RE-EVALUATING THE LAW ENFORCEMENT TO
MONEY POLITICAL CRIME IN PEMILUKADA
IN BANGGAI REGENCY

Hardianto Djanggih
Nasrun Hipan
Azwad Rachmat Hambali

Universitas Tompotika Luwuk Banggai
Jl. Dewi Sartika No. 67 Luwuk-Banggai, Sulawesi Tengah
Email :hardianto.djanggih@gmail.com

Universitas Muhammadiyah Luwuk Banggai
Jl. K.H Ahmad Dahlan, Luwuk-Banggai, Sulawesi Tengah
Email :Nasrun.hipan@yahoo.com

Universitas Muslim Indonesia
Jl. Urip Sumohardjo Km.5 Makassar, Sulawesi Selatan

Abstrak

Kata Kunci: Penegakan Hukum, Politik Uang, Penyidikan, Polisi

Abstract
Law enforcement against criminal acts has not gone well, as well as with law enforcement of money politics in the implementation of Regional Head Election. This research aims to analyze the occurrence of law enforcement against money politics in the implementation of the Regional Head Election in Banggai Regency. This is normative juridical research-supported empirical data. The results showed that the law enforcement against criminal acts in implementation of Pemilukada in Banggai Regency had not gone well due to a long legal process and procedure of investigation undertaken by investigators at Banggai Regency Police, Central Sulawesi, and finally in Criminal Investigation Agency at INP headquarters. The cessation of investigation was not legitimately taken through Luwuk District Court Pretrial Verdict, thus the process of investigation was continued.

Key words: Law Enforcement, Money Politic, Investigation, Police
Introduction

The democracy in several countries would follow four evolution scenarios, namely improved, stagnant, decreased or failed. One form of democracy is the implementation of Direct Regional Head Election or Pemilihan Langsung Kepala Daerah (thus Pemilukada). This implementation of Pemilukada is indicated by the availability of a set of rules which becomes the legal protection for its implementation, the good, detailed mechanism and procedure as well as legal sanction and law enforcement (normative aspects). Pemilukada in Indonesia was firstly organized in 2005 under Law Number 32 Year 2004 on Regional Government. Previously, the Regional Head was elected by Regional House of Representatives or Dewan Perwakilan Rakyat Daerah (DPRD) under Law Number 22 Year 1999 on Regional Government. This way, Pemilukada in Indonesia used to be organized by election for DRPD members and it means it was indirect election.

The direct Pemilukada as a means of realizing an intact democracy system in the effort of manifesting people’s sovereignty. This direct Pemilukada is a process of electing leaders in regions which involves the public or people in the electoral regions sovereignty. To make this come true, Pemilukada should refer the such principles as independence; honesty; fairness; legal certainty; well-managed implementation; public interest; transparency; proportionality; professionalism; accountability; efficiency; and effectiveness.

A well-organized Pemilukada would result in high-quality regional leaders.

Public participation in Pemilukada process and results is decreasing. This fact that public participation is decreasing indicates that problems exist in the implementation of Pemilukada. The implementation of

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2 Hamdan Zoelva, “Problematica Penyelesaian Sengketa Hasil Pemilukada oleh Mahkamah Konstitusi (Issues on Dispute Settlement in Regional Head Election Results by Constitutional Court),” Jurnal Konstitusi Vol. 10, No. 3, (September 2013): 377-398.
Pemilukada gives birth to dissatisfaction which eventually leads to objection towards the results of this Pemilukada to the court for many reasons. It can be said that the implementation of Pemilukada still leaves many interesting problems for research topics.

Tri Sulistyaniingsih Sulardi in her study suggests that the implementation of a democratic and participatory regional head election is expected to create a more legitimate government in regions. However, the Pemilukada administered in many regions shows the symptom of money politic. The fact that there is this symptom of money politic as revealed in Tri Sulistyaniingsih’s study indicates that the democracy system of Pemilukada implementation does not work well. The money politic practice harms the democracy system. The citizen’s right to vote is abused to cast it for those they do not consciously favor.

This money politic practice occurred in the implementation of Pemilukada in Banggai Regency in 2015. This is as per police report number LP/699/XII/2015/Sulteng/Res Banggai dated December 16, 2015 submitted by a third party namely the victim of money political crime (Banggai Regent and Vice Regent Candidate Pairs Number 2, Ma’mun Amir-Batia Sisilia Hadjar) allegedly done by Regent Candidate Number 3, i.e. H. Herwin Yatim, MM on October 22, 2015 during their Campaign in Dondo Soboli Village, Bunta District.

This allegedly money political crime case has been submitted to the General Criminal Investigation Directorate or DITRESKRIMUM of Sulteng Regional Police and the investigation has been ceased with a letter Number SP.Sidik/106.a.1/IX/2016/Ditreskrimum Central Sulawesi Provincial Police dated September 13, 2016.

The description of case about this allegedly money political crime is that the victims, Regent and Vice Regent Candidate Pairs Number 2 (Ma’mun Amir-Batia Sisilia Hadjar) submit a request for pre-trial of plaintiff (principal) who are declared as 2015 Banggai Regent and Vice Regent Candidate Pairs and have been qualified based on the Official Report of Regional General Election Commission or Komisi Pemilihan Umum Daerah (KPUD) of Banggai Regency, Number: 41/BA/VII/2015 dated August 23, 2015 and Decision Letter of KPUD of Banggai Regency. The judges in the Pre-Trial

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Case Adjudication Process have decided on the plaintiffs’ claim with a Decision Number: 09/PID.PRA/2016/PN Lwk stating that the investigation conducted into the Defendants is ceased with a Letter of Ceasation of Investigation Number: SP.Sidik/106.a1/IX/2016/Ditreskrimum dated September 13, 2016 for it being legally invalid.\textsuperscript{11} The pre-trial decision which orders the investigation to be ceased is invalid and the investigation process continues. In its development, the follow-up of alleged money political crime investigation is handed over to the Criminal Investigation Agency of Indonesian National Police (INP) Headquarter.

The fairly lengthy investigation process which is divided into some stages from the investigators of Banggai Regency Police, investigators of Sulteng Provincial Police to investigators of INP Headquarter attracts the writer’s attentiton for further study. The problem studied in this research is how is the law enforcement process performed by the law enforces in responding to money political crime during the implementation of Pemilukada on Banggai Regency? This study aims at discovering the law enforcement process performed by the investigators over money political crime during the implementation of Pemilukada in Banggai Regency.

In order to answer the problem formulation in this research, it uses normative law research method supported with empirical data. A normative law research is conducted through literature study by collecting, studying and analyzing the relevant data resulting from the research in order to answer the research problem. The obtained data are then presented qualitatively as per their relevance with the problem formulation. The approach used in this research is Statute Approach, i.e. an approach which is performed by studying all regulations of law which are related to the problem (legal issues) in this research’s topic and Case Approach, an approach which is done by reviewing the case related to the legal issue of this research.

**Discussion**

**A. The Position of Alleged Money Political Crime Case in the Implementation of Pemilukada in Banggai Regency.**

The alleged money political crime case during the implementation of 2015 Pemilukada in Banggai Regency was dealed with in a fairly long time. The process began with investigators at Bangga Regency Police, Central Sulawesi Provincial Police, and finally the Pretrial process at Luwuk District Court.

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\textsuperscript{11} See the Copy of Decision of District Court of Negeri Luwuk Number: 09/PID.PRA/2016/PN.Lwk dated January 9, 2017, on behalf of Plaintiff 1. Drs. Ma’mun Amir; 2 Hj Batia Sisilia Hadjar against Defendant: 1. National Police of the Republic of Indonesia; 2. Central Sulawesi Provincial Police; 3 Banggai Regency Police, 1-47
The case began with a Report by the Lawyers Team of Candidate Pairs Number 2 (Ma’mun Amir and Batia Sisilia Hadjar) during a Limited campaign of Candidate Pairs Number 3 (Herwin Yatim and Mustar Labolo) in Dondo Soboli Village, Bunta District on October 22, 2015. At this campaign occasion, the Banggai Regent Candidate Number 3 (Herwin Yatim) based on the Supervisory Committee of Dondo Soboli Village’s report had splashed some money to the people present there. Based on this report from the society, the Legal Team of Candidate Pairs Number 2 followed it up.

The lawyers of Candidate Pairs #2 had reported it to Bangga Regency Police, dated December 16, 2015. Following this report, the investigators of Bangga Regency Police issued an Investigative Warrant No.: SP.Sidik/426/XII/2015/Reskrim, dated December 16, 2015. Furthermore, they issued Investigation Progress Notice or Surat Pemberitahuan Perkembangan Hasil Penyidikan (SP2HP), Number: SP2HP/26/II/2016/Reskrim, dated February 09, 2016, which specified, among other things; that the Banggai Regency Police had conducted an investigation to a number of witnesses including: witness Drs. Husen Boften, witness Yeheskiel Noman, witness Meske Bode, witness Margarice Kulalang, witness Dikarlice Malota, witness Drs. H. Ma,mun Amir, witness Hj. Batia Sisilia Hadjar and witness Ir. H. Herwin Yatim, M.M.; and they also made some forceful effort in the form of the seizure of; cash money amounting to Rp. 200,000.- (two hundred thousands rupiah) and 9 (nine) photographs.

From the investigation, it was found that witness Yeheskiel Noman, witness Meske Bode, witness Margarice Kulalang, and witness Dikarlice Malota had admitted that there had been an action of splashing money during the Campaign performed by Ir. HERWIN YATIM, the Candidate Pairs #3, soliciting to vote for Number 3 in Banggai Regent Election on December 9, 2015. A seizure has been made to evidences in the form of cash money of Rp.200,000, and 9 (nine) photographs, a camera and a Camera Memory card and white envelop.

Afterwards, the case was handed over to investigators of General Crime Directorate of Central Sulawesi Provincial Police as set forth in SP2HP Number: SP2HP/34/II/2016/Reskrim, dated February 29, 2016. At this Provincial Police the Investigators on behalf of the Central Sulawesi Provincial Police had issued a Further Investigative Warrant Number: SP.Sidik/106/III/2016/Ditreskrimum, dated March 6, 2016. The results of investigation based on information in SP2HP Number: B/918/IX/2016/Ditreksrimum, dated September 14, 2016 led to a conclusion that the Central Sulawesi Provincial Police had ceased the inquiry and investigation of alleged crime as per Police Report No.: LP/699/XII/2015/Sulteng/Res. Banggai, dated December 16, 2015 for Inadequate Evidence reason.

For Police investigators, the legal basis for their authority to issue SP3 (Surat Perintah
Penghentian Penyidikan or Investigation Cessation Warrant) is not (only) the provision of Article 109 of Law Number 8 Year 1981 on Criminal Law Procedural Code or Kitab Undang-Undang Hukum Acara Pidana (hence KUHAP). Notwithstanding Article 109 paragraph (2) of KUHAP wherein the formal reasons for issuing SP3 were governed, for investigators of the Police, the more important and not so distant provisions and which therefore should be the concrete reference which governed their conduct were: Regulation of Indonesian National Police Chief Number 14 year 2012 on Criminal Offense Investigation (Perkap14/2012) and Regulation of Head of Criminal Investigation Agency of Indonesian National Police Number 2 Year 2014 on Standard Operating Procedure of Criminal Investigation Organization (Perkaba 2/2014). Thus, the investigators in their measure of ceasing the investigation process of an alleged crime in addition to referring to KUHAP must also comply with the Police’s internal regulation as their investigation management.

When the investigation was ceased, the disputing parties, in this case the party affected by this cessation of investigation performed by the investigators for inadequate evidence reason, have a valid reason to request for a pre-trial. A pre-trial serves as a process of voluntary examination conducted before an examination is done to the main case being adjudicated in the court. The main case here refers to an allegation that a crime has been committed, which is under an investigation or litigation.

In this study, the pre-trial material was Cessation of Investigation undertaken by the investigators of Central Sulawesi Provincial Police and a Request for Pre-Trial had been submitted to Luwuk District Court as indicated in the Case Register Number: 09/PID.PRA/2016/PN.Lwk, dated November 8, 2016. The dicta of Prettrial Award were:

1. To grant the Plaintiff’s Request for Pretrial;
2. To declare that the Cessation of Investigation conducted by the Defendants under the Investigation Cessation Warrant Number SP.Sidik/106. a1/IX/2016/Ditreskrimum, dated September 13, 2016 was invalid by law;
3. To order the Defendants to continue the investigation of Police Report Number: LP/699/XII/2015/Sulteng/Res.Banggai, dated December 16, 2015; and
4. To charge the case fee to the State.

The pre-trial award stated that the cessation of investigation of alleged money political

crime by INP investigators was found invalid by law as referred to in the second dictum of the pre-trial injunctions. It could be said that the INP Polri’s investigators did some errors or mistakes in performing their investigation function. Upon the pre-trial award, the legal proceeding continued. In this continued investigation process, a new fact was found, i.e. the money given during the campaign was not intended to persuade people to vote for Candidate Pairs #3, rather it was a reward for those who were chosen to and could answer the questions asked by Candidate Pairs Number 3 (HERWIN YATIM).

Afterwards, the case was discussed specifically on April 4, 2017 in a room in Birowasidik at INP Headquarter in the presence of Central Sulawesi Provincial Police’s investigators and Plaintiff’s lawyers and Defendant’s lawyers. This resulted in:

The further investigation over Police Report No.: LP/699/XII/2015/Sulteng/Res. Banggai, dated December 16, 2015 was taken over by the investigator of Criminal Investigation Agency of INP Headquarter.

This further investigation in Criminal Investigation Agency of INP Headquarter began with the issuance of SP2HP Number: B/465/VIII/2017/Dit.Tipidum, dated July 18, 2017. During the investigation process in Criminal Investigation Agency of INP Headquarter on July 18, 2017, the Plaintiff had received a Notice of Investigation Commencement or *Surat Pemberitahuan Dimulainya Penyidikan* (SPDP) Number: B/168/VII/2017/Dit Tipidum, dated July 18, 2017 addressed to the Attorney General. Furthermore, upon the issuance of SP2HP Number: B/465/VIII/2017/Dit.Tipidum, dated July 18, 2017 and Notice of Investigation Commencement (SPDP) Number: B/168/VII/2017/Dit Tipidum, dated July 18, 2017 addressed to the Attorney General, the Plaintiff had never received any further notice of investigation progress from the investigators of Subdit IV/Poldok Dit Tipidum Bareskrim Polri. This could be reasonably questioned since this Alleged Crime in Pilkada of Banggai Regency had firstly been reported on December 16, 2015 in Banggai Regency Police and even until now there has been no sign of “Determination of Suspect” and nothing is known whether the case file will be or have been or cannot be assigned to the prosecutor’s office.

Underlying the investigation facts, the provisions of Article 149 paragraph (1) of Criminal Code is placed as the provisions of penalty in the investigation process of alleged money political crime (Bribery) in relation to Police Report No.: LP/699/XII/2015/Sulteng/Res.Banggai, dated December 16, 2016. Thus, the reason for the expiration of Litigation is based on the provisions of Article 78 paragraph (1) point 2; “in regard to the crime threatened with fine punishment, detention punishment,

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14 Hardianto Djianggih & Kamri Ahmad, “The Effectiveness of Indonesian National Police Function on Banggai Regency Police Investigation (Investigation Case Study Year 2008-2016)”, *Jurnal Dinamika Hukum Vol.17, No.2*, (2017): 152
or imprisonment punishment for at the longest three years after six years.”

In order to figure out whether the substance of Plaintiff Lawyer’s Report fell within “Electoral Offence or Non-Electoral Offence,” it is therefore reasonable to first find out the definition of “Electoral Offence.”

a. a. That in the provision of Article 145 of Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015 it is stated that: “An Electoral Offence is any offence or crime to the provisions of Elections as governed in this Law”.

b. b. That in accordance to the Joint Arrangement between General Election Supervisory Board of the Republic of Indonesia, Indonesian National Police 15/NKB/BAWASLU/X/2015 Number: B/38/X/2015, Number: KEP-153/A/JA/10/2015 on INTEGRATED LAW ENFORCEMENT CENTER, Article 1 point 5, it is stated that: “An Electoral Offence is any offence or crime to the provisions of elections as set forth in Law Number 1 Year 2015 and Law Number 8 Year 2015”.

Thus, it is clear that Election Crime/Offence is any action which is prohibited and threatened with punishment under provisions set forth in Law Number 1 Year 2015 and Law Number 8 Year 2015. The threatened punishment for Election Crime/Offence should be clearly and expressly governed in the Provisions on Punishments of Law Number 1 Year 2015 and Law Number 8 Year 2015.

In the provisions of Article 73 Law Number 1 Year 2015 (Appendix to Government Regulation in lieu of Law or Perppu No. 1 Year 2014) in conjunction to Law Number 8 Year 2015, it is stated:

(1) Candidates and/or their campaign team are prohibited from promising and/or giving money or other materials to influence voters.

(2) Any candidate found to have committed any offence as referred to in paragraph (1) based on a court verdict which has owned a permanent legal force shall be sanctioned with his/her being revoked as a candidate by Provincial KPU and Regency/Municipality KPU and sanctioned with a penalty in accordance with the regulations of law.

(3) Any campaign team found to have committed any offence as referred to in paragraph (1) berdasarkan court verdict which has owned a permanent legal force shall be sanctioned with a penalty in accordance with the provisions of regulations of law.

This provision is about prohibition by including the Administrative Sanction to be imposed to the Candidate which is preceded with legal verification based on Court Verdict on the occurrence of money politics. Therefore, it should be first verified that money politics (bribery) had occurred and was committed by a Candidate or his/her Campaign Team, by applying the Provisions on Punishments set forth in Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015, and then the aforementioned provisions in Article 73 as a form of administrative sanction would be applied.

Based on an examination of Provisions on Punishments in Law Number 1 Year 2015, starting from Articles 177 to 198, as well as Law Number 8 year 2015, starting from
Articles 184 to 197, nothing is governed about Money Political Crime (Bribery committed by a Candidate). It means money political crime in Regional Head Election is not governed in the Provisions on Punishment of Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015. Despite the fact that the Money Politic crime/offence (Bribery) is not governed in the Criminal provisions of Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015, it cannot be interpreted that the money politic (bribery) committed by a candidate is something justified or cannot be culpable. In accordance with the provisions of Article 73 of Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015, money politic (bribery) is deemed as a prohibited action, which brings along administrative sanction upon the sentencing of criminal award as a means of proving the candidate’s wrongdoing. Based on this fact, another law instrument is needed beyond Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015 which governs an electoral candidate’s money politic (bribery) action in an election for the sake of implementing its criminal provisions after which the provisions of Article 73 of Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015 have been applied as a form of administrative sanction.

The Provisions on Punishments in Law Number 1 Year 2015 starting from Articles 177 to 198 and Law Number 8 year 2015 starting from Articles 184 to 197, no part in them states any criminal provision governing Money Political Crime. This means money political crime in Regional Head Election is not arranged in the Provisions on Punishment of Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015. Based on this legal fact, then in accordance with provisions of article 145 of Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015 in conjunction to Law Number 8 Year 2015 in conjunction to General Election Supervisory Board of the Republic of Indonesia, National Police of the Republic of Indonesia and Public Prosecution Service of the Republic of Indonesia, Number: 15/NKB/BAWASLU/X/2015, Number: B/38/X/2015, Number: KEP-153/A/JA/10/2015 on INTEGRATED LAW ENFORCEMENT CENTER, Article 1 point 5, then the “Money Politic” Crime is not classified as an Electoral Crime/Offence. And since the “Money Political” crime is an Electoral Crime/Offence, yet it has no criminal provisions in Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015, then its Enquiry and Investigation are not subject to the provisions of Article 134 of Law Number 8 Year 2015 where the mechanism of Electoral Offence Report is governed.

The provisions of Article 134 of Law Number 8 Year 2015 describe the procedure and method as well as the deadline for submitting Electoral Offence report and its settlement. The problem is that in accordance with the provisions of article 145 of Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015 in conjunction to
Joint Agreement between General Election Supervisory Board of the Republic of Indonesia, National Police of th Republic of Indonesia serta Public Prosecution Service of the Republic of Indonesia, Number: 15/NKB/BAWASLU/X/2015, Number: B/38/X/2015, Number: KEP-153/A/IA/10/2015 on INTEGRATED LAW ENFORCEMENT CENTER, Article 1 point 5, it is found that the Election Crime/Offence in the form of “money politic” (bribery) committed by a candidate is not governed in the Provisions on Punishment of Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015, despite its prohibition under the provision of Article 73 of Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015.


The “money political” crime committed by a candidate in Pemilukada based on the researcher’s analysis is not governed in the Provisions on Punishment in Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015, yet it is still prohibited under the provisions of Article 73 of Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015, maka procedure and method and deadline for submitting report and examination of Electoral Offence which refer to the Provisions on Punishments of Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015, as set forth in the provisions of Article 134 Law Number 8 Year 2015 are not applicable or enforceable in the examination/investigation of alleged money political crime (penyuapan) committed by a candidate in an election. The legal reasons are that if the provisions of Article 134 of Law Number 8 Year 2015 are applied in the examination/investigation of alleged money political crime then no single criminal provision would be found in Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015 which governs the criminal provision, punishment elements, nor the threatened punishment for the perpetrator of crime/offence in the form money politic (bribery) committed by Candidate Pairs.

The philosophy is that since the Electoral offence of Pemilukada in the form of “money politic” committed by Candidate Pairs is prohibited with a threatened administrative sanction as per Article 73 Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015 in which case the application of administrative sanction depends on the Court Verdict in regard on the proven money political crime (bribery) committed by candidates, thus in the absence of arrangement in the Provisions on Punishment for Money Politic in Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015, it is reasonable by law to enforce another criminal provision beyond the two laws which has some relevance to Pemilukada.
The police investigators had been aware of “the absence of Provisions on Punishment” in Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015 which governs money politic, hence these investigators from the Police apply the provisions of Article 149 paragraph (1) of Criminal Code in their investigation, to support the application of provisions of Article 73 of Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015 which governs the prohibition of money politic (bribery) in elections by imposing administrative sanction.

The absence of rule occurring in Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015 which do not govern any criminal provision on money politic (bribery) has been revised with the issuance of Law Number 10 Year 2016 concerning Second Amendment of Law Number 1 Year 2015 concerning Determination of Government Regulation in lieu of Law Number 1 Year 2014 concerning Election of Governor, Regent and Mayor to be Law. Nevertheless, Law Number 10 Year 2016 cannot be used as the basis of examination of alleged crime as referred to in Police Report Number: LP/699/XII/2015/Sulteng/Res. Banggai, dated December 16, 2015, since this Law Number 10 Year 2016 is in full effect and force upon its enactment, i.e. July 1, 2016, thus this Law is cannot be applied to verify the event occurring before the the law is enacted. This is consistent with the Legality Principle, and it results from the failure to fulfill the Retroactive Principle by Law Number 10 Year 2016.

The provisions of Article 134 of Law Number 8 Year 2015 cannot be applied to alleged money political crime/offence (bribery) committed by Candidate Pairs, thus the provision on deadline set forth in this Article 134 (EXPIRATION reason) cannot be applied in this case of alleged money political crime/offence (bribery) committed by Candidate as referred to in Police Report Number: LP/699/XII/2015/Sulteng/Res. Banggai, dated December 16, 2015. As an additional explanation, the EXPIRATION which was associated with the provisions of Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015, by the Single Pretrial Judge, had considered that the reason for this Expiration had been included in the Examination of Principal Case (Vide pp. 33 to 34 of Minutes of Judgment). Based on this consideration, it is therefore a must for the investigators to immediately assign the Principal Case File or Berkas Perkara Pokok.

Serving as a verification of the “imperfect” arrangement of criminal provision for money politic in Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015 is the issuance of Law Number 10 year 2016 concerning Second Amendment of Law Number 1 Year 2015 concerning Determination of Government Regulation in lieu of Law Number 1 Year 2014 concerning Election of Governor, Regent and Mayor to be Law. In the provisions of Article 187A paragraph (1) of Law Number 10 Year 2016 it is stated:
"Any person deliberately commits an unlawful act of promising to give or giving money or other materials as rewards to Indonesian citizens either directly or indirectly to influence the Voters to not exercise their right to vote, to exercise their right to vote in such a way that the vote becomes invalid, to vote for certain candidate, or to not vote for certain candidate as referred to in Article 73 paragraph (4) shall be subject to imprisonment of a minimum of 36 (thirty six) months and a maximum of 72 (seventy two) months and a fine of a minimum of Rp200,000,000.00 (two hundred million rupiah) and a maximum of Rp1,000,000,000.00 (one billion rupiah)"

The amendment of Provisions of Article 73 of Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015 with an addition of 2 (two) paragraphs based on Law Number 10 year 2016 as well as the inclusion of Provisions on Punishment of Money Politic into the provisions of Article 187A paragraph (1) of Law Number 10 Year 2016 has allowed the the inclusion of money political crime as an Electoral Crime/Offence according to Law Number 10 Year 2016. Nevertheless, it is of course impossible to use Law Number 10 Year 2016 tidak as the basis for examination of alleged crime as referred to in Police Report Number: LP/699/XII/2015/Sulteng/Res. Banggai, dated December 16, 2015, since Law Number 10 Year 2016 was in effect from its enactment, i.e. July 1, 2016, thus the Law cannot be applied to verify the event occurring before the the law is enacted. This is consistent with the Legality Principle, and it results from the absence of Retroactive Principle in Law Number 10 Year 2016.

The revision to Law Number 10 Year 2016 in terms of Electoral Crime/Offence in the form of Money Politic clearly indicates that the Electoral Crime/Offence in the form of money politic is actually not governed in Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015. Therefore, in the investigation of alleged money political crime, the provision on the procedure and deadline as set forth in provision Article 134 Law Number 8 Year 2015 cannot be applied in the investigation of alleged crime as referred to in Police Report Number: LP/699/XII/2015/Sulteng/Res. Banggai, dated December 16, 2015.

The idea of applying the provisions of Article 149 paragraph (1) of Criminal Code in the investigation of alleged “Money politic” crime (bribery) in 2015 Pemilukada in Banggai Regency, is based on the following legal facts:

a. The absence of Provisions on Punishment which govern the Provisions of Sentencing, punishment elements, and threatened punishment for money political crime (graft) committed by a candidate in Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015;

b. Money political crime/ offence is prohibited under the provisions of Article 73 of Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015. Since the provisions of Article 73 govern only the Prohibition and the
imposition of administrative sanction, with no arrangement whatsoever on the Provisions on Punishment for money politic in the Law, anothe legal instrument (beyond Criminal Code) is required to verify that a money political crime (graft) occurs in order to impose administrative sanction in accordance with those provisions of Article 73;

For that reason, in the process of verifying the alleged Electoral crime/ offence, the provisions of Article 149 paragraph (1) of Criminal Code in the investigation are applied. Furthermore, to figure out the existence and relevance of provisions of Article 149 paragraph (1) of Criminal Criminal Code with the Electoral crime, the following review will be carried out:

According to P.A.F. Lamintang and Theo Lamintang’s opinions, it is stated that “a bribery crime in an election held under a general regulation intended for the bribed persons to not exercise their rights to vote or to exercise their rights to vote in a particular way is regulated in Article 149 of Criminal Code”. The crime as referred to in Article 149 of Criminal Code by our legislators has been specifically in Article 286 of Law Number 10 year 2008 concerning General Election, i.e. in case the crime had been committed when the General Election was held, the formulation of which is as follows:

“Any person deliberately committing an unlawful act of promising to give or giving money or other materials as rewards to Indonesian citizens either directly or indirectly to influence the Voters to not exercise their right to vote, to exercise their right to vote in such a way that the vote becomes invalid, to vote for certain candidate, or to not vote for certain candidate as referred to in Article 73 paragraph (4) shall be subject to imprisonment of a minimum of 36 (thirty six) months and a maximum of 72 (seventy two) months and a fine of a minimum of Rp200,000,000.00 (two hundred million rupiah) and a maximum of Rp1,000,000,000.00 (one billion rupiah)”.

The formulation of this punishment provision of Article 286 of Law Number 10 year 2008 concerning General Election which govern further the provisions of Article 149 of Criminal Code is relevant with the substance of provision of Article 138A of Law Number 10 Year 2016 concerning Second Amendment of Law Number 1 Year 2015 concerning Determination of Government Regulation in lieu of Law Number 1 Year 2014 concerning Election of Governor, Regent and Mayor to be Law, the formulation of which is as follows:

“Any person deliberately committing an unlawful act of promising to give or giving money or other materials as rewards to Indonesian citizens either directly or indirectly to influence the Voters to not exercise their right to vote, to exercise their right to vote in such a way that the vote becomes invalid, to vote for certain candidate, or to not vote for certain candidate as referred to in Article 73 paragraph (4) shall be subject to imprisonment of a minimum of 36 (thirty six) months and a maximum of 72 (seventy two) months and a fine of a minimum of Rp200,000,000.00 (two hundred million rupiah) and a maximum of Rp1,000,000,000.00 (one billion rupiah)”

The elements to be fulfilled are:

That based on the Pretrial Award Number: 09/Pid.Pra/2016 /PN.Lwk, dated January 9, 2017 it has been elaborated that the elements of Article 149 paragraph (1) of Criminal Code\(^{16}\) are:

a. The element of Any person;
b. The element of In an election held under a general regulation;
c. By giving or promising something, bribing someone to not exercise their voting rights or to exercise their rights in a certain way.

The pretrial by Single Judge has verified the three elements “By giving or promising something, bribing someone to not exercise their voting rights or to exercise their rights in a certain way” intended to verify whether or not the three elements have adequate evidence (Minutes of Judgment pp. 42 to 46). Having considered the Document Evidence and information from witnesses nominated by the Plaintiff, the Judge concludes:

“Considering that if they are linked to the main elements of offence of Article 149 paragraph (1) of Criminal Code, i.e. the third element, “giving or promising something, bribing someone to not exercise their voting rights or to exercise their rights in a certain way”, then in the court’s opinion, it has been the case, that is there have been an act of giving money, then saying to exercise the voting right in such a way, i.e. voting for number 3. Based on this, the court thinks that the initial evidence of the investigators have been sufficient to proceed to litigation. As to what was actually happening based on those evidences, the court would certainly adjudicate it later”.

In another part, it has also been considered: “Considering, that based on all considerations above, the court deems that the case investigated by the Defendant has been found adequate to be escalated to litigation, based on this then the cessation of investigation over the case performed by the Defendants for such reason as having inadequate evidence for the offence in Article 149 paragraph (1) of Criminal Code does not comply with the regulations of law in Article 109 paragraph (2) of KUHAP, therefore on this basis, the cessation of investigation performed by the Defendant, in the court’s opinion has no legal basis” (Vide p. 44 of Minutes of Judgment).

The verification of element Any Person has been clear that the one reported against is Ir. H. Herwin Yatim, is a law subject, proponent of rights and obligations which can be responsible and accounted for legally.

The application of element In an election held under a general regulation, thus according to P.A.F. Lamintang and Theo Lamintang\(^{17}\), it is suggested that “The words during voting in the formulation of this crime does not merely mean when people cast their vote in an election.”

2015 Governor/Vice Governor, Regent/Vice Regent, Mayor/Deputy Mayor Elections have been governed in the provisions of Law

\(^{16}\) Minutes of Judgment, p. 42.
\(^{17}\) Ibid, p. 374.
Number 1 Year 2015 in conjunction to Law Number 8 Year 2015. The phases of Election Implementation according to provisions of Article 5 paragraph (3) of Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015 begins with the Registration of Prospective Candidate to Nomination, Ratification and Appointment of the Elected Candidate. Meanwhile, the “money politic” event allegedly committed by Ir. H. Herwin Yatim occurred on October 22, 2015, during the Election Campaign. Judging from this fact, the “money politic” (graft by Candidate to Voters) occurred during the implementation of 2015 Governor/Vice Governor, Regent/Vice Regent, Mayor/Deputy Mayor Elections.

Conclusion

Based on the discussion earlier, it can be concluded that the law enforcement process against money political crime during the implementation of Pemilukada in Banggai Regency in 2015 had not run well. This was because of the performance of investigators who failed to work professionally in performing the investigation process over money political crime by ceasing the investigation, as has been revoked by the pretrial awark of Luwuk District Court.

The second cause is the weak element of article on money political crime in Pemilukada Law. The use of article 149 of Criminal Code and Law Number 10 year 2008 concerning Election as well as Law Number 10 Year 2016 concerning Determination of Government Regulation in lieu of Law Number 1 Year 2014 Tentang Election of Governor, Regent and Mayor to be Law, i.e. governing Money Political Crime (Bribery during election). This means to Crime/Offence in the form of Money Politic (Bribery by Candidate to Voters) which is not governed in Law Number 1 Year 2015 in conjunction to Law Number 8 Year 2015, the provision in Article 149 of Criminal Code can be applied in order to deal with the absence of rule in both laws.

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