

# THE URGENCY TO PREVENT ILLICIT POLITICAL PARTY FUNDRAISING THROUGH THE ANTI-MONEY LAUNDERING REGIME IN INDONESIA

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## Abstract

*An election is a democratic process, which is both costly and cumbersome for anyone who wishes to participate. Existing practices, precisely in Indonesia, show that both political parties as well as candidates often need to raise funds to finance their campaign and/or their programs, as well as to ensure the sustainability of their political parties. The Indonesian law states various financial resources in which a political party can raise. Nevertheless, it does not set the limitations and restrictions, particularly on ways to identify and monitor where funds come from. Hence, there has been a fear that political parties may use this loophole to conduct money laundering. It is argued that while the money laundry regime can be used to prevent conspicuous practices related to political financing, a legal framework has yet to be designed and implemented.*

**Keywords:** *anti-money laundering regime, money laundering, political party financing, Indonesia*

## 1. INTRODUCTION

Political financing has always been an issue in the context of election and democracy, especially in Indonesia. Under the new electoral system, Indonesia has three direct elections: the election of the president and vice president, the election of the national chambers (both national and regional), and the regional elections to elect governors and mayors.<sup>2</sup> It is safely said that the new electoral system in Indonesia had become more democratic than ever before.<sup>3</sup> However, safeguarding democracy is not without cost. Billions of Indonesia Rupiah have been spent to ensure that people's political rights to vote and be voted have been met and been held openly and transparently. In addition to elections, pre-election campaigning by political parties as well as selection of candidates and programs to amass public support all require a great deal of resources. Practices reveal that both political parties and candidates often need to raise funds to finance their campaign and/or their programs. They also need to ensure the sustainability of their political parties.

The 2008 Law No. 2 on Political Parties as amended by 2011 Law No. 2, allows parties to raise funds from various sources. This is usually in the form of membership dues, legal contributions, and financial assistance from the State Revenue and Expenditure Budget (APBN)/(or)Regional Revenue and Expenditure Budget (APBD).<sup>4</sup> It sets the maximum amount for each category, except contribution from its members. The maximum amount for individual non-member donations, for example, is a maximum of 1,000,000,000 IDR (one billion rupiahs)<sup>5</sup>, and company donations are a maximum of 7,500,000,000 IDR<sup>6</sup>. (seven billion five hundred million rupiahs).<sup>7</sup> Furthermore, to ensure transparency, political parties must report their funding resources to the public.

There have been some cases showing that contributions to political parties may be used as

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2 The new electoral system is uses direct elections systems in order to vote the candidates. See Marcus Mietzner, *Indonesia's Direct Elections: Empowering the Electorate or Entrenching New Order Oligarchy?*, Soeharto's New Order and Its Legacy, ANU Press, pp. 173-174.

3 Denny Indrayana, "Money Politics in a More Democratic Indonesia: An Overview," *Australian Journal of Asian Law*, Vol. 18 No. 2, 2017, pp. 2-3.

4 Pasal 34 UU No. 2 tahun 2011 jo. UU No. 2 tahun 2008 about Political Party

5 Approximately 72,000 USD

6 Approximately 550,000 USD

7 Pasal (article) 38 UU No. 2 tahun 2011 jo. UU No. 2 tahun 2008 about Political Party

a safe place to disguise funds, resulting in criminal acts, such as corruption, drug trafficking, and so on.<sup>8</sup> The Indonesian Corruption Watch mentioned three problems that may challenge an election's integrity; one of them is soliciting illegal money to finance political parties.<sup>9</sup> The pressure on political parties to raise money increases the power of monied interest groups, companies, and individuals to influence party behavior in exchange for financial support. This situation could create a situation to profit from various resources, including money laundering. While money laundry *per se* is already a crime, as it threatens economic circumstances, placing illicit funds in political parties will indeed distort the electoral process and undermine democratic processes.

*In order to prevent this, it is argued that an anti-money laundering regime could help, detect, prevent, and counter money laundering in its own jurisdiction throughout all sectors.*<sup>10</sup> In Indonesia, money laundering is criminalised in Law No. 8/2010 on the Prevention and Eradication of Money Laundry. The said law regulates the definition of money laundry and its element of crime, the predicated offenses, and the Indonesian Financial Transaction Reports and Analysis Centre's role, widely known as PPATK, to examine suspicious financial transactions.

The question is whether the law on money laundry as well as the political parties are efficient in addressing such criminal procedure. This article attempts to address such a dilemma.

## 2. METHODOLOGY, CLARIFICATION, AND LIMITATION

It has to be established that this article does not aim to answer all problems relating to political party financing, nor how revenues are spent. Instead, it analyses how the anti-money laundering (AML) regime may be used to prevent illicit political party financing in Indonesia. This big research issue can further be broken down into the following questions:

1. How could money laundering in a political party financing system be conducted? This will refer to the typology of money laundering in the political party financing system.
2. How can the Indonesian regulatory framework be used to address the issue of money laundering related to party financing?

To answer these questions, this article is developed based on publicly available data at the time of writing, including regulations and/or policies and/or analysis at the national and international levels.<sup>11</sup> Peer group discussions and interviews with selected resource persons were also conducted to strengthen analysis from a more practical lens.

To avoid confusion, there are several terminologies used in this article. First, a political party is defined as national organizations, which are formed voluntarily by Indonesian citizens based on common commitment and objectives to fight for and defend the political interests of their members, society, nation and state. Furthermore, they are organized to maintain the Republic of Indonesia's integrity, *Pancasila*<sup>12</sup> the 1945 Constitution. This is in line with the definition articulated in Law No. 2/2008 as amended by Law No. 2/2011. Second, the concept of money

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8 Spyridon Repousis, 'Politicians, Political Parties' Funding in Greece and Anti-Money Laundering Regulatory Framework', *Journal of the Money Laundering Control*, January 2014.

9 Indonesian Corruption Watch states that three problems during the elections: money politics, illegal funds as a modality for political parties as well as the use of State's or Local Government's property to win election.

10 Neil Boister, *An Introduction to Transnational Criminal Law*, (Oxford University Press, 2012). P. 186.

11 Enid Campbell, E.J. Glasson, Ann Lahore, *Legal Research: Material and Methods*: 2nd Edition (Law Company Book Limited, 1979). p.1 See also Suzanne R. Rowe, *Legal Research, Legal Writing, and Legal Analysis*, 29 *stetson Law Review*, 1999-2000, p. 1197-1198.

12 Pancasila is the basis of the state and outlook of the nation of Indonesia. As the foundation of the State, Pancasila used as the basis to build the Unitary Republic of Indonesia. See Ambiro Puji Amariolini, *Menjaga Eksistensi Pancasila dan Penerapannya bagi Masyarakat di Era Globalisasi*, *Jurnal Pancasila dan Kewarganegaraan*, Vol. 1, No. 2, January 2017, p. 01.

laundering refers to the processing of these criminal proceeds in disguising their illegal origin.<sup>13</sup> This process is of critical importance, as it enables the criminal to enjoy these profits without jeopardising one's source.<sup>14</sup> Finally, as mentioned in this article, the anti-money laundering regime refers to a set of international standards that can be used by national laws to prevent and counter money laundering in its jurisdiction.<sup>15</sup> Two approaches can be used according to the anti-money laundering regime. The first one refers to a preventive approach through a risk-based approach. The other one is a repressive approach through criminal provisions in the laws and regulations. This paper shall then discuss two anti-money laundering approaches, which can be used to prevent money laundering in political party funding.

### 3. RESTRUCTURING MONEY POLITICS & POLITICAL CORRUPTION, AND MONEY LAUNDERING

#### 3.1. Money politics and Political Corruption as Predicate Crime(s)?

Money politics is often linked to political corruption. The concept of money politics is commonly defined as a means of receiving illicit funds for political campaigns.<sup>16</sup> It is further expanded to include money, gifts, and contracts to "buy" supporters or voters during elections.<sup>17</sup> In other words, it is typically understood as offering rewards in exchange for someone's vote.

The question is whether money politics constitutes a crime or money politics; it is considered political corruption. Such determination is essential to identify a predicate crime. There is no common response to such a question. Some scholars described money politics as a form of corruption or bribery, as politicians receive illicit funds from individuals, usually from business and affluent circles that obviously wanted something in return. It could be anything from direct access to government, business contracts, or even joint business ventures.<sup>18</sup> Others argue that money politics and corruption are two separated notions, with some overlaps.<sup>19</sup> 'Corrupt' political financing generally involves behaviour on the part of the candidate or a party in which they improperly or unlawfully conduct financial operations for his/her/their gain.<sup>20</sup> Other highlight that corrupt political financing must related with the elements of corruption itself which is "abuse of power by state official" and "misuse of the state finance for political purpose."<sup>21</sup>

In Indonesia, the number of money politics is very high, placing Indonesia in the third rank of countries in the world that conduct money politics during elections.<sup>22</sup> The research followed by another survey showing that 40% of their respondent argued that money politics is a part of the democratic process. Therefore, it is not a crime to accept money from a candidate.<sup>23</sup> Furthermore,

13 <https://www.fatf-gafi.org/faq/moneylaundering/>

14 *Ibid.*

15 Neil Boister, *An introduction to Transnational Criminal Law*, (Oxford University Press, 2012). P. 186.

16 Burhanuddin Muhtadi, "Politik Uang dan New Normal dalam Pemilu Paska-Orde Baru", *Journal AntiKorupsi INTEGRITAS*, Vol. 5 No. 1, p. 57.

17 Simeon Nichter, "Vote Buying or Turnout Buying? Machine Politics and the Secret Ballot", *The American Political Science Review*, Vol. 102, No. 1 (Feb. 2008), p. 19. Doi:10.1017/S0003055408080106

18 Yik Koon The, "Money politics in Malaysia", *Journal of Contemporary Asia*, Vol. 32:3, (2002), p. 338. DOI: 10.1080/0047233028000231

19 Marcin Walecki, 'Political Money and Political Corruption: Considerations for Nigeria' (Abuja, Nigeria: International Foundation for Election Systems (IFES), November 2003), 2, [https://www.ifes.org/sites/default/files/nigeria\\_political\\_money\\_and\\_political\\_corruption.pdf](https://www.ifes.org/sites/default/files/nigeria_political_money_and_political_corruption.pdf).

20 *Ibid.*

21 *Ibid.*

22 Burhanudin Muhtadi, "Riset Tunjukkan Sepertiga Pemilih Indonesia Terima Suap Saat Pemilu", <https://theconversation.com/riset-tunjukkan-sepertiga-pemilih-indonesia-terima-suap-saat-pemilu-100317>, accessed on 26<sup>th</sup> November 2020.

23 Deti Mega Prunamasari, "Survei Lipi: Masyarakat Memandang Politik Uang Bagian dari Pemilu, Tidak Dilarang", <https://nasional.kompas.com/read/2019/08/29/05213291/survei-lipi-masyarakat-memandang-politik-uang-bagian-dari-pemilu->

several studies also try to explain the phenomenon of money politics in Indonesia due to drastic changes in the Indonesian Election process,<sup>24</sup> from indirect to direct elections and the open-list system for a member of parliament. Moreover, the current democratic concept involves multiple parties. In fact, out of 200 registered political parties, only 27 passed a rigorous preliminary selection.<sup>25</sup> Even though the number of participants has diminished, competition among them had become tougher than before. Consequently, the competition happened not only among the candidates of different parties but also those from within parties. This situation led every party/candidate to employ more direct political campaigning tactics/methods to the voter. This usually ended up in vote-buying. In short, significant changes in election systems had resulted in higher costs of the political campaign.

Such discussion highlights two issues. First, the connection between money politics and political corruption is complex. Apparently, there is no common sentiment on whether money politics constitutes political corruption. On the one hand, there has been a desire to ensure that money politics is corrupt. Hence, it can be considered as a predicate crime to money laundering. On the other hand, resistance to such an idea is also clear. Both are indeed two separated yet overlapping notions.

Second, tough and costly competition between candidates as well as amongst political parties has severe and perilous effects on political campaigning. Recent developments reveal that money laundering proponent took this opportunity to launder their illicit proceeds of crime using a novel method called "donation campaign scheme." This brings us to the next issue on money laundering in political party financing.

### 3.2. Money Laundering in Political Party Financing

Money laundering has, in recent times, become a socio-political pandemic.<sup>26</sup> Money laundering is the process of concealing, converting, or transferring the existence of illegal income and disguising that illegal income to appear legitimate.<sup>27</sup> The IMF estimates that the sum of money laundered is between 2-5% of the world's Gross Domestic Product (GDP) or about US 600 Billion.<sup>28</sup> The massive amount of this illegal money has threatened the licit economy's integrity and could threaten public order.<sup>29</sup> Furthermore, in the context of democracy, money laundering has a devastating effect on the election process.<sup>30</sup> The amount of illicit money provided by the

[tidak?page=all](#), accessed on 26<sup>th</sup> November 2020.

24 After the Constitutional Court Decision in 2008, the election system was amended to not only the direct election but also the open-list system for the parliament candidate. In the open list system, the political party no longer decided which candidate are given the ballot to win the seat. However, the seat must be given to the candidate from the party who obtained the most individual votes. Further discussion, see: Denny Indrayana, "Money Politics in a More Democratic Indonesia: An Overview", *Australian Journal of Asian Law*, Vol. 18. No. 2, (2017), p. 5

25 It can be seen from the rise of the political party from only three to over two hundred (200) parties after reformasi. Fortunately, the number has been reduced to 73 political parties which are registered in the Ministry of Law and Human Rights and only 27 political parties that are eligible to participate in the election in 2019. For further discussion see: Estu Suryowati, "Mengapa jumlah Partai yang Mendaftar Sebagai Calon Peserta Pemilu 2019 Menurun?", <https://nasional.kompas.com/read/2017/10/17/13175921/mengapa-jumlah-partai-yang-mendaftar-sebagai-calon-peserta-pemilu-2019?page=all>, accessed 27 November 2020.

26 Reda Manthovani and R. Narendra Jatna, *Rezim Anti Pencucian Uang dan Perolehan Hasil Kejahatan di Indonesia*, (Malibu:2012), pp. 20-21.

27 Javier Garcia, "International Measures to Fight Money Laundering", *Journal of Money Laundering*, Vol.4 No.3, 2001, p.7.

28 US Government, Secretary of the Treasury and Attorney General Office, "The National Money Laundering Strategy", available at: <https://www.treasury.gov/resource-center/sanctions/OFAEnforcement/Documents/ml2001.Pdf> accessed 6 February 2021 p. 6-7.

29 Mark Pieth and Gemma Aiolfi, *A Comparative Guide to Anti-Money Laundering, A Critical Analysis of Systems in Singapore, Switzerland, the UK and the USA*, (Edward Elgar Publishing, 2004), P. 3.

30 Denny Arinanda Kurnia, "Study on Money Laundering Practices from Criminal Action Results of Political Parties",

criminal is desirable for corrupt candidates.<sup>31</sup> As a consequence, the integrity of the election process will be disrupted. A global anti-money laundering (AML) regime has been established to fight this problem effectively and efficiently.

The anti-money laundering system (AML) has historically evolved in four phases. The first phase dates back to 1970, which focused on the regulatory and preventive measures to combat money laundry.<sup>32</sup> It was followed by a discussion on the criminalisation and internationalisation of money laundering.<sup>33</sup> From there, global impacts of money laundry had been put on the table, which had been succeeded by the establishment of a supranational body, the Financial Action Task Force (FATF), which carries monitoring and response mandates.<sup>34</sup> Since then, discourses then dwelled on terrorism financing<sup>35</sup>. Fast forward to today, is it possible to qualify money laundering in discourses and policies related to political party financing?

Before answering such a question, it is important to highlight how money laundering regimes function in the context of political party financing. In this case, there will be three points of view: Steps of money laundering, Nature of criminal networks, and the Typology of money laundering.

### 3.2.1. Steps of money laundering

Discussions in this context refer to the process of concealing, converting, or transferring the existence of illegal income and disguising such to appear legitimate<sup>36</sup> in a political party system. In other words, it highlights three important steps, namely placement, layering, and integration. Placement is a physical introduction of the proceeds of crime into the financial systems of a political party.<sup>37</sup> Layering can be described as the disguise of the origins of the proceeds of crime into a series of complex financial transactions.<sup>38</sup> Finally, integration is when a criminal combines the newly laundered funds with the legitimate origin.<sup>39</sup> This normally occurs through donations from both members and non-members, such as private institutions. These three important steps are not necessarily in a linear manner.<sup>40</sup> In most cases, the steps are taken at the same time.

The steps of money laundering in a political party seem to be relatively safe and easy.<sup>41</sup> It only requires a “connection” with the corrupt members of the political party. Criminals can use their connection in the political party to disguise their illicit money. The method is very simple, it can be done through “fake donations” given to a political party.

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*Jurnal Kajian Komunikasi dan Studi Media, Vol 6 No 1*, pp. 30-32.

31 Donald R. Liddick, JR, “Campaign Fund-Raising Abuses and Money Laundering in Recent U.S. Election: Criminal Networks in Action”, *Crime, Law, and Social Change* 34, no. 2 (September 2000): pp 138 - 140..

32 Marco Arnone and Leonardo Borlini, “International Anti-Money Laundering Programs: Empirical Assessment and Issues in Criminal Regulation”, *Journal of Money Laundering Control Vol.13 No.3 (July, 2010)*, p.239.

33 *Ibid.*

34 *Ibid.*

35 *Ibid.*

36 Javier Gracia, “International Measures to Fight Money Laundering?”. *Journal of Money Laundering Vol 4 No. 3 (1999)*, p.7.

37 Neil Boister, *An Introduction to Transnational Criminal Law (Oxford University Press 2012 p.100*

38 William C. Gilmore, *Dirty Money: The Evolution of International Measures to Counter Money Laundering and the Financing of Terrorism*, 3<sup>rd</sup> ed.rev. (Council of Europe Publishing 2004) p. 29.

39 Mark Pieth and Gemma Aiolfi, *A Comparative Guide to Anti-Money Laundering, A Critical Analysis of systems in Singapore, Switzerland, The UK and The USA* (Edward Elgar Publishing 2004) p.3.

40 Niel Boister, *An Introduction to Transnational Criminal Law*, (Oxford University Press, 2018), p.

41 Indonesia Legal Roundtable, on position paper, “Reformasi Pendanaan Kampanye Pemilu Melalui Pendekatan Anti-Pencucian Uang”, Position Paper, 2014. Pp. 1-3.

### 3.2.2. Nature of criminal networks

There following are some common scenarios involving criminal networks:

- **Patron-client relationship**

This relationship is a vertical dyadic alliance between two persons of unequal status, power, or resources usually used in organised crime modus.<sup>42</sup> In practice, this type exists in many forms, including instrumental friendships, ritual kinships, and patron-client clusters.<sup>43</sup> A powerful person in an organized crime will use this relationship to commit bribery involving another political party member.<sup>44</sup> This person shall then exercise power over public officials or political party members in of resources to pursue political agenda. In return, the political member will give access to politics, policymaker, and even impunity as client in this alliance. In addition, an organized crime again benefits from this scheme. It provides free tools to hide/disguise proceeds of crime through donations to a political party member. This guarantees swift and immediate funding for the political party. This scheme mostly uses a political party member as a nominee to hide and conceal their proceeds of crime. Such a process also minimizes prejudice from the legal officer. Furthermore, with the absence of a regulatory policy and strict framework on financial disclosure, it is can be confidently expressed that this scheme provides a “win-win” solution both for the political party and involved patron-criminals.

- **Abuse of state resources for political party financing**

In this typology, certain state resources, such as money, infrastructure, or even government programs may be extensively used for election purposes.<sup>45</sup> The government officer, which is also a member of political party, may abuse the use of these resources for their own benefit.<sup>46</sup> Moreover, in certain cases, a government officer would distribute these through unauthorized channeling of public funding into several controlled individuals, organizations, or companies.

Unlike other types of financial sources, the practice of abusing state resources is an act of political corruption.<sup>47</sup> There have been a few cases involving high-rank officials leaders of political parties in Indonesia. One example is the mayor of one city in East Java Province, who used illicit money for a political campaign in 2018.<sup>48</sup> Another example is a recent corruption case of social aid funding for COVID-19 by a Minister of Social Welfare. In this case, he was alleged to have used state funds to support his election campaign.<sup>49</sup> It should be noted that these two examples feature cases involving individuals. So far, political parties in Indonesia have yet to be proven accountable for such crimes.

### 3.2.3. Typologies of Money Laundering

There have been two typologies of money laundering. First, corporate accounts are used to carry out transactions with criminal proceeds, which aim at disguising a crime. These

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42 Donald R. Liddick, JR, ‘Campaign Fund-Raising Abuses and Money Laundering in Recent U.S. Election: Criminal Networks in Action’, *Crime, Law, and Social Change* 34, no. 2 (September 2000): 138.

43 *Ibid.*

44 *Ibid.*, 137.

45 Marcin Walecki, “Political Money and Political Corruption: Considerations for Nigeria”, *INEC-Civil Society Forum, Seminar on Agenda for Electoral Reform*, (2003), p. 6

46 Piers Beims and James Messerschmidt, *Criminology, Second Edition* (Harcourt Brage College Publishers, 1995), p. 295-297.

47 This falls under the definition of corruption namely any action by the government officers both in legislative, executive, or even judiciary body. This is ant abuse of public position, resource, facilitate for their own benefit including family, friends or even political party.

48 M. Yusuf Manurung, *Uang Suap Bupati Jombang Untuk Kampanye Pilkada 2018*, <https://pilkada.tempo.co/read/1057288/uang-suap-bupati-jombang-untuk-kampanye-pilkada-2018>, Accessed 20 Januari 2021.

49 Dani Prabowo, *KPK Diminta Koordinasi Bawaslu Awasi Anggaran BANSOS Covid-19 saat Pilkada*, <https://nasional.kompas.com/read/2020/09/10/09433111/kpk-diminta-koordinasi-bawaslu-awasi-anggaran-bansos-covid-19-saat-pilkada>, Accessed 20 Januari 2021.

transactions are done as if it is normal and legal. Furthermore, the truth about the criminal origin of the assets is deliberately masked in the process.; Second, legal assets are mixed with illegal assets obtained from the conduct of crime. This act is known as *co-mingli*, which to anyone who attempts to trace the origin of the source of assets. Then the assets obtained forms the conduct of criminal acts committed by the defendant would not be known. Considering that based on the above elaboration, then the element "With the aim of concealing or disguising the origin of assets has been fulfilled legally and convincingly at law."<sup>50</sup>

These explanations above signify some scenarios that may apply money laundering policy in political party policing, although more complex scenarios may also be found in practices. The point highlighted here is that this typology of money laundering is "relatively" safe to be used to laundering illicit money through political party financing. Especially with current political party regulation. The criminal can use his/her relatives from political members as "tools" to disguise his/her illicit money. Furthermore, the political party can be abused as a "co-mingli" of the illicit money. The illicit donations from political member who has a relative with the criminals can be merged with the legal donations from other resources. As a consequence, it will be extremely difficult to trace the illicit money.

#### 4. REGULATORY FRAMEWORK FOR POLITICAL PARTIES FINANCING

##### 4.1. Financing Political Parties

In Indonesia, political party financing has been specifically regulated in Article 34, 34A, 35, and 39 of 2011 Law No. 2 on the Amendment of 2008 Law No. 2 on Political Parties. Article 34 stipulates that the financial sources of political party are derived from the membership fee, legitimate contribution, and subsidy from the national budgets and/or regional budgets.<sup>51</sup> Such resources should be managed and documented in the financial report of political parties and subjected to audit from the Supreme Audit Board (BPK); Finally, it should be made available to the public for accountability.<sup>52</sup>

With regards to donation, Article 35 regulates further that "legitimate donation" can come from (1) individuals members of a political party of which the implementation shall be governed by the statute and by-laws of the political party, *without limitations*; (2) non-member Individual, to the amount that shall not exceed Rp1.000.000.000, 00 per person within the period of 1 (one) year; (3) companies and/or corporations, to the amount that shall not exceed Rp 7.500.000.000,00 per company/corporation within the period of 1 year. This article speaks two points. First, the limitation is crucial as it aims to ensure that a political party is not dependent on non-member's and private actors' contributions. Nevertheless, it does not apply to membership. In practice, it is clear that some political parties are owned by prominent family such as the Partai Demokrasi Indonesia Perjuangan (PDIP) which is mainly funded by the Megawati's family.<sup>53</sup> Similarly, the Democratic Party (Partai Demokrat) is mainly supported by the Susilo Bambang Yudhoyono, National Democratic Party is also funded by the Surya Paloh. In other words, memberships can

50 The Preparation team of NRA Update of Indonesia, *The Updated 2015 Indonesia's Risk Assessment on Money Laundering Crime*, May 2019, Available at <https://www.ppatk.go.id/backend/assets/uploads/20200219102802.pdf> Accessed 28 January 2021, p. 89-91

51 the political parties are obliged to submit an accountability report on the income and expenditure of financial subsidy from the National/Regional Budget to be submitted to the Supreme Audit Board annually to be audited in no later than 1 (one) month after the end of the fiscal year. The auditing process of the financial Reports shall be conducted in 3 (three) months after the end of the fiscal year. The result of the audit of the financial report shall be submitted to the political party in no later than 1 (one) month after being audited.

52 Articles 38, 39, & 40 of the 2008 Law No. 2 on Political Parties

53 Faisal Laode M. Syarif, 'Addressing the Root of Political Corruption in Indonesia', *Jurnal Antikorupsi INTEGRITAS* 5, no. 2 (n.d.): 193.

be used as an excuse to trespass the limitation clause.

Second, since there is no limitation on the amount of money or donation, or contribution received from the members of the political party (ies), this opens an opportunity to deposit any kinds of funds, including illegal ones. Many political parties, in fact, supports the former corruption convicts. While their cases have been closed, there is no guarantee whether the funds contributed by the candidate had resulted from his/her corruptive actions or not.

The further question is whether the principles of honesty, volunteerism, fairness, transparency, accountability, as well as sovereignty and independence of political parties as stated in Article 36 of the 2008 Law No. 2 can be used as a foundation for all activities of political parties including the financial management. Nevertheless, there is no clear explanation of what these principles mean and how they operate in practice. As mentioned, due to the closed links with family, the governance affair of political party will be very much influenced by the 'owner' of the parties. This includes the criteria and requirements to become the top leaders. Practices of political dowry to please the owners are found in the practice. Under this management, it provides consequence on the fund management.<sup>54</sup>

There have been some efforts such as preventive and punitive mechanisms to ensure that such principles have been implemented. The Indonesian Anti-Corruption and Eradication Commission (KPK) and the Indonesia Institute of Science (LIPI) have issued strategies to implement political parties' integrity system.<sup>55</sup> They suggested due to their fundamental nature, ethical and integrity principles should be upheld by all members and candidates of political parties and applied at all levels of operationalization of political parties, including recruitment, day to day management, and evaluation/assessment; they should further be articulated in the rules of games and day to day policy with sanctions for non-compliance. Hence such principles are no longer an ethical issue but also a legal one. Another endeavor of the government to push for transparency and accountability was also articulated in the National Strategy for Corruption Prevention (Stranas PK). Using the corruption platform is expected to add value for enforcing transparency and accountability. Nevertheless, this is still the homework of this country. Almost all political parties have rules and policies however the implementation has been an issue. This is still a struggle for this. Moreover, in its research in 2013, the TII highlighted the unwillingness of some political parties to publish their finance report signifies the problem that may undermine the fundamental principles.

In the end, the 2008 Law No. 2 on Political Parties sets the foundation and boundaries for political parties to operate. However, it is acknowledged certain consequences have not been addressed, including money laundering activities. Hence, there is a need to look further into the anti-money laundering regime to fill the gap. This is to avoid that this law should not justify the practice of money laundering.

#### **4.2. Money laundering Policy**

The anti-money laundering regime in Indonesia began with the passing of 2002 Law No. 15 on Prevention and Eradication of Money Laundering (TPPU), which was amended through Act Number 8 of 2010 (Money Laundering Act). These instruments regulate definitions, elements

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<sup>54</sup> Ibid., 194.

<sup>55</sup> <https://www.kpk.go.id/en/news/press-releases/725-kpk-recommending-amendment-on-political-party-law>

of crimes, and criminal procedures for handling money laundering crime. Implementing anti-money laundering measures. As seen in the table below, there already are several implementing regulations passed to ensure the effective implementation of this law:

No.	Regulation	Year
1.	Government Regulation Number 43 of 2015 concerning Reporting Parties in Prevention and Eradication of Money Laundering Offences of 2015	2015
2.	Government Regulation Number 2 of 2016 concerning Procedures for Submitting Data and Information by Government Agencies and/or Private Institutions in Prevention and Eradication of Money Laundering Offences of 2016	2016
3.	Presidential Regulation Number 117 of 2016 concerning Amendment to Presidential Regulation Number 6 of 2012 concerning National Coordinating Committee	2016
4.	Presidential Regulation Number 13 of 2018 concerning Application of Principles of Recognizing Beneficiaries from Corporations in the Context of Prevention and Eradication of Money Laundering Offences and Terrorism Financing Offences of 2018	2018

There have been other regulations implementing laws and regulations related to money laundering. Such laws and regulations have laid down the money laundering regime in Indonesia and become the extended hand of other types of crime as predicate crimes. It should be noted that the crimes that are specific to any money laundering programs (predicate crime) are limitative, meaning that not all crimes are linked to money laundering. Moreover, Indonesian law allows the crime of money laundry to be prosecuted with or without predicate crimes.

The question is whether the laws and regulations could address the issue of AML in a political situation. There have been some notes in this regards:

- Unclear status of money politics and political corruption

As mentioned earlier, the unclear status of money politics, as well as political corruptions, have created a limbo situation whether both concepts can constitute crime or not. Without clear determination and acknowledgment, both cannot be considered as predicate crime.

- Limitative list of a predicate crime

The 2010 Law No. 08 on the Prevention and Eradication of Money Laundering specifies the specific crimes which can be considered as predicate crime. This is expressed in Article 2, Paragraph (1). However, the crimes under the law on political parties are not recognized.<sup>56</sup> The

<sup>56</sup> article 2 Law No. 8 year 2010 on the Prevention and Eradication of Money Laundering Offence.

crime-related political party is not mentioned in article 2, paragraph (1) Money laundering law. Hence, this calls for the amendment of 2010 Law No. 08.

- Requirement of a minimum of 4 years imprisonment

The 2010 Law No. 08 on the Prevention and Eradication of Money Laundering has opened “clause” regulation related to a predicate crime.<sup>57</sup> It means the list of predicate crimes under Article 2 on money laundering law can be expanded for any crimes imposed with imprisonment of a minimum of four (4) years. Unfortunately, the political party regulation, especially related to the political party financing, was only imposed with administrative sanctions of six months of detention and fines.<sup>58</sup> Consequently, the money laundering law could not be used if a case is related to political party financing. This condition urgently needs improvement by amending the regulation on political party financing. Furthermore, such regulations need to aggravate the punishment of at least four (4) years of imprisonment to be compatible with the anti-money laundering regime.

Such loopholes in the legal framework probably explain why there has been no case involving money laundering in political party financing. Laws and regulations still do not recognize the direct connect between political corruption and money politics. This is indeed a hurdle that needs to be addressed if the money laundry regime will be applied in the context of political party financing. Hence, the next question is whether the current mechanism and institution on money laundering can be used as a preventive measure to detect the flow of funds in light of political parties’ revenues and expenditure.

## 5. INSTITUTIONAL FRAMEWORK

### 5.1. The role of PPAATK (FIU) to monitor Political Party Financing

Indonesia Financial Transaction Reports and Analysis Center (PPATK) is an Indonesia Financial Intelligence Unit (FIU) that has main duties to (1) prevent and eradicate money laundering crimes, (2) manage information data obtained by PPAATK, (3) supervise compliance of the reporting party, and (4) analyse and examine reports and information on financial transactions that indicate criminal acts of money laundering and / or other criminal acts as referred in Money Laundering Law.<sup>59</sup> It has to be noted that PPAATK is not a law enforcement agency. It is merely an administrative institution monitoring the flow of funds.<sup>60</sup> Hence, it has no authority to independently conduct investigations related to money laundering activities in Indonesia. However, data generated by this agency can serve as evidence, which can be shared with law enforcement agencies.

The question is whether PPAATK can be used to monitor the flow of revenues and expenditure of political parties. The 2010 Law No. 08 on Prevention and Eradication of Money Laundering, however, does not specify political party as the subject of monitoring, not excludes it from scrutiny.

PPATK generally has a duty to prevent, manage, monitoring, supervise, and analyse information related to money laundering.<sup>61</sup> As a financial intelligence unit that has data and

<sup>57</sup> Article 2 par. (1) (z) Law No. 8 year 2010 on the Prevention and Eradication of Money Laundering Offence.

<sup>58</sup> Article 49 j.o Article 35 Law No. 2 year 2008 as amended by Law No. 2 year 2011 on Political Party.

<sup>59</sup> Article 40 Law No. 8 year 2010 on the Prevention and Eradication of Money Laundering Offence (Money Laundering Law),

<sup>60</sup> The Preparation team of NRA Update of Indonesia, *The Updated 2015 Indonesia’s Risk Assessment on Money Laundering Crime*, May 2019, Available at <https://www.ppatk.go.id/backend/assets/uploads/20200219102802.pdf>, Accessed 28 January 2021

<sup>61</sup> A (A) rticle 40 Law No. 8 year 2010 on the Prevention and Eradication of Money Laundering Offence (Money

resources related to money laundering, it can monitor and analyse any suspicious transactions through the Financial Service Providers (PJK) report.<sup>62</sup> This covers any donations, membership fees, or corporate donations deposited into the political party bank account.<sup>63</sup> Furthermore, the PPATK has a regulation for Bank Institutions to conduct enhanced Due Diligence for every transaction to the bank account owned by a politically exposed person (PEP).<sup>64</sup> This procedure needs to be implemented in order to prevent any abuse of political party financing. In addition, as a focal point of the Anti-Money Laundering regime, the PPATK can also manage, supervise and analyse transactions data obtained by financial institutions related to PEP, especially the transactions made by a member of the Political Party.

The role of PPATK becomes more crucial during elections season. In fact, it was actively involved in monitoring election campaign funding during the 2017-2019 election years.<sup>65</sup> There were 1,092 reports on cash transactions amounting to 1.3 Trillion Rupiah involving election organizers, candidates and their relatives, and political party. Furthermore, it unearthed 143 suspicious transactions with totalling 47.2 billion rupiahs.<sup>66</sup> Furthermore, in March 2019, the PPATK also found 16 indicated cases connected to money politics.<sup>67</sup> This situation indicates that the number of crime-related political party financing and general election financing remains high in Indonesia.

In 2020, The PPATK conducted a coordination meeting with the banking industry to discuss about to the supervision of the suspicious transactions report. Banks have an obligation to identify any suspicious transactions from its customer.<sup>68</sup> The identification of the suspicious transaction must include: (a) the monitoring of customer transaction; (b) transaction analysis, and (c) the recognition of the transaction as a suspicious transaction.<sup>69</sup> These procedures have been implemented in every bank in Indonesia, and must be applied to every customer, which *should include political parties and PEPs. To ensure these procedures are implemented correctly, sanction is imposed to those who fail to comply.*<sup>70</sup>

The chairman of the PPATK urged the banking industry to be more aware of money laundering risks related to electoral campaign funding.<sup>71</sup> Therefore, the process of monitoring and identifying suspicious transactions by bank institutions must be intensified. There are several indicators that the bank industry can use to considered suspicious transactions from the PEPs. It can be, but not limited to, any transactions that involve the purchasing of unreasonable electronic money and/or withdrawal cash by the candidates, and the massive amount of transfer

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Laundering Law),

62 Article 40 and article 41 Law No. 8 year 2010 on the Prevention and Eradication of Money Laundering Offence (Money Laundering Law).

63 Refki Saputra, "Mendorong Transparansi dan Akuntabilitas Dana Kampanye Melalui Pembatasan Transaksi Keuangan Tunai", *Jurnal Pemilu dan Demokrasi*, Vol 6, 2013., Pp. 82-83.

64 The regulation of the Head of The Financial Transaction Report and Analysis Center, No. Per-02/1.02/PPAT/02/15. Tentang Kategori Pengguna Jasa yang Berpotensi Melakukan Tindak Pidana Pencucian Uang.

65 Pers Release, *Mewujudkan Pilkada dan Pemilu Bebas dari Politik Uang*, available at <https://www.ppatk.go.id/back-end/assets/uploads/20181219104626.pdf>, Accessed 28 January 2021

66 Ibid

67 PPATK, *The PPATK annual report 2019*, available at <https://ppid.ppatk.go.id/wp-content/uploads/2020/08/Laporan-Tahunan-PPATK-2019.pdf>, Accessed 28 January 2021.

68 The regulation of the Head of The Financial Transaction Report and Analysis Center, No. Per-11/1.02/PPAT/06/13 as amended by Per-04/1.02/PPATK/03/2014 Tentang Kategori Pengguna Jasa yang Berpotensi Melakukan Tindak Pidana Pencucian Uang.

69 Article 3, Ibid.

70 article 24, Ibid.

71 Mochammad Januar Rizki, *Awasi TPPU Hingga Dana Kampanye Pilkada, PPATK Gandeng Direktur Kepatuhan BANK*, <https://www.hukumonline.com/berita/baca/lt5f864e5ba5a16/awasi-tppu-hingga-dana-kampanye-pilkada--ppatk-gandeng-direktur-kepatuhan-bank>, Accessed 28 Januari 2021.

without reasonable explanation.<sup>72</sup>

In addition, The PPATK also has collaborated with the Election Supervisory Body (BAWASLU) to maintain the integrity of the election process from money laundering.<sup>73</sup> The cooperation, including monitoring transactions in the campaign, founded a special account (RKDK).

## 5.2. Politically Exposed Person

The identification of politically exposed persons (PEPs) is an important aspect related to the AML Regime. PEPs can be defined as individuals who are or have been entrusted with public functions, including heads of state, head of government, senior politicians, senior government, judicial or military officials, senior executives of publicly owned corporations, and important political party officials.<sup>74</sup> Furthermore, immediate family members or even persons known to be close associates with prominent public functions must be listed under such classification.<sup>75</sup> In other words, PEPs are a list of individuals who have a high tendencies to commit money laundering.

If a PEP wants to establish a business relationship, Financial Institutions (such as banks, insurance companies) have an obligation to take preventive measures by (1) creating appropriate customer identification to determine whether the customer is a PEP, (2) directly involving senior management officers to assess the business relationship as such; (3) taking reasonable measures to detect the source of wealth and source of funds of a PEP; and (4) conducting enhanced and sustained monitoring of the business relationship. All these procedures are made to ensure that PEPs use legitimate funding to establish a business.<sup>76</sup>

In the context of Indonesia, there are several points that need to be highlighted. First, the concept of PEP is not new. PPATK already carries the mandate to monitor PEPs. The implementation of the concept of PEP can be seen in the regulation of the Head of the PPATK related to The Categories of Potential Service Users to Commit Money Laundering.<sup>77</sup> Second, every financial service provider in Indonesia has an obligation to conduct special procedures in dealing with transactions with the PEPs, which is called Enhanced Due Diligence (EDD).<sup>78</sup> In this procedure, financial service providers have an obligation to identify the transactions of the PEPs. The identifying process to include (a) profile of PEPs, (b) source/s of transactions, and (c) rationale for transactions,<sup>79</sup> However, the current procedure has been heavily criticized. The implementation of the concept of PEPs, as well as EDD procedures are highly dependent on the compliance of financial service providers.<sup>80</sup> As such, systems can only work as long as

<sup>72</sup> Ibid. p.2

<sup>73</sup> Pers Release, *Mewujudkan Pilkada dan Pemilu Bebas dari Politik Uang*, available at <https://www.ppatk.go.id/back-end/assets/uploads/20181219104626.pdf>, Accessed 28 January 2021

<sup>74</sup> Daniele Canestri, "Politically Exposed Entities: How to Tailor PEP Requirements to PEP owned legal entities", *Journal of Money Laundering Control*, Vol. 22 No.2, 2019, p. 360.

<sup>75</sup> Kim-Kwang Raymond Choo, "Politically Exposed Persons (PEPs): Risk and Mitigation", *Journal of Money Laundering Control*, Vol. 11 No.4, (2008), p. 372

<sup>76</sup> FATF Guidance, *Politically Exposed Person* (Recommendations 12 and 22), available at <http://www.fatf-gafi.org/media/fatf/documents/recommendations/guidance-pek-rec12-22.pdf>, Accessed 28 January 2021

<sup>77</sup> The regulation of the Head of The Financial Transaction Report and Analysis Center, No. Per-02/1.02/PPAT/02/15. Tentang Kategori Pengguna Jasa yang Berpotensi Melakukan Tindak Pidana Pencucian Uang.

<sup>78</sup> Ibid.

<sup>79</sup> The Financial Service authority (OJK) Regulation No 12/POJK.01/2017 as amended by OJK regulation No. 23/POJK.01/2019 on The Implementation of Anti Money Laundering and Terrorist Financing in Financial Services Sector.

<sup>80</sup> S, Nugroho, "Impelementasi Customer Due Dilligence dan Enhanced Due Dilligence dalam Mencegah Tindak Pidana Pencucian Uang", *Unnes Law Journal*, 3 (1), 2014, <https://doi.org/10.15294/ulj.v3i1.3633>

the financial providers are able to cooperate with and report regularly to relevant authorities. Moreover, there are no “checks and balances” to maintain the integrity and the quality of reports being submitted.

## 6. CONCLUSION

Costs required to ensure the integrity of political processes in Indonesia are staggering. Furthermore, recent developments in election systems have also increased the political cost for both candidates and the political party.

There are typologies that are widely known related to political party funding. First, the patron-client relation, which is a scheme mostly uses a political party member as a nominee to hide and conceal their proceeds of crime. Illicit funding from the criminal will appear as a donation from the political member to the political party to minimize prejudice from the legal officer. Second is abusing state resources for political party financing. Government officials are privy to illegal distribution of state resource through unauthorized channeling of public funding into several controlled individuals, organizations, or companies.

In Indonesia, as in any democratic country, the source of political party funding must come from a legal actor and activity. Yet, there is no clear process of assessment to ensure the integrity of financial elements and procedures in the country. Therefore, there is a massive risk for political party funding to be abused by money launderers. Unfortunately, this situation is beyond the coverage of existing Indonesian laws, particularly on political party financing and money laundering. These loopholes indeed can create an opportunity to be used by criminals to hinder their illicit money.

Therefore, actions need to be taken to tackle money laundering in relation to political party funding. Increasing public awareness is imperative. Non-Governmental Organizations (NGOs) should play an important role in putting pressure on the political parties to be more transparent, especially related with their funding. Cash as donations should be prohibited. This can avoid proceeds of crime into political party financing. Money launderers are likely to use cash rather than bank transfers in order to hide their illicit money. However, a robust and long-term solution, which is the amendment of the current law on political party financing, is needed to tackle this systemic problem. Several aspects need to be changed. Firstly, a better scheme to monitor transactions, especially the donations from the political party members must be upheld. Secondly, punishment of the political party funding crime must be made more severe. Such act must be recognised as a predicate crime of money laundering, which is needed at least a crime with the punishment of 4 years imprisonment.

As of this writing, a mechanism exists to eliminate any forms of money laundering in the context of political party financing. The PPATK carries a monitoring mandate. However, it has to be able to investigate and criminalise all illegal conducts during the election. Nevertheless, it can provide evidence to advocate for further regulation in this matter. In the end, tackling money laundering in the political party's financing will not depend on the regulatory or institutional framework. Lastly, leaders in the political parties should take a bold stand to ensure that financial procedures are free from any criminal elements.

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