian public hopes that the Indonesian Constitutional Court (MK RI) can draw inspiration and action from Thailand in efforts to combat unfair election practices in Indonesia.

5. Conclusion

Based on the above explanation, it can be concluded that the approach to preventing the practice of money politics in elections from the perspective of Progressive Constitutional Law (*Hukum Tata Negara* or HTN) is by prioritizing morality over the law. Morality is the primary foundation in the electoral system. Progressive HTN conceptually moves towards progress and improvement within its system. One of the main characteristics of progressive HTN is the adoption of higher democratic and responsive values. Progressive law places humans as the top priority, aiming to enhance the welfare and happiness of the people. An ideal HTN should design a system that caters to the needs of as many individuals as possible, listening more, and understanding better. This indicates that a more democratic approach replaces a more submissive approach to regulations. This approach aims to demonstrate that progressive creativity replaces adherence to routine regulatory logic.

Second, from the perspective of progressive constitutional law, preventing the practice of money politics in elections can be implemented through a series of steps, such as changing the electoral system model from a liberal one to a more competitive one, imposing stricter restrictions on the sources and amounts of campaign funds that candidates and political parties can use, regulating electronic transactions used in campaign fund usage, enforcing a ban on candidates involved in corruption cases from running for legislative positions, implementing progressive regulations regarding the formation of political party coalitions and a more democratic candidate

selection process, granting the Constitutional Court the authority to annul the victories of political parties proven to be involved in money politics, requiring political parties to actively educate their constituents about the dangers of money politics, and ensuring that election organizers work with high integrity. From a progressive constitutional law perspective, these steps can be an effective way to prevent the practice of money politics in elections.

The recommendations from this research are directed towards the Government and the Indonesian House of Representatives, which play a crucial role in the formulation of election laws. They are expected to prioritize a progressive approach in efforts to prevent the practice of money politics in elections by incorporating new elements into the regulations. Concrete steps that can be taken include changing the electoral system model from a liberal one to a more competitive one, stricter regulations on the sources of campaign funds for candidates and political parties, regulations on electronic transactions in campaign fund usage, a ban on candidates involved in corruption cases, more democratic regulations regarding political party coalitions and candidate selection, granting authority to the Constitutional Court to annul the victories of political parties involved in money politics, requiring political parties to actively educate their constituents about the dangers of money politics, and ensuring that election organizers carry out their duties with high integrity. With these steps, it is hoped that substantial changes can be achieved in the electoral system towards a cleaner and more integrity-based one.

References

- Aulia, M. Z. (2018). Hukum Progresif dari Satjipto Rahardjo: Riwayat, Urgensi, dan Relevansi. *Undang: Jurnal Hukum*, 1(1), 159-185.
- Birch, S. (2011). *Electoral malpractice*. Oxford University Press, USA.
- Carstensen, M. B., Ibsen, C. L., & Schmidt, V. A. (2022). Ideas and power in employment relations studies. *Industrial Relations: A Journal of Economy and Society*, 61(1), 3-21.
- De Sousa, L. (2004). The regulation of political financing in Portugal. *West European Politics*, 27(1), 124-145.
- Dworkin, R. (1986). *Law's empire*. Harvard University Press.
- Evendia, M., Yasir, A., Neta, Y., & Firmansyah, A. A. (2020). The Legal Politics of Recall Right of Political Parties Relevance with the System of Popular Sovereignty In Dynamics of the Constitution of Indonesia. *Pattimura Law Journal*, 5(1), 20-35.
- Ginsberg, M. (2003). *Keadilan Dalam Masyarakat*. Yogyakarta: Pondok Edukasi.
- Hartoyo, E. (2022). *Penegakan Hukum Dalam Putusan Hakim Pada Perkara Pidana Yang Berkeadilan Berbasis Hukum Progresif* (Doctoral dissertation, Universitas Islam Sultan Agung (Indonesia)).
- Harun, M. (2019). Philosophical Study of Hans Kelsen's Thoughts on Law and Satjipto Rahardjo's Ideas on Progressive Law. *Walisongo Law Review (Walrev)*, 1(2), 195-220.
- Hirschl, R. (2009). *Towards juristocracy: the origins and consequences of the new constitutionalism*. Cambridge: Harvard University Press.

- Mamonto, M. A. W., & Gani, A. W. (2022). Model of Political party Financial Regulation in Post-Reformation Indonesia. *Golden Ratio of Law and Social Policy Review (GRLSPR)*, 1(2), 76-85.
- Mietzner, M. (2015). Dysfunction by design: Political finance and corruption in Indonesia. *Critical Asian Studies*, 47(4), 587-610.
- Paulson, L., & Büchs, M. (2022). Public acceptance of post-growth: Factors and implications for post-growth strategy. *Futures*, 143, 103020.
- Priyono, A. E., & Hamid, U. (Eds.). (2014). *Merancang arah baru demokrasi: Indonesia pasca-reformasi*. KPG (Kepustakaan Populer Gramedia) bekerja sama dengan Public Virtue Institute, Hivos, dan Yayasan Tifa.
- Rahardjo, S. (2010). *Penegakan hukum progresif*. Jakarta: Penerbit Buku Kompas.
- Reuter, T. (2015). Political parties and the power of money in Indonesia and beyond. *TRANS: Trans-Regional and-National Studies of Southeast Asia*, 3(2), 267-288.
- Riewanto, A. (2018). Model Setting of Political Party System and Electoral Systems to Prevent Political Corruption. *Jurnal Cita Hukum (Indonesia Law Journal) Vol, 6*.
- Riewanto, A. (2019). Strategi Hukum Tata Negara Progresif Mencegah Politik Uang Pemilu Serentak. *Integritas: Jurnal Antikorupsi*, 5(1), 111-125.
- Riwanto, A. (2014). Inkompatibilitas Asas Pengaturan Sistem Pemilu dengan Sistem Pemerintahan Presidensial di Indonesia. *Jurnal Hukum Ius Quia Iustum*, 21(4), 509-530.
- Riwanto, A. (2015). Korelasi pengaturan sistem pemilu proporsional terbuka berbasis suara terbanyak dengan korupsi politik di Indonesia. *Yustisia Jurnal Hukum*, 4(1), 89-102.
- Sadono, B. (2010). *Hukum Tata Negara Yang Progresif*. Jakarta: Suara Karya.
- Schlosberg, D. (2020). From postmaterialism to sustainable materialism: the environmental politics of practice-based movements. *Environmental Politics*, 1-21.
- Schlosberg, D., & Craven, L. (2019). *Sustainable materialism: Environmental movements and the politics of everyday life*. Oxford: Oxford University Press.
- Sule, B., Adamu, U., & Sambo, U. (2020). The 2019 general election in Nigeria: Examining the issues, challenges, successes, and lessons for future general elections. *International Journal of Social Sciences Perspectives*, 6(2), 100-113.
- Van Biezen, I. (2003). *Financing political parties and election campaigns: guidelines*. London: Council of Europe.
- Warburton, E., & Aspinall, E. (2019). Explaining Indonesia's democratic regression. *Contemporary Southeast Asia*, 41(2), 255-285.
- Winters, J. A. (2016). Electoral Dynamics in Indonesia: Money Politics, Patronage and Clientelism at the Grassroots. *Bulletin of Indonesian Economic Studies*, 52(3), 405-409.
- Yap, J. B. H., Lee, K. Y., Rose, T., & Skitmore, M. (2022). Corruption in the Malaysian construction industry: investigating effects, causes, and preventive measures. *International Journal of Construction Management*, 22(8), 1525-1536.
- Young, A. P. (2011). Cartel Parties and Party Competition: Growth and Analysis. *Inquiries Journal*, 3(01).