

Political Law Crime Money Politics in General Elections and Regional Head Elections

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Abstract--Money politics in organizing general elections and regional head elections still occurs using a variety of methods. Money politics criminal acts are regulated in Article 523 paragraph (1) to paragraph (3) of Law no. 7 of 2017 concerning Elections, which are divided into 3 categories, namely during the campaign, quiet period and during voting. If observed, there are relatively similarities in the elements of *actus reus* in paragraph (1) to paragraph (3) in that article. The *mens rea* elements are formulated deliberately. Election of regional heads for handling money politics is stated in Law no. 10 of 2016 concerning the Election of Governors, Regents, and Mayors or commonly referred to as the *Pilkada Law*, Articles 73, 187 A that gives and recipients of money in a democratic party can be subject to criminal sanctions. This study aims to determine the criminal sanctions against criminal acts of money politics. This study uses qualitative methods and the approach used is the legal approach. Identification of the problem as follows 1) How effective are the regulations regarding money politics crimes in Indonesia? 2) What are the criminal sanctions against money politics crimes that fulfill the aspect of legal certainty? Criminal sanctions against crimes of money politics in both general elections and regional head elections should be imposed not only by field actors but also by all actors involved in money politics crimes including intellectual actors.

Keywords: Money Politics, Criminal Sanctions, General Elections

I. INTRODUCTION

General Election is the process of involving citizens in the government process. Citizens are actively involved in determining who has the right to control the government within a certain period of time. This process presupposes the existence of sovereignty in the hands of the people. People who are sovereign have the right to determine who holds power and governs the lives of citizens. This people's sovereignty is only partially handed over to the rulers. The real sovereignty of the people remains in the hands of the people. The ruler has the legitimacy to govern and exercise power as long as it does not harm the interests of the people who handed some of their sovereignty. The submission

of some of the sovereignty through the electoral process.

General elections and Regional Head Elections (*Pilkada*) are the implementation of the people's sovereignty as mandated by the 1945 Constitution, elections and regional head elections involve all elements of citizens of the Republic of Indonesia who meet the requirements stipulated by the law. Elections and *Pemilukada* provide the widest possible access for citizens as "individuals" to participate in determining policy and decision-making. General elections and Regional Head Elections as the main mechanisms of democracy must be able to produce representative agents capable of defending and fighting for the interests of the people, not the other way around just distributing "cakes" to a limited elite, so the substance is the same as the authoritarian behavior of the New Order which was rejected by the people. On the other hand, reform also causes various accesses, and rolls unethically, the cause is not supported by an adequate political format and not supported by the economic foundation [1].

Money politics is a practice that can create political corruption. Money politics as *the mother of corruption* is the main and most common issue in Indonesia [2]. Money politics is the main funnel to create a leader who is pro to personal and group interests. Money politics resulted in a more expensive political cost of a leader during the selection process. Of course, when a candidate who is elected by means of a bribery process, he will think about how the capital will be released again and not think for the people's interest. The general elections in Indonesia from 1955 to 2019 have been held 12 times, as for the *Pilkada* in Indonesia it was held simultaneously for the first time in 2005, then for the latest *pilkada* will take place on December 9, 2020.

The ongoing political struggle looks transparent, and tends to be harsh, this can be seen from various partisan interests, which dominate the national political arena. The struggle for economic and political power is carried out without preamble, and leaves ethics. Bribery and the capture incidents that have successfully captured a number of regional heads and candidates of regional heads become a

cheap show in the political field. One of the reasons for this is the current characteristics of state government administration, which show more of the characteristics seen from reducing the power to make laws on the part of the president and shifting them to the authority of the House of Representatives (DPR). Election / *Pemilukada* which is expected to become a mechanism for changing power in Indonesia, including in the regions, by means of democratic, honest, fair, and transparent. Friedrich Ebert Stiftung (FES), Germany, in 2004 and 2009 for example, assessed the success of the Legislative Election and *Pemilukada* in Indonesia because there were only a few acts of mass violence. The assessment is indeed true, if it is placed in the Regional Head Election which succeeded in making a candidate to become a Regional Head or occupy a legislative seat, but without money politics and honestly it can still be seriously debated, because some facts in the field say otherwise.

II. PROBLEMS

Election as the implementation of a democratic political system is reflected in several provisions of the 1945 Constitution, Sovereignty in the hands of the people is carried out based on the Election Law which is carried out periodically with the principle of *Luber Jurdil*. The constitutional mandate is derived from the Election Law. In order to realize the *Jurdil* Election, several norms for prohibiting the practice of money politics and legal consequences are formulated. The Regulations regarding money politics in Indonesia are regulated in several laws according to the types of elections which experience ups and downs from time to time.

Law Number 10 years 2016 concerning Regional Head Elections and Law Number 7 years 2017 concerning General Elections are legal policies issued by the state, in this case the Government and the House of Representatives DPR. This legal policy was issued for the purpose of the state. The stated goal of the country is the creation of a general election system in Indonesia that is strong, democratic, fair, integrated, guaranteed, legal certainty, and effective and efficient. This law regulates the crime of money politics in regional head elections and general elections. Provisions regarding money politics can be found in Book V Chapter II under the title Election Criminal Provisions, in Article 523 paragraphs (1-3).

This research uses a qualitative approach. Qualitative research is research that intends to understand the phenomena experienced by research subjects. For example, behavior, perception, motivation, action, etc., *holistically*, and by describing in the form of words and language, in a specific natural context and by utilizing various natural methods [3]. This research also includes

normative legal research, namely by using legislation. The focus of normative legal research, in accordance with the distinctive character of legal science, lies in the study of law or legal studies of positive law, which includes three (3) layers of legal scholarship, consisting of a study of legal dogmatics, legal theory, and legal philosophy. This study critically and comprehensively examines the crime of money politics in elections and regional head elections in Indonesia.

This study aims to determine the criminal sanctions against criminal acts of money politics. This study uses qualitative methods and the approach used is the legal approach. Identification of the problem as follows 1) How effective are the regulations regarding money politics crimes in Indonesia? 2) What are the criminal sanctions against money politics crimes that fulfill the aspect of legal certainty? Criminal sanctions against crimes of money politics in both general elections and regional head elections should be imposed not only by field actors but also by all actors involved in money politics crimes including intellectual actors.

III. THEORETICAL FRAMEWORK

Political Law

The national legal system must be built based on the ideals of the nation, the goals of the state, the ideals of law, and the guidelines contained in the Preamble to the 1945 Constitution; it means that there must be no legal products that contradict the things mentioned above. The national legal system includes broad dimensions, which Friedman summarizes into three major elements, namely the substance or content of the law *substance*, the law *structure*, and the law *culture* [4]. In order to work on the development of the legal system, State Policy Guidelines (GBHN) during the New Order era developed the legal system into four elements, namely legal material, law enforcement apparatus, legal facilities and infrastructure, and legal culture. In fact, if we want to talk about legal system development through legal politics, the scope can cover all subsystems of a broad legal system [5].

According to Sudarto, legal politics is a state policy through the authorized agencies to establish the desired regulations which are thought to be used to express what is contained in society and to achieve what it aspired 7 [6]. Political law, put forward by Mahfud MD, who said that legal politics is a *legal policy* or an official policy line on law that will be enforced either by making new laws or by replacing old laws, in order to achieve state goals [5].

The essence of criminal law politics is first, what actions should be made into criminal acts. Second, what sanctions should be used or imposed on the offender. Third, the legal procedures that will be taken if there is a violation of the criminal

provisions, so that the perpetrator can be subject to criminal sanctions [6]. The legal politics of money politics in general elections and regional head elections will be seen from the formulation of the actions, the formulation of criminal sanctions to the legal processes available when money politics crimes occur both in the general election law (pemilu) and Regional Heads elections law (Pilkada).

Political Education Political

Political Education is an activity that has the aim of shaping moral values and political orientation in individuals. Political education encourages people to participate as members of society who are responsible for state politics [4]. According to Kartini Kartono [5] political education is an educational effort that is deliberate and systematic to frame individuals to be able to become ethically/morally responsible participants in achieving political goals. Meanwhile, according to Djahiri Kosasih (1995: 18) states that a political education is education or counseling, guiding the citizens of a country to understand, to love and having a sense of belonging to the nation, country/ state and all institutional devices that exist.

In Indonesia, political education is regulated by Presidential Instruction Number 12 of 1982 concerning Young Generation Political Education (1982: 2) which explains that in principle, political education for the younger generation is a series of efforts to increase and strengthen political and state awareness in order to support the preservation of Pancasila and the 1945 Constitution as the political culture of the nation. According to Kartono [5] political socialization is different from political education, political education changes the process of political socialization. So that people are truly able to understand ethical values in politics and are able to practice them. Political education for the community must be carried out to instill the values of honesty and dare to reject money politics in order to create a democracy that is clean, honest and fair. Currently the campaign against money politics is limited to a declaration. Nor has the operational definition of a money politics campaign been reduced to a practical level. Organizers must specify the target community or voters for the program. So, there are targets to be achieved and can be measured [3].

Politics of Money(MoneyPolitics)

One definition of money politics which is often cited by many circles as submitted by Etzioni-Halevy is the exchange of political support with personal material benefit or the use of money and direct benefit to influence voters [3]. In the Philippines, money politics can be defined as the use of money or compensation in direct voting activities

to influence voters' votes and support candidates who donate funds [5].

The indication of money politics as a serious threat to the continuation of a quality democracy and clean government needs to be studied in depth. For example, out of 118 democratic countries in the world, Indonesia is still considered a group of countries with low transparency in managing campaign funds in elections [13].

In several regions, the phenomenon of money politics is seen and carried out openly with the naked eye, both by candidates and their support teams. Politicians carry out haram practices during elections to influence voters. The most common and striking manifestation of election crimes is direct bribing of voters [12]. The practice of money politics is based on two (2) sub variables. Understanding of money politics and voter experiences related to money politics [3]. It seems that in accordance with the opinion of Woshinsky (2008: 132 in Kurniawan, 2017: 362) that the decision to vote in a political contest is ultimately determined by the experience and understanding of the voters themselves. Money politics is an effort to bribe voters by providing money or services so that the voter preference can be given to a bribe [2].

In a study conducted by Goodpaster [7], money politics is a term used to describe the purchase of profit or political influence. This study connects money politics as part of the corruption that occurs in the electoral process, which includes the election for president, regional head and legislative elections. Goodpaster concluded that money politics is a bribery transaction carried out by actors in the interest of gaining votes in elections.

This money politics behavior will produce a phenomenon of clientelism and patronage. Clientelism is a form of exchange that is personal with the characteristics of the existence of obligations and power relations that occur unequally between them. In addition, it is marked by patron activities that provide access to clients in the form of certain means. So that a mutually beneficial reciprocal exchange relationship is formed. (Aspinall & Berenschot, 2019; Aspinall & Hicken, 2019).

In its journey, money politics is the act of distributing money, goods and services which has experienced a refraction of meaning. Meanwhile, according to Ismawan, the limits of money politics actors are people who give political money, either candidates, supporters or support teams, and recipients of political money in any form. Money politics is carried out consciously by parties who practice money politics [9].

In the Indonesian context, Supriyanto (2005: 3) presents two political understandings of money. The first definition refers to the practice of money politics, which he calls exchange for political positions or policies or decisions. In the context of

elections, there are four circles of money politics. First, transactions between economic elites (money owners) and candidates for regional head. Second, transactions between regional head candidates and political parties that have the right to nominate. This practice is summarized by Buehler and Tan [5] as "parties that eat away money from candidates." Third, transactions between candidates and the campaign team and election officials who have the power to count votes. Fourth, transactions between candidates or voters and the campaign team form a reasonable purchase. Candidates distribute money directly to prospective voters in the hope of getting instant votes (Supriyanto, 2005: 4).

The practice of money politics in elections will create a corrupt officials. The basis for corruption in government is the general election / regional head election which is dominated by money politics. The result is high political costs. Therefore, the way to prevent corruption can be started by providing political education about money politics. political practices need to be avoided because basically the election is about to be carried out can produce leaders who have qualified competence, have legitimacy in the true sense, and have high sensitivity to their future people [17].

In Indonesia, the practice of money politics often occurs in limited meetings, distribution of campaign materials, and general meetings. One of the most vulnerable points is when the "quite-day" because this time is the participants' last chance to convince the target voters, either directly or indirectly.

IV. DISCUSSION

How Effective Are the Rules Regarding Money Political Crime in Indonesia?

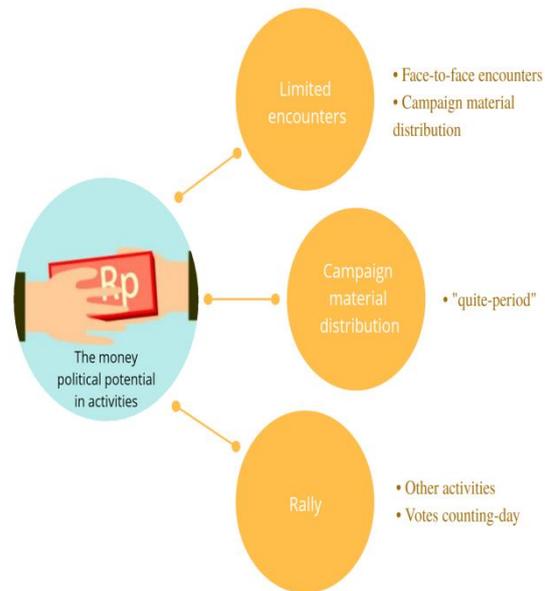
Different rules for implementing regional head elections will certainly create new problems, especially for the Election Supervisory Agency (Bawaslu). Law 10 of 2016 concerning Pilkada still has weaknesses for election organizers, namely *Bawaslu* because it is only limited to providing recommendations to the General Election Commission (KPU) related to cases of administrative violations committed by election participants. This is different from Law no. 7 of 2017 concerning Elections in terms of handling cases of administrative violations *Bawaslu* is given the authority to decide and give recommendations according to the Election Supervisory Agency.

Law No. 7 of 2017 concerning the General Election

The Anti-Money Political Village Movement (APU) is a movement that aims to carry out political education related to money politics in Indonesia.

Law Number 7 of 2017 concerning Elections. In the Election Law, in the case of *money politics*,

Article 284 states, "In the event that it is proven that the organizers and the election campaign team



promised or gave money or other materials as compensation to campaign participants directly or indirectly for not exercising their voting rights, in this law election allows the provision of food / drink fees, money / transport costs, campaign materials costs / money to campaign participants at limited meetings and face-to-face election participants." This is based on the attachment to Article 286 of the Election Law and is not included in other material categories.

The General Election Commission Regulation (PKPU) number 23 of 2018 in the campaign material rules is stated in Article 30 that the value of each campaign material if converted into money is at a maximum value of IDR 60,000 and when the time for regional head elections in 2018, the value of campaign materials if converted is at most Rp25,000. This means that the rules regarding General Elections, there are still weaknesses, many gaps that can be exploited by election participants, when the campaign material increases from the previous rules, it will make election participants compete to collect high campaign funds.

Money Politics during the campaign period, "quite-period" or on voting day there are still happening, many things that make it an election crime, namely money politics. Money politics crime modes are various, either through meetings of the campaign team with the public by providing envelopes containing money or items categorized as having the value of money that have been determined by law. The general election law prohibits three subjects, namely the campaigner, election participants and the campaign team. Apart from this, the election law does not regulate other subjects.

There is still a legal loophole for people who are not included in the three subjects who are prohibited from engaging in money politics during the Election and there are still many practices of money politics in the field, but as long as the perpetrators are not included in the three categories regulated by the Election Law, they can not be prosecuted, in the electoral law that can be subject to sanctions only the giver in the event of money politics.

In Law 7 of 2017 concerning General Elections concerning the Subjects of Money Politics, there are three phases according to the stages of the campaign, the first phase is the campaign element in terms of implementing the campaign during the campaign period. The second phase is when the "quite-period" the elements of the subject are the same, the team and campaign implementers. The third phase is polling day, the element is everyone, this third phase is easy to ensnare money politics actors.

Law No. 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors

In contrast to the General Election Law Number 17 of 2017 concerning elections, in the Law 10 of 2016 concerning the Election of Governors, Regents and Mayors in terms of *Money Politics*. In this Election Law, money politics for imposing sanctions can be given to recipients and givers. The subject of money politics actors in this Election Law is "whoever does it", it will be easier to impose sanctions in the event of money politics.

Table 1. Differences in Money Politics for General Elections and Regional Head Elections

No	Information	on General	Election Regional Head Elections
1	Constitution	Law no. 7 of 2017	> Law no. 1 of 2015 > Law no. 8 of 2015 > Law No.10 of 2016
2	Time for Handling Violations	7 + 7 Working Days	3 + 2 Calendar Days
3	Reporter	> Indonesian citizens who already have voting rights; > Election observers; or > Election contestants.	> Indonesian citizens who already have the right to vote in local elections; > Election observers; or > Electoral Participants.

4	Handling of Alleged Criminal Actions	Examination may be carried out in the absence of the suspect or defendant. (In Absentia)	Reported Party, Suspect, Defendant Present.
5	Subjects of Money Politics	Giver	Giver and Receiver
6	Subject Everyone in Money Politics Violations	Only on Election Day. Then during the Campaign and Quiet Period, it is only addressed to the Implementer, Participants, and / or Campaign Team	At each Election Stage
7	Deadline for Investigation on Political Crime	14 Days	14 Working Days
8	Incomplete Investigation Files and Files Returns	3 + 3 Days	3 + 3 Working Days
9	Deadline for Prosecution	5 Days	5 Working Days
10	Time Limits in Court	7 Days	7 Days
11	Reporting Time	7 (Seven) Days After the Alleged Election Violation Is	Known and / or Found Election Violation
12	Outputs for Administration of	Decisions and Recommendations according to the Level of Election Supervisors	Recommended

Source : Regulations Analysis

From the Table 1, the author concludes that there are still many loopholes that can be made by election participants to influence voters in the General Election Law. In Law number 7 of 2017, article 284 states that the replacement of money for transportation, food allowance, is permitted by the

Election law as long as it is within reasonable limits and is determined by the General Election Commission (KPU) regulations. KPU Decree Number 278 / PL.02.4-Kpt / 06 / KPU / I / 2019 concerning Costs for Food, Drinking, and Transportation for Campaign Participants said that "Costs for drinking, eating and transportation for campaign participants are at most equal to the regional cost standards set by Local government. The cost of drinking, eating and transportation is not given in the form of money to campaign participants". The absence of a fairness limit regarding the replacement of transportation money determined by the KPU Decree will certainly trigger the practice of money politics in the field.

Political Penalties Election Money and Pilkada

Criminal Sanctions Money politics in Regional Head Elections can be imposed on everyone. This is in Article 187A states that the subject is "Everyone" this will certainly make it easier for election organizers, namely the General Election Supervisory Agency (Bawaslu) to handle the case of Money Politics. The Law on Regional Head Election is more stringent, for example if a candidate is proven to have committed a Massive and Systematic Structured Violation (TSM), he may be subject to a cancellation sanction as a candidate. In contrast to Law No. 7 of 2017 concerning General Elections, in this Law the rules on money politics are divided into three phrases, the first during the campaign period is regulated in Article 280 Paragraph 1 letter J which has the potential to get entangled are campaign executives or people whose names are registered with the General Election Commission (KPU) as the campaigner. Article 523 paragraph 2 states that the quiet period that can be ensnared is the team and campaign executors, while on voting day the subject is "everyone" is regulated in Article 523 paragraph 3.

Criminal acts of money politics in general elections are regulated in the following:

Article 523 paragraph (1): every implementer, participant, and / or Election Campaign team who deliberately promises or gives money or other materials in return for the Election Campaign participants directly or indirectly as referred to in Article 280 paragraph (1) letter j. shall be sentenced to imprisonment of 2 (two) years and a maximum fine of Rp. 24,000,000.00 (twenty four million rupiah). Article 523 paragraph (2): Every organizer, participant, and / or Election Campaign team who deliberately promises or gives compensation for money or other materials to voters directly or indirectly as referred to in Article 278 paragraph (2) during the quiet period as referred to in Article 278 paragraph (2) with a maximum imprisonment of 4 (four) years and a maximum fine of Rp. 48,000,000.00 (forty eight million rupiah). Article 523 paragraph (3): Every person who deliberately

promises or gives money or other materials to voters not to use their voting rights or to elect certain Election Contestants shall be sentenced to imprisonment of 3 (three) years and a maximum fine of 3 (three) years and a maximum fine of IDR 36,000,000.00 (thirty six million rupiahs).

Whereas in law number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations 1 of 2014 concerning Elections for Governors, Regents and Mayors is regulated in the following:

Article 187A paragraph (1) reads "every person who deliberately gives money or materials in exchange for influencing voters, that person will be sentenced to imprisonment for a minimum of 36 months and a maximum of 72 months, plus a fine of at least Rp. 200 million to a maximum of Rp. 1 billion". Whereas in Article 187A paragraph (2), the same criminal provisions shall be applied to voters who deliberately commit acts against the law, receive gifts or promises as referred to in paragraph (1).

In the Pilkada Act number 10 of 2016 concerning Regional Head Elections, it clearly regulates the practice of money politics. The law states that it is not only those who give compensation, but whoever receives compensation, there will be legal sanctions, there is no nominal provision stipulated in this law, so whatever rewards are given, for both the giver and the recipient, it is certain that they will be subject to sanctions. .

In addition to regulating sanctions related to money politics, the Regional Head Election Law also regulates political dowry, political dowry sanctions are regulated in Law number 10 of 2016 concerning Pilkada, in article 187 b, namely political parties or coalitions of political parties, are prohibited from receiving compensation. in any form in the process of nominating a Governor, Regent or Mayor. If later it is found that a political party deliberately violates the law, receives compensation in any form in the process of nominating a regional head, it will be subject to imprisonment, for a minimum of 36 months and a maximum of 72 months and a maximum fine of Rp1 billion.

According to Dennis Chapman, there are 2 ways to prevent criminal acts, namely First, looking for factors driving the occurrence of a crime. For that there are 2 things that must be considered. First, through an abolitionists system, namely eliminating the factors that drive crime. Second, through a moralistic system, namely prevention through religious spirituality. This system will strengthen moral values so that it is expected to be able to suppress human evil instincts (Black, 2011: 109). Second, optimizing law enforcement [17].

The phenomenon of money politics crime in both the General Elections and Regional Head Elections, the theory of prevention is often used as a reference. In connection with this, there are several points that

the author can put forward in order to make the electoral law effective in both general elections and regional head elections. First, the difference between the two general election laws and regional head elections regarding money politics is very clear in regulating money politics crimes, the differences that stand out on the subject and stage. Regarding the phrase "subject" in Law no. 7 of 2017 is the Implementing Team registered with the KPU, and does not regulate at all stages while Law No. 10 of 2016 is subject to all people in this case who are suspected and regulated at all stages. Therefore, a clear election regulation is needed (*lex certa*) and firm (*lex stricta*) in regulating the formulation of money politics crimes including criminal sanctions which must also be maximal. The two double rules, namely the Electoral Law, Law number 7 of 2017 concerning Elections and Law 10 of 2016 concerning Regional Head Elections, there are differences from starting the duties of the *Bawaslu* authority which will make it difficult for election organizers, especially for the General Election Supervisory Agency in handling money politic cases.

In the future, I hope that the reform of the rules regarding Regional Head Elections and General Elections can harmonize the differences between the two laws, in order to achieve an honest, fair and free democracy from the practices of money politics. Election organizers, especially the General Election Supervisory Agency, must be extra in conducting supervision in remote areas as well as areas that are affected by a disaster because this could have the potential for money politics to be used by election participants and regional head elections as a campaign arena/ field to gain sympathy from voters by making donations.

V. CONCLUSION

From the discussion regarding the rules of money politics in both the General Election and the Regional Head Election, several conclusions can be drawn: First, money politics criminal acts are regulated in Article 523 paragraph (1) to paragraph (3) of Law no. 7 of 2017 concerning Elections, which are divided into 3 categories, namely during the campaign, quiet period and during voting. If observed, there are relatively similarities in the elements of *actus reus* in paragraph (1) to paragraph (3) in that article. The mens rea elements are formulated deliberately. Election of regional heads for handling money politics is stated in Law no. 10 of 2016 concerning the Election of Governors, Regents, and Mayors or commonly referred to as the Pilkada Law, Articles 73, 187 A that gives and recipients of money in a democratic party can be subject to criminal sanctions. Second, there are still dual rules, namely the Electoral Law Law number 7 of 2017 concerning Elections and Law number 10 of

2016 concerning Regional Head Elections, there are differences from the duties of the *Bawaslu* authority which will make it difficult for election organizers, especially for the General Election Supervisory Body. in handling money politics cases. The author hopes that in the future the electoral law can be clearer and more assertive in regulating money politics as well as becoming a united electoral law without having to be separate so that it does not make it difficult for law enforcers to carry out their duties and functions.

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