

ELECTORAL INTEGRITY AT STAKE? ISLAMIC LAW AND INDONESIAN LEGISLATION ON VOTE TRADING

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Abstract

This study aims to analyse the comparison of buying and selling voting rights in general elections from the perspective of Islamic law and Indonesian national law. The buying and selling of voting rights is an act that involves the exchange of voting rights for a certain reward, which is often considered a form of ethical and legal violation. In the context of Islamic law, this practice is viewed through the principles of sharia that emphasise justice, benefit, and the prohibition against buying and selling that contains elements of usury and gharar. Meanwhile, in the perspective of Indonesian national law, the buying and selling of voting rights is regulated by the law governing general elections, which confirms that the practice is illegal and subject to criminal sanctions. This study uses a qualitative method with a descriptive-analytical approach to outline the views of the two legal systems on the buying and selling of voting rights. The results show that in both Islamic law and Indonesian national law, the buying and selling of voting rights is viewed as illegitimate and violates the principles of justice. This research provides recommendations for increasing public understanding and awareness of the importance of maintaining the integrity of voting rights in general elections as well as stricter law enforcement to prevent the practice of buying and selling voting rights.

Keywords: Money Politics; Elections; Vote Buying; National Law; Islamic Law.

INTRODUCTION

A general election in Indonesia is a real example of democracy and how people voice their concerns about the country and leadership. Along the way, there have been deviant behaviors towards the ideals of democracy that are still upheld in Indonesia, where money politics and vote buying are part of the election violations that occur in Indonesia.

In a broader context, the practice of vote buying is not carried out by ordinary people but by political parties in a structured, systematic, and massive manner. This phenomenon is concerning because it damages the value system of democratic principles.

Vote buying and money politics are things that harm the principles of the democratic system, especially in terms of decision-making and maintaining the originality of the people's voice in the general election process. In general elections, democracy wants the election principle of "*Luberjurdil*," an acronym for Direct, General, Free, Secret, Honest, and Fair. Article 22E of the 1945 Constitution paragraph (1) states that "Direct, General, Free and Secret" is the principle of "*Luber*," which is the basis for holding elections in Indonesia. The New Order era gave rise to the principle of "*Luber*." Then, the principle of "*Jurdil*" is an abbreviation of "Honest and Fair" developed throughout the reform era.

There is a direct correlation between the rampant practice of corruption and vote buying and money politics. According to Anggraeni and Ramdhani, money politics used to buy and sell voters' votes is one of the causes or potential for political corruption. Meanwhile, Marsudi and Sunarso revealed that money politics is usually used to carry out political corruption in elections. As a result, the "wrong" person will emerge as the winner. In considering the election process, it can be said to be of quality if the principle of "free and honest," as referred to in Article 22E paragraph (1) of the 1945 Constitution, is applied in the election.

The rampant activities of vote buying and money politics have contributed to the decline in the quality of Indonesian democracy. As a country that implements a political agenda every five years, it should continue to improve itself towards a quality democracy. Unfortunately, the practice of vote buying and money politics is not fought by political parties as pillars and flowers of democracy; instead, they are actively involved and even become the core players in this deviant practice.

Looking further back, Indonesia went through a long journey of government until it was free from the New Order era, which left an impression of no sovereignty for the people. Then, Indonesia rose and built high ideals as a democratic country that is sovereign, national, and state. The people have repeatedly felt various leadership patterns created by each elected leader. This way, there are many opportunities to create

national progress through a democratic government system from the various successes and failures.¹ This study is intended to examine vote buying and money politics further to show the reality of Indonesian democracy and the ideal ideals being aimed for.

The implementation of elections in Indonesia was held from 1955 until the 2024 election. Elections have been held 13 times. In its implementation, elections have principles that must be met in accordance with Law Article 3 Number 7 of 2017.² Justice and honesty are the most important principles in elections. However, it is not uncommon for fraud to occur in the implementation of elections, both fraud committed by government officials and by candidates for the country's leaders themselves. One of the frauds that often occurs is the buying and selling of voting rights between candidates and the people through their political parties. The law on the buying and selling of voting rights will be explained through the perspective of Islamic law and the perspective of Law Number 3 of 1999.

METHOD

This study used descriptive analysis research methodology by collecting, combining, and analyzing various data to explain existing problems and draw conclusions from the study. The data used was secondary data obtained from various literature such as books, articles, journals, research results, or other information related to this study. The data successfully obtained was collected through a literature study methodology, which included library data collection, data retrieval, transcription, and research data processing. After data collection, the data was analyzed using a deductive method. This means carrying out an analysis and drawing general conclusions about the role of organizational culture change in modern adaptive organizations.

RESULT AND DISCUSSION

1. History of Elections

¹ Umbu Rauta, "Menggagas Pemilihan Presiden Yang Demokratis Dan Aspiratif," *Jurnal Konstitusi* Vol.11, No (2014): 604.

² Annisa, "Pemgertian Pemilu, Fungsi Dan Prinsipnya," Fakultas Hukum UMSU, 2023.

Elections in Indonesia are divided into three periods, namely, the old order period, the new order period, and the reform period. The old order period was the first election held in 1955, which had previously been intended to be implemented by President Soekarno Hatta in 1946 in the Parliamentary and Constituent Assembly elections, as stated in the Vice President's Decree Number X on November 3, 1945, concerning the recommendation to form political parties.³

However, at that time, independence had just been felt by the Indonesian people, so the country's security was still unstable and was considered very low. In addition, there had not been a set of instruments that could regulate the holding of elections. Therefore, during the Burhanuddin Harahap cabinet, the first election could only be held. In 1955, there were two elections, namely on September 29 for the Parliamentary election and on December 15 for the Constituent Assembly election. Law Number 7 of 1953 stated that the first election had a legal basis, namely the application of the principles of direct, free, honest, together, general, and secret in the election of members of the Constituent Assembly and the election of members of the People's Representative Council. Determining the number of seats must be based on the number of residents of the region as the purpose of the election in electing Parliament and the Constituent Assembly as stated by law.⁴

Moving from the old-order era, Indonesia began to explore the new-order era under the leadership of President Soeharto. During this period, there was a change in the democratic system, from a guided democracy system to a Five Principles (*Pancasila*) democracy system. The term state as a single actor became a characteristic of the new order era because it combined all bureaucracies and the military to eliminate mass parties. After all, they were considered dangerous to stable power. On July 5, 1971, the first election of the new order era was held based on Law Number 15 of 1969 concerning the General Election of Members of the Consultative Body/People's Representative Council and Law Number 16 of 1969 concerning the Composition and Position of the

³ Evi Noviawati, "Perkembangan Politik Hukum Pemilihan Umum Di Indonesia," *Jurnal Ilmiah Galuh Justisi* 7, no. 1 (2019): 75, <https://doi.org/10.25157/jigj.v7i1.2139>.

⁴ Seta Basri, "Kajian Politik: Sistem Pemilihan Umum (Pemilu) Di Indonesia," in *Saripedia*, 2012, <https://saripedia.wordpress.com/tag/pemilu-1992>.

People's Consultative Assembly, House of Representatives, and Regional House of Representatives.

Then, in the second election, an election system was used with a closed list of candidate candidates, namely the proportional system. Followed by two political parties, the second election during the New Order was held in 1977, competing for 460 parliamentary seats. On May 4, 1982, the third election during the New Order was held based on Law Number 2 of 1980, namely Regarding Amendments to Law Number 4 of 1975 concerning Amendments to Law Number 15 of 1969 concerning the General Election of Members of the Consultative Body/People's Representative Council.

When Soeharto's leadership was transferred to BJ Habibie, Indonesia began moving from the New Order era to the reform era on May 21, 1998. The presence of a new chapter also brought new hopes for Indonesia in rebuilding democracy to change the central political system that had long dominated the democratic system.⁵ On June 7, 1999, the first election was held during the reform era based on the principles of democracy, namely, direct, general, free, secret, honest, fair (*luber jurdil*) in accordance with Law Number 3 of 1999 concerning Elections. Then, on October 20, 1999, the presidential election was held, with the candidates Abdurrahman Wahid and Megawati Soekarno Putri, who were finally won by Abdurrahman Wahid. Because the political system built by Abdurrahman Wahid disappointed the political elite, the People's Consultative Assembly held a special session on July 23, 2001, with the result that Megawati Soekarno Putri was appointed as President of the Republic of Indonesia.⁶

On April 9, 2009, the Legislative and Executive elections were held by the people through the third election during the reform era using an open candidate list proportional system. This election was based on the principle of *Luber Jurdil* according to Law Number 10 of 2008 concerning the General Election of Members of the House of Representatives, Regional Representative Board, and Regional House of Representatives. The final result

⁵ Heru Nugroho, "Demokrasi Dan Demokratisasi: Sebuah Kerangka Konseptual Untuk Memahami Dinamika Sosial Dan Politik Di Indonesia," *Jurnal Pemikiran Sosiologi* Vol.1, No. (2012): 11.

⁶ Kiki Mikail, "Pemilu Dan Partai Politik Di Indonesia: Menanti Kebangkitan Partai Politik Islam Di Tahun 2019," *Jurnal Tamaddun* 15, No. 1 (2015): 113-15.

was won by the pair Susilo Bambang Yudhoyono and his deputy Boediono. However, at that time, the election was carried out only as a democratic formality to achieve power.⁷

On April 9, 2014, the Legislative and Executive elections were held. For the Legislative elections based on Law Number 8 of 2012 concerning the Election of Members of the House of Representatives, Regional Representative Board, and Regional House of Representatives, a requirement of 30% involvement of women in managing political parties at the central level was required to become election participants. This was applied in the fourth election of the reform era, in which two pairs of presidential and vice presidential candidates participated, with the final result being won by the pair of Joko Widodo and his deputy Jusuf Kalla.

Then, on April 17, 2019, the direct, general, free, secret, honest, and fair principles were applied, as well as the application of national, permanent, and independent principles for election organizers, namely the General Election Commission, in the fifth election during the reform period. This election was won by the pair of Joko Widodo and his deputy KH. Ma'ruf Amin.⁸ The sixth election during the reform period that was just held was on February 14, 2024, with three candidate pairs. However, the final result was won by the pair Prabowo Subianto and his deputy Gibran Rakabuming Raka.

2. Law of Buying and Selling

Buying and selling is an economic activity that often occurs in everyday human life. The practice of buying and selling has existed since the time of our ancestors, but the name is not buying and selling but barter. Barter is an economic practice carried out by exchanging goods for crops or vice versa. As time passed, humans were introduced to higher-value currencies to exchange for goods needed. Etymologically, buying and selling comes from Arabic, namely *بيعا - يبيع - باع*, which means selling or exchanging something for something.⁹ In terminology, buying and selling is the practice of exchanging by transferring ownership from one to another with the note that they must

⁷ Indra Pahlevi, "Dinamika Sistem Pemilu Masa Transisi Indonesia," *Jurnal Politica* Vol.5, No. (2014): 129-31.

⁸ Agus Dedi, "Analisis Sistem Pemilihan Umum Serentak," *Jurnal Moderat* Vol.5, No. (2019): 219.

⁹ Abd. al-Rahman al-Jaziri, *Kitab Fiqh Ala Al-Mazahib Al-Arba'ah* (Turki: Ikhla Wakif, 2003).

mutually give up. This shows that buying and selling cannot be carried out if there is an element of coercion between the seller and the buyer.¹⁰

Buying and selling has clear laws in Q.S al-Baqarah: 275

“Those who consume interest will stand ‘on Judgment Day’ like those driven to madness by Satan’s touch. That is because they say, “Trade is no different than interest.” But Allah has permitted trading and forbidden interest. Whoever refrains—after having received warning from their Lord—may keep their previous gains, and their case is left to Allah. As for those who persist, it is they who will be the residents of the Fire. They will be there forever.”

The verse explains that Allah permits the practice of buying and selling in accordance with the provisions of Islamic jurisprudence, namely fulfilling the pillars of the conditions of buying and selling. But Allah forbids the practice of usury, and the Al-Qur'an has explained the reward for those who consume usury.

According to the majority of scholars, there are four pillars of buying and selling, namely:¹¹ 1) Contract; 2) The person who makes the contract must be muslim, sane, of his own free will (without coercion), mature, and not a wasteful person; 3) Goods to be traded (*ma'kud 'alaih*) with the condition that the goods must be clean (not unclean or illegitimate goods), useful goods, the goods belong to the person making the contract (the seller), the goods are clear and known by the buyer and seller, the goods are in the hands of the seller, the goods can be handed over; and 4) Have exchange value.¹²

The conditions for buying and selling are several things stated in the pillars of buying and selling, namely: 1) the seller and buyer are mature, rational, and not wasteful; 2) the buying and selling is carried out of their own will; 3) the goods to be sold can be seen by the seller and buyer when the transaction takes place; 4) the goods sold have benefits; 5) the goods sold are clean, not dirty, and not unclean; and 6) the goods sold are the property of the seller.¹³

¹⁰ Idris Ahmad, *Fiqh Al-Syafi'iyah* (Jakarta: Karya Indah, 1986).

¹¹ Zakariyya bin Muhammad al-Ansari, *Fathul Wahhab Bi Syarh Manhaj At-Thullab Juz 1* (Beirut, Libanon: Dar Al-Kotob Al-Ilmiyah, 2021).

¹² Shobirin, “Jual Beli Dalam Pandangan Islam,” *uJurnal Bisnis Dan Manajemen Islam* Vol.3, No. (2015): 246–51.

¹³ “Jual Beli Dalam Islam: Pengertian, Hukum, Syarat, & Macamnya,” OCBC, 2023, <https://www.ocbc.id/id/article/2023/10/27/jual-beli-dalam-islam>.

3. Law on Buying and Selling of Voting Rights from an Islamic Law Perspective

The right to vote is inherent in a citizen and is a constitutional right in a country. The right to vote in general elections is a right that must be protected, upheld, and respected by the government and laws of a democratic country. In addition to being part of Human Rights (HR), Article 28C paragraph (2) of the 1945 Constitution concerning the Protection of Voting Rights states that every citizen has the right to advance themselves in fighting for their rights collectively to build their society, nation, and country.¹⁴

Islam, a religion that prioritizes state life since the time of the Prophet Muhammad, also has rules for choosing a leader. In fact, Islam requires its followers to give their voting rights to elect a leader. This is in accordance with the words of Ibn Khaldun, expressed in his book: "Indeed, choosing a legal leader is obligatory, and his obligations are known in the Shari'ah according to the agreement (ijma') of the companions and tabi'in after the death of the Prophet Muhammad. The Companions immediately pledged allegiance to Abu Bakr and handed over decisions to him in their matters and so in every era afterward."¹⁵

The buying and selling of voting rights is actually no different from the practice of bribery, which in Arabic is called *risywah*, clearly forbidden by law. Imam Al-Ghazali explains about *risywah* in the book *Asnal Mathalib*, which means "Al-Imam Al-Ghazali in his *Ihya'* said: If wealth is given for the purpose of bringing rewards, then it is called alms. If it is given to get worldly rewards in the form of wealth, then it is called *hibah bisyartit tsawab*. If it is given for forbidden matters or *muaya'an* obligations, then it is called *risywah*. If it is intended for permissible matters, then it is called *ijarah*. If it is given to act as a means with its rank in order to achieve its goals, then it is called a gift if its position and rank are in the form of knowledge or lineage, but if it is in the form of a legal decision or an action, then it is called *risywah*".¹⁶

¹⁴ UUD RI Tahun 1945 Pasal 28C ayat (2); UU RI Nomor 12 Tahun 2003 tentang Pemilihan Umum Anggota DPR, DPD, dan DPRD

¹⁵ Ibnu Khaldun, *Tarikh Ibnu Khaldun* (Beirut: Dar al-Fikr, 1998).

¹⁶ Zakariyya bin Muhammad al-Ansari, *Asnal Mathalib Fi Syarhi Rhaudhit Thalib Juz IV* (Beirut: Dar al-Kutub Islami, 2008).

From the explanation above, it can be concluded that the buying and selling of voting rights carried out to obtain a position and degree obtained through a legal decision differs from *risywah*, which is illegitimate. However, the buying and selling of voting rights is subject to the same law as *Gharar*. *Ghararis* is a buying and selling that contains elements of fraud, which is illegitimate. *Gharar* causes losses to one of the parties. The impact of this buying and selling of voting rights is very detrimental to other prospective leaders because prospective leaders who buy votes from people who are entitled to vote according to the law are actually forced to follow the wishes of the candidate and prioritize them over other prospective leaders so that an election process occurs that is not in accordance with the actual legal rules.

4. Law on the Buying and Selling of Voting Rights from the Perspective of Law Number 3 of 1999

Vote buying and political money are phenomena that are currently emerging in the world of national politics. The strong attraction of money in influencing public political behavior is not a new fact. Theoretically, there is indeed a strong interconnected relationship between money and power. On the one hand, money is a source of power that produces power. On the other hand, power can also be used to produce money.

However, wealth is not always king. The role of money as the 'sole dictator' in international politics has never been recorded in history. Money remains a powerful tool for gaining power in many civilizations, including the Indonesian civilization, which is considered obedient because power and money are basically the same thing.

Rose Ackerman (1999) and Bardhan (1997), cited by Ahmad Khoirul Umam, challenged the pattern often appearing in several newly democratic Asian countries. Why do many politicians and political parties who are clearly corrupt get a lot of electability and public support ahead of the upcoming election? Isn't there a democratic process that allows people to carry out reforms and remove corrupt leaders from office through public political sanctions?¹⁷ The answer was found that Asian society has so far been considered to tend to ignore corrupt activities that occur around them, apparently influenced by the response to this issue both in terms of social and cultural. This corrupt practice is believed

¹⁷ Ahmad Khoirul Umam, "Membajak Nilai Sosial-Agama", *Republika*, Kolom Opini, 14 Desember 2012, hlm. 4.

to have been embedded and integrated into a society rich in moral principles, ethical standards, and socio-religious beliefs.

According to Law Number 3 of 1999 concerning the Presidential Election, it is explained that money politics is a form of campaign violation. In general, money politics is carried out by political party administrators approaching the general election day. This practice is carried out by giving money and basic necessities to the public so that they will vote for the party concerned.¹⁸ It can be concluded that the law prohibits the practice of buying and selling votes, money politics, or giving campaign basic necessities if it is intended to buy people's voting rights.

Meanwhile, Law Number 10 of 2016 Article 7 paragraph (1) stated that candidates and/or campaign teams are prohibited from promising and/or giving money or other materials to influence election organizers and/or voters.¹⁹ Looking at the explanation of the law, buying people's votes by promising to give gifts can damage the election process that should occur according to state regulations. Thus, the results of the elections implemented are not the pure result of the people's desires and trust in the candidate leader but rather coercion carried out through the buying and selling of voting rights.

CONCLUSION

The law of buying and selling of voting rights in Islam is illegitimate because it is considered the same as bribery to obtain a position of rank and level obtained through legal decisions. In addition, this is also coercion through promises of prospective leaders by giving several meaningful gifts to the community. Meanwhile, the law of buying and selling from the perspective of Law Number 3 of 1999 also prohibits buying and selling voting rights or money politics. This prohibition is also supported in Law Number 10 of 2016 Article 7 paragraph (1), that buying and selling of voting rights can damage the process of holding general elections, which should run according to the correct rules, not run with a process considered dirty like this vote buying.

¹⁸ Undang-Undang Nomor 3 Tahun 1999 tentang Pemilihan Presiden

¹⁹ UU Nomor 10 Tahun 2016 tentang Perubahan Kedua Atas Undang-Undang Nomor 1 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 Tentang Pemilihan Gubernur, Bupati, Dan Walikota Menjadi Undang-Undang

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UUD RI Tahun 1945 Pasal 28C ayat (2); UU RI Nomor 12 Tahun 2003 tentang Pemilihan Umum Anggota DPR, DPD, dan DPRD