***Dirasat*: Human and Social Sciences, Volume 52, No. 3, 2025, 3966**

Deanship of Scientific Research

Political Dowry in the Indonesian Election Nomination Process

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Received: 28/1/2023
Revised: 26/12/2023
Accepted: 14/3/2024
Published online: 2/2/2025

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Citation: Effendi, E., & Handoko, T. (2025). Political Dowry in the Indonesian Election Nomination Process. Dirasat: Human and Social Sciences, 52(3), 3966.
https://doi.org/10.35516/hum.v52i3.3966

Abstract

Objectives: In practice, political parties need well-known figures to run as candidates. To get this support, the practice of political dowry arose, in which a certain amount of money had to be deposited with party officials for operational costs. This activity has not been prosecuted legally, even though it should be suspected as a source of high-priced politics.

Methods: This study uses a normative juridical approach, in which research data analysis is carried out through qualitative descriptions.

Result: The study show that even though interpretation is carried out using an analogy that is rejected by the majority of criminal law experts, the practice of political dowry still cannot qualify as a crime, especially corruption.

Conclusion: This conclusion was obtained regarding the subject of corruption as a bribe recipient, namely having to become a civil servant or state administrator. Political party officials are still analogous to civil servants or state administrators. Therefore, considering the adverse effects of the practice of political dowry, it is necessary to criminalize the practice of political dowry as a crime in the election nomination process in Indonesia.

Keywords: Criminalization; Analogy; Political Dowry; Election

المهر السياسي في عملية الترشيح للانتخابات الإندونيسية

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ملخّص

الأهداف: من الناحية العملية، تحتاج الأحزاب السياسية إلى شخصيات معروفة للترشح. وللحصول على هذا الدعم، نشأت ممارسة المهر السياسي، حيث كان لا بد من إيداع مبلغ معين من المال لدى مسؤولي الحزب لتغطية التكاليف التشغيلية. ولم تتم ملاحقة هذا النشاط قانونيًا، على الرغم من أنه يجب الاشتباه به باعتباره مصدرًا لسياسة باهظة الثمن.

منهجية البحث: تستخدم هذه الدراسة المنهج القانوني المعياري، حيث يتم تحليل بيانات البحث من خلال الأوصاف النوعية.

النتيجة: أظهرت الدراسة أنه على الرغم من أن التفسير يتم باستخدام قياس مرفوض من قبل غالبية خبراء القانون الجنائي، إلا أن ممارسة المهر السياسي لا يمكن اعتبارها جريمة بعد، وخاصة جريمة فساد.

الاستنتاج: تم التوصل إلى هذا الاستنتاج فيما يتعلق بموضوع الفساد كمتلقي رشوة، أي أن يصبح موظفاً حكومياً أو مسؤولاً في الدولة. لا يزال مسؤولو الأحزاب السياسية مشابهين لموظفي الخدمة المدنية أو مسؤولي الدولة. ولذلك، وبالنظر إلى الآثار السلبية لممارسة المهر السياسي، فمن الضروري تجريم ممارسة المهر السياسي كجريمة في عملية الترشيح للانتخابات في إندونيسيا.

الكلمات الدالة: التجريم، تشبيه، المهر السياسي، انتخاب

Introduction

In the Indonesian constitutional system, political parties play an important role and are the main source of presenting national and regional leadership (Fionna & Tomsa, 2017; Triyana, 2015). In essence, political parties have the authority to nominate candidates for president and vice president, regional heads and deputy regional heads, as well as candidacy for members of the legislature (Rajagukguk et al., 2021). Thus, political parties are the main actors in elections which are a means of testing the functioning of government institutions and the protection of human rights (Ardiansyah, 2017). Currently, the nomination process in elections is not as ideal as expected. In the political recruitment system in Indonesia, many political parties take advantage of shortcuts by recruiting popular figures as legislative or executive candidates to represent their parties. As a result, internal political parties experience a dilemma because on the one hand, they want to nominate their party cadres, but internal cadres are often unpopular so they cannot be used as a strategy to get votes for political parties. Meanwhile, on the other hand, figures outside political parties are already popular (well-known), so they have a solid foundation that is certainly believed to be able to win political party votes (Prianto et al., 2022). In essence, the process is considered valid as part of the nomination procedure and does not violate the law as long as it is carried out democratically. However, such legislative and executive nomination procedures are a matter of concern because popular figures outside the party must pay some operational costs for the needs of political parties and there is an impact on party activists who have struggled from the start but have not received the trust and opportunities (Venice Commission, 2020). This kind of practice, of course, is neither good nor ideal for the development of democracy in Indonesia (Prianto et al., 2022; Purwaningsih & Widodo, 2021).

Fundamentally, modern democracy cannot work without political parties, and democracy will not function properly if political parties are weak. This has been accepted as the consensus for more than fifty years in scientific studies of democracy (Hicken, 2023). Then, in Indonesian political practice, the term political dowry is understood by the public as an underhanded transaction or illicit deal involving the giving of large amounts of funds from a candidate for a contested office (elected office) in elections/local election with the political party that is the political vehicle. The practice of giving money to political parties in elections will eliminate opportunities and proper leadership as well as important elements of democracy namely the principles of justice and objectivity, elections are expected not to produce regional leaders who only have money but lack experience, integrity, and achievements. The practice of money politics in its various forms will get rid of candidates who have the capability as leaders but do not have sufficient economic capital. Such practices will only give rise to political elites who prioritize the logic of profit and loss and do not think about the interests of the common people (Anggraeni, 2018; Mustika & Rodiyah, 2023).

The current legal regulations are essentially difficult to use to ensnare perpetrators of political bribery in the election process. So far, the perpetrators have been quite shrewd at playing under the shadow of the law, while criminal traps must always be subject to the power of the elements of the regulatory article. This stance is always played at the moment of political contestation. The use of money in elections and regional elections is regulated in such a way that democratic principles are not violated. One of the provisions related to this is the prohibition of bribery in the election law, the election crime law, and the provisions regarding regional elections in the Regional Government Law (Anwar et al., 2022). However, based on the perspective of criminal law, the existence of operational costs or what is often referred to as "political dowry" cannot be considered as a bribe or gratuity because: *First,* it is considered not a bribe, but an internal demand from a political party. *Second,* political party officials are not civil servants or state administrators, so they are not covered by corruption law (Siahaan et al., 2022). Therefore, to stop similar practices so as not to undermine the democratic process in Indonesia, various radical measures need to be taken. One effort that can be made to overcome this problem is to expand the subject of corruption, especially bribery, not only to civil servants or state administrators but to expand the meaning of civil servants or state administrators by interpreting political party officials as part of civil servants or state administrators. Meanwhile, interpretations that use analogies in criminal law are highly criticized and even considered by most legal experts to be prohibited (Myftari & Guço, 2021). Thus, this research is important because it aims to explain the criminalization and analogy of corruption to the practice of political dowry in the election nomination process in Indonesia.

Research Methods

This study uses a normative legal research methodology to examine the practice of political dowry in the election nomination process in Indonesia. Then, the data sources in this study consisted of primary data and secondary data. The primary data in question is the results of interviews with Members of the Election Supervisory Board in the Provinces of Jambi, Riau, and South Sumatra. While secondary data includes books, internet media, proceedings, expert opinions, and national and international publications. Data collection techniques in this study were through interview techniques and documentation techniques at relevant sources. To analyze the collected data, the authors use a qualitative descriptive analysis which includes a description of the reality that has occurred, the obstacles encountered, and the strategic opportunities that can be found and then concluded inductively (Creswell & Poth, 2016; Sudiarawan et al., 2020; Sun, 2020). Therefore, this study will explain the criminalization and analogy of corruption to the practice of political dowry in the election nomination process in Indonesia.

Results And Discussion

The development of democracy in Indonesia after Soeharto shows a fairly good direction for democracy. This can be seen from the growth of civil supremacy, freedom of the press and the birth of new political parties that contest elections in Indonesia. In fact, the development of democracy has not been accompanied by a good level of public political literacy, this is shown by the still high level of money politics and the existence of political dowries in the political candidacy process in Indonesia. This condition is relevant to high levels of corruption, collusion and nepotism as well as public political preferences where everything is based on gifts from candidates. The political reform process in Indonesia is slightly different from other countries in the Asian region. Such as a study (Torki Bani Salameh, 2017) that looks at the process of political reform in Jordan during the reign of King Hussein and King Abdullah II from 1989 to the present. The report also identifies obstacles to political reform. Key findings include that political reform in Jordan is a long-standing and popular demand, and that the political reform process in the country has produced results. However, these achievements are not enough to encourage real and sustainable reform. This study presents a number of policy recommendations. The most prominent concern is the need for further constitutional amendments to consolidate the democratic principle of "popular sovereignty", reduce the executive authority's access to other authorities, and reconsider the laws governing political life, in order to build a state governed by law and institutions, to build a just and equal society, and to overcome the instability manifested in the Arab Spring

Political Dowry Practices in Indonesia as a Cause of Corruption

The practice of dowry politics is part of money politics. Patterns of patronage and clientelism in politics in Indonesia allow for the rise of transactional politics commonly known as 'money politics' (Winters, 2016). The practice of dowry politics in Indonesia is an open secret, but it is difficult to prove because there is no law enforcement mechanism available. Political dowry is an imposed term because dowry itself comes from Arabic as a dowry for marriage. Political dowry is just an everyday term that the public often specifies as a bribe (Ragazou et al., 2022). Based on the data obtained, there have been several cases of political dowry that have occurred in Indonesia. These cases did not go through the legal process but were suspected to have occurred. Some of them were revealed in Naiggolan's writing as quoted by Irwan Hafid and Dendy Prasetyo Nugroho in the 2019 Presidential Election. There were allegations of giving a political dowry of Rp. 500 billion each from Sandiaga Uno to two parties to run for Prabowo Subianto's Deputy Presidential Candidate in the 2019 Presidential Election (Hafid & Prasetyo Nugroho, 2021). This case has never been brought to court, so it is only a rumor until now. Likewise, according to the results of the 2018 Vionita & Khasanah research cited by Irwan Hafid and Dendy Prasetyo Nugroho which stated that cases of political dowry in the 2018 simultaneous local elections occurred and involved regional head candidates in the Cirebon City local election, Papua local election, East Java local election, and local election in Palangkaraya City (Ahmad, 2017).

Based on this, it can be assumed that the data is only a general description such as the phenomenon of icebergs that appear at sea level. Far below the seabed, there are in essence far more cases that do not surface in the mass media. Based

on the results of the interviews that have been conducted, several political dowry practices have occurred in three provincial areas on the island of Sumatra which can be seen in table 1 below:

Table 1. Dowry Political Practices According to According to the Actors

Number	Actors	Explanation
1	Member of the Election Supervisory Board (Bawaslu) Jambi Province	- In the Local Election of Jambi City, a candidate for Regional Head was forced to mortgage his house to be able to participate in local political contestation. - In the next five years, the candidate ran as a candidate for the regional head but failed to be appointed as a candidate because the number of political parties carrying it did not meet the conditions set by the General Elections Commission (KPU).
2	Member of the Election Supervisory Board (Bawaslu) Riau Province	- In Riau Province, the practice of political dowry also exists, although it is difficult to prove. - Both parties just accept it as a transactional imperative in politics. But no one dared to report either the parties or the community members.
3	Member of the Election Supervisory Board (Bawaslu) South Sumatra Province	- Political dowries have also occurred in South Sumatra Province, where regional head elections and legislative member elections often occur, but no one has ever reported them and they have never been processed.

Source: Research Data, 2023.

Based on table 1 above, it can be seen that various actors have their perceptions related to the existence of political dowry practices in three provinces which include the provinces of Jambi, Riau, and South Sumatra. The existence of this political dowry has led to high-cost politics and high-cost politics is suspected as the main cause of corruption perpetrated by regional heads. According to research by Melo & Rennó (2016), corruption is always closely related to political costs, especially during campaigns. If the campaign has been generally accepted throughout the world as the cause of high political costs, then of course the political costs in Indonesia will be even higher with the practice of political dowry. Then, research by Xu & Chen (2022) also confirms that corruption is closely related to high-cost politics. Corruption is defined as a political transaction process. According to transactional politics theory, political transactions are related to political contracts similar to economic transactions. Real evidence regarding the political relationship between high costs and corruption in Indonesia can be seen in the many cases of corruption committed by public officials elected through the election system, where Since the Corruption Eradication Commission (KPK) was established in 2003, the KPK has charged more than 250 Members of Parliament, 20 Governors, 100 Regents or Mayors (Laode M Syarif, 2019). Then, from its establishment in 2004 to 2022, the Corruption Eradication Commission (KPK) has processed 176 regional heads as a result of direct regional head elections as illustrated in table 2 below:

Table 2. Number of Corruption Cases of Regional Heads in Indonesia

Number	Corruption Case	Amount
1	Governor	22
2	Regent and Mayor	154
	Total	**176**

Source: Corruption Eradication Commission (KPK), 2022.

In general, acts of corruption involving regional heads generally occur in connection with bribery. Bribery is a form of corruption. In general, there are seven types of corruption, namely: unlawful acts or abuse of authority that harms the state, acts of receiving and giving bribes, embezzlement, extortion, acts of fraud, conflicts of interest in procurement and gratuities (Naher et al., 2020). According to research by Lyra et al., (2022), joint corruptionand collusion are the most common crimes di the public sector, which relate to financial transactions. One of the strategies to overcome corruption is to use prevention strategies that adapt to the local context (Ceschel et al., 2022). In Indonesian society, the local context is often perceived as customary law, which is one of the areas of law other than Islamic law and state law that lives and develops in the community (Isra et al., 2017). Therefore, in the context of Indonesia, it is required to strengthen criminal penalties in corruption cases for them to have a deterrent effect on corrupt actors.

Criminalization and Interpretation of Political Dowry Practices as Bribery and Corruption Crimes

Fundamentally, criminalization is defined as the state's action to determine an action to be a criminal act, that is, an act that if violated is threatened with sanctions in the form of a criminal offense (Maher & Dixon, 2017) Criminalization departs from moral considerations and is only done if the behavior to be criminalized is judged morally to be wrongdoing (Pearce, 2022). In practice today, criminalization is also defined as the act of law enforcement to process the law of a person as a suspect in a case. Such an understanding is not only common in Indonesia but is also used in other countries (Mitchell et al., 2022). If criminalization is interpreted from a real perspective, namely as an act that can be punished, then the act of giving and receiving political dowries has been determined as a criminal act. Normatively, the regulation on political dowry has been regulated in article 228 of the Election Law which states that political parties are prohibited from receiving compensation in any form in the nomination process for the president and vice president. The provisions referred to also apply to the election of candidates for members of the People's Representative Council (DPR), provincial Regional People's Representative Council (DPRD), and district/city Regional People's Representative Council (DPRD) (Article 242). If this is violated, administratively the political party concerned is prohibited from nominating candidates for the next period (Article 228 paragraph (2). Nevertheless, the criminalization of the practice of political dowry is still limited to the candidacy of the President and or Vice President and has not been unequivocal. The facts show that the practice of political dowry is more prevalent at the level of regional elections. If criminalization is interpreted as the second meaning, namely the law enforcement process against a certain act, then until now there has been no fact of law enforcement against political dowry cases. According to Indonesian criminal procedure law, the processing of a criminal case is caused by three things, namely a report or complaint, being caught, and being known by law enforcement themselves. In the event of a political dowry, so far there have been no reports of casualties. Although it is known by law enforcement itself, it is not easy to enforce the law in this case because in general until now it has been accepted that political dowry is considered a legal, not an unlawful act let alone a criminal act. The common understanding among law enforcement is that political dowry cannot be called corruption, especially bribery, it cannot also be referred to as money politics. To be called money politics, the object must be the voter, because what is meant by money politics is the giving of gifts or other materials by-election participants to voters to influence voters in exercising their right to vote (Indrayana, 2017).

In practice, in the case of political dowry, those who provide material, especially money are election participants, and those who receive our political party officials. One possible answer is to widen the definition of political dowry as a money politics offense or bribery offense, which is defined as a criminal act of corruption and is referred to as an equivalent

interpretation (Giovannetti, 1984). According to Anaria (2020), Indonesian Criminal Law prohibits interpretation by analogy. The Indonesian Criminal Code, which adopted the Dutch Criminal Code based on the principle of concordance, prohibits legal analogies, as stated in Article 1 paragraph (1) of the Criminal Code because they infringe human rights. Even the Universal Declaration of Human Rights forbids analogies. However, not all specialists ban analogies. Pompe is an expert who allows analogies. According to Pompe, analogy-based monitoring is permissible when there is a dispute between two clauses and the latter must take precedence. Then, the use of analogies in criminal law according to Lamintang, is allowed if (1) societal change has occurred and (2) criminalization has been carried out in such a way (Ismed, 2020).

Based on the opinions of Pompe and Laminating, the practice of political dowry can be analogous to bribery which is part of the criminal act of corruption. The bribery offense was initially regulated in the Criminal Code and then in its development, the bribery dealt regulated in the Criminal Code was converted into articles of the corruption law from Law Number 3 of 1971 to Law Number 20 of 2001. If referring to the definition of bribery according to the Corruption Law, then what is meant by bribery is the giving of promises or gifts to civil servants or state organizers to encourage civil servants or state organizers to do or not do something beyond their obligations (Bahoo et al., 2020). Included in the definition of bribery is the Giving of a gift or promise because a civil servant or state organizer has committed an act beyond his obligations (Anders et al., 2020). If the gift made is not to move a civil servant or state administrator to do something beyond his obligations but has something to do with his office then the deed is referred to as gratification. It's a bit vague about what should not be given to be referred to as gratification or to the extent of merely a reward or souvenir (Ali et al., 2021).

What is important to examine in the criminal act of bribery is whether the act of giving is followed by further actions, namely committing or not committing acts outside their obligations, or acceptance is carried out after acts by civil servants or state administrators outside their obligations. Thus, if the provision of money labeled in the name of operational costs to the management of a political party as a lease is not made to make the administrators of a political party do something outside their obligations, then the provision of operational costs cannot be qualified. as a bribe. Nor can it qualify as satisfaction. Apart from bribery and gratuity, a distinction must also be made between bribery and gift-giving. Gift giving is the act of someone giving something (money or goods/services) based on one's expression of gratitude to another person. In Islam giving gifts is justified, but in practice, it is not easy to distinguish between giving gifts solely because of friendship or good relations or something to do with position. If it is related to the position, then from the point of view of the Corruption Law it will turn into gratuity (Karianga, Hendra, 2020).

Bribery also cannot be called a bribe if the gift does not cause political party officials to act contrary to their obligations, for example, it does not cause a person who should be a candidate to become a candidate or a person who should be a candidate not to become a candidate. a candidate to be determined as a candidate according to the provisions of the applicable laws and regulations or the statutes and bylaws of a political party. However, if the granting of political dowry results in the actions of the political party management contrary to their obligations under the provisions of the applicable laws and regulations or internal party provisions, then the receipt of a political dowry can be qualified. as a criminal act of corruption, namely bribery. In practice, it is known that the determination of candidates by political party officials sometimes ignores the applicable provisions, both in the form of statutory regulations and the internal regulations of the political party concerned. Thus, the granting of a political dowry has been able to change the decisions of the party management beyond its obligations. Therefore, it is no longer appropriate if the provision of political dowry is considered as providing civil operating expenses. If that is the case, both the giver and the recipient can be qualified as perpetrators of corruption crimes, namely accepting and giving bribes. When viewed from the objective element, namely the element of the act can be recited as a criminal act of corruption, the next problem is related to the subjective element. So far, the notion of civil servants or state administrators has ceased to be limited to those who receive salaries or wages from both central and local governments, either temporarily or permanently. Political party administrators are not classified as people who receive wages or salaries from the state, so they cannot qualify as civil servants or state organizers (Roberts, 2015). If law enforcement takes a legalistic approach, the management of political parties cannot be the subject of corruption. For this

reason, it is necessary to interpret it by analogy, although it is generally rejected by criminal law experts. With widespread interpretation or interpretation by analogy, the definition of a civil servant or state organizer is expanded so that the management of a political party can be analogous to a civil servant or state organizer (Lach, 2021).

The argument that can be used as a foothold is that even though political party officials do not receive wages or salaries directly from the government, they indirectly receive funds from the state through the financing of political parties by the government. In addition, it can be interpreted broadly that those who become administrators of political parties in general also serve as executive leaders and legislative leaders who thus certainly receive a salary or wages from the state. This argument turns out to be unsatisfactory because there will be a subsequent debate, namely that even though they receive a salary from the government, the receipt of operational money or political dowries is not in their capacity as legislative or executive officials in the government but as government administrators. Unless there is a law that stipulates that those in the executive and legislative branches cannot serve as administrators of political parties, then if they continue to serve as administrators of political parties they can be considered to have malicious intent or just to enrich themselves (Yaffe, 2018). Thus, the interpretation by analogy can be applied in the case of the actions of the administrator of a political party who receives political dowry money to do or not do an act contrary to his obligations, but the interpretation by analogy still cannot reach the capacity of the administrator of a political party that cannot be equated as a Civil servant or State organizer. Thus, the operational costs in the nomination process cannot still be qualified as a criminal act of bribery. Moreover, it is postulated that those who receive money for operational costs are not the personnel of the management of a political party, but a political party as a legal entity. As a legal entity, there is a separation from its management, although many political parties in Indonesia are founded and taken care of by certain people or figures. It is sometimes difficult for the public to identify the votes of the administrators with the votes of the parties because, in some political parties in Indonesia, the decisions of the parties are identic with the decisions of the party chairman. If this is the case, then no legal remedy can be taken if the nomination process is dishonest by a political party. Our criminal law has so far been unable to reach the practices of receiving operational costs by political Party administrators in the nomination process so that such acts are still considered legally valid and transactional under civil law. Overcoming this weakness of criminal law, it is necessary to remember that the existence of criminal law in the Electoral Act is not as a premium medium, but as an ultimatum medium. The existence of criminal law in the Electoral Law is more than just to provide guarantees that the electoral law is strictly observed (Ramdlany, 2021). However, considering that the impact of the practice of political dowry is very serious, the act of giving political dowry by one of the candidates who is handed over to a political party, of course, must be determined as a criminal act in the election, although so far it still does not meet the requirements as a criminal act of corruption.

Theoretically, criminalization can be done with the provision that the act that wants to be banned is an act that is not liked by society. In this case, the act of giving a political dowry is not liked by the people. Another reason is that such deeds bring serious harm to society. In this case, the practice of political dowry has led to the election of candidates who are not necessarily qualified while closing the opportunity for qualified candidates not to become candidates due to financial constraints. The neglect of the practice of political dowry will keep the Indonesian nation away from the politics of fair play and dignity according to the guidance of modern democracy. If the public is prohibited from receiving money or other materials from election participants, then it is also fair that the management of political parties is prohibited from receiving money from candidates for legislative members or candidates for regional heads. Beyond that, if it is the funding of political parties that is the reason for legalizing the receipt of political dowry money, in the future it is necessary to build a party funding mechanism that does not look like a bribe. Donations by members and sympathizers of political parties should be made in advance, not during the nomination process.

Conclusions

Based on the discussion and analysis above, it can be concluded that even though interpretation is carried out using an analogy that is rejected by the majority of criminal law experts, the practice of political dowry still cannot qualify as a crime, especially corruption. This conclusion was obtained regarding the subject of corruption as a bribe recipient, namely

having to be a civil servant or state administrator. Political party officials are still analogous to civil servants or state administrators. Therefore, considering the adverse effects of the practice of political dowry, it is necessary to criminalize the practice of political dowry as a crime. The limitation of this research is that it only uses some primary data and is dominated by secondary data. Therefore, we recommend that further research be carried out on the urgency of efforts to criminalize the practice of political dowry during the election momentum in Indonesia.

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