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FOREWORD

Khoirunnisa Nur Agustyati
Executive Director of the Association for Elections and Democracy
(Perkumpulan untuk Pemilu dan Demokrasi/Perludem)

The Association for Elections and Democracy (Perkumpulan untuk Pemilu dan Demokrasi/Perludem) has been managing the Election and Democracy journal since 2012 which is named the Journal of Elections and Democracy. The purpose of making this journal is to publish the results of research and advocacy that have been done by Perludem. Until now, Perludem has produced a total of 11 journal publications. The journal that has been developed by Perludem is still in the national scope. Most of the parties involved in the writing of this journal are Perludem researchers, civil society activists and election organizers.

Perludem intends to develop the Election and Democracy Journal into a regional journal with more academic aspects. The hope is that this regional journal will become a forum for academics, study centers at universities, civil society, and election organizers to be able to contribute their writing in this journal. This was gradually realized by the existence of the Asia-Pacific Regional Support for Elections and Political Transitions (Respect) program which was managed by Perludem with support from the United States Agency for International Development (USAID). It is hoped that this regional publication will be useful for researchers, academics, and civil society to provide recommendations and references for improving electoral governance and democratic and political processes in the Asia and Pacific Region. In the process of managing this regional journal, Perludem is assisted by the Djokosoetono Research Center (DRC), Faculty of Law, University of Indonesia.

For this first edition we chose the theme political finance in the region. This theme is chosen because money has an important role in the political system of democracy. Money has a role in enabling political parties to run their organizations, including carrying out the three main functions of parties, namely as political parties in the grass root, parties in the central office, and parties in the public office. In addition, parties also play a role as an intermediary agent that connects constituents and also the state through the electoral arena. In the election stages, for example, political parties need money in order to carry out campaign activities to obtain voter votes. Even if money is not enough, money means a lot to the success of the campaign because the campaign has an influence on the election results and the campaign will not run without money (Jacobson 1980: 33). Meanwhile, outside the electoral stage, political parties use money to provide political education, political recruitment, to the aggregation and articulation of interests.

On the other hand, the use of money in politics often has a negative side effect on the quality of a country's democracy. Political corruption, transparency, and accountability in reporting are the main problems of the use of money in politics which have an impact on the decline of democracy. Whereas in a democratic political system, openness and transparency in various political activities are important aspects that are always prioritized, especially in the management and use of political funds carried out by political parties as the main actors of democracy.

The agenda for reforming political party financial governance has become one of the important discourses that have long been discussed and is still being carried out to this day. However, the question is, how can reforms in political party financial governance be carried out? This question can be answered by reading the design of political party financial arrangements and mapping and analyzing political party financial governance problems first.

These questions are trying to be answered in the articles in this journal. In this journal, there are 5 articles written by academics from Indonesia, Malaysia, the Philippines and Timor Leste. The first article was written by Dr. Deasy Simanjuntak entitled Political Financing and Its Impact on the Quality of Democracy in Southeast Asia. This paper discusses the quality of democracy in Malaysia, Indonesia, Thailand and Myanmar by looking at the existing political financing in these countries. The second article entitled The Urgency to Prevent Illicit Political Party Fundraising Through The Anti-Money Laundering Regime in Indonesia by Nathalina Naibaho, Patricia Rinwigati, and Ahmad Ghazi discusses the existence of a legal vacuum related to limitation of donations in Indonesia which can encourage the potential for money laundering practices, so that its importance there is a legal framework to prevent this. The third article entitled Conceptualizing Party Finance Legislation in Malaysia: Between Normative and Reality written by Azmil Tayeb and Dineskumar Ragu raises the issue that political finance is not ideally regulated in Malaysia because there is no specific legal framework that addresses this. This has led to a number of corruption cases related to political finance. So it is important to encourage regulations that can promote transparency and accountability of political parties. The fourth article entitled A Disproportionality Unequal Playing Field: Challenges to Prospects for Campaign Finance Law and Policy in the Philippines was written by Patricia Blardony Miranda. This paper raises the issue of transparency and accountability of campaign finance to see the equality of playing field for election participants. And the last article entitled Examining the Level of Accountability and Transparency with Respect to Political Party Financing in Timor Leste written by Celso da Fonseca and Joel Mark Baysa-Barredo raises the issue of the importance of accountable and transparent governance for a newly independent country like Timor Leste.

These articles provide an overview of the situation in the development of democracy in Southeast Asia in terms of political finance. Finally, we hope that these articles can further generate discussion among academics, election activists, researchers on the issue of ideal democratic governance, especially for the Southeast Asia region and in general for the Asia Pacific region. Happy reading!

POLITICAL FINANCING AND ITS IMPACT ON THE QUALITY OF DEMOCRACY IN SOUTHEAST ASIA

Deasy Simandjuntak¹

Abstract

Across the region, it is generally assumed that funding for parties and campaigns derives from sources such as membership fees, voluntary work by members and/or financial contributions by wealthy individual and interest groups. Yet what are the similarities and differences among the regimes and practices of political financing the region, and how do we understand the quality of democracy by looking at their political financing? Malaysia, Indonesia, Thailand and Myanmar have had their elections in the past three years. The article gives an overview of the countries' political financing regimes and/or practices to identify common denominators as well as draw linkage between political financing sources and democratic quality.

Keywords: *political financing, democratization, Thailand, Myanmar, Malaysia, Indonesia*

2020 was a year of political contestations for some Southeast Asian countries. Some of these take the form of popular suffrage, or elections, such as Singapore's election in July, Myanmar's election in November, and in Indonesia, whose local elections – in December in 270 of its provinces and districts- was one of the world's largest elections. Political contestations also took other non-electoral forms, such as the ongoing political uncertainties in Malaysia, which had begun in February 2020 and which led to the appointment of Muhyiddin Yassin as prime minister replacing Mahathir Mohamad, whose coalition, the Pakatan Harapan (PH) had initially won Malaysia's groundbreaking election in 2018.

Political activities, especially elections, are costly. Yet, the financial aspects of political activities such as campaign and party financing, have not been at the center of scholarly attention. Across Southeast Asia, it is at times taken for granted that funding for parties and campaigns derives from sources such as membership fees, voluntary work done by the rank-and-file members, and/or the more problematic financial contributions by wealthy individuals and interest groups. However, is this always the case? Are there common denominators of political parties and campaign financing regimes in the region?

This article aims at answering the following questions: What are the similarities and differences among the regimes of political financing, i.e. political parties and campaign financing, in some Southeast Asian countries? How do we understand each country's democratic quality by looking at their political financing? The article gives an overview of Malaysia, Indonesia, Thailand and Myanmar's political financing regimes and/or practices in particular in order to identify common denominators as well as draw linkage between political financing sources and democratic quality. Indonesia's recent elections were generally free and fair, yet political parties' financing is fragmented and aggravates patronage relations. Malaysia is an example of electoral polity with semi-competitive election and multi-party systems, while Thailand equivocates between military interventionism and electoral democracy especially exhibited by the competition between Thaksin Shinawatra's political influence and the military. At the time of writing, the Myanmar military has staged a coup and detained Aung San Suu Kyi and other democratically elected leaders, following parliamentary elections lost by the army-backed

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opposition.² Prior to the coup Myanmar has exhibited a retreat of democracy for its lack of capacity to address the plight of its ethnic minorities.

Norris and Es broadly define political finance as all money earned or spent by parties and candidates during and apart from political campaigns.³ As evidenced in many campaigns and other instances of political activities, the regulation of political finance in Southeast Asia is flexible and problematic. On the one hand, regulations seem to be strict, yet on the other the control mechanism is frail, leading to weak implementation of regulations. This is at the face of growing demands for non-governmental oversight structures which is represented by organizations such as Transparency International in Malaysia and Indonesia Corruption Watch, which struggle for transparent political finance regulations in order to create fair political contestations during elections. The International Institute for Democracy and Electoral Assistance (International IDEA) 2019 report mentions the absence of regulations, intersection between business and politics, informal management practices of parties and campaigns, unrealistic rules and regulations and discourage competition as challenges in the region.⁴

Discussing common sources for party finance in different polities, Scarrow wrote that they may derive from public purse, (whether subsidies or patronage resources), party-run businesses, membership dues, and donations (from party members, members who are officeholders, companies or trade unions).⁵ Examining political parties in Western democracies, Von Beyme classified these sources as “internal”, referring to dues and donations from party members, contributions from office holders, and funds generated by businesses connected to the party such as newspaper or research services; “external”, including non-party members’ donations, as well as donations from companies, unions and other organizations; and “state support”, which denotes both direct and indirect subsidies (comprising tax benefits for contributions and the provision of free services).⁶

It is generally understood that one of the underlying factors explaining the ability of electoral authoritarian regimes to maintain power is the latter’s access to significant financial resources to use towards their political goals, and this access is often guaranteed the laws and institutions overseeing political finance.

Malaysia’s former Pakatan Harapan (PH) government had promised, in its 2018 electoral manifesto, to push for electoral reform by introducing Political Financing Control Act which would introduce principles of accountability and transparency in political funds: including regulating that qualified political parties would receive annual funding from the government according to a formula that is transparent and consistent, that all political contributions must be from sources that can be identified, that political parties must submit audited financial reports every year, that political parties cannot have assets in excess of RM 1 billion (approx. USD 247,341,200) and that government-owned companies are not allowed to make political contributions. These reforms plans were initiated partly also to address the corruption involving the 1MDB economic development fund which implicated former PM Najib Razak, the leader of Malaysia’s Barisan National (BN) coalition. After coming into power in 2018, Prime Minister Mahathir Mohamad’s government launched its National Anti-Corruption Plan (NACP) in January 2019, reiterating commitment to “introduce new legislation on governing political funding and to include an

2 “Myanmar coup: Aung San Suu Kyi detained as military seizes control,” BBC, 1 February 2020, <https://www.bbc.com/news/world-asia-55882489>

3 Pippa Norris and Andrea Abel Van Es, eds. *Checkbook elections?: Political finance in comparative perspective*. Oxford University Press, 2016.

4 Erik Mobernd, Fernando Casal Bértoa and Yukihiko Hamada (2019), “The Integrity of Political Finance Systems in Asia: Tackling Political Corruption”, *International IDEA Policy Paper* No. 19, <https://www.idea.int/sites/default/files/publications/integrity-of-political-finance-systems-in-asia.pdf>

5 Susan E. Scarrow, “Political finance in comparative perspective.” *Annual Review of Political Science* 10 (2007): 193-210.

6 Klaus Von Beyme, *Political parties in Western democracies*. Gower Publishing Company, Limited, 1985.

offence on lobbying” by December 2020. However, the ongoing political crisis which began in February 2020 had toppled the PH government and in turn also impeded the efforts towards electoral reform, including the above reform on political financing regime.

In Indonesia, where the problems of political financing, e.g. vote-buying and patronage relations with businesses, are tolerated, it is widely accepted that petty corruption is widespread during elections. Marcus Mietzner wrote that one of the reasons for this was that the post-authoritarian era political parties felt forced to constantly search for funds to finance their daily operations, expensive campaigns and the extravagant lifestyles of their leaders; while the central party headquarters in Jakarta received almost no state subsidy and very few legal donations, nor collect any significant fund from membership fees.⁷ This, and the reduction of funding of central party offices, are the main reasons for the rise of illicit fundraising and businessmen patronage since 2005. However, the political finance oversight regime was also designed to be ineffective by a political elite which all seek to avoid public scrutiny into its financial affairs, a phenomenon that Marcus Mietzner calls “impunity-by-consensus”.⁸

Since 1955, Thailand has passed six different laws on political parties, which were designed to strengthen military-backed parties. Waitoolkiat and Chambers wrote that during the 1980s and 1990s, business-political parties linkages developed while vote-buying was widespread mostly in the rural areas, with the regional factions or party bigwigs as the main financial sponsors for larger and small parties respectively.⁹ This has resulted in a decentralized and personalized party control. Meanwhile, state subsidies were unavailable, leading to the shallowness and weakness of party organization. The Asian financial crisis pushed for party reforms, including on the regulation of political finance, resulting in new party acts in 1998 and 2007 which purported more transparency and accountability. This has in turn resulted in the Political Party Development Fund (PPDF) which contributed USD 77.6 million to 81 parties between 1999 and 2013. Moreover, the 1997 and 2007 Constitutions empowered the Election Commission of Thailand (ECT) to resolve to the Constitutional Court for decisions on party bans. These reforms forced politicians to disclose their spending.

However, the 2007 formula of state subsidies’ distribution benefited mostly large parties while private donation generally come from party leadership and/or businesses. Therefore, on the one hand, there has been slapdash on the enforcement of regulation concerning private donation and vote-buying yet on the other hand, targeted by the incumbent power holders, ECT and Constitutional Court implemented penalties. In some cases, such as one which caused the recent street rallies, some parties were dissolved due to insufficient information on expenses.

Since 2015, Myanmar has conducted four elections: the 2015 general elections and the 2017 and 2018 by-elections and the 2020 general elections. IDEA International listed several aspects in need for improvement pertaining to campaign finance:¹⁰ firstly, financial disclosure. Candidates are required to detail their income and expenditure throughout the campaign period. This report, dubbed Form 20, must be submitted to the Union Election Commission (UEC) sub-commissions 30 days after the announcement of results. However, political parties are not obliged to submit their financial reports to UEC unless officially inquired to do so. Secondly, all candidates running for election in all three legislative bodies: *Pyithu Hluttaw* (Lower House), *Amyotha Hluttaw* (Upper House) and State/Region *Hluttaw* (regional parliaments). The regulations stipulate that

7 Marcus Mietzner (2015) Dysfunction by Design: Political Finance and Corruption in Indonesia, *Critical Asian Studies*, 47:4, 587-610, DOI: 10.1080/14672715.2015.1079991

8 Andreas Ufen and Marcus Mietzner (2015) Political Finance Regimes in Southeast Asia: Introduction, *Critical Asian Studies*, 47:4, 558-563, DOI: 10.1080/14672715.2015.1082260, p.561.

9 Waitoolkiat, Napisa and Paul Chambers (2015) Political Party Finance in Thailand Today: Evolution, Reform, and Control, *Critical Asian Studies*, 47:4, 611-640, DOI: 10.1080/14672715.2015.1091211

10 Pyae Sone (2018) “Room for improvement: Myanmar’s campaign finance framework”, International IDEA, 11 December, <https://www.idea.int/news-media/news/room-improvement-myanmar%E2%80%99s-campaign-finance-framework>

all candidates, regardless of the type of *Hluttaw* they are competing for, cannot spend more than 10 million kyats (approximately USD 7,590) for their campaign activities. Yet the difference sizes of each type of *Hluttaw* should have necessitated different spending limits. Thirdly, that there should be a clear line between party and candidate campaign activities. While individual candidates have a spending limit of 10 million kyats, parties are allowed to spend whichever amount, and this creates unfairness towards independent candidates and candidates from poorer parties. Fourthly, there are few monitoring mechanisms and that oversight mechanisms on illegal income and spending limits remain weak.

In terms of the lack of transparency and the lack of necessary regulations governing political financing, similarities are found in the above four Southeast Asian countries. The article delves deeper into these similarities to draw a conclusion on how uncertainties in political financing regulations have posed a limit to free and fair election.

1. POLITICAL FINANCING IN MALAYSIA

Dettman and Gomez mentions that the most important features of Malaysia's political finance regime included that unlimited anonymous donations to parties are allowed, that political parties can own businesses, and that the ruling parties benefit from the network of GLCs that forms a substantial portion of Malaysia's economy.¹¹ In addition, the country also showcased instances of vote-buying, the commodification of party posts, frequent overspending by candidates and a weak oversight system.¹² Vote-buying is however more evidenced in East Malaysia, where parties are financed by businessmen and strongmen, and are institutionally weaker than in the Peninsular Malaysia.

Moreover, that while political parties are obliged to submit audited financial reports to Registrar of Societies each year, party finances are hidden and that the public does not have access to these reports.¹³ Gomez and Tong similarly wrote that while parties, especially those within the BN coalitions, were able to generate considerable funds during elections, the only ones responsible for submitting an account of income and expenditures were the candidates, not the parties.¹⁴ Even then, as the candidates seldom declare what their parties have spent on their campaign, it is more often that the amount of funds that were reported by the candidate is not a valid depiction of the actual amount of money that has been spent.

The principal laws regulating elections in Malaysia are found in Part VIII (arts 113-20) of the 1957 Federal Constitution. Article 113 regulates the role of an Election Commission (EC) which "conducts elections to the House of Representatives and Legislative Assemblies of the States and prepare and revise electoral rolls for such elections." The EC also "reviews the division of the Federation and the States into constituencies and recommend such changes therein as they may think necessary in order to comply with the provisions contained in the Thirteen Schedule." Article 114 regulates that the EC "shall be appointed by the Yang di-Pertuan Agong." It also stipulates how these members are appointed and removed, as well as regulates their remunerations. The administration of the EC is governed by the EC Act 1957.

Regulations regarding expenses during parliamentary and state elections are drawn in the 1954 Election Offences Act. The provisions of the Act, among other things, are meant to prevent electoral offences and corrupt and illegal practices at elections; to establish enforcement teams;

11 Sebastian Dettman and Edmund Terence Gomez (2020) "Political financing reform: Politics, policies and patronage in Malaysia." *Journal of Contemporary Asia* 50.1: 36-55, quoted Gomez et. al (2017) "Minister of Finance Incorporated: Ownership and Control of Corporate Malaysia. Basingstoke: Palgrave-Macmillan.

12 Ufen and Mietzner (2015), *op. cit.*

13 Dettman and Gomez (2020), *op. cit.*, p.4

14 Edmund Terence Gomez and Joseph Tong (2018) "Financing Politics in Malaysia: Reforming the System." *Australian Journal of Asian Law* 18.2.

to provide for the appointment of election agents; to control election expenses; and to provide for election petitions to voters who feel aggrieved by the alleged breaches of election rules.¹⁵

The Act listed types of expenses up to a maximum of RM 200,000 (approx. USD 49,500) each, while the maximum amount allowed for a candidate contesting a state seat is RM 100,000 (approx. USD 24,800). Gomez and Tong wrote that, regarding these expenses, no variation is permitted with regard to the electoral district's geographical size of or other constituency characteristics such as whether it is urban or rural.¹⁶

In addition, the period within which the expenditure incurred must be reported is limited to between the date of publication of the Notice of Election and the day of election, which is the campaign period. This means, candidates do not have to report any income or expenditure outside of the campaign period. This also means that a candidate is free to raise money or incur a large amount of expenses before or after the election period, which implies that the law does not forbid successful candidates from remunerating their supporters upon victory.

To limit the rise of individual candidates' formal expenses during election, candidates are only allowed short campaign periods and with spending limits. There has also been no granting of public subsidies nor free media advertising for political parties. However, this allows for the linkage between political parties, especially the elites in the United Malays National Organization (UMNO) party, with big businesses that would offer donations during campaigns. UMNO, which ruled the country since independence in 1963 up to its defeat in the election in 2018, in a broad coalition with minority parties, has built a pervasive network of dependable funding sources through Government Linked Companies (GLCs) and other patronage.¹⁷

Dettman and Gomez (2020) underscore two periods of political financing regimes in their analysis,¹⁸ the first one began in the aftermath of the electoral victory of UMNO in the 2008 federal and state election and the subsequent inauguration of Najib Razak as Prime Minister. Upon gaining power Najib introduced several schemes claimed as efforts to curb patronage and rent-seeking. However, as the proposed changes garnered little support from UMNO members and drew skepticism from opposition parties, Najib abandoned his reform commitments. As a result, campaign spending significantly increased in 2013.

The 2008 elections sparked a debate over political finance reform as the issue of rampant patronage was brought to the fore during the campaigns. In this election, the then-opposition parties managed to win in five state governments despite the uneven playing field which favored the ruling Barisan Nasional (BN). Due to the pressure from academia and civil society for political financing reforms, then-PM Najib Razak instigated what was dubbed to be an era of "transparency, democracy and the rule of law" (The Star, 4 April 2009) by introducing some plans for economic, social and education reforms in 2010, including the Government Transformation Programme (GTP), the New Economic Model (NEM), the Economic Transformation Programme (ETP), the Education Blueprint 2011-2015 and the Tenth Malaysia Plan, encapsulated under the slogan *1Malaysia*, which, according to Gomez et. al signified that Najib's "form of governance and mode of policy planning and implementation would transcend political, economic and social differences based on race and religion." Najib also pointed out that "political patronage would be minimized as he planned to actively privatize GLC."¹⁹

15 Amerul Muner Mohammad (2020), "Consolidate election law into one book", New Straits Times 6 November. <https://www.nst.com.my/opinion/columnists/2020/11/638684/consolidate-election-law-one-book>

16 Gomez and Tong (2018), *op. cit.*

17 Wolfgang Sachsenröder (2018) *Power Broking in the Shade*. World Scientific Publishing Company Pte Limited.

18 Dettman and Gomez (2020), *op. cit.*

19 Edmund Terence Gomez, *et al.* (2018) *Minister of Finance Incorporated: Ownership and control of corporate Malaysia*. Springer.

Not long after however, as it became evident that domestic private firms were reluctant to invest in the economy, the government recoiled on the decision to cease the policy of affirmative action to push forward a “market friendly affirmative action”²⁰ that was outlined in the Tenth Malaysia Plan. Some Malay groups connected to the UMNO, especially Persatuan Pribumi Perkasa (Perkasa) had pressurized the government not to follow up with the ceasing of affirmative action. Gomez et. al remarked that “UMNO members had become accustomed to government patronage through affirmative action that entailed the government concessions to *Bumiputera* (referring to Malay or native, Author’s emphasis) businesses.”²¹

Meanwhile, civil society kept pushing for reforms. The Transparency International (TI)-Malaysia issued a memorandum on political financing in May 2011, which included among others, the recommendation for a public disclosure of all political parties’ sources of financing and expenditure, mandatory audit of political parties and candidate’s elections expenses by certified auditors before submission to the Election Commission, and the prohibition of parties from directly or indirectly owning or being involved in business.²² Unsurprisingly these proposals garnered tepid responses in the parliament. Parliamentarians and politicians alike argued that full disclosure would equate to harassment to their donors by the winning coalitions for supporting the losing coalition in the election.

In the 2013 election, while the above backtracking of policies raised concerns about the effectiveness of the government’s reform agenda, both BN and opposition (*Pakatan*) coalitions could now solicit money from businesses.²³ Weiss remarked that both coalitions had generally similar programmatic policies to mitigate the impact of Malaysia’s rising cost of living.²⁴ The BN introduced a cash transfer policy called *Bantuan Rakyat 1Malaysia* (1Malaysia Citizens Support), which helped the BN win seats in the election. Similarly, the opposition presented several programs to subsidize necessities such as education, childcare, fuel and internet access. However, as is common in incumbent campaigning, in addition to spending considerable sums before and during the election, BN underscored its track record in development while *Pakatan* promised to conduct good governance, social justice and change.²⁵

The second period of Malaysia’s political financing regimes took place after 2015, the 1MDB scandal was exposed and took center stage in Malaysia’s politics. Part of these funds, after they were found in Najib’s personal account, had allegedly been used to finance the 2013 general election campaign.²⁶ Najib formed a national consultative committee on political financing in 2015 yet its members’ task was only to deliberate on stipulations of a new law, without delving deeper in the 1MDB scandal. When the reform proposals were issued, civil society groups called attention to the lack of certain regulations, while the opposition were similarly reluctant to support the proposals due to the lack of attention given to the 1MDB scandal. Seventy NGOs, led by G25, a group of prominent Malays submitted a proposal on political finance reforms in 2015. This proposal²⁷ included recommendations for the government to make political funding more transparent and accountable through new laws including the Political Parties Act which

20 Dettman and Gomez (2020). *op. cit.*, p.6.

21 Gomez et. al (2018), *op. cit.*, p.59

22 “Submission of Memorandum or Reform of Political Financing in Malaysia”, *Transparency International Malaysia*, 2011, <http://www.transparency.org.my/pages/what-we-do/reforming-political-financing/submission-of-memorandum-or-reform-of-political-financing-in-malaysia-to-the-prime-minister-of-malaysia>

23 Gomez and Tong (2018), *op. cit.*, p.8

24 Meredith L. Weiss (2016) “Payoffs, parties, or policies: “Money politics” and electoral authoritarian resilience.” *Critical Asian Studies* 48.1: 77-99.

25 *Ibid.*, p.83

26 Tom Wright and Bradley Hope (2015) “1MDB and the Money Network of Malaysian Politics.” *Wall Street Journal*, 28 December.

27 The Sun Daily, 1 December 2015, “G25 submits proposal on political funding reform to PM” <https://www.thesundaily.my/archive/1626702-LSARCH340238>

would ban secret and foreign funding, limit political contributions and expenditure, establish reporting requirements and public disclosure, introduce guidelines for a caretaker government and ban party ownership of business. The proposal also urged the protection of EC's autonomy and impartiality as well as making sure that the Commission have stronger monitoring and enforcement capabilities. In the area of direct public funding, it was recommended that political funding come from public coffers for all political parties, whether in the government or the opposition.

The corruption case which toppled former Prime Minister Najib Razak revealed the linkage between patronage relations and campaign financing. In a recent testimony related to the 1MDB corruption scandal, former 1Malaysia Development Bhd CEO Hazem Abdul Rahman mentioned that the investment fund was set up to raise money for the ex-prime minister and UMNO.²⁸

2. POLITICAL FINANCING IN INDONESIA

Thomas Reuter listed three sources of legitimate party financing in Indonesia, namely members' contributions, state funding and private donations.²⁹ As mentioned above, members' fees are not a significant source of funding. A more significant source is party members who have a seat in the House of Representatives (DPR) or holds a ministerial position, who allocate 15-25 per cent of their wages for their parties. Meanwhile, state funding also represents a dismal amount. In 2005 the payment was a meagre IDR 21 million (USD 1428) per seat, or around IDR100 (USD 10 cents) per vote. In 2009, based on a vote-based calculation, parties received about IDR108 per vote. The 2011 party law allows for donations of IDR 1 billion (USD 68,000) per year from individuals and up to IDR 7.5 billion (USD 510,000) from corporations. In reality, donations do not conform to these rules and could be made to individual prominent party members. Moreover, although current law requires parties to disclose donations, income and expenditures, the requirement is only a single report endorsed by their own auditor, and not open to public scrutiny. Illegal contributions and spending thus cannot be traced by revealing discrepancies between income and expenses.³⁰ Unsurprisingly party leaders rejected the idea of increasing public funding for parties, as this would require them to conduct frequent audits and account for the funds they receive. Moreover, oligarchic party chairmen are wary of losing their privileged positions if parties were able to access more public funding.³¹

Marcus Mietzner mentions three main goals of campaign financing systems: to allow parties to eschew oligarchic intrusion and corrupt fund-raising practices; to create a level playing field between large and small parties and between government and opposition parties; and to inform voters about the sources of a party's income and how it is spent.³² Despite these aims, the fragmented political financing regimes in Indonesia have resulted in the aggravation of existing patronage structures and corruption, in addition to triggering oligarch's role in politics. Jeffrey Winters wrote that oligarchy "describes the political processes and arrangements associated with a small number of wealthy individuals who are not only uniquely empowered by their material resources, but set apart in a manner that necessarily places them in conflict with large segments of the community (often including each other)"³³ and that "Indonesia after the fall of Suharto represents a complex but stable

28 The Edge Markets, 14 September 2020. "1MDB was set up to raise money for Najib and Umno, says former CEO" <https://www.theedgemarkets.com/article/1mdb-was-set-raise-money-najib-and-umno-funding-says-former-ceo>

29 Thomas Reuter (2015) TRaNS: Trans-Regional and-National Studies of Southeast Asia 00:0 1-22, © Institute of East Asian Studies, Sogang University DOI:10.1017/trn.2014.23.

30 *Ibid.*

31 Ufen and Mietzner (2015), *op. cit.*

32 Mietzner (2015), *op. cit.* p.601

33 Jeffrey A. Winters, "Oligarchy and democracy in Indonesia." *Indonesia* 96 (2013): 11-33, p.14

blend of oligarchy and democracy, with wealth-power pervading a political arrangement that tolerates and responds to popular participation.”³⁴

This oligarchic capture of politics plays a role in party formation and political financing in Indonesia. Reuter³⁵ quoted Titi Anggraeni of the Associations for Elections and Democracy (Perludem) who mentioned that the fact that legal funding sources only covered 15 percent of the operating expenses for political parties had meant that a large percentage of funds must be generated from elsewhere. Pertaining to the source of their funds, Reuter offers a useful classification of political parties. The first category comprises those parties that he dubs “privately owned”, and whose *raison d'être* was to serve as a political vehicle for individuals, mostly oligarchs, aspiring to gain power in the parliament or the executive branch. Examples of these are Gerindra, which was founded by Prabowo Subiyanto, the National Democrat Party (Nasdem) which was founded by media tycoon Surya Paloh and the Hanura party which was founded by former general Wiranto and media tycoon Hary Tanoë Soedibjo.³⁶ Another party which is similarly one-person-focused, yet not founded by an oligarch, is the Democrat Party (PD). Established by former general Susilo Bambang Yudhoyono (SBY) to be his political vehicle to run for presidency in 1999 and was successful. PD and Indonesian Party for Struggles (PDIP) are also the two parties which show dynastic qualities, as they have leadership succession which prioritizes the family members of the founders.

The second category includes the parties with long history in Indonesia's politics. Some of these have recently allowed oligarchs to become their leaders. Among these parties was Golkar, the party which had helped sustain Suharto's authoritarian regimes for more than three decades, yet which has undergone some transformations necessitated by the post-reform politics. Jusuf Kalla became the first oligarchs that raised to the leadership position of Golkar in 2004. Aburizal Bakrie was another billionaire businessman which became Golkar's leader in 2009. Reuter wrote however, that having oligarchs as leaders of political parties could at times bring down the party's popularity, as was the case when Bakrie's companies' poor handling of the 2006 Lapindo environmental crisis caused him a low electability, which also hindered his chances in the presidential race in 2014.³⁷ It was also the case that some of the Indonesian voters were not used to the increasing role of billionaires in politics and preferred leaders who were “of the common people”, something that Joko Widodo (Jokowi) portrayed very well in 2014, and which partly motivated PDIP to nominate him as their presidential candidate.

The third category comprises of the parties which, in addition their long history, also possesses a strong mass base as well as dynastic features. This is portrayed by PDIP, whose leader Megawati Sukarnoputri, Indonesia's fifth president, was the daughter of the country's first president Sukarno. PDIP is also generally seen as the successor of Sukarno's Indonesian Nationalist Party (PNI). Megawati's daughter Puan Maharani is the current speaker of the country's People's Representative Council (DPR), or the lower house. Some observers recently considered her as a potential vice-presidential candidate for the 2024 election, to be paired with Prabowo Subiyanto, who will likely run for presidency again. Recent surveys, however, did not yet show high electability for Puan, who scored only 0.9% in a poll done by Indikator Politik, 1.1% by Indonesia's Foundation of Surveys and Polls (SPIN) and 1.7% by Populi Research Center, placing her either on the 11th or 12th in the list of possible vice-presidential hopefuls.³⁸ Vice-presidential chances aside, PDIP's, as well as PD's, dynastic politics will less likely be diminished as it is widely replicated in the national and local politics. In the 2020 local elections, Jokowi's

34 *Ibid.*, p. 16.

35 Reuter (2015), *op. cit.*, p.10

36 *Ibid.*, p.11

37 *Ibid.* p.12

38 Sindonews, 29 October 2020, “Peluang Puan Maharani di Pilpres 2024: Antara Survei dan Kekuatan Politik” (Chances for Puan Maharani in the 2024 Presidential Election: Between surveys and political clout”) <https://nasional.sindonews.com/read/212690/12/peluang-puan-maharani-di-pilpres-2024-antara-survei-dan-kekuatan-politik-1603937438?showpage=all>

son and son-in-law have won mayoral elections in Solo and Medan respectively, generating assumptions that the President aspires for high political offices for his children in 2024.

Reuter also mentions secondary sponsors for party and campaign financing, who aspire for specific favors than continuing political support for their business ventures, some chose to remain invisible, while others openly supported the candidates or parties of their choosing.³⁹ Indonesian Solidarity Party (PSI), a new party which catered for generally middle-class millennials in urban settings, admitted that they received financial backing from businesses leaders, whom, its Chinese-Indonesian, former TV anchor, leader Grace Natalie had dubbed as, “running *white businesses, not grey*” and that these businesses “have political conscience, so there is no take and give [with us]. They just want a stable business environment, so that their businesses could run well,”⁴⁰ insinuating, rather naively, that businesses may support political parties without asking for anything in return.

As mentioned above, in addition to turning to oligarchic leadership and business-backings, the scarcity of political financing public sources in Indonesia also led to the collection of funds from party representatives in public office. This has become party’s main source of funding and is justified by dubbing it “membership fees”. Mietzner wrote that the amount could go as high as 40% of a legislator salary.⁴¹ As a result, to offset these party-related expenditures, legislators – who are not allowed to receive individual donations – turn to running businesses. Based on recent research by Marepus Corner, 55% of the current parliamentarians are entrepreneurs, 23% of which are PDIP’s legislators, generating concerns among civil societies that the parliament is business-biased.⁴² This assumption seems to not be far from the truth: recent legislations show business interests were indeed prioritized, for example, in the issuance of the controversial Job Creation Laws (Omnibus Law) which according to many labor organizations significantly decreased labor rights.⁴³

The fact that the parliament is rigged of corruption may partly also owes to the necessity to generate funds to offset party-related expenses in addition to the fact that some parliamentarians do seem to make use of their position to generate money for themselves either through budget scalping (receiving fee for approving specific budget items), bribery or other misappropriation of funds. Corruption Eradication Commission (KPK)’s biggest case relating to the E-ID card project (E-KTP), which incurred IDR 2.3 billion (USD 163,300) state losses, allegedly involved many of the former members of the parliament, including the parliament speaker Setya Novanto, a Golkar politician who was sentenced to 15 years imprisonment. The KPK’s powers however, having vigorously fought against corruption since 2012 and earned a remarkable 100% conviction rate, had recently been significantly clipped with the new controversial legislation which places the once-independent Commission under the executive branch.⁴⁴

Another way for parties to generate funds is to “sell” its endorsement to individuals aspiring to run for local governments’ leadership position. A field research done in 2005 in North Sumatra province showed that even as early as the first-ever direct election for district heads, political parties put price tags on their nomination. A mass-based political party on the national level

39 Reuter (2015), *op. cit.*

40 Detik, 18 June 2015. “Grace Natalie Buka-bukaan Soal Sumber Dana Awal PSI” (“Grace Natalie reveals PSI’s preliminary funding sources”) <https://news.detik.com/berita/d-2945956/grace-natalie-buka-bukaan-soal-sumber-dana-awal-psi>

41 Mietzner (2015), *op. cit.*, p. 602

42 Liputan 6, 9 October 2020 “Penelitian: 55 Persen Anggota DPR Pengusaha, Potensi Konflik Kepentingan Besar” (Research: 55 percent of parliament members are entrepreneurs. Large potential for conflict [of interests]”) <https://www.liputan6.com/bisnis/read/4378020/penelitian-55-persen-anggota-dpr-pengusaha-potensi-konflik-kepentingan-besar>

43 Usmand Hamid and Ary Hermawan (2020) “Indonesia’s omnibus law is a bust for human rights”, New Mandala, 9 October. <https://www.newmandala.org/indonesias-omnibus-law-is-a-bust-for-human-rights/>

44 Aninda Dewayanti and Deasy Simandjuntak (2019) “So much for eradicating corruption in Indonesia”, Channel News Asia Commentary, 27 September. <https://www.channelnewsasia.com/news/commentary/indonesia-protest-joko-widodo-law-corruption-code-graft-11948856>

had asked IDR 100 million (USD 7,100) for individuals seeking endorsement in a district-head election.⁴⁵ In the recent years, this nomination “fee” dubbed *mahar politik* could go up to billions rupiahs and were generally considered as part of the “normal” practice in local politics.⁴⁶ Local elections have indeed opened new possible avenues for illicit political fund-raising endeavors. State funds are also often “misappropriated” for political purposes. Legislators, for example, may take advantage of the *grant funding (meant for social assistance programs) they received from the state and direct it to fill the coffers of party-linked organizations or distribute it directly among potential voters.*

3. POLITICAL FINANCING IN THAILAND

Sirivunnabood wrote that in order to increase transparency and accountability of parties, strengthen party system and prevent the return of money politics,⁴⁷ Thailand introduced the Party Act (1998), among whose provisions was the Political Party Development Fund (PPDF), which was the first subsidy that the State ever granted political parties. Responsible for the distribution of such subsidy was the Election Commission of Thailand (ECT). The ECT was also established to monitor election and party activities and finances. This was a transfer of jurisdiction from the Ministry of Interior, who used to oversee these functions prior to 1998. ECT also has the power to submit cases to the Constitutional Court and call for the dissolution of parties allegedly involved in illegalities.⁴⁸

The PPDF itself was aimed at increasing transparency and accountability, limiting money-politics, as well as strengthening smaller political parties, creating a more level playing field for them to compete against larger parties, by giving them access to state funding.⁴⁹ State subsidies comprises of two types: direct and indirect monetary subsidies, as well as non-monetary subsidies. Direct monetary subsidy, the largest source of party funding, was distributed annually based on the number of a party’s parliament members, the number of votes the party garnered, and the number of party members and branches. The lack of clarity pertaining to method of calculations, however, resulted in small parties vying to maximize their subsidy by creating branches and recruiting members. The numbers were not always veritable, as many members were found to be members of more than one party, whereas listed “branches” were nonexistent.

Indirect subsidies included subsidies for public utilities, such as electric bills, and postal fees, and that party revenues are exempt from taxation (Organic Act on Political Parties 2007, Art.48 and 81).⁵⁰ Meanwhile, non-monetary subsidies included free television and airtime for the parties that had parliament members. Despite the considerable amount, however, monetary subsidies did not deteriorate the influence of businesses in the party politics nor have they improved party internal structure. On the other hand, it exacerbated the existing problem of corruption, as smaller parties adopted a rent-seeking behavior while larger parties relied mostly on large private donations, creating a patronage linkage between politics and businesses.

45 Personal conversation with a candidate, October 2005.

46 Deasy Simandjuntak (2015) “Persistent Patronage: Explaining the Popularity of Former Corruption Convicts as Candidates in Indonesia’s Regional Elections”, ISEAS Perspective No. 55.

https://www.iseas.edu.sg/wp-content/uploads/pdfs/ISEAS_Perspective_2015_55.pdf

47 Punchada Sirivunnabood (2019) “How the Thai State Subsidizes Political Parties”, ISEAS Perspective No 50.

48 Napisa Waitoolkiat and Paul Chambers (2015) Political Party Finance in Thailand Today: Evolution, Reform, and Control, *Critical Asian Studies*, 47:4, 611-640, DOI: 10.1080/14672715.2015.1091211

49 Punchada Sirivunnabood (2018) “Understanding Political Party Finance in Thailand: New Regulations but Old Practice.” *Asia-Pacific Social Science Review* 17.3: 1-14.

50 As quoted by Waitoolkiat and Chambers (2015), *op. cit.*

The 2007 Party Act still endorsed the PPDF, yet with a clearer regulation on its allocations. PPDF 2008 guidelines stipulated that only active parties – referring to those which conduct political activities regularly and has structure in accordance to the 2007 rules - were eligible to receive subsidies. Art. 23 of the Act also underscores that only parties which have won at least 0.5% of votes nationally from the party-list system and 0.5% of constituency votes would be eligible for PPDF allocation. The new formula weighed financial allocations as follows: 40 per cent reflecting the number of a party's MPs; 40 per cent reflecting the number of party list MPs; 10 per cent reflect the number of party members altogether; and 10 per cent reflecting the number of party branches.⁵¹ Moreover, the 2008 guideline also delineated what were accepted as party branches (which was that they have to have a minimum of 200 members), and the conditions for members qualified for the calculation of the PPDF (which was that they would have to be members paying party membership fees annually). In addition, it also regulates the preconditions for the state to terminate subsidies if a party lost in multiple elections. Art. 32 stipulated that if a party had not won parliamentary seats or nominated candidates for two consecutive elections, the state would only grant half of the PPDF funding it previously received; if a party had not won seats for three consecutive elections, the state would only grant a quarter of the party's previous PPDF funding; lastly, if a party had not won and/or nominated candidates to four consecutive elections, the state funding would be stopped.

In 2017, Thailand issued a new Political Party Acts which revised the allocation method for PPDF.⁵² Political parties may receive PPDF subsidies based on, firstly the total amount of annual membership fees (40% of the total subsidy), the number of votes won in elections (40% of the subsidy), the number of party branches (20% of the subsidy) – the latter only applies during election years. Aside from the election years, the ECT allocates subsidies in accordance to the donations that parties receive annually - not on the basis of votes the parties garnered -, in addition to the number of party branches and the total membership fees paid. Subsidies that are now allocated on the basis of total membership fees received annually, rather than on the basis of total number of members, was designed to make sure that party members are willing to support their party financially. In practice, however, the minimum annual membership of 100 baht and minimum lifetime membership of 2,000 baht were still too high for most Thais, resulting in parliament members paying for party members.⁵³ ECT also still allocates subsidies based on the number of parties' branches even when it is difficult for ECT to determine whether the branches and their members were real.

The new regulations also allow parties to accept donations from Thai donors -made directly to parties, and up to a maximum of 10 million baht annually. According to the ECT, from January to May 2019, major parties received the following: Phalang Prachrat 13 million baht, Phuea Thai 55 million baht, Future Forward Party 10 million baht, and the Democrat Party 155 million baht.⁵⁴ In February 2020, however, Thailand Constitutional Court dissolved the Future Forward Party determining that by accepting 191 million baht (approx. USD 6,036, 664) loan from Thanathorn Juangroongruangkit, the party has violated sections 66 and 72 of the Organic Law on Political Parties, which bans donations of more than 10 million baht (approx. USD 316,000), in addition to prohibiting 16 party executives from competing in elections for ten years.⁵⁵ The dissolutions of FFP triggered flash mobs on

51 Chambers, Paul, and Napisa Waitoolkiat (2020) "Faction Politics in an Interrupted Democracy: the Case of Thailand." *Journal of Current Southeast Asian Affairs* 39.1: 144-166.

52 Sirivunnabood (2019), *op. cit.*

53 Sirivunnabood (2019), *op. cit.*

54 Sirivunnabood (2019) *op. cit.*, pp. 5-6.

55 Amnesty International (2020), "Thailand: Authorities must reverse dissolution of opposition Future Forward Party",

21 February. <https://www.amnesty.org/en/latest/news/2020/02/thailand-authorities-must-reverse-dissolution-of-opposition-future-forward-party/>

many campuses, yet the students' demands were aimed at overhauling the political system, by, among other things, calling for the resignation of PM Prayut Chan-Ocha, the formation of a drafting committee to draft a new democratic constitution, the election of senators and an end to legal impunity for coup makers.⁵⁶

4. POLITICAL FINANCING IN MYANMAR

While the ongoing coup in Myanmar is beyond the scope of this paper and that campaign financing was not part of the electoral aspects being highlighted in the upheaval, the crisis underscores major problems in the 2020 elections.⁵⁷

Pertaining to political financing, prior to the election, observers had pointed at the issue of the lack of enforcement of campaign finance rules as a major concern which could lead to "undetected or unsanctioned excess of the maximum authorized campaign expenditure", which could "affect the results significantly enough to swing the outcome".⁵⁸

The November 2020 election delivered a landslide victory for Aung San Suu Kyi's National League for Democracy (NLD), with 920 of the 1,106 party candidates elected to national and local parliament bodies. Especially in the *Pyidaungsu Hluttaw*, the national parliament, the party won 396 seats. According to *Frontier*,⁵⁹ the NLD's campaign funding relied on a mixture of sources, e.g. a proportion of lawmaker and minister salaries, small donations from members and larger donations from corporate and private donors, yet did not generate income from businesses nor rely on a single benefactor. *Frontier* noted that the main source of funds for the NLD (around 200 million kyats per month) is the deduction of the salaries of party members who are lawmakers or cabinet members. This deduction varies, from 20 percent of those in the state and regional parliament bodies to 25 percent from the salary of lawmakers in the *Pyidaungsu Hluttaw* and that of all ministers. A more non-transparent source is donations from companies and individual, some had provided significantly for its 2015 election campaign. *Frontier* wrote that according to an NLD spokesperson there was no limit to these donations, only that they "be unconditional, in the national currency and from Myanmar citizens.... Companies also have to be able to prove they've paid tax on the money they plan to donate."⁶⁰

The issue of campaign financing has in turn raised questions due to several aspects of election laws,⁶¹ for example firstly, that the laws do not allow the use of state resources, foreign donations to Myanmar parties or candidates, whether from individuals, businesses of organizations, or contributions from religious organizations. International IDEA Myanmar wrote that eligible campaign funds were those derive from candidates' own funds and property, donations from individual citizens, donations from political parties, donations from

56 Termsak Chalermpananupap (2020) "Weak Party System Dooms Thai Political Party Reforms", *ISEAS Perspective* No. 27, 8 April. https://www.iseas.edu.sg/wp-content/uploads/2020/02/ISEAS_Perspective_2020_27.pdf

57 The military claimed to have found widespread inconsistencies with regard to voters lists and many cases of ineligible voters, relating to this, they also claimed to have found 8 million cases of potential voting fraud. See Jack Goodman, "Myanmar coup: Does the army have evidence of voter fraud?" *BBC*, 5 February 2020. <https://www.bbc.com/news/55918746>

58 As cautioned by Greg Kehailia, then outgoing Myanmar Director of the Carter Center. See Thompson Chau, "Myanmar election at risk of digital threats and weak financial rules, expert warns", *Myanmar Times*, 24 September 2019 <https://www.mmtimes.com/news/myanmar-elections-risk-digital-threats-and-weak-finance-rules-expert-warns.html>

59 Swe Lei Mon and Htin Lynn Aung, "Holding the NLD to account: The money behind a winning election campaign", *Frontier*, 24 December 2020, <https://www.frontiermyanmar.net/en/holding-the-nld-to-account-the-money-behind-a-winning-election-campaign/>

60 *Ibid.*

61 Aung Tun (2015) "Time to Reform Campaign Financing" *Myanmar Times*, 7 October, <https://www.mmtimes.com/opinion/16871-time-to-reform-campaign-financing.html>

Myanmar companies or group of companies.⁶² In practice, however, enforcing these regulations are difficult because, for example, some candidates may hold campaign events at religious compounds with the assistance of religious groups. Banning the use of public resources is also problematic, as government officials who run in elections may utilize state resources in their campaigns.

Secondly, there is a limit on campaign spending of K10 million (USD 7765) during the two-month campaign period. These spending limits exist despite big differences in the size of constituency that makes up three different parliament bodies, namely Pyithu Hluttaw (Lower House), Amyotha Hluttaw (Upper House) and State/Region Hluttaw (regional parliament). The spending limits seems unfair for the Upper House candidates, who typically have to cover a larger geographical area than those of the other parliament bodies.

Thirdly, there is the issue of financial disclosure whose monitoring is impossible, Myanmar being largely a cash-based economy. There is also the question of oversight and sanctions. The election laws state that both a voter and a candidate can issue a complaint over a candidate's spending, which implies that the burden of oversight is on rival candidates rather than an independent body or institutions. This also means that losing candidates may be prone to file a complaint in the hope of changing the electoral results.

A fifth important aspect of Myanmar's political financing is the close relations between politicians and the country's large companies which raised the question of whether or not the latter financed the former's campaigns despite it being forbidden by the laws. An investigation done by Myanmar Times in August 2020 revealed that among the 22 large companies under survey, more than half did not publicly disclose if they had made political donations with regard to the November 2020 election. Eight companies said they did not have political donations as policy, but fourteen did not answer at all. None, except the Shwe Taung company, responded to the question about disclosure of donations made by beneficial owners of the company in their personal capacity.⁶³ The unresponsiveness of these companies, however, is not uncharacteristic. Electoral regulations in Myanmar places limited oversight on corporate donations to politicians. Moreover, Myanmar laws also allows anonymous donations to parties. Local companies and their beneficial owners may contribute to candidate or their affiliated political parties. Spending limits are placed upon individual candidates, but not their parties, the latter do not have to report campaign financing for any activity, including those that are election related.

5. CHALLENGES TO ELECTORAL SYSTEMS AND THE QUALITY OF DEMOCRACY IN SOUTHEAST ASIA

The political financing regimes and practices in the four Southeast Asian countries, which in the past two years have conducted elections, show several problem areas among which is the absence of regulations, the linkage between business and politics, unlevel playing field for large and small parties, corruption, and weak monitoring mechanisms. Concerning the absence of regulations, Malaysia depicts an interesting case as it does not forbid foreign donations for political parties. The 1MDB scandal which implicated former PM Najib Razak as well as many individuals and entities highlighted the role of foreign donations in Malaysia's politics. In July 2020, the former PM was found guilty of all seven charges in his first trial

62 International IDEA Myanmar, "2020 General Election in Myanmar – Fact Sheet" https://www.idea.int/sites/default/files/news/news-pdfs/2020-General-Election-in-Myanmar-Fact-Sheet_14-July-2020.pdf

63 Johnson Chau and John Liu (2020) "Companies in Myanmar quite about political donations," Myanmar Times, 23 August, <https://www.mmtimes.com/news/companies-myanmar-quiet-about-political-donations.html>

linked to the multibillion-dollar scandal – which means he now faces 12 years in jail.⁶⁴ This verdict came just days after the announcement of a USD 3.9 billion settlement with Goldman Sachs in return for Malaysia dropping criminal charges against the investment bank over its role in helping 1MDB sell USD 6.5 billion in bond.⁶⁵

The linkage between businesses and politics seems to be rampant in all countries. In Indonesia, this is depicted by the role of oligarchs in political parties, as founders of new, one-person-centered party, or as individuals who use existing parties to further political interests and ambitions. Gerindra, Hanura and Nasdem parties are examples of the former category and Golkar (who welcomed the leadership of billionaire businessmen Jusuf Kalla and Aburizal Bakrie) is an example of the latter. In Thailand, billionaire Thaksin Shinawatra founded the Thai Rak Thai (TRT) party in 1998, became prime minister in 2001 and was re-elected in 2005. After TRT was dissolved in 2007, in its place emerged The People's Power Party (Phak Palang Prachachon – PPP). When the PPP was dissolved in 2008 due to several charges of electoral frauds in the 2007 elections, it was replaced by Pheu Thai which was founded in 2008, and which successfully ushered in Thaksin's sister Yingluck Shinawatra to be Thailand's first female prime minister in the aftermath of the 2011 election. Although it lost the 2019 election, Pheu Thai's popularity depicts the deep-seated political clout that Thaksin still has despite massive setbacks against the government. Similarly, in Myanmar, several large businesses seemed to have donated for political parties yet did not disclose their financial support.

The problem of unlevel playing field seems to be indicative of Thailand, although before the 2018 election Malaysia also depicted the discrepancy between the financial and structural traits of the then-ruling BN coalitions and the oppositions. Thailand tried to mitigate this problem by providing state subsidies to all parties. However, for large political parties the subsidies seemed to be too dismal that they still relied on donations from large businesses while on the other hand small parties scrambled to create party branches and recruit members in order to maximize their subsidies. It thus remains to be seen whether the 2017 Political Party Act's revision of PPDF subsidy would level the playing field between large and small parties in Thailand. The lack of funding may also stimulate corruption, as politicians try to offset the percentage of their salaries spent on party-related expenditures, like what takes place in Indonesia, where budget scalping is part of everyday corruption. In Malaysia, the 1MDB scandal exemplifies how misappropriation of funding is not a rare occurrence in Southeast Asian politics, especially when large businesses are involved. Vote-buying is also rampant. In Indonesia, politicians may distribute state funding to attract votes under the disguise of social aid programs.

Weak monitoring mechanism also constitutes a serious problem, yet popular pressure, combined with accountability tools, has proven effective in combating political corruption.⁶⁶ The results of the 2018 Malaysia election showed how the financial scandal involving former PM Najib had generated public distrust on the government. Civil society reactions, such as that illustrated by the *Bersih* movement had helped drawing attention to the political and electoral corruption. Riding on public grievance on corruption, the opposition Pakatan Harapan won the election despite the unlevel financial playing field as well as BN's tactic of gerrymandering and identity-politics. In Indonesia, weak monitoring is depicted by the regulations that only individual candidates should disclose income and expenditures while political parties are exempt from this obligation.

The above problems limit the quality of democracy in the region. Diamond and Morlino wrote

64 Guardian, 28 July 2020, "1MDB scandal: Najib Razak handed 12-year jail sentence." <https://www.theguardian.com/world/2020/jul/28/1mdb-scandal-najib-razak-verdict-malaysia>

65 Reuters, 26 July 2020 "Malaysia faces crucial graft test as Najib's first 1MDB verdict looms" <https://www.reuters.com/article/us-malaysia-politics-najib-idUSKCN24R05F>

66 Mobrand, Bértoa and Hamada (2019) op. cit.

that “While there is no absolutely objective way of laying out a single framework for gauging democratic quality, there are eight dimensions on which democracies vary in quality: freedom, the rule of law, vertical accountability, responsiveness, equality, participation, competition, and horizontal accountability.”⁶⁷ While there are freedom and participation, the democracy in the four countries discussed above shows challenges in the rule of law, vertical and horizontal accountability, while the unlevel playing field which distorts the competition despite the generally free and fair elections. In order to increase the quality of democracy pertaining to political financing, it is useful to increase public financing of politics and limiting businesses influence in politics, strengthen the rule of law, as well as ensure that party (not only individual candidates) and campaign financial accounts are managed correctly and disclosed to the public.

⁶⁷ Larry Diamond and Leonardo Morlino (2004) “The quality of democracy: An overview.” *Journal of democracy* 15.4: 20-31.

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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.² It is safely said that the new electoral system in Indonesia had become more democratic than ever before.³ 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).⁴ 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)⁵, and company donations are a maximum of 7,500,000,000 IDR⁶. (seven billion five hundred million rupiahs).⁷ 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.⁸ 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.⁹ 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.*¹⁰ 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.¹¹ 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*¹² 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

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.¹³ This process is of critical importance, as it enables the criminal to enjoy these profits without jeopardising one's source.¹⁴ 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.¹⁵ 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.¹⁶ It is further expanded to include money, gifts, and contracts to "buy" supporters or voters during elections.¹⁷ 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.¹⁸ Others argue that money politics and corruption are two separated notions, with some overlaps.¹⁹ '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.²⁰ 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."²¹

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.²² 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.²³ 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.

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 26th 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,²⁴ 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.²⁵ 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.²⁶ Money laundering is the process of concealing, converting, or transferring the existence of illegal income and disguising that illegal income to appear legitimate.²⁷ 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.²⁸ The massive amount of this illegal money has threatened the licit economy's integrity and could threaten public order.²⁹ Furthermore, in the context of democracy, money laundering has a devastating effect on the election process.³⁰ The amount of illicit money provided by the

[tidak?page=all](#), accessed on 26th 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.³¹ 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.³² It was followed by a discussion on the criminalisation and internationalisation of money laundering.³³ 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.³⁴ Since then, discourses then dwelled on terrorism financing³⁵. 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 legitimate³⁶ 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.³⁷ Layering can be described as the disguise of the origins of the proceeds of crime into a series of complex financial transactions.³⁸ Finally, integration is when a criminal combines the newly laundered funds with the legitimate origin.³⁹ 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.⁴⁰ 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.⁴¹ 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.

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*, 3rd 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.⁴² In practice, this type exists in many forms, including instrumental friendships, ritual kinships, and patron-client clusters.⁴³ A powerful person in an organized crime will use this relationship to commit bribery involving another political party member.⁴⁴ 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.⁴⁵ The government officer, which is also a member of political party, may abuse the use of these resources for their own benefit.⁴⁶ 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.⁴⁷ 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 2018.⁴⁸ 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.⁴⁹ 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

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.”⁵⁰

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.⁵¹ 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.⁵²

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.⁵³ 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.⁵⁴

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.⁵⁵ 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

⁵⁴ Ibid., 194.

⁵⁵ <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.⁵⁶ The

⁵⁶ 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.⁵⁷ 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.⁵⁸ 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.⁵⁹ It has to be noted that PPAATK is not a law enforcement agency. It is merely an administrative institution monitoring the flow of funds.⁶⁰ 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.⁶¹ As a financial intelligence unit that has data and

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

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

⁵⁹ article 40 Law No. 8 year 2010 on the Prevention and Eradication of Money Laundering Offence (Money Laundering Law),

⁶⁰ 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

⁶¹ 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.⁶² This covers any donations, membership fees, or corporate donations deposited into the political party bank account.⁶³ 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).⁶⁴ 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.⁶⁵ 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.⁶⁶ Furthermore, in March 2019, the PPATK also found 16 indicated cases connected to money politics.⁶⁷ 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.⁶⁸ 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.⁶⁹ 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.*⁷⁰

The chairman of the PPATK urged the banking industry to be more aware of money laundering risks related to electoral campaign funding.⁷¹ 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

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.⁷²

In addition, The PPATK also has collaborated with the Election Supervisory Body (BAWASLU) to maintain the integrity of the election process from money laundering.⁷³ 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.⁷⁴ Furthermore, immediate family members or even persons known to be close associates with prominent public functions must be listed under such classification.⁷⁵ 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.⁷⁶

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.⁷⁷ 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).⁷⁸ 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,⁷⁹ 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.⁸⁰ As such, systems can only work as long as

72 Ibid. p.2

73 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

74 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.

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

76 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

77 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.

78 Ibid.

79 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.

80 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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CONCEPTUALIZING PARTY FINANCING LEGISLATION IN MALAYSIA: BETWEEN NORMATIVE AND REALITY

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Abstract

How political parties finance their operations is not well regulated in Malaysia. There is no specific law that oversees the myriad ways political parties raise funds and to what purpose they are used. This stands in contrast to neighboring Indonesia and the Philippines, where there are laws that regulate party financing. As a result, corruption in the name of political donations is rampant in Malaysia, the infamous one being the 1MDB scandal that presently ensnares the former Prime Minister, Najib Razak. However, absence of a law that regulates party financing and the inability of the current government to enact one does not mean that Malaysia should sideline the importance of keeping political parties in line with democratic norms. In this article we argue for a normative party financing model based on five criteria if Malaysia is to promulgate a legislation to regulate political parties' finances. We suggest the proposed legislation should incorporate reporting mechanism that enforces transparency and accountability; level playing field that allows common people and smaller parties to have a stronger voice in politics; reducing patronage politics; easing ethnoreligious tensions; and establishing clear separation between business and politics. We interviewed numerous party representatives, academics, and Election Commission official to solicit their inputs on the substance and viability of this proposed party funding legislation based on the abovementioned five criteria. The article ends with a set of recommendations on the ways to move forward with this proposed legislation or its iterations, both at the federal and state levels.

Keywords: *Malaysian politics, party financing, Government-Linked Companies (GLC), Malaysian Election Commission, Pakatan Harapan (PH), Barisan Nasional (BN)*

1. INTRODUCTION

Unlike its neighbors Philippines and Indonesia (see articles in this issue), Malaysia at the present does not have a law that regulates how political parties fund their operations. Party financing in Malaysia has always been plagued with corruption and lack of transparency, precisely due to the reason it is not regulated by the government. The big political parties that dominate Malaysian politics stand to benefit from the existing status quo and therefore have no incentive to reform the ways that they raise funds to fill their party coffers. It is indubitably an issue of serious concern as funding sources can reveal the vested interests behind political parties' policymaking process and coalitional dynamics. Thus, the chief aim of this article is to explore party financing models from several countries and solicit inputs from various experts, with the objective to come up with an ideal model of party financing in Malaysia. In other words, the absence of a legislation that regulates party financing does not necessarily negates the need to study and recommend party financing model that conforms to the socio-political reality in Malaysia.

This article contends that a party financing model that suits Malaysia can be an amalgam of best practices from around the world, namely in countries that implements the First-Past-The-Post (FPTP) electoral system such as the US and the UK. More importantly, the model must embody these components: 1) reporting mechanism that enforces transparency and accountability; 2) level playing field that allows common people and smaller parties to have

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a stronger voice in politics; 3) reducing patronage politics; 4) easing ethno-religious tensions; and 5) establishing clear separation between business and politics. These five components are crucial since they deal directly with the problems that currently bedevil Malaysia.

In seeking to formulate an ideal party financing model for Malaysia, this article employs the following research questions as its main conceptual thrust:

- 1) Why is there a need to regulate party financing in Malaysia?
- 2) What type of party financing legislation suits Malaysia's ethno-religious politics and First-Past-The-Post (FPTP) electoral system?
- 3) What are the ideal conditions that can allow for the passage of such legislation?
- 4) Is it possible to have a party financing legislation at the state level if the unpredictable climate of national politics is not conducive to its passage?

When it comes to methodology, this article employs a purely qualitative research approach that consists of document review and semi-structured interviews. We have chosen a list of thirteen informants, which comprises of party representatives, NGO activists, academics, and think tank analysts. Due to overlapping of information, we end up using the input from ten informants to inform the writing of this article. Nearly all political parties responded positively to our interview requests except the Malay-Muslim parties UMNO, PAN and Bersatu for reasons unknown to us (we did not ask PAS). As mentioned above, the scope and limitation of this research is its normative nature since there is no actual party financing law in Malaysia to speak at the moment.

The article begins with an overview of the ways political parties in Malaysia currently raise funds to finance their operations. We then proceed to discuss various party financing models around the world, in particular in countries that have similar characteristics such as the FPTP electoral system and ethnic and religious diversity. It is then followed by the section that analyzes the Malaysian socio-political context and argues for an ideal prototype of party financing that can be both feasibly attainable and politically effective. The article ends with a summary of its argument and recommendations on the ways to move forward in enacting a party financing legislation in Malaysia.

2. OVERVIEW OF CURRENT PARTY FUNDING MEANS IN MALAYSIA

As mentioned earlier, currently there is no formal law that regulates political funding in Malaysia, unlike its neighbors Indonesia and the Philippines. Therefore, there is no mechanism to oversee and hold political parties accountable for their funding. One infamous example of the lack of oversight and accountability is the 1MDB scandal that saw an "Arab donation" of USD600 million going into the personal bank account of the former PM Najib Razak, which he claimed was intended for his political party UMNO. Similar examples of lesser magnitude are rife among many politicians and political parties in Malaysia on both sides of the political aisle.

Politicians and political parties in Malaysia acquire funding via several sources. First source is the Government-Linked Companies (GLCs) and Government-Linked Investment Companies (GLICs). The federal government, mostly through the Finance Ministry and Prime Minister's Department, owns the majority shares of 67 publicly listed companies, which translates into 42 percent of market capitalization.³ GLCs are not only limited to the federal government as the state governments (mainly through the Chief Minister's Department) also own majority shares in numerous companies that operate in their respective states. Appointments to GLCs board of directors and top executive positions become highly politicized and used as rewards for

³ Edmund Terence Gomez, "Business as usual: regime change and GLCs in Malaysia," *New Mandala* (12 March 2019), <https://www.newmandala.org/business-as-usual-regime-change-and-gcls-in-malaysia/>, accessed on 19 October 2020.

supporters and allies. In short, GLCs serve as a cash cow for political parties and an integral cog within the political patronage system.

Major political parties also own businesses that generate income to be channeled back into party coffers. Some of these businesses such as in the media industry are also employed as a propaganda tool to legitimize the government. UMNO for instance owns Utusan Malaysia, a major Malay newspaper, and several TV stations as part of the conglomerate Media Prima, while the Chinese political party MCA owns one of the main English newspaper The Star.⁴ These media were in turn employed as a propaganda tool for the former BN government to legitimize its rule and demonize the opposition until the 2018 general election when the BN government lost.

Political parties also raise funds from within their own ranks. Most political parties require Members of Parliament (MPs) and State Assemblypersons (*Ahli Dewan Undangan Negeri*, ADUN) to give up a portion of their monthly salaries for party coffers, ranging from 10 to 30 percent. As a reference, a cabinet minister, for instance, earns on average RM55,650 (USD13,788) per month and an MP slightly less, depending on their allowances and attendance record.⁵ According to Howard Lee Chuan How, the Chair of DAP Socialist Youth (DAPSY), DAP mandates its elected representatives to allocate 30 percent of their salaries to the party, of which 25 percent would go to the party's national headquarters and 5 percent would go to state chapters.⁶ The Malaysian Socialist Party (*Parti Sosialis Malaysia*, PSM) also requires its elected representatives to contribute one-third of their salaries to the party, half of which would go to party headquarters and the remaining half would be used to run constituency service centers and community organizing work. The Chair of PSM, Jeyakumar Devaraj, even gave up 80 percent of his salary to the party when he was serving as the MP for Sungai Siput.⁷ PKR, meanwhile, asks its elected representatives to contribute between 10 to 20 percent of their salaries to the party, with the ones representing poor constituencies having to pay the lower rate.⁸

Political parties and politicians are also known to receive donations and other forms of support from the business community. It is common to see businesses sponsoring events for political parties and politicians. Business community generally knows no political loyalty and easily shift sides when the political tide turns. In the state of Penang for instance the property developers, arguably the state's biggest lobbying group, was politically cozy with the party Gerakan, which governed Penang from 1969 until 2008. After Gerakan's shocking loss in the 2008 election and subsequently replaced by the party DAP, it did not take long for the property developers to ingratiate themselves to the new DAP state government.⁹ Now the symbiotic relationship between property developers and DAP is such that the party's critics mock it as "Developers Action Party."

Another source of funding for politicians comes from MP's allocation for constituency work. Each MP is currently entitled to RM800,000 (USD193,000) per year to carry out constituency work. The allocation can be used for minor projects and emergency assistance in the MP's respective constituency. However, in practice, only MPs who are part of the ruling government are given the full allocation. During the BN government era, opposition MPs did not receive any allocation for constituency work while during the PH government after 2018, opposition MPs received much less than PH MPs.¹⁰

4 *The Star*, "Quick take: Media Prima declines after Umno sells stake," (3 July 2019) <https://www.thestar.com.my/business/business-news/2019/07/03/quick-take-media-prima-declines-after-umno-sells-stake>, accessed on 19 October 2020.

5 Semakan Online, "Tangga Gaji Menteri Kabinet & Ahli Parlimen Malaysia," (13 May 2018), <https://semakanonline.com/tangga-gaji-menteri-kabinet-ahli-parlimen-malaysia/>, accessed on 10 January 2021.

6 Interview via Zoom with Howard Lee Chuan How, Chair, DAP Socialist Youth (DAPSY), 1 December 2020.

7 Interview via Zoom with Sivarajan Arumugam, Secretary General, Parti Sosialis Malaysia, 30 November 2020.

8 Interview via Zoom with Fahmi Fadzil, Member of Parliament (Lembah Pantai), Parti Keadilan Rakyat, 30 December 2020.

9 Mohamed Basyir, "DAP-led Penang govt sold 2,000ha of land to private developers, says Loo," *New Straits Times*, (13 March 2018), <https://www.nst.com.my/news/nation/2018/03/344789/dap-led-penang-govt-sold-2000ha-land-private-developers-says-loo>, accessed on 19 October 2020.

10 Hemananthani Sivanandam, et al, "Uproar in Dewan Rakyat over allocations for MPs." *The Star*. (1 April 2019),

Finally, to a lesser extent, political parties from both sides of the political divide also receive assistance from international agencies and organizations such as USAID, AUSAID, various German *stiftungen* (foundations), among others. This type assistance is usually program-specific that helps to build party capacity, women leader empowerment, democracy education and other non-regime threatening activities. This funding source is less important than the aforementioned ones and does not qualitatively influence the way a party functions, either from the view of good governance or democratization.¹¹

The former BN government first tried to introduce a legislation to regulate political donations in 2016 but it did not make much headway. The law proposal, dubbed Political Donations and Expenditure Act (PDEA), faced vigorous criticisms from the opposition parties as they were worried that a full disclosure of their donors would result in witch-hunts from the government.¹² In September 2019, the then PH government started a discussion on Political Funding Bill at the inter-ministerial level with the hope of tabling the bill for parliamentary vote in 2020. One key aspect of the discussion is to adopt the German model, which is to disburse funding based on the number of votes gained by political parties in the general election. The PH government's recommendation was to provide RM10 (USD2.40) for every vote received by political parties. But in late February 2020, Malaysia went through an abrupt change of government and as of now the political funding bill has been shelved. In the current political climate it is highly unlikely that this bill will see the light of day, much less debated and passed by the parliament. Nevertheless, it is not a reason to drop the effort of formulating a party financing model for Malaysia as opportunity to debate and enact the legislation might yet arise in the future. Therefore, the aim of this article is to survey various best practices from around the world and solicit expert opinions when it comes to party financing in order to extrapolate the ideal model for Malaysia.

3. COMPARING PARTY FINANCING MODELS

Proponents of party financing law in Malaysia often refer to the “German model” as the benchmark for formulating the substance of the law, namely in creating a more equitable playing field for political parties and introducing mechanisms to enforce transparency and accountability. The German government provides funding to any political parties that have obtained at least 0.5 percent of votes in the latest national or European election or one percent of votes in the latest state election. Due to the Mixed-Member Proportional (MMP) electoral system practiced by Germany, only the votes from the party-list are counted in the funding allocation, not the candidate-list. The federal government provides €0.85 per vote for the first four million votes and €0.70 per vote thereafter. Political parties are also entitled to a matching grant of €0.38 for every Euro they receive from membership fees and individual donations not exceeding €3,300. The federal government distributes these funds four times a year in the form of estimated advance payment, which would be adjusted later based on actual expenditures. Political parties must submit an annual financial statement to the President of Bundestag that fully discloses their income and expenditures. Violators would be punished with up to three years of imprisonment and a hefty fine.¹³ While the “German model” seems attractive especially when it comes to narrowing the gap

<https://www.thestar.com.my/news/nation/2019/04/01/uproar-in-dewan-rakyat-over-allocations-for-mps/>, (accessed on 19 October 2020).

11 Muhammad Takiyuddin Ismail, *Bantuan Demokrasi dan Pendanaan Asing di Malaysia: Melewati Pertukaran Rejim* (Kuala Lumpur: Universiti Malaya Press, 2019).

12 Kamles Kumar, “Najib: BN wants ‘transparent’ political funding, but Opposition must also agree,” *Malay Mail* (30 September 2016), <https://www.malaymail.com/news/malaysia/2016/09/30/najib-bn-wants-transparent-political-funding-but-opposition-must-also-agree/1217847>, accessed on 19 October 2020.

13 Edith Palmer, “Campaign Finance: Germany,” *Library of Congress* (2009), <https://www.loc.gov/law/help/campaign-finance/germany>, accessed on 10 January 2021.

between big and small political parties, a wholesale adoption of its party financing system might not be suitable to Malaysia's First-Past-The-Post (FPTP) system, which skews heavily towards big and well-established political parties.

Thus, it is instructive for proponents of party financing law in Malaysia to look at countries that practice the FPTP electoral system. The United Kingdom (UK) is one such country. While the UK government does not provide a comprehensive, votes-based public funding for political parties like in Germany, it does have allocate limited financial assistance for party activities. Every year the UK parliament channels £2 million to all political parties under the Policy Development Grant program. The main objective of this grant is to help political parties develop concrete policies for their election manifestos. The grant is available to all parties with at least two sitting members in the House of Commons. The UK parliament also provides funding to opposition parties to carry out their parliamentary business. The United States (US) is another country that practices the FPTP electoral system. Public funding in the US is available for those who are eligible to contest in the presidential primaries. The public funding matches individual contributions but not from corporations, labor unions, and Political Action Committees (PAC). The source of this public funding comes from individual annual tax return, where on the tax return form American taxpayers have the option of donating USD3 to the Presidential Election Campaign Fund, which the U.S. Treasury would in turn channel to eligible candidates.¹⁴ Major presidential candidates typically forgo public funding since it imposes a limit on how much the candidates can raise and spend. Instead, they prefer to raise unlimited funds from private contributions. As such, public funding in the US is only utilized by minor presidential candidates with a long shot of winning the general election.

4. PARTY FINANCING MODEL IN MALAYSIA: NORMATIVE VERSUS REALITY

As mentioned earlier in this article, a party financing model in Malaysia should normatively include these five criteria: 1) reporting mechanism that enforces transparency and accountability; 2) level playing field that allows common people and smaller parties to have a stronger voice in politics; 3) reducing patronage politics; 4) establishing clear separation between business and politics; and 5) easing ethnoreligious tensions. In late 2019, the then *Pakatan Harapan* (PH) government promulgated a proposal for Political Funding Bill at the inter-ministerial level. The main aspect of the proposal was to adopt the "German model," which was to disburse funding based on the number of votes gained by political parties in the general election. The proposal called for RM10 (USD2.40) per vote. It also included recommendations for funding regulatory mechanisms to ensure transparency, integrity and corruption-free, though it was unclear in what forms these regulatory mechanisms were to take shape and the extent of their regulatory powers.¹⁵ The abrupt change of federal government in late February 2020 derailed the plan to introduce the legislative draft in the parliament. It is highly unlikely that the present *Perikatan Nasional* (PN) government will introduce its own party financing legislation since it is employing the entrenched patronage system to survive challenges to its legitimacy and a party financing legislation will only hamper its ability in doing so.¹⁶

14 Federal Election Commission, "Public funding of presidential elections," (2020), <https://www.fec.gov/introduction-campaign-finance/understanding-ways-support-federal-candidates/presidential-elections/public-funding-presidential-elections/>, accessed on 10 January 2021.

15 *Malay Mail*, "Bill on political funding for tabling next year," (29 October 2019), <https://www.malaymail.com/news/malaysia/2019/10/29/bill-on-political-funding-for-tabling-next-year/1804916>, accessed on 19 October 2020.

16 Azmil Tayeb, "Malaysia in 2020: Fragile Coalitional Politics and Democratic Regression," *Asian Survey* 61 Vol. 1 (February 2021).

The bleak prospect of passing a party financing legislation in the current political climate should not preclude us from drafting a model based on inputs from party representatives and political analysts that is suitable for Malaysia. This model still incorporates the abovementioned five normative criteria, which will be parsed in detail by our informants, particularly taking into account the realpolitik context of Malaysia. Most informants agree on adopting transparency and equitable aspects of party financing model found in Germany and Scandinavian countries despite these countries practicing different type of electoral system than Malaysia, which will also be discussed below.

5. TRANSPARENCY, ACCOUNTABILITY, AND ENFORCEMENT

When it comes to transparency and accountability, all our informants agree on the need to create a financial reporting mechanism for all political donations and make it fully accessible to the public. As mentioned earlier, the reason the massive 1MDB political scandal was able to take place was because political parties and politicians were not obligated by law to report any donations, be it from inside or outside the country. According to Thomas Fann, the Chairperson of BERSIH 2.0, a coalition working towards a clean and fair election in Malaysia, due to the complexity and varied ways through which funds are channeled to political parties and politicians, as exemplified by the said 1MDB fiasco, the proposed party financing legislation must establish a reporting mechanism that is comprehensive and sophisticated.¹⁷ Simply having a reporting mechanism in place is not suffice as it has to be complemented with full asset and expenditure declaration by political parties and independent agencies that are endowed with the unimpeded authority to investigate and punish violators. The Commissioner of the Malaysian Election Commission, Faisal Hazis, states that the current law only requires political parties to declare their expenditures during the short election period, starting from the nomination day until the polling day, which typically spans around two weeks. In order for the reporting mechanism to fully capture the depth of party finances, the party financing law must require political parties to declare their assets and expenditures all year round and be subjected to independent audit.¹⁸ A full accounting of political parties' assets and finances will make it easier to detect any glaring discrepancy between cash inflow and outflow, which is a tell-tale sign of mismanagement and corruption.

While transparency requires a full disclosure of political donors, some members from the opposition political parties register their reservation of such openness due to the potential that it can be exploited for nefarious political ends. In an illiberal democracy such as Malaysia, where the opposition does not compete at the same level as the government, an open reporting system that discloses names of persons and companies that donate to the opposition might exposed them to serious political repercussions. The government can sift through the donors' list and seek to punish by any means those who support the opposition. This is the fear voiced out by the Member of Parliament (MP) from the People's Justice Party (*Parti Keadilan Rakyat*, PKR), Fahmi Fadzil. He instead proposes a law that is able to balance the citizens' right to support their preferred political parties as well as ensuring their anonymity and safety, so as to prevent any backlash, in particular not to run afoul of the 2010 Personal Data Protection Act.¹⁹ It is also sentiment shared by Shakir Ameer, the Vice Chair of DAPSY (the youth wing of the Democratic Action Party, DAP). According to him, a full disclosure that openly displays the names of persons and businesses might leave them vulnerable to boycott by public or the government.²⁰ Except

17 Interview via Zoom with Thomas Fann, Chairperson, BERSIH 2.0, 2 December 2020.

18 Interview via Zoom with Faisal Hazis, Commissioner, Malaysian Election Commission, 30 November 2020.

19 Interview via Zoom with Fahmi Fadzil, Member of Parliament (Lembah Pantai), Parti Keadilan Rakyat, 30 December 2020.

20 Interview via Zoom with Shakir Ameer, Vice Chair, DAP Socialist Youth (DAPSY), 30 November 2020. See also Sebastian Dettman and Edmund Terence Gomez, "Political financing reform: Politics, policies, and patronage in Malaysia,"

for the brief 22-month interregnum between 2018 and 2020 when the PH was in control of the federal government, both PKR and DAP, the political parties of which the two aforementioned informants are part, have always been part of the opposition and therefore know full well the extent to which the government goes to silence its critics. It is thus imperative for the proposed law to guarantee that for the sake of transparency and accountability, reported political donors must not be harassed or intimidated solely because of their political choices.

A reporting mechanism is only as good as its enforcement component since there is no point in having full disclosure when the offenders can escape sanction with impunity. In Malaysia, the Attorney General's Chamber (AGC) typically prosecutes corruption charges against politicians and political parties. Since 1980 AGC has been subsumed under the Prime Minister's Department and the appointment of the Attorney General is a prerogative of the Prime Minister, usually a party loyalist. As such, there is a general perception that the AGC is not independent and merely a political tool employed at the behest of the Prime Minister and the federal government to target opposition parties and critics. The prosecution of 1MDB case during the BN government rule is illustrative of the AGC's emasculation. Despite overwhelming evidence of corruption charges against the then Prime Minister Najib Razak, the AGC, along with the Malaysian Anti-Corruption Commission (MACC), decided that there was no prima facie case to pursue.²¹ It was not until PH took control of the federal government in 2018 that Najib Razak was formally charged for the 1MDB case.

MACC is another federal agency responsible for investigating corruption charges especially in public sector. Part 3 of the 1954 Election Offences Act dictates the scope and limitation of MACC authority when it comes to monitoring politicians and political parties for any campaign irregularities including bribery and undue influence. In reality, the MACC rarely investigates, much less arrests, anyone for electoral offences. Hence, all of our informants agree that federal agencies that oversee activities of political parties such as the AGC, MACC and EC need to be freed from political pressure and be allowed to act independently without fear or favor. In addition to institutional independence, the PKR MP, Fahmi Fadzil, stresses the need to beef up the MACC by endowing the agency with unfettered prosecutorial authority and enough manpower to carry out its duty in order for the proposed party financing law to be effective.²² The Secretary General of the political party Malaysian Chinese Association (MCA), Andrew Chong Sin Woon, pushes for the establishment of an independent regulatory agency with full investigative and enforcement authority and not placed under any ministry to look into financial dealings of political parties.²³ Meanwhile, Jeyakumar Devaraj, the current Chairperson of PSM, recommends that the 1954 Election Offences Act be amended to include limit on campaign spending by third parties and ban on candidates from attending events organized by third parties to prevent any conflict of interests.²⁴

6. LEVELING THE PLAYING FIELD

The proposed party financing law must also act as a democratizing force by opening up the

Journal of Contemporary Asia 50 Vol. 1 (2020), p. 46.

21 *Malaysiakini*, "Probe Apani over alleged 1MDB cover-up – Kepong MP," (2 June 2019), <https://www.malaysiakini.com/news/478328>, accessed on 19 October 2020.

22 Interview via Zoom with Fahmi Fadzil, Member of Parliament (Lembah Pantai), Parti Keadilan Rakyat, 30 December 2020.

23 Interview via Zoom with Andrew Chong Sin Woon, Secretary General, Malaysian Chinese Association (MCA), 9 December 2020.

24 Interview via Zoom with Jeyakumar Devaraj, Chairperson, Socialist Party of Malaysia (PSM), 28 November 2020.

political space to small parties and regular citizens. Many of our informants strongly prefer the German political financing model as a basis for the proposed party financing law in Malaysia (see preceding section). Not surprisingly, the inter-ministerial proposal drafted by the previous PH government also recommended the German financing model. But as discussed earlier, the German political financing model is based on the country's Mixed-Member Proportional (MMP) electoral system, which allocates funding to political parties that manage to win seats in the parliament based on the number of votes they receive. MMP allows smaller parties higher likelihood of making it into the parliament, which in turn gives them access to public funds.

Unfortunately, the First-Past-The-Post (FPTP) electoral system practiced by Malaysia heavily favors big, well-established political parties at the expense of smaller, lesser-known political parties. In this winner-takes-all system, small parties have little chance of getting into the parliament and will thus be deprived of public funding. Jeyakumar Devaraj confronts this political reality first-hand as the head of a small political party. He proposes that the new party financing law to allow all political parties registered with the Registrar of Societies, a federal agency, to have access to public funds. One way to do it is through voters' consent. According to him, there should be a third ballot at the election where voters get to choose which political parties they wish to fund with their tax money. Jeyakumar Devaraj suggests the amount of RM10 (USD2.50) per vote per year to be given to political parties out of public funds. That way smaller parties will still receive funding to run their operations without having to win a seat in the parliament.²⁵ Andrew Chong of MCA concurs with Jeyakumar Devaraj. He says that the proposed party financing law should look to Taiwan, where political parties that do not win any seats are entitled to public funds since the votes they gain reflect people's mandate.²⁶ Faisal Hazis, the EC Commissioner, believes that the German model is not suitable for Malaysia due to differences in electoral systems though he supports adopting some aspects of it such as grant-matching, where the federal government would match the amount parties raised from their membership dues and donations.²⁷ Short of revamping the electoral system, the proposed party financing law should consider the ways to increase the participation of small parties through public funding as recommended by the aforementioned informants.

7. REDUCING PATRONAGE POLITICS

The public expect politicians and political parties to provide for their needs, big or small, which in turn places tremendous financial pressure on them. The patronage politics favors MPs and political parties in the ruling coalition while putting the opposition MPs and political parties at a disadvantage. As mentioned earlier, MPs receive annual allocation and development funds to service their constituency by carrying out welfare programs and small infrastructure projects. MPs from the ruling coalition receive significantly more than opposition MPs, which then allows the former to buy support from the public. MPs and political parties from the ruling coalition also have full access to other government resources through various ministries that are not available to opposition MPs. While there is a campaign spending cap for candidates – RM100,000 for state elections and RM200,000 for federal elections – there is no limit to what parties can spend during an election season. According to Faisal Hazis, this is a serious problem in the election law since party campaign finances are non-transparent and not audited. As such, parties with bigger resources would engage in patronage politics and outspend their less financially well-off rivals. Therefore, it is imperative that the proposed party financing law mandates parties to fully declare their expenditure before, not only during, election season.²⁸ In the words of the prominent election analyst, Wong Chin Huat, the main objective of a party financing law is to stop MPs and ADUNs (state assemblypersons) from acting like Santa Claus

²⁵ Ibid.

²⁶ Interview via Zoom with Andrew Chong Sin Woon, Secretary General, Malaysian Chinese Association (MCA), 9 December 2020.

²⁷ Interview via Zoom with Faisal Hazis, Commissioner, Malaysian Election Commission, 30 November 2020.

²⁸ Ibid.

delivering toys on Christmas eve, or in this case, the election.²⁹ The parties' search for resources is not only limited to government coffers as parties are also deeply intertwined with the business world and the Government-Linked Companies (GLCs), which will be discussed next. It is therefore crucial that the proposed law should make it abundantly clear its objective in minimizing the influence of patronage politics presently pervasive in Malaysia.

8. CLEAR SEPARATION BETWEEN BUSINESS AND POLITICS

For decades the erstwhile ruling coalition Barisan Nasional (BN) had tapped into the private sector for more resources to fund its operations while enriching its politicians in the process. Patronage politics mentioned above would not have been as effective had there not been a boost in resources coming from the private sector. These private resources come in three forms: party-owned businesses, GLCs, and corporate contributions (financial and in-kind). The corporate sponsored patronage was enabled by the highly interventionist nature of the Malaysian government that controlled significant portion of the private sector, particularly in construction, banking, and media. Even corporations that are not formally linked to the government found it financially beneficial to ally themselves with BN by way of contributions.³⁰

All of our informants agree that overhauling the relationship between business and politics must be an integral part of the proposed party financing law. The first on the chopping block is the political appointments of politicians and party loyalists to the board of directors of GLCs. Political appointments to GLCs have long served as rewards to party loyalists, who in turn channel the GLCs' resources back to political parties. It is also a way to deter defection and keep alliance intact.³¹ Since it is difficult to prevent political appointees in GLCs, Wong Chin Huat suggests that political parties implement stringent requirements that ensure only well-qualified candidates are appointed to directorship positions in GLCs, namely bureaucrats and corporate leaders. It is also imperative to prohibit sitting politicians from being appointed to such positions. He also states that GLCs must be thoroughly audited by independent auditing firms, in particular to identify if any of their resources are being channeled back to political parties.³²

When it comes to business ownership by political parties, it is arguably trickier to regulate. All of our informants agree that political parties should be allowed to engage in the business sector as a means for income generation but with several caveats. Political parties and politicians must fully disclose their assets, including donations, and business interests in the reporting mechanism discussed earlier. Presently, asset declaration is not mandatory and even when it is done it is superficial at best. The EC Commissioner, Faisal Hazis, recommends that assets owned by individual political party to be capped at RM1 billion (USD247 million) since political parties should not operate like regular profit-oriented corporations since they are in the business of public interests.³³ Party-owned business must also be prohibited from receiving government contracts, which highlights the sheer importance of transparency and independent auditing in the proposed party financing law.

The proposed party financing law must also find a way to curb the pervasive and unaccountable corporate influence on political parties and politicians. Currently, there is no limit to the amount corporations can contribute to political parties. It goes without saying that more contribution equals bigger say in party's agenda and decision-making process. Further worsening the

²⁹ Interview via Zoom with Wong Chin Huat, Professor of Political Science, Sunway University, Selangor, 30 December 2020.

³⁰ Sebastian Dettman and Edmund Terence Gomez, "Political financing reform: Politics, policies, and patronage in Malaysia," *Journal of Contemporary Asia* 50 Vol. 1 (2020): p. 40.

³¹ Ibid.

³² Interview via Zoom with Wong Chin Huat, Professor of Political Science, Sunway University, Selangor, 30 December 2020; interview via Zoom with Faisal Hazis, Commissioner, Malaysian Election Commission, 30 November 2020.

³³ Interview via Zoom with Faisal Hazis, Commissioner, Malaysian Election Commission, 30 November 2020.

problem is the lack of requirement for parties to disclose their donors and the donation amounts. Thomas Fann, the Chairperson of BERSIH 2.0, suggests putting a cap on donation amounts given to political parties. For a corporation, he recommends a contribution limit of RM1 million (USD247,000) while for private donors the amount is RM100,000 (USD24,700) in a single fiscal year.³⁴ It is crucial that these donations are reported transparently in a system that is accessible to the public at-large. Finally, the proposed party financing law must guarantee that donors who contribute to opposition parties will not be targeted and punished by the government, chiefly by adhering to the 2010 Personal Data Protection Act, a point previously made by the PKR MP, Fahmi Fadzil, and the DAP stalwart, Shakir Ameer.

9. EASING ETHNO-RELIGIOUS TENSIONS

Ethnic relations in Malaysia are managed through a type of political system Arend Lijphart calls consociationalism.³⁵ Consociationalism is normally found in countries where there are intense sectarian rivalries along ethnic and religious lines such as Lebanon and Belgium. The main thrust of consociationalism is that every major sectarian group in the society would have representation at the highest echelons of government, so as to prevent a majoritarian rule that marginalizes the interests of minority groups. In the context of Malaysian politics, major ethnic groups such as Malays, Chinese, Indians and various indigenous Borneo tribes would have their interests represented at the federal level through ethnic-based political parties such as the United Malay National Organisation (UMNO), Malaysian Chinese Association (MCA), Malaysian Indian Congress (MIC), and tribal-based parties in Borneo Malaysia. The downside of consociationalism is that it fosters a communal-based politics where public goods are seen through the ethnic lens as in which ethnic group gets what and how much, which in turn creates distrust among ethnic groups and widens the sectarian divide.

Adding to this heady ethno-religious mix is the central role of Islam in Malaysia and how closely it intertwines with the Malay identity. According to Article 160 in the Malaysian constitution, a Malay person is also a Muslim, which means we cannot touch on one identity without including the other. Islamic interests meanwhile are represented by two competing Islamic political parties: the Pan-Malaysia Islamic Party (*Parti Islam Se-Malaysia*, PAS) and the National Mandate Party (*Parti Amanah Negara*, PAN). Malay-based parties such as UMNO and Bersatu also claim to represent the interests of Islam due to the reason mentioned above. While many of the opposition political parties are not ethnic- or religious-based, the fact remains that ethno-religious sentiments are widely pervasive in Malaysian politics, which leads to the contentious polarization seen in the society today.

The question then, with the status quo in place, if it is possible for the proposed party financing law to include mechanisms and reforms that can temper ethno-religious tensions in Malaysian politics? In the course of our research, almost all of our informants think that alleviating ethno-religious tensions should not be the main focus on the proposed law. They believe that the proposed law should concentrate instead on transparency, accountability, and leveling the political playing field (as discussed above). It is difficult to see how the proposed law can help to reduce the toxic ethno-religious political climate, short of forcing communal-based parties to change their *raison d'être* to become more citizenship-based parties. Nevertheless, the EC commissioner, Faisal Hazis is hopeful that the proposed law can have a moderating and regulatory effect on the deeply conservative, predominantly provincial PAS by bringing it into mainstream politics and simmering down its divisive rhetoric.³⁶ In all, when it comes to reforming Malaysia's acrimonious ethno-religious politics, the proposed party financing law

34 Interview via Zoom with Thomas Fann, Chairperson, BERSIH 2.0, 2 December 2020.

35 Arend Lijphart, "Consociational Democracy." *World Politics 21 Vol. 2* (January 1969): 207-225.

36 Interview via Zoom with Faisal Hazis, Commissioner, Malaysian Election Commission, 30 November 2020.

might not be the right remedy for it.

10. PARTY FINANCING LEGISLATION AT THE STATE LEVEL

One question that we asked in this article if it is possible to enact party financing law at the state level if the effort fails at the federal level. The answer is a qualified no. The primary reason being that activities of political parties fall under the aegis of the Registrar of Societies, a department under the Ministry of Home Affairs. As such, any attempt by a state legislature to pass the law will be seen as ultra vires since it runs afoul of the constitution. Another reason is that state governments simply do not have the financial wherewithal to provide funding to political parties. The highly centralized federalism practiced in Malaysia means that most states are dependent on federal support for their budgets, which makes it unlikely that they will allocate public funds for political parties.

However, according to some of our informants there are ways to circumvent this constitutional barrier. The state assembly can adopt some aspects of the proposed party financing bill discussed above without violating the federal constitution. For one, it can pass a law that requires all its members to fully declare their assets and personal campaign finances after they are sworn in to increase transparency and minimize conflict of interests. This is a view shared by Mak Kah Keong, the Secretary General of *Parti Gerakan Rakyat Malaysia* (Gerakan) and Sivarajan Arumugam, the Secretary General of PSM.³⁷ The key from not running into the constitutional brick wall is to regulate members of the political parties, not the political parties per se. Arguably, similar law can also be enacted at the federal level. The lower house of the Malaysian parliament did in fact pass a special motion on 1 July 2019 that mandated all MPs and their immediate family members to declare their assets at the risk of getting fined or suspended. By the end of 2019, there were still 62 MPs – mostly from UMNO and PAS – who had yet to declare their assets, out of the 222 total MPs in the lower house.³⁸ Wong Chin Huat, meanwhile, proposes that state government allocates special funding for political parties that achieve certain diversity quota in their elected representatives in the state assembly such as women and ethnic minorities. He also recommends prohibition on appointment of politicians to the directorship of state government-owned enterprises, similar to previously discussed recommendation made at the federal level.³⁹ In short, all hope is not hope if the proposed party financing legislation fails to pass at the federal level as state governments are still able to implement some aspects of it as long as they remain within the constitutional boundary.

11. IDEAL CONDITIONS TO ENACT THE LEGISLATION

In the currently unstable and contentious political climate at the federal level, it is a seemingly insurmountable undertaking to enact the party financing legislation. The PN government is not interested in taking up the effort to introduce this bill in the parliament as it is fully preoccupied with challenges posed by pandemic and the threat to its precarious hold on power. Therefore, the effort to enact the party financing legislation has to be carried out in a medium-to-long political game, namely when there is a federal government that is stable and strong enough. Our informants agree that there are two crucial, mutually-reinforcing, aspects that can help to ensure the passing of this legislation. First is political will by party leaders, which is woefully

37 Interview via Zoom with Mak Kah Keong, Secretary General, Parti Gerakan Rakyat Malaysia, 10 December 2020; interview via Zoom with Sivarajan Arumugam, Secretary General, Parti Sosialis Malaysia, 30 November 2020.

38 Ahmad Fairuz Othman, et al, "Dewan Rakyat passes special motion on asset declaration," *New Straits Times*, (1 July 2019), <https://www.nst.com.my/news/nation/2019/07/500680/dewan-rakyat-passes-special-motion-asset-declaration>, accessed on 10 January 2021; Arjuna Chandran Shankar, "Sixty-two MPs yet to declare assets," *The Edge Markets*, (5 December 2019), <https://www.theedgemarkets.com/article/sixtytwo-mps-yet-declare-assets>, accessed on 10 January 2021).

39 Interview via Zoom with Wong Chin Huat, Professor of Political Science, Sunway University, Selangor, 30 December 2020.

lacking now. Political parties, on both sides of the aisle, when in power find the status quo to be immensely beneficial and therefore have no incentive to reform the entrenched system. The PH coalition included in its election manifesto the intention to do away with political appointments to GLC directorships but reneged on the promise when it came to power in 2018.⁴⁰ Second aspect is the political mobilization from civil society organizations, which serves two functions: shoring up the political will of party leaders so as to embolden them to initiate the reforms; and raising widespread awareness among the public on the importance of the proposed legislation and its positive impact on the overall health of democracy.⁴¹ It is also important to educate the public not to see their elected representatives as Santa Claus, which would only perpetuate the culture of political patronage and corruption.⁴²

Besides the two aforementioned aspects, our informants also offer other conditions that can ease the passage of the proposed law. Fahmi Fadzil stresses that the proposed law must be weighted and balanced in the Malaysian context in order for it to be amendable to MPs across the partisan divide. It means that the proposed law must consider the malapportionment problem, geography and socio-economic backgrounds of the constituencies, the level of infrastructure development in various constituencies, among others.⁴³ Echoing the PKR MP, BERSIH 2.0 in its exhaustive report on political financing recommends that party votes' threshold for funding eligibility to be set regionally. It means that peninsular Malaysia, Sarawak and Sabah will each have their own threshold, which BERSIH 2.0 suggests set at 2 percent. Finetuning the thresholds regionally will allow small regional parties, most of which are located in Sarawak and Sabah, more opportunity to access public funding.⁴⁴ In short, the workings of the proposed law need to be finessed and should not be a one-size-fits-all remedy.

Thomas Fann, meanwhile, holds a more sanguine outlook on the prospect of passing the proposed party financing legislation in the current political climate. He believes that there is a higher chance for reforms to take place now because there is no one dominant party and that the coalitions are fragile. As such, political parties are more willing to consider bipartisan agreement that can level the political playing field for all, including but not limited to party financing reforms.⁴⁵ Political parties must also undergo a serious internal reform, particularly in revamping their party election system, before they can make a good-faith effort in passing the party financing legislation. Rising up the party leadership typically requires buying the support of the rank-and-file members, which then compels contenders to seek as much funding as possible, licit or otherwise.⁴⁶ Money politics within political parties needs to be flushed out before genuine party financing reforms can take place. In light of the conditions we have discussed above, it remains a tall order to pass an effective and comprehensive party financing legislation, be it in present time or later down the road.

40 Robin Augustin, "Unhappy with PH's GLC appointments, NGOs want task force for reforms," *Free Malaysia Today*, (24 January 2019), <https://www.freemalaysiatoday.com/category/nation/2019/01/24/unhappy-with-phs-glc-appointments-ngos-want-task-force-for-reforms/>, accessed on 10 January 2021; interview via Zoom with Sivarajan Arumugam, Secretary General, Parti Sosialis Malaysia, 30 November 2020.

41 Interview via Zoom with Sivarajan Arumugam, Secretary General, Parti Sosialis Malaysia, 30 November 2020; interview via Zoom with Fahmi Fadzil, Member of Parliament (Lembah Pantai), Parti Keadilan Rakyat, 30 December 2020.

42 Interview via Zoom with Wong Chin Huat, Professor of Political Science, Sunway University, Selangor, 30 December 2020.

43 Interview via Zoom with Fahmi Fadzil, Member of Parliament (Lembah Pantai), Parti Keadilan Rakyat, 30 December 2020.

44 A 2 percent threshold means that political parties that receive at least 2 percent of the total votes cast in the most recent general election will be eligible for public funding. In the regional context, it means that 2 percent of total votes cast in peninsular Malaysia, Sarawak, and Sabah, respectively. Ooi Kok Hin, "Public Funding of Political Parties in Malaysia: Debates, Case Studies and Recommendations," *BERSIH 2.0 Report* (2021), pp. 66-67.

45 Interview via Zoom with Thomas Fann, Chairperson, BERSIH 2.0, 2 December 2020.

46 Edmund Terence Gomez and Joseph Tong, "Financing Politics in Malaysia: Reforming the System," *Australian Journal of Asian Law* 2 Vol. 18 (2017), p. 15.

12. CONCLUSION

It is high time that Malaysia follows in the footsteps of its neighbors Indonesia and the Philippines in enacting a law that regulates political financing. Malaysian politics is awash in unaccountable funding from various undisclosed sources that has significantly eroded public confidence in political parties over the years. The proposed party financing legislation should seek to restore diminished public confidence in the viability of political parties as an agent of change and a force of good. The passage of party financing legislation also needs to be accompanied with serious institutional reforms, which overarching purpose is to ensure the independence of monitoring and enforcement agencies in carrying out their responsibilities. Examples of institutional reforms that can be undertaken in conjunction with the law include imposing term limits for EC commissioners and an explicit guarantee for their independence and placing ROS under the ambit of EC since ROS oversees party activities and finances.⁴⁷ By leaving ROS under the Ministry of Home Affairs, as is the case now, it allows ROS to be used as a political cudgel to punish opposition and critics of the sitting government since ROS has the authority to de-register political parties and NGOs, and thus making them illegal at the stroke of a pen. There is no better time to enact a party financing law as presently the public's trust in politicians and political parties is at an all-time low.⁴⁸ A party financing law that is transparent, independent, and democratically empowering is indeed one of the best remedies to cope with this malady.

47 Ibid., p. 14.

48 Durie Rainer Fong, "Trust in politicians at all-time low, says analyst," *Free Malaysia Today*, (3 March 2020), <https://www.freemalaysiatoday.com/category/nation/2020/03/03/trust-in-politicians-at-all-time-low-says-analyst/>, accessed on 10 January 2021.

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LIST OF ZOOM INTERVIEWS

Jeyakumar Devaraj, Chairperson, Socialist Party of Malaysia (PSM), 28 November 2020.

Shakir Ameer, Vice Chair, DAP Socialist Youth (DAPSY), 30 November 2020.

Faisal Hazis, Commissioner, Malaysian Election Commission, 30 November 2020.

Sivarajan Arumugam, Secretary General, Parti Sosialis Malaysia, 30 November 2020.

Howard Lee Chuan How, Chair, DAP Socialist Youth (DAPSY), 1 December 2020.

Thomas Fann, Chairperson, BERSIH 2.0, 2 December 2020.

Andrew Chong Sin Woon, Secretary General, Malaysian Chinese Association (MCA), 9 December 2020.

Mak Kah Keong, Secretary General, Parti Gerakan Rakyat Malaysia, 10 December 2020.

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Fahmi Fadzil, Member of Parliament (Lembah Pantai), Parti Keadilan Rakyat, 30 December 2020.

A DISPROPORTIONATELY UNEQUAL PLAYING FIELD: CHALLENGES TO AND PROSPECTS FOR CAMPAIGN FINANCE LAW AND POLICY IN THE PHILIPPINES

Patricia Blardony Miranda¹

Abstract

In the Philippines, the influence of money poses a challenge to political participation and representation of socially excluded, lesser-known, and historically underfunded candidates. Marginalized people and sectoral groups have to cope with discrimination alongside hurdling additional barriers of limited access to economic resources and rising campaign costs.

Using Carol Bacchi's "what is the problem represented to be?" (WPR) approach, this paper primarily interrogates how equal access to opportunities for public service is defined and represented in Philippine campaign finance law and policy. The approach also offers a conceptual framework that helps surface what remains 'unproblematized' by existing policy discussions and narratives.

This paper contends that challenges to electoral integrity, accountability, and transparency in campaign finance are not solely due to ineffective implementation and enforcement. The WPR approach enables us to reflect on how existing policy interventions or responses to what the law identifies as problematic can also entrench elite power and replicate uneven power dynamics evident in Philippine society. Thus, for campaign finance laws to promote, rather than block, political participation and representation, additional attention must be given to the assumptions, policy gaps, and silences that give rise to anti-competitive, corrupt, and disempowering practices and norms. The resulting analysis may prove useful for outlining avenues for future law reform and policy advocacy efforts, but invite the imagining of alternative and inclusive proposals to ensure that the ability to run for public office rests on merit and ability, rather than access to financial influence and resources.

Keywords: *campaign finance, electoral laws, political participation, representation, problem representations analysis, Philippines*

1. INTRODUCTION

The centrality of money in Philippine electoral campaigns poses challenges to the political participation and representation of socially excluded, lesser-known, and historically underfunded candidates. However, marginalized candidates and sectoral groups, such as women, Indigenous peoples, the urban and rural poor, ethnic and religious minorities, LGBTQIA communities, young people, and people with disabilities, among others, have to cope with discrimination alongside hurdling additional barriers of limited access to economic resources and rising campaign costs. These factors taken together contribute to a disproportionately unequal political playing field in the Philippines' elite-dominated democracy.

In the Philippines, equal access to opportunities for public service and the prohibition of political dynasties are constitutionally mandated.² However, this is accompanied by the limiting provision "as may be defined by law,"³ which means further defining and operationalizing these so-called constitutional 'guarantees' are mainly left to the will and interests of Congress. Considering that the Philippines follows a plurality system, *i.e.*, whoever garners the most votes wins the elections, vested interests will most likely incentivize legislative inaction in regulating

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2 1987 Constitution, Article II, Section 26: "The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law.

3 *Pamatong v. COMELEC*, 427 SCRA 96 (2004).

campaign finance and, therefore, enlarging democratic spaces.⁴

If elections are considered to be “democratic choice, expressed through the ballot,” as stated by the Philippine Supreme Court in *Aquino v. COMELEC et al.* (1995),⁵ then access to campaign finance can increase the participation of qualified and meritorious candidates. A robust campaign finance legal landscape promotes equal access to funding, helps limit dynastic politics by enabling the inflow of new leaders,⁶ and opens spaces for the “free expression of the will of the people.”⁷

Against this backdrop, a broader question is raised: how is equal access to opportunities for public service defined and represented in Philippine campaign finance law and policy? Carol Bacchi’s “what is the problem represented to be?” (WPR) approach⁸ was used to interrogate and analyze the Philippines’ legal framework on campaign finance. The findings surfaced by the WPR approach proves useful because it can help outline new ways forward for legislative and policy advocacy efforts, and invite the imagining of alternative and inclusive proposals where the ability to run for public office is not predicated on financial influence and resources.

1.1. Conceptual and methodological framework

The WPR approach begins with the premise that proposed interventions in Philippine campaign finance laws reveal what the decision-makers find problematic or what needs to change.⁹ As a conceptual framework, the WPR approach helps surface what remains ‘unproblematized’ by existing policy discussions and narratives.¹⁰ As a methodology, I chose Bacchi’s WPR approach because it can open up a range of questions that other approaches can fail to address due to the focus on merely describing the law or the *status quo*.¹¹ Specifically, the following questions are explored in this paper:

- (1) How has equal access to opportunities for public service been defined and represented in Philippine campaign finance laws, and what are the underlying assumptions we need to unpack about these representations?
- (2) What historical and other contextual factors have led to the emergence of these problem representations on campaign finance?
- (3) What are the potential gaps, limitations, and silences of these problem representations?
- (4) What strategies can be used to question, disrupt, and replace challenges to electoral integrity, political participation, and representation?

4 See Julio C Teehankee, ‘Electoral Campaigning in the Philippines’ in *Election Campaigning in East and Southeast Asia: Globalization of Political Marketing* (Ashgate Publishing, Ltd 2006).

5 *Aquino v. COMELEC*, 248 SCRA 400 (1995).

6 See Eduardo T Gonzalez, ‘Regulating Campaign Finance in the Philippines: Limits and Challenges’ (2003) 47 *Philippine Journal of Public Administration* 26; Lolita Cigane and Magnus Ohman, ‘Political Finance and Gender Equality’ (IFES White Paper, 2014).

7 *Gonzalez v. COMELEC*, 27 SCRA 835 (1969); citing *People v. Vera*, 65 Phil. 56 (1937). *Manila Race Horse Trainers Asso. v. De la Fuente*, 88 Phil. 60 (1951); *Bautista v. Mun. Council*, 98 Phil. 409 (1956).

8 Carol Bacchi, “‘Are ‘Problem Representations’ (WPR) Problematizations?’” (*Carol Bacchi*, 11 June 2018) <<https://carolbacchi.com/2018/06/11/are-problem-representations-wpr-problematizations/>> accessed 22 October 2020; Carol Bacchi and Susan Goodwin, *Poststructural Policy Analysis: A Guide to Practice* (Springer 2016). \u00u8216{\u00u8220}{Are \u00u8216}{Problem Representations\u00u8217}{ (WPR

9 Carol Bacchi, ‘Introducing the “What’s the Problem Represented to Be?” Approach’ in Angelique Bletsas and Chris Beasley (eds), *Engaging with Carol Bacchi Strategic Interventions and Exchanges* (University of Adelaide Press 2015).

10 Carol Bacchi, ‘Why Study Problematizations? Making Politics Visible’ (2012) 02 *Open Journal of Political Science* 1.

11 Carol Lee Bacchi, *Analysing Policy: What’s the Problem Represented to Be?* (Pearson Education 2009).

The primary method used in this research is document analysis. While document analysis generally accompanies other research methods, it is also recognized as an independent, stand-alone, and self-supporting method for specialized forms of qualitative research, such as in problem representations analysis.¹²

1.2. Scope and limitations

In order to determine how and why the constitutional provision of equal access to opportunities for public service been defined, represented, and problematized in the Philippines, *i.e.*, the first research question, the paper provides an overview of campaign finance laws, policies, and regulations insofar as these facilitate or impede the objectives of the 1987 Constitution and the amended Omnibus Election Code (OEC) of the Philippines. To address the three subsequent questions, relevant Supreme Court jurisprudence, which forms part of the Philippine legal system,¹³ and secondary sources, which include election law textbooks and manuals, academic journal articles, news articles involving campaign finance issues, and think pieces by legal experts and academics, shall form the bases for identifying the historical and other contextual factors; examining gaps, limitations, and silences of these problem representations; and providing identifying policy representations or what the government aims to change, or not change.¹⁴

While the WPR is a practical methodology because it provides six guiding questions that may be answered step by step, this paper did not pursue a linear approach to ensure brevity, avoid repetitiveness, and address time constraints and word count limits.¹⁵ This paper focuses on two main thematic areas of campaign expenditure limits and prohibited campaign contribution sources to determine how these impact equal access to opportunities for public service in the Philippines. Finally, as discussed in the preceding section, this paper solely uses document analysis because this is a self-supporting method in problem representations research.

2. A SNAPSHOT OF THE PHILIPPINES' CAMPAIGN FINANCE LEGAL FRAMEWORK

The Philippines, officially the Republic of the Philippines, has a presidential form of government where power is intended to equally reside in its three branches – *i.e.*, executive, legislative, and judicial – under the principle of checks and balances.¹⁶ The legal system is based mainly on Western models and ideas, a blend of both the Anglo-American and Spanish systems.¹⁷ Elections and other democratic processes were imposed by American colonizers who introduced electoral and party politics nearly a century ago.¹⁸

Through a plurality system, all elective officials from the executive and legislative branches – *i.e.*, *president, vice-president, senators, members of the House of Representatives, local chief*

12 Glenn Bowen, 'Document Analysis as a Qualitative Research Method' (2009) 9 *Qualitative Research Journal*; Brian W Head, 'Reconsidering Evidence-Based Policy: Key Issues and Challenges' (2010) 29 *Policy and Society* 77; Bacchi, "'Are "problem representations" (WPR) problematizations?" (n 8).
 13 Article 8 of the New Civil Code; Republic of the Philippines v. Prieto (1963), https://lawphil.net/judjuris/juri1963/apr1963/gr_1-17946_1963.html

14 See Carol M Bast and Ransford C Pyle, 'Legal Research in the Computer Age: A Paradigm Shift' (2001) 93 *Law Libr J* 285; Steven M Barkan and others, 'Fundamentals of Legal Research, Tenth Edition' (SSRN Scholarly Paper, Social Science Research Network 7 April 2015).

15 This paper was developed and written amid a pandemic and in a highly securitized context.

16 Gonzalez v. Office of the President, 679 SCRA 614 (2012); Justice Carpio, Concurring Opinion: "The constitutional principle of independence does not obviate the possibility of a check from another body. After all, one of the constitutive principles of our constitutional structure is the system of checks and balances- a check that is not within a body, but outside of it. *This is how our democracy operates - on the basis of distrust.*" (Emphasis supplied.)

17 Julio Teehankee, 'Electoral Politics in the Philippines' [2002] *Electoral Politics in Southeast and East Asia* 149.

18 Teehankee (n 4); Teehankee (n 17).

*executives, and local legislators – are chosen by a direct vote of the people through a ‘first-past-the-post system’ where the candidate with the highest number of votes is declared the winner.*¹⁹ This system is found in the United Kingdom and countries once part of the British Empire, including the United States, Canada, and India.²⁰

The 1987 Constitution also introduced the party-list system to promote inclusion by broadening the representation in the House of Representatives and facilitating access to representation of minority or marginalized groups who may not have access to sufficient funding or political machinery.²¹ However, according to the Philippine Commission on Women, the plurality system affects political parties or groups’ preference to finance male candidates who are perceived to have higher probabilities of winning the election.²²

The plurality system coupled with the real democratic threat of exclusion due to access barriers to power and resources underscore the links between electoral integrity and campaign finance in the Philippines. When elections are free, fair, and credible, voters continue to have faith in electoral and democratic processes even when their candidates do not win.²³

The Omnibus Election Code (OEC) of the Philippines defines campaign finance as electoral contributions raised or received, and expenditures made, to promote candidates or political parties in all elections, referendums, or plebiscites.²⁴ The OEC, enacted into law in 1985, remains the basic code on elections and codifies all previous election laws and regulations.²⁵ While it has undergone amendments through the 1987 Constitution, particularly on the powers of the Commission on Elections (COMELEC) to enforce and administer all electoral laws and regulations, this voluminous piece of legislation has remained mostly the same over the decades with additional amendments and repeals from around seven laws issued between 1987 to 2013.²⁶ The term “any election,” as used in both the OEC and 1987 Constitution of the Philippines, includes all current forms of electoral and political exercises in the country, as well as those that future laws may require.²⁷ The COMELEC, one of the Philippines’ three constitutional commissions, is identified to be the competent body to regulate and oversee campaign finance.²⁸

Further, other laws and policies that substantially impact the scope and coverage of campaign finance include recent amendments to the Corporation Code in 2019,²⁹ which enables domestic corporations to give donations in aid of any political party or candidate or for purposes of partisan political activity.³⁰ Before, Section 36(9) of Batas Pambansa Bilang 68, or the old Corporation Code

19 Teehankee (n 17); Ben Reilly and Andrew Reynolds, ‘Electoral Systems and Conflict in Divided Societies’ in *International Conflict Resolution After the Cold War* (National Research Council 2000).

20 Reilly and Reynolds (n 19).

21 Fritzie P Tangkia and Ma Araceli Habaradas, ‘Party-List System: The Philippine Experience’ [2001] Manila: Friedrich Ebert Stiftung.

22 Philippine Commission on Women, ‘Women’s Political Participation and Representation’ (February 2021) <<https://pcw.gov.ph/womens-political-participation-and-representation/>> accessed 10 February 2021.

23 See Marlene Mauk, ‘Electoral Integrity Matters: How Electoral Process Conditions the Relationship between Political Losing and Political Trust’ [2020] *Qual Quant*.

24 OEC, Sections 94 to 112; also known as Batas Pambansa Bilang 881.

25 COMELEC, ‘Campaign Finance’ (*Republic of the Philippines Commission on Elections*, 2020) <<https://www.comelec.gov.ph/?r=CampaignFinance>> accessed 22 October 2020.

26 See 2001 – RA 9006 – Fair Election Act; 1997 – RA 8436 – authorizing COMELEC to use an automated election system; 1996 – RA 8189 – establishing a voter’s registration act; – RA 7166 – Synchronized national and local elections; 1995 – RA 7941 – Party-List System Act; and 1987 – RA 6646 – Electoral Reform Law.

27 Ruben E Agpalo, *Comments on the Omnibus Election Code* (Rex Book Store 2004) ; citing *Gatchalian v. Comelec*, 35 SCRA 435 (1970).

28 1987 Constitution, Article IX, Section 1.

29 Official Gazette (2019). Available at: <https://www.officialgazette.gov.ph/downloads/2019/02feb/20190220-RA-11232-RRD.pdf>. accessed 22 October 2020.

30 See Richelle Dianne Patawaran, ‘Corporations’ Political Contributions under Revised Corporation Code’ (*Manila Times*, 2019) <<https://www.manilatimes.net/2019/03/21/business/columnists-business/corporations-political-contributions->

of the Philippines, absolutely prohibits both foreign and domestic corporations from donating to any political party or candidate or for any partisan political activity. Read together with Section 95 of the OEC, a domestic corporation, as long as it does not fall under the exemptions (*e.g.*, public or private financial institutions; contractors or sub-contractors of government goods or services; grantees of government franchises; juridical persons operating a public utility or in possession of or exploiting any natural resources of the nation, among others),³¹ can donate to any political party or candidate during elections or contribute to any partisan political activity.³²

Another example would be tobacco control policies, according to the WHO Framework Convention on Tobacco Control (FCTC), which prohibit tobacco industry participation and sponsorships. This includes banning political contributions and donations, with no exceptions,³³ to protect the Philippine government from industry interference in tobacco control and public health policies.

For both examples, the prohibition imposed on specific corporations and industries covers both direct or indirect contributions, the purpose is to prevent both the actuality and perception of corruption resulting from large individual financial contributions.³⁴

3. DEFINING, REPRESENTING, AND PROBLEMATIZING EQUAL ACCESS TO OPPORTUNITIES FOR PUBLIC SERVICE

The main objective for regulating campaign finance can be found in the 1987 Constitution, specifically Article II, Section 26, which reads:

“The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law.” (Emphasis supplied.)

The Supreme Court recognized the significance of this policy in *Chavez v. COMELEC* (1992), which reiterated that the ability to run for public office “without regard to the level of financial resources” is vital public interest, which the State must safeguard.³⁵ While the Supreme Court also ruled that the provision does not represent a constitutional right but is merely a privilege subject to limitations imposed by law,³⁶ it nevertheless an essential declaration of policy that sets directions for action.

Read together with the declaration of principle in the *Fair Election Act* (2001), the “equal opportunity for public service” includes access to media time and space, and the equitable right to reply for public information campaigns and fora among candidates and assure “free, orderly, honest, peaceful and credible elections.”³⁷ Additionally, the law aims to protect candidates running in good faith for any public office from any form of harassment and discrimination.³⁸

The explicit identification of equal access to opportunities for public service as a positive indicator for a democratic and fair elector process spotlights the historically persistent problem of inequality and disadvantage, which mar electoral contests. For example, it has been found that more than half of elected Philippine members of Congress and governors have a relative who has

under-rc/528679/> accessed 22 October 2020.

31 Agpalo (n 27). See contributions prohibited under Sections 89, 95, 96, 97 and 104 of the OEC.

32 Patawaran (n 30).

33 Civil Service Commission-Department of Health Joint Memorandum Circular 2010-01.

34 See *Ejercito v. COMELEC*, G.R. No. 212398, 25 November 2014.

35 *Chavez v. Comelec*, 211 SCRA 315 (1992).

36 *Pamatong v. COMELEC*, 427 SCRA 96 (2004).

37 *Fair Election Act*, Section 2.

38 *Fair Election Act*, Section 2.

been previously elected into office,³⁹ which provides additional evidence that state monopoly and capture by powerful and wealthy families are enduring challenges which our laws and policies have not been able to curb. Thus, interventions that promote equal access to opportunities mean a level playing field for all candidates, regardless of their financial capacity.⁴⁰ These can contribute to ending inequitable representation of elite interests and values in political affairs which is characteristic of dynastic or elite-dominated democracies.⁴¹

3.1. Campaign expenditure limits

The imposition of a maximum limit on campaign expenditures is an important measure in campaign finance. However, failure to review and update expenditure limits, coupled with implementation gaps, have posed challenges to leveling the political playing field. In particular, marginalized groups are prevented from fully participating in the political arena because they will have limited access to the political influence and sustained funding needed to amplify campaign messages and commitments during the election campaign.⁴²

39 Pablo Querubin, 'Political Reform and Elite Persistence: Term Limits and Political Dynasties in the Philippines' (SSRN Scholarly Paper, Social Science Research Network 2012), potentially undermining the effectiveness of institutional reforms. One particular form of elite persistence is illustrated by the existence of political dynasties. A natural question is whether certain political reforms can break dynastic patterns and open up the political system. In this paper I study the extent to which the introduction of term limits by the 1987 Philippine Constitution effectively broke the hold of incumbent families on power. The ability of term limits to dismantle political dynasties is not obvious, as term-limited incumbents may be replaced by relatives or may run for a different elected office. Whether these strategies undermine the direct effects of term-limits in reducing the time an individual can hold office is an empirical question. I find no evidence of a statistically significant impact of term limits on curbing families' persistence in power. Moreover, term limits deter high-quality challengers from running prior to the expiration of an incumbent's term. Challengers prefer to wait for the incumbent to be termed-out and run in an open-seat race. As a consequence, incumbents are safer in their early terms prior to the limit. These results suggest that political reforms that do not modify the underlying sources of dynastic power may be ineffective in changing the political equilibrium.", "event-place": "Rochester, NY", "genre": "SSRN Scholarly Paper", "language": "en", "number": "ID 2108036", "publisher": "Social Science Research Network", "publisher-place": "Rochester, NY", "source": "papers.ssrn.com", "title": "Political Reform and Elite Persistence: Term Limits and Political Dynasties in the Philippines", "title-short": "Political Reform and Elite Persistence", "URL": "https://papers.ssrn.com/abstract=2108036", "author": [{"family": "Querubin", "given": "Pablo"}], "accessed": {"date-parts": ["2021", 1, 20]}, "issued": {"date-parts": ["2012"]}], "schema": "https://github.com/citation-style-language/schema/raw/master/csl-citation.json"}

40 Francis Tom Temprosa, 'A Human Rights Discourse on Campaign Finance in the Philippines' (SSRN Scholarly Paper, Social Science Research Network 2013).

41 See Bing Baltazar C Brillo, 'A Theoretical Review on Philippine Policy-Making: The Weak State-Elitist Framework and the Pluralist Perspective' (2011) 39 *Philippine Quarterly of Culture and Society* 54; Querubin (n 39), potentially undermining the effectiveness of institutional reforms. One particular form of elite persistence is illustrated by the existence of political dynasties. A natural question is whether certain political reforms can break dynastic patterns and open up the political system. In this paper I study the extent to which the introduction of term limits by the 1987 Philippine Constitution effectively broke the hold of incumbent families on power. The ability of term limits to dismantle political dynasties is not obvious, as term-limited incumbents may be replaced by relatives or may run for a different elected office. Whether these strategies undermine the direct effects of term-limits in reducing the time an individual can hold office is an empirical question. I find no evidence of a statistically significant impact of term limits on curbing families' persistence in power. Moreover, term limits deter high-quality challengers from running prior to the expiration of an incumbent's term. Challengers prefer to wait for the incumbent to be termed-out and run in an open-seat race. As a consequence, incumbents are safer in their early terms prior to the limit. These results suggest that political reforms that do not modify the underlying sources of dynastic power may be ineffective in changing the political equilibrium.", "event-place": "Rochester, NY", "genre": "SSRN Scholarly Paper", "language": "en", "number": "ID 2108036", "publisher": "Social Science Research Network", "publisher-place": "Rochester, NY", "source": "papers.ssrn.com", "title": "Political Reform and Elite Persistence: Term Limits and Political Dynasties in the Philippines", "title-short": "Political Reform and Elite Persistence", "URL": "https://papers.ssrn.com/abstract=2108036", "author": [{"family": "Querubin", "given": "Pablo"}], "accessed": {"date-parts": ["2021", 1, 20]}, "issued": {"date-parts": ["2012"]}], "schema": "https://github.com/citation-style-language/schema/raw/master/csl-citation.json"}

42 Temprosa (n 40); Clarita Carlos and others, 'Democratic Deficits in the Philippines' in *A Future For Democracy* (Konrad-Adenauer-Stiftung, Singapore 2011).

For example, a local candidate can only spend Philippine Pesos (PhP) 3⁴³ per registered voter in their jurisdiction, according to Republic Act (RA) No. 7166 that synchronized the local and national elections. However, since these unrealistic limits remain at 1991 standards, virtually unchanged for the past three decades, there is barely any incentive for candidates to properly declare the actual expenses and contributions needed to run a campaign today.⁴⁴ This, in turn, fast tracks the inevitability of graft and corruption.

In *Ejercito v. COMELEC* (2014), the Philippine Supreme Court cites American jurisprudence to explain the purpose of expenditures limits:

“First, the limits serve to mute the voices of affluent persons and groups in the election process and thereby to equalize the relative ability of all citizens to affect the outcome of elections. Second, it is argued, the ceilings may to some extent act as a brake on the skyrocketing cost of political campaigns and thereby serve to open the political system more widely to candidates without access to sources of large amounts of money.”⁴⁵

In the *Ejercito* case, the COMELEC held that gubernatorial candidate Ejercito spent up to PhP 23,563,365.28⁴⁶ for his campaign even if he is only authorized by law to spend PhP 4,576,566,⁴⁷ or PhP 3 for every voter registered voter in his province. The Supreme Court upheld Ejercito’s disqualification and stated that “to rule otherwise would practically result in an unlimited expenditure for political advertising, which skews the political process and subverts the essence of a truly democratic form of government.”⁴⁸

More recently, during the 2019 Midterm Elections, the Philippine Center for Investigative Journalism (PCIJ) tracked senatorial candidates’ spending on political advertisements and compared each candidates’ net worth, as declared in their Statement of Assets, Liabilities and Net Worth (SALN), to the ad placement data from a global market research firm specializing in broadcast media.⁴⁹ The filing of SALN, which is constitutionally enshrined,⁵⁰ promotes transparency in the civil service and serves as an effective mechanism for the public to scrutinize undisclosed properties and wealth.⁵¹ The PCIJ’s findings revealed that all the top spenders’ expenses exceeded their net worth declared in the SALN.

The rationale for filing truthful and comprehensive SALNs, as well as the assumption of dishonesty and lack of integrity when candidates fail to disclose their wealth, underpins the requirement that candidates and parties to submit “full, true and itemized” statements of contributions and expenditures (SOCs) concerning their electoral campaigns.⁵² At the core of these regulations is the need to prevent actual and perceived corruption “spawned by the real or imagined coercive influence of large financial contributions on candidates’ positions and their

43 Approximately 0.062 US Dollars (calculated 10 February 2021).

44 Vicente Reyes, ‘Can Public Funding Overcome Corruption? A View from the Philippines’ in *Money, Corruption, and Political Competition in Established and Emerging Democracies* (Lexington Books 2012); Emil Marañon III, ‘Is It Time to Amend the Philippines’ Campaign Finance Law?’ (2019) <<https://www.rappler.com/voices/thought-leaders/is-it-time-amend-philippines-campaign-finance-law>> accessed 21 October 2020.

45 *Buckley v. Valeo*, 424 U.S. 1, 19, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976) (per curiam); cited in *Ejercito v. COMELEC*, G.R. No. 212398, November 25, 2014.

46 Approximately 490,297.32 US Dollars. (calculated 10 February 2021).

47 Approximately 95,227.40 US Dollars. (calculated 10 February 2021).

48 *Ejercito v. COMELEC*, G.R. No. 212398, November 25, 2014.

49 Malou Mangahas, ‘P2.4-B Pre-Campaign Ads: Bong Go, Marcos, Roxas, Roque Top Spenders’ (*Philippine Center for Investigative Journalism*, 13 February 2019) <<https://pcij.org/article/1379/p24-b-pre-campaign-ads-bong-gobrmarcos-roxas-roque-top-spenders>> accessed 10 February 2021.

50 1987 Constitution, Article XI, Section 17.

51 *Casimiro v. Rigor*, 749 Phil. 917, 929-930 (2014).

52 RA 7166, Section 14.

actions if elected to office.”⁵³ Thus, regardless of the elections’ results, candidates or parties are required to file their SOCE with the COMELEC, even in contexts where they did not receive any contribution or spend on their campaign.⁵⁴

The Philippine Congress continues to tackle the issue of outdated and unreasonably low campaign expenditure limits. Amid the Covid-19 pandemic lockdown last year, hope sparked anew as the House of Representatives approved on third reading a measure proposing an increase in candidates and political parties’ electoral spending limits.⁵⁵ These limits were made in consultation with the Bangko Sentral ng Pilipinas, the National Economic and Development Authority, and the Philippine Statistics Authority.⁵⁶ This bill further requires the COMELEC to adjust the amount of authorized election campaign expenses every six years based on the inflation rate and consumer price index.⁵⁷ While this is a positive step forward, it is critical to determine whether these proposals address both the gaps created by laws and the poor implementation of campaign finance; otherwise, these will only continue to create democratic deficits and promote exclusion.

3.2. Prohibited campaign contribution sources

In the Philippines, regulatory measures exist to prevent conflicts of interest between political aspirants and powerful or wealthy donors. Disclosure requirements contribute to ensuring transparency and encourage candidates to accept only legitimate funding sources because these can be scrutinized or verified by the public.⁵⁸

Aside from being an election offense, soliciting and receiving prohibited campaign contributions are also grounds for disqualification under Section 68 of the OEC. The prohibition includes campaign contributions made by foreign governments and their agencies. It is constitutionally enshrined that such contributions shall be seen as constituting interference in national affairs.⁵⁹

The prohibition against soliciting or receiving political donations or contributions from certain kinds of persons or companies are listed in Section 95 of the OEC, which includes any direct or indirect contributions by public or private financial institutions; natural and juridical persons operating a public utility or in possession of or exploiting any nation’s natural resources; entities holding contracts or sub-contracts to supply the government with goods or services or to perform construction or other works; or who have been granted franchises, incentives, exemptions, allocations or similar privileges or concessions by the government; and those granted government loans or other accommodations, among others.

Further, laws and policies that substantially impact campaign finance scope and coverage, but are not traditionally associated with election law or campaign finance, include recent amendments to the Corporation Code in 2019, which enable domestic corporations to donate to candidates and parties during elections.⁶⁰ The full impacts of this revision will most likely be

⁵³ Buckley v. Valeo, 424 U.S. 1, 19, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976) (per curiam); cited in Ejercito v. COMELEC, G.R. No. 212398, November 25, 2014.

⁵⁴ See *Pilar vs. COMELEC*, G.R. No. 115245, 11 July 1995)

⁵⁵ David Tristan Yumul, ‘House Approves Bill on Increasing Candidates’ Campaign Expenditures Limit’, *CNN Philippines* (no date) <<https://www.cnn.ph/news/2020/6/2/House-approves-bill-on-increasing-candidates--campaign-expenditures-limit.html>> accessed 10 February 2021; Mikee Cervantes Filane, ‘Bill Raising Spending Limit for Candidates Gets House Nod’, *Philippine News Agency* (1 June 2020) <<https://www.pna.gov.ph/articles/1104576>> accessed 21 January 2021.

⁵⁶ Filane (n 54).

⁵⁷ *ibid.*

⁵⁸ Cigane and Ohman (n 6).

⁵⁹ 1987 Constitution, Article IX, Section 2.

⁶⁰ Patawaran (n 30).

seen in the upcoming 2022 general elections in the Philippines.

The legal framework governing tobacco control in the Philippines, drawing from the first global health treaty, the WHO Framework Convention on Tobacco Control (FCTC), and the Civil Service Commission-Department of Health Joint Memorandum Circular, which provides a blanket prohibition to tobacco industry participation and sponsorships, including a ban on political contributions and donations.⁶¹ The aim is to protect public health policies for tobacco control from commercial and other vested interests of the tobacco industry and the strategies and tactics used by the tobacco industry to interfere with the setting and implementation of tobacco control policies. Based on Article 5.3 of the FCTC and additional policy commitments by the Philippine government, even with the relaxing of the rule on corporate donations in Revised Corporation Code 2019, tobacco corporations, whether domestic or foreign, are not legally allowed to make campaign contributions, nor could these be accepted by candidates, more so when they are also holding public office.

4. RECOMMENDATIONS AND FUTURE RESEARCH

In *Chavez v. COMELEC* (1992), the Supreme Court reiterated the significance of equal opportunity to “proffer oneself for public office, without regard to the level of financial resources” on public interest grounds.⁶² While a well-financed campaign does not, on its own, always guarantee electoral victory, there is ample evidence in the Philippines and elsewhere⁶³ that access to campaign funding helps scale-up the quantity and intensity of campaign activities, and convey messages to a broader voter base. The ability of a candidate to run political advertisements, maintain social media sites and ‘boost’ and sponsor posts,⁶⁴ employ staff and volunteers, and support door-to-door canvassing efforts; or, on the manifestly illegal side of the spectrum of actions and norms, engaging in vote-buying and bribery,⁶⁵ can turn the electoral tide even for candidates facing, or who have faced, charges of plunder, graft and corruption, and other criminal offenses involving misuse of public funds.⁶⁶

Thus, this section addresses the last question of the WPR approach enumerated earlier in this paper. It aims to envision strategies that can be used to question, disrupt, and address challenges to electoral integrity, political participation, and representation. The assumption is that setting realistic spending limits according to what candidates can presumably afford benefits those with limited finances and redistribute power away from the entrenched elites.⁶⁷ By exploring how equal access to opportunities for public service is problematized, and examining the challenges arising from issues on campaign expenditure limits and prohibited campaign contribution sources, we can see the importance placed on accountability and transparency.

61 K Alechnowicz and S Chapman, ‘The Philippine Tobacco Industry: “The Strongest Tobacco Lobby in Asia”’ (2004) 13 *Tobacco Control* ii71; Allan Chester Nadate and others, ‘Characterising Tobacco Industry Interference Tactics in the Philippines towards Preemptive Advocacy and Policy Design’ (2018) 4 *Tob Prev Cessation*.

62 *Chavez v. Comelec*, 211 SCRA 315 (1992).

63 Marañon III (n 44); Mangahas (n 49).

64 John Rieger, ‘Social Media: A Game Changer in Philippine Elections’ (*The Asia Foundation*, 27 April 2016) <<https://asiafoundation.org/2016/04/27/social-media-a-game-changer-in-philippine-elections/>> accessed 20 January 2021.

65 See Amer Laut and others, ‘Graft and Corruption Practices Among Selected Public Officials in Mindanao, Southern Philippines’ (2013) 4 *Journal of Government and Politics* 237. Southern Philippines (n 8217) (2013)

66 ABS-CBN News, ‘Revilla Credits Plunder Acquittal, “Budots” Ad Campaign for “Magic 12” Ranking’ (*ABS-CBN News*, 17 May 2019) <<https://news.abs-cbn.com/news/05/17/19/revilla-credits-plunder-acquittal-budots-ad-campaign-for-magic-12-ranking>> accessed 20 January 2021; Nathan Gilbert Quimpo, ‘THE PHILIPPINES: Political Parties and Corruption’ [2007] *Southeast Asian Affairs* 277; Laut and others (n 65). THE PHILIPPINES: Political Parties and Corruption (n 8217) [2007] *Southeast Asian Affairs* 277; Laut and others (n 65)

67 Reyes (n 44).

Current bills in Congress should not be allowed to languish as these can help counter political monopolies and anti-competitive behavior, and close the loopholes created by the absence of proper auditing mechanisms and poor enforcement of penalties for violations.⁶⁸ However, more than a fair, accountable, and equitable formula for setting these expenditure limits, there should also be a heightened focus on ensuring laws are implemented, compliance is monitored, and whether disclosures are comprehensive and accurate.

This paper also surfaces new avenues for future research. Specifically, it is important to assess the extent to which commitments and other international standards for democratic elections are reflected in Philippine campaign finance law and policy. Additionally, deeper applications of Bacchi's 'WPR' approach to problematizations of expenditure limits and prohibited sources of contributions can focus on how campaign finance regulations to promote gender equality and women's participation. Most campaign finance regulations, including from the Philippines, have not been formulated with gender equality and women's participation considerations.⁶⁹ Instead, it has focused on (theoretically) reducing the advantages of powerful and wealthy candidates. However, in practice, and as discussed in this paper, elites continue to dominate electoral contests in the Philippines.

A way forward is to build the evidence base that will support law with specific provisions on campaign finance and gender equality,⁷⁰ including proposals from the Philippine Commission Women to create a women's campaign fund for aspiring women candidates, especially those belonging to marginalized sectors.⁷¹

5. CONCLUSION

This paper contends that challenges to electoral integrity, accountability, and transparency in campaign financing are not solely due to ineffective implementation and enforcement. The WPR approach informs us how existing policy interventions or responses to what the law identifies as problematic (or not problematic) can also entrench elite power and replicate uneven power dynamics evident in Philippine society. Thus, for campaign finance laws to promote, rather than block, political participation and representation, additional attention must be given to the assumptions, policy gaps, and silences that give rise to anti-competitive, corrupt, and disempowering practices and norms.

An assumption weaving across Philippine campaign finance law and policy is that a mode of leveling the political playing field is by setting spending limits according to what less-moneyed candidates can presumably afford. Law and jurisprudence show that the rationale is straightforward: the State is charged with safeguarding people and parties' ability to run for public office "without regard to the level of financial resources" as a matter of public interest. However, in practice, failure to account for realistic limits, lack of transparency, and weak sanctions for non-compliance with these limits, enable elites to continue dominating electoral contests. Failure to address the gaps in the law, as helpfully surfaced by the WPR approach, means electoral contests will continue to exclude candidates and groups with limited access to funding or political machinery.

On a final note, implementation is not enough. When the law itself creates and replicates unfairness, injustice, and avenues for corruption, the constitutional aim of ensuring equality of opportunity for parties and candidates will be perpetually at risk. The resulting analysis from the WPR is useful for outlining avenues for future law reform and

68 Marañon III (n 44).

69 Cigane and Ohman (n 6).

70 *ibid.*

71 Philippine Commission on Women (n 22).

policy advocacy efforts, such as the pending bills in Congress, and inviting the imagining of alternative and inclusive proposals.

The ability to run for public office should not be predicated on financial influence and resources. The challenge now is to ensure proposed strategies and interventions will lead to more balanced and equal political participation, which can only occur when we remove the stranglehold of money in determining electoral success.

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EXAMINING THE LEVEL OF ACCOUNTABILITY AND TRANSPARENCY WITH RESPECT TO POLITICAL PARTY FINANCING IN TIMOR-LESTE

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Abstract

The democratization process in Timor-Leste as a post-conflict country, developing economy and fragile state requires good governance, accountability, and transparency. In this light, political actors, such as parties, are expected to play an essential role in this achievement. However, accountability and transparency of the political parties' funding and financial execution remain questionable in this tiny, young nation. There are a number of legal safeguards to ensure political party accountability and transparency concerning fund acquisition and use. However, it can be argued that monitoring financial status of political parties has been challenging, as sources have never been fully publicly revealed nor scrutinized. This has serious implications on the level of accountability and transparency amongst political actors, as well as, on the democratic process in Timor-Leste, as a whole. There is, indeed, a need for systemic reform, particularly in the area of publishing and auditing financial activities of political parties. Judicial and investigative functions of relevant State agencies have to be either developed or fortified. On a more philosophical sense, Timor Leste's political actors are expected more aware about and fully committed to their roles and responsibilities towards the country's democratization and the attainment of a well-informed and empowered society.

Key Words: *Timor-Leste, Transparency, Accountability, Political Funding, Political Parties*

1. INTRODUCTION

Before gaining independence in 2002, Timor-Leste underwent bitter experiences, such as colonization, human rights abuses and an authoritarian regime under the Indonesian occupation. In pursuit of self-governance, democracy and human rights principles were adopted as the core engines to design social, economic and political fabrics of the country. The preamble of the Constitution clearly emphasizes the role of democratic culture in building Timor-Leste's society. The constitution of Timor-Leste was built based on the rule of law. More clearly, a multi-party democracy is adopted to form a state institution. Furthermore, elected institutions that lead sovereign organ are selected and appointed through democratic and citizen-driven participation. Despite such strides, this young and emerging nation still faces various challenges due to its fragile democratic situation.

For the newly established countries, it requires some periodic stabilization or transitional phases to enable democratic institutions and values to flourish. Linz and Stepan asserted that the "pre-transition regime and the nature of the transition have direct consequences for nature

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and durability”³. This is As a post-conflict nation, the process of democratization in Timor-Leste is still fragile. For it to progress, a constant commitment to good governance, accountability and transparency within the political system is required.

UNESCAP⁴ emphasized eight pillars of governance characteristics: “participatory, consensus-oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law”. This is reinforced by the, UN OHCHR, which identified five key characteristics of good governance such as transparency, responsibility, accountability, participation, responsiveness.⁵ The issues of accountability and participation by citizens in a democratic system are crucial to controlling and, eventually, eliminating power abuses leading to systemic corruption, impunity and inequalities.

All of these ideal requirements could not be achieved, if the political participation of the people is weak, especially if citizens cannot fully control nor access any information about political processes and any decisions and actions made by their government. Furthermore, for democratic societies, the ambience of “political participation and rule of law in the election process is crucial”⁶. It endeavors “to choose and control government activities and monitor government, meaning political parties, elections, electoral rules, political leadership, interparty alliances, and legislature”.

The political system in Timor-Leste adopts a semi-presidential style, wherein both parliament members and president are elected through popular vote every five years. Parliamentary elections in Timor-Leste have already been held 5 times (2001, 2007, 2012, 2017, and 2018), most of which have been viewed as peaceful and well-conducted. The International Republican Institute-IRI reported that the last election in 2017 was “well-administered, peaceful, open and transparent”⁷. Similarly, the watchdog institution Lao Hamutuk report that the process of election was “peaceful and democratic”⁸. However, accountability and transparency of the political parties funding remains a public debate.

Despite a vibrant exercise of democratic elections in Timor-Leste, there is little research done on how political parties function and are governed in Timor-Leste. Moreover, literature has yet to be developed about the level of transparency and accountability in governance, specifically when it comes to funding access, usage, and monitoring by political actors and parties. These two democratic principles are crucial, at least “to protect electoral integrity to make institutional structures and their actions or decisions widely accessible and better understood and it is the best way to make the system accountable and transparent publicly to involve public control around the issues of electoral abuse and corruption involvement”⁹.

Political parties have played a vital role in Timor-Leste’s public policy, especially elite politicians who have long governed the country. As per current legal frameworks, elections are expected to be participated by multiple political parties. As per Political Parties Laws No 3/2004 and No. 2/2016, government construction is based on the participation of citizen’s decision making through political parties.

This article aims to examine the accountability and transparency in relation to political party

3 Linz, Juan J., and Stepan, Alfred. C. (1996). *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*. Baltimore and London-UK, The Johns Hopkins University Press.

4 The United Nations Economic and Social Commission for Asia and the Pacific

5 UNOHCHR (2020) “About good governance”. <https://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/AboutGoodGovernance.aspx>

6 Op cit

7 IRIS (2017) “Timor-Leste Parliamentary Elections”.

8 Lao Hamutuk (2018) “Early Parliamentary Election”.

9 ACE Project (2020). ” Electoral Integrity”. <https://aceproject.org/ace-en/topics/ei/onePage>. Accessed 18 October 2020.

funding in Timor-Leste. Hence, it builds on the following critical questions:

- What is the level of accountability and transparency of political parties, specifically when it comes to their funds/resources?
- What are the implications of the current level of accountability and transparency of political parties in Timor-Leste?

A mixed-method approach with semi-structured interviews with key informant and examination of secondary data was used for this study. Furthermore, secondary data include academic journals, existing policies and laws related to political parties.

The scope and limitations of this study were heavily influenced by the lack of adequate literature on this matter, and by the COVID-19 pandemic. Moreover, while the initial plan for data collection was to involve the three main political parties in Timor-Leste, only one political party was interviewed due to restrictions brought about by the state of emergency policy imposed throughout the country. Moreover, difficulties of accessing information *may* prove the hypothesis that the level of willingness and openness of political parties to declare their status—despite emergency condition, has yet to be achieved in Timor-Leste.

2. LEGAL SOURCES FOR POLITICAL PARTIES AND FUNDING IN TIMOR-LESTE

The source of law for political parties, including funding in Timor-Leste, is finds its basis from national constitution, which guarantees fundamental rights and freedoms, and equality.¹⁰ It is apparent that the constitution is founded based on democratic culture and principles. Moreover, democracy has become the core foundation for all political parties to compete and express themselves based on the people's will and obey the laws and regulations.

The Law No. 3/2004 (Political Party Law), which was amended via Law No.2 / 2016, was developed and passed to provide legal bases for political party definition and functions¹¹. These national laws further regulate political party scope, its legality in forming the government, its rights, and obligations. More importantly, This law also regulates the role of political parties in the general election process, including the acquisition and disposal of financial support. Article 2 expresses general principles on financing political parties and election campaigns the following general principles:

- Legality;
- Transparency regarding the origin and application of financing; and
- Presentation, inspection and publicity of the accounts.

This law also emphasizes that all political parties are obliged to openly pursue their political goals and programs, it is very important to uphold the principle of transparency including the “use of funds and public activities at the national and international levels” as regulated in Article 7. it clearly highlights that all political parties must be transparent in term of providing information related to political party's activities and financial report.

The Political Party Law guarantees that all political parties can access state financial support, including the subsidies for political campaign. Under Governmental decree law no. 18/2017 (Regulation For The Electoral Campaign) Article 2 emphasizes that all political parties including their

¹⁰ The Constitution of The republic of Timor-Leste < http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf>

¹¹ Jornal da Republika Timor-Leste, Law, no. 2/2016“ Sobre Partidos Políticos (Political Party's Law)

coalitions have the right to access applicable fees based on equality principle and the information must be provided by the media to The National Election Commission-CNE¹² before the electoral campaign commences. Moreover, this regulation provides that the financial source for political party comes from loan from any private institution, bank, or microcredit, and a donation. Although the law allows political parties to obtain from private loans and internal contribution from political members, the question is where all the money comes from if the political parties access private micro-credit loans and individual contributions. Moreover, political parties decree-law, 6/2008 on Financing of Political Parties mentions that “Political parties must execute their financial fiscal based on the three principles with legality and transparent.”.

Existing legal instruments provide a fundamental basis for political party existence and its function. Moreover, the national law and government regulation law regulate specific issues like political party function and state funding. Although the law and supporting regulations have strongly regulated political parties, their compliance and commitment are a totally different story. Similarly, the lack of institutions that control political parties can negatively affect the principles of “legality, transparency, and accountability,” which are highly respected in national laws and regulations.

3. STATE SUBSIDIES FOR POLITICAL PARTIES

As previously discussed, the State can legally provide financial support for political parties. Those who are voted even receive annual subsidies from the state budget. Political parties have various forms of financing models, which includes the provision of public funds to political parties. Falguera et al.,¹³ highlight that subsidies for political parties is a way to promote democracy, and enable fair and equal representation in elections. The Electoral Knowledge Network stated that in some countries, the state constructs a legal model that provides financial assistance to political parties. This helps them, through campaign subsidies, to carry out the functions as the public representatives. However, sources of funding for political parties “might be different across the world based on culture, precedent and legal standards”¹⁴.

Timor-Leste is a new democracy that promotes multi-party participation that encourages every citizen’s political life participation. Although the state provides a subsidy to political parties, some critics have argued that it is inadequate to provide all political parties. Political parties have enjoyed financial support from the state budget since Independence’s restoration. State support for parties seek to help these entities to sustain their electoral campaign needs, as well as, provide incentives for work aiming to impact the lives of their respective constituencies (e.g. regular subsidy aims for citizens’ education based on the constitution and political party’s law.) Political parties in Timor-Leste are privileged to access subsidies as amplified through the Legal Regime for the financing of political party’s law, no. 6/2008.¹⁵

Most key informants argued that in a tiny nation like Timor-Leste, state subsidies could influence an increase in the number of many new political parties. However, this may affect the party’s long-term sustainability. One shared that new political parties that may not survive, because they exist only to access political funding. In fact, State funds, he even mentioned, are “big enough” to alleviate poor peoples’ situation. He added that government subsidies are extremely attractive, and everyone would attempt to get a piece of such generous pie.¹⁶

12 Komisaun Nasional de Eleicoes

13 Falguera et al., (2014) “Funding of Political Parties and Election Campaigns”. Stockholm

14 The Electoral Knowledge Network- (2020) Public Funding of political parties <https://aceproject.org/ace-en/focus/core/crb/crb05>. Accessed 18 October 2020.

15 Jornal da Republika Timor-Leste, Law, no. 6/2008 “Regime jurídico do financiamento dos partidos politicos. Series I, no. 14

16 Anonymous, Personal Interview, December 7, 2020

A key informant from The National Election Commission (CNE) said that in 2017, after the parliamentary elections, all of the political parties applied for reimbursements amounting to 4\$ per vote¹⁷. Receipts are submitted to the financial department of CNE. After verifying expenses, accounted subsidies are then transferred to their bank account. However, the rigor of the auditing and accounting process was not fully disclosed.

Apart from subsidies for political campaigns, the annual subsidies that accessed by elected members of parliament. For example in the 2017 national parliamentary election, there were four political parties, CNRT¹⁸, FRETILIN¹⁹, PD²⁰ and FRENTE MUDANÇA²¹, were able to receive financial support from the state amounting to 6,000,000 USD. The allocation of the subsidies is based on per seat of the political parties' quota in the parliament, around 92,000 USD-per one seat are allocated. The five political parties are CNRT winning, 30 seats in the parliament received 2,769,230.77 USD, FRETILIN with 25 seats in the parliament received 2, 307, 692.31 USD democratic party PD with 8 seats, received \$738,461.54, and FRENTE-MUDANÇA with 2 seats received \$184,615.38.²²

4. COMPLIANCE IN THE NAME OF ACCOUNTABILITY AND TRANSPARENCY

All political parties are expected to submit annual financial reports to the National Commission of Election (CNE), as per Law no. 6/2008. The CNE is mandated to oversee and manage national elections, announce its result at the local and national levels. Moreover, this institution also controls the execution of the subsidies that political parties accessed and used.

The Director of the Department of Democracy and Political Parties at CNE said that all political parties in Timor-Leste are able to comply with this requirement, within the prescribed time frame of 45 days. However, the lack of human resources at CNE to audit these report has proven to be a challenge to fully ensure full accountability and transparency. Hence, financial reports and attached receipts could not be fully examined within one month²³.

In reality, the CNE has then failed to submit its audited reports on time. Furthermore, although a financial report is required to pass external audits, still, some irregularities are found in the end. To address this issue, Journal da Republica (2017) asserted that expenses should be submitted on a trimestral basis. Another concern is that political parties do not have a structured plan nor mechanism to monitor and/or audit how funding is spent within their ranks. While this has already been brought up in a CNE report, compliance is still bleak.²⁴

Based on what has been discussed, parties, especially those voted into parliament, seem to lack the efficiency and willingness to be transparent, especially when it comes to reporting expenses using public funds. Mr. Camillo Ximenes, Dean of the Faculty of Political and Social Science of the National University of Timor Lorosa'e (UNTL) highlighted transparency and accountability have yet to be ingrained in both policy and practice of political parties in Timor-Leste. Most political parties have no structured mechanism to publicly report their financial activities to the citizens. Furthermore, the people are not fully aware about how state subsidies are actually spent by these political actors. He particularly mentioned about the state of political and civic education in rural areas, which could

17 The National Commission of Election (CNE), personal interview. December 9, 2020

18 Congresso Nacional de Reconstrução de Timor-Leste (National Congress for Timorese Reconstruction)

19 Frente Revolucionária do Timor-Leste Independente (Revolutionary Front for an Independent Timor)

20 Partido Democrático (Democratic Party)

21 Frente de Reconstrução Nacional de Timor-Leste Mudança (Timor-Leste National Reconstruction Front Change)

22 Deliberaçãun CNE 23/Ix/2018, Journal Da Republica, Publicação Oficial da República Democrática de Timor - Leste Série I, N.º 38

23 CNE, Loc cit

24 CNE, Loc cit

have been conducted through these state-sanctioned resources²⁵.

According to Secretary of the Democratic Party (PD),²⁶ one of the issues that needs to be considered is the transparency, or the lack of, of political parties in reporting their financial status. He boasted that PD is, as of this writing, the only political party that has a formal website that features all the relevant information about its activities. However, based on further assessment, the party has yet to put up its financial report. The respondent addressed this by saying that this could be done next year.²⁷

This then raises the issue on how the funds are actually disposed by political parties. Resources could have benefited constituents, specifically in the realm of citizenship and political education. Furthermore, technologies could help facilitate this. However, this has not been the case. At this point, transparency and accountability seem to be promoted, but not truly experienced by the public.²⁸

5. TRANSPARENCY AND ACCOUNTABILITY AS LIP SERVICE

The fundamental pillar for political parties has to be the principles of legality, transparency and accountability, especially with respect to the acquisition and disposal of funds. This also covers the efficient delivery of financial reports, which should be made open for public review and scrutiny. This, in the end, could directly affect the good governance, specifically addressing money politics and corruption involvement.

Political observers have raised concerns over political party throughout electoral proceeding. The dean of the Faculty of Political Science-UNTL Camilo Ximenes asserted that all politicians have respective lobby groups and private supporters. It is therefore required to declare these connections, as well as assets obtained from supporters.²⁹ Moreover, he added that amassing support from these interest groups may derail the agenda of good governance in the country. These “dubious” relationships may result in money politics and corruption. This is why a regulatory and monitoring regime is crucial in preventing and eliminating such criminal acts.

In this spirit, a respondent working for the National Ombudsman (PDHJ)³⁰ highlighted a grave lack of transparency amongst political parties in the practice of receiving government subsidies. Political parties are expected to set the standard for good governance in the country. It starts with full public knowledge on how funds are distributed, used and reported. This has not been the case so far.³¹ The National Ombudsman, which is responsible for human rights and good governance, is mandated to monitor financial activities by political parties. However, a glaring gap in reporting expenses hinders any means to achieve individual and/or organizational accountability.

The Political Party and Democratic Affairs Division of CNE is responsible for monitoring state subsidies for political parties. Its director expressed that all political parties lack the will and mechanism to provide information about its financial situation to the people. He mentioned, *“when our team the National Commission of Election-CNE conducted socialization about political party funding, including all the expenses. I was asked about the issues of transparency and accountability by the participants, there had been difficulties accessing information from the*

25 Ximenes, Camilo, Personal Interview, December 10, 2020.

26 Democratic Party (*Partido Democrático*), the biggest third large party was founded in 2001, based on democratic principles and human rights. As of this article being written, this party serves their position as the opposition in the national parliament of Timor-Leste.

27 Secretary general of Democratic Party-PD, Personal Interview, December 12, 2020

28 Ximenes, Op cit.

29 Ximenes, Loc cit

30 Provedór Direitos Humanos no Justisa-PDHJ

31 Ibid

*parties. They started to know at that moment when the information was provided by our team.*³²

Such dilemma was validated by a policy analysis staff working with Lao Hamutuk, a local non-government organization (NGO). It was pointed out that information about political party subsidies are not publicly accessible. The government, neither, is able to share such data. It is therefore the responsibility of the State and political parties to fully commit to transparency and accountability.³³

6. CONCLUDING ANALYSIS

The principles of transparency and accountability of political parties are ingrained in Timor-Leste's legal system, particularly in Law No. 6/2008, and government decree law No. 18/2017 (the allocation of state subsidies). However, the operationalization of these principles seem to only happen in the capital city of Timor-Leste. In rural areas, citizens find themselves in the dark, and are excluded from benefiting from these public resources. Moreover, most political parties have not reported any information about their financial status, despite the existence of online platforms.

With respect to private donations, political parties seem to hide any kind of information from the public. Asset and property declaration is not a common practice, while money laundering seem to be an issue that has yet to be brought to public knowledge and scrutiny. However, there are steps being made by CNE to collaborate with the Central Bank of Timor-Leste to address this problem. This current situation poses serious implications on democratic process and public trust.

There is still so much to be done to make political parties more attuned to the principles of transparency and accountability. Technology can be maximized to make information more accessible to the public, especially those living in remote areas. In a young democratic country with a small population, it is crucial for the government, especially for political parties, to be more transparent and accountable, which can be done through intense socialization, public participation, and systemic reforms.

7. RECOMMENDATIONS FOR REFORM

In Timor-Leste, the State has provided financial subsidies to political actors under existing political parties' auspices. Moreover, the state acts to ensure that every political party can enjoy the freedom to participate in political life under the mandate of the Constitution and and relevant national legal instruments.

To guarantee the democratic stability that gives life to the principles of a multi-party system, Timor-Leste provides two forms of subsidies. The first is an annual subsidy for political parties who are elected and have representatives in parliament. Apart from annual subsidies, there are also parliamentary election campaign subsidies; these subsidies are used to support political parties' activities during the campaign period. Financial assistance for political parties is regulated in national law. In this case, Law No.3 / 2004 and Law No.2 / 2016 and the Functions of Political Parties and laws are regulated in law (no 6/2008) as well as government regulations, no. 18/2017 Regulation for The Electoral Campaign.

These legal instruments clearly guarantee that the right to get subsidies has been regulated in such a way. however, the obligation of political parties with respect to financial execution is fundamental to ensure accountability and transparency in the use of state funding.

³² CNE Op cit

³³ Anonymous. Personal Interview, October 14, 2020

Although the state provides subsidies to political parties that are legally guaranteed. All political parties that use state finances have, at this point, failed to comply with the principles of transparency and accountability. This can be seen from the lack of commitment of political parties to provide information through multiple sources such as political party websites or other media that the public can access. Although CNE uses the *Journal da Republika* Website to publish every audit result, many rural communities still do not have access to this online platform. This is proven by the fact that some community members in rural areas argued that they never get any information from their elected political representatives. In fact, such information is only known through reports from media and online platforms.

Apart from transparency issues, the lack of human resources at CNE to audit financial reports and monitor political party activities has proven to be challenging. In light of political parties' frequent failure to regularly conduct their financial audits, the CNE's function to ensure full accountability and transparency needs to be improved. Therefore, the submission of financial reports within a short period of time, or even non-submission, could greatly undermine the process of accountability related to financial execution of political parties.

This article, therefore, asserts the need for systemic and efficient management and monitoring of political party financing in Timor-Leste.

- Political parties must be obliged to fully disclose their finance situation publicly, via reports or their online platforms. This will enable the public to review their work, and scrutinise irregularities. All annual activities plans should be submitted to CNE and published through the Republic Journal. These documents ensure that political parties are using the state budget for their internal activities in an efficient and impactful manner.
- The current political party law should therefore be amended to regulate sources of funding, and efficiently provide robust legitimacy to CNE. Furthermore, related regulations and laws on anti-money laundering and financial procedures, should be strengthened by including control mechanisms, as well as punitive sanction for those who are unable to comply or abide by standards.
- Cooperation between institutions is seen as a means to achieve durable solutions. Therefore, the National Ombudsman (PDHJ), Anti-Corruption Commission (CAC), and CNE and academic institutions must work together to ensure political parties can be controlled and held accountable.
- Strict guidelines have to be set on how funds, specifically those given by the State, are used. Political parties must be aware that these resources should fully benefit the development of their respective constituencies.
- The CNE, too, has to be reformed by providing more human resources and capacity to audit and reprimand political parties at fault.
- Law enforcers and the judiciary must be socialized about this rather crucial political and social issue. Individual and organization accountability must be upheld at all times.

This article sheds light on a critical issue that has yet to be fully discussed by the State, civil society and the general public in Timor-Leste. Further research on this matter is crucial to help policy makers come up with ways to ensure that political parties are aligned with the vision of attaining a democratic Timor-Leste, which is free from inequality, corruption, and impunity.

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