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Criminal Law Policy as the Efforts of Preventing Criminal Bribe within Regional Head Election

Totok Sugiarto[1], Prof DR Arief Amrullah SH.MH[2], DR. Fany Tanuwijaya SH.MH[3]

[1]Doctoral Candidate at Faculty of Law, Jember University
[2]Lecturer at Faculty of Law, Jember University
[3]Lecturer at Faculty of Law, Jember University

Abstract: ***Money politics has became disclosed secret within current political context; often citizens deemed it as social an aid, charity, give, and others yet. The Shifting term of money politics indirectly has resulted in social protection perspective based on cultural norms that the money politics is like common social act in common; there is no fault on it. When people tough it as a normal act, unconsciously it will goad the enactment of formal legal law has difficulty. Therefore it is needed a clear interpretation to understand any meaning tucked behind the political behavior, so as to facilitate the di clear differences between Bribery act and giving in the real sense as aids Efforts. Nowadays, to the criminal law policy both of preventing and combating the practice of bribery are still on a reactive level. Whereas, in the sense of cracking down after it has occurred In the context of criminal law politics, that crime prevention efforts include bribery can be reached by two approaches, namely penal code (Criminal Law) and non-penal code (Mediation). By means of penal which has always been prepared for it, it is more repressive, has limitations. In addition, it is only a symptomatic treatment. Meanwhile, if through a non-penal approach, then nature is more preventive, in the sense of preventing it before it occurs, looking for the cause and even a more strategic approach.***

Keywords: Criminal Law Policy, Criminal Bribe, General Election. Penal Code, Non-Penal Code

1. Introduction

The principle of regional autonomy and decentralization dealing with policies (*gezagverhouding*) between central and regional governments is one way within the implementation of democracy. This means that the principle of democracy must be implemented through the dispersion of authorities both horizontally and vertically. The horizontal authorities mean sharing division down to the regional side of state institution in which has the integrated parallel level to central institution, legislative, executive and judiciary which are regulated by checks and balances mechanism, while vertical dispersion leads to the central government and autonomous regional governments which bear the right of decentralization (Sarundajang, 2002: 49).

The birth of Decentralization is a correction of the centralized power governmentof the New Order era which has created a condition where people's aspirations are oftenignored. In other words, it must be admitted that centralized politics has led to an anti-democratic condition ever. Whereas, Decentralization will improve the competitiveness of the government as decentralization of local governments will seek to serve and accommodate the needs and desires of the residents.

The electoral system is essentially a set of methods that govern citizens in their choice in the state representative institutions. The electoral system can be a set of methods for transferring voter choice in a parliament. Issuance of Government Regulation in Lieu of Law No. 1 of 2014 on the Elections of Governors, Regents and Mayors (State Gazette of the Republic of Indonesia Year 2014 Number 245, addition to the State Gazette of the Republic of Indonesia No. 5588) which has been strengthened into Laws to change the mechanismfor the implementation of the regional head election. As matter of fact, the directelection that has been started since 2005 was not simultaneously implemented. Therefore, it should be converted into simultaneously direct elections in all regions in Indonesia.

2015 is the first stage for the implementation of regional head elections simultaneously. It is said to be the first stage because there are subsequent stages up to the national elections simultaneously in 2017. But there is one thing that concerns some parties, including election supervisors, namely the absence of legal sanctions of electoral law-based for any practice of political bribery, popularly called money politics.

In another side, Therewas certainact as the prohibition for any political parties to receive rewards in the nominating process, often called dowries. Conversely, everyone should be prohibited from giving dowries to any political parties. The provisions are regulated in Article 47 of Law No. 1 Year 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 Year 2014 on the Election of Governors, Regents and Mayors Becoming Law (State Gazette of the Republic of Indonesia Year 2015 Number 23, Supplement to State Gazette of the Republic Indonesia Number 5656). In addition Article 73 Paragraph (1) of Law Number 1 Year 2015 (State Gazette of the Republic of Indonesia Year 2015 Number 23, Supplement to State Gazette of the Republic of Indonesia Number 5656) states "candidates and/or campaign teams are prohibited from promising and/or providing money or other materials for influencing voters. The problem is the absence of criminal sanctions for every violation of Article 47 and Article 73 Paragraph (1).

The absence of certain legislation regarding the regulation toward bribery act has brought a difficultydue to disclose the bribery case, especially within regional head election process. This is exacerbated by the abuse of power that is usually done by the incumbent, in which the case of bribery crime committed by the potential incumbent usually never disclosed by law.

Article 22B of Law No. 10 Year 2016 on the Second Amendment to Law No. 1 Year 2015 on Stipulation of Government Regulation in Lieu of Law No. 1 Year 2014 on the Election of Governors, Regents and Mayors Becoming Law (State Gazette of the Republic of Indonesia Year 2016 Number 130, addition to the State Gazette of the Republic of Indonesia Number 5898) regulates the duties and authorities of Bawaslu (electoral supervisory board) due to its supervision for the General Election.

According to Law No 10 Year 2016 regarding the Second Amendment to Law No. 1 Year 2015 on Stipulation of Government Regulation in Lieu of Law No. 1 year 2014 on the Election of Governor, Regent and Mayor Becoming Law (State Gazette of the Republic of Indonesia Year 2016 Number 130, additionto the State Gazette of the Republic of Indonesia Number 5898), the role of election supervisor is limited, so that it can be said that Law No. 10 Year 2016 on the Second Amendment to Law No. 1 Year 2015 on Stipulation of Government Regulation in Lieu of Law No. 1 Year 2014 (State Gazette of the Republic of Indonesia Year 2016 No. 130, in other side, to the State Gazette of the Republic of Indonesia No. 5898) has undermined the existence of Bawaslu and the General Elections Commission (KPU) so as to result, it could bear the bribery crime arises.

This is different from the criminal provisions of the political bribery crime as referredin the Law on Regional Head Election, whose it handling is done first by the Bawaslu. The problem is, does the national policeknow about the absence of criminal sanctions for the practice of political bribery in the Electoral Law? If already know, whether to accept and apply the principle of *LexSpecialis Derogate Legi Generalist* and crack down every perpetrator of bribery crime? Regarding the issue, there are some actions should be taken by the Bawaslu. *First*; explain to the public about the absence of criminal sanctions for the practice of political bribery crime within the electoral law. itneeds to be done so that the community does not blame the Bawaslu when it can not follow up the report. Second; coordinate with police as early as possible and intensively encourage the use of the Criminal Code to crack down on political bribery in elections. Third; directing reporters of alleged political bribery practices to report to the police and assist police to take action against them.

The current political conditions is considered by the most people are heavily loaded with political interests, money politics is a trend for every election event; the voting rights are 'traded' whether at the time of the election to elect the Governor, electing the Regent or Mayor, even to the level of village head elections, including election of legislative members, and ironically occasionally to the election of the head of a civil organization. The practice of money politics in the election occurred almost in many areas, this violation is very worrying because it becomes an instrument of winning amid direct elections. As a result, citizens' right to vote is hijacked by the interests of the candidate. Money politics practices can occur during campaigns and ahead of the vote. The modelof used was in vary, such as for basic needs, free medication, charity days and so forth. But the most worrying if the money politics that occurred with the involvement of election organizers. If this happens, the vote can be impure again.

Money politics takes place with diverse patterns of election; village head, regent/mayor, legislative even Presidential Election. Whereas, the deciding factorfor money politics in elections takes place with certain patterns; (1) some are done in a very subtle way so that the recipients of money are unaware of receiving bribes, (2) another are done in very striking (open) way in front of thousands of people.

Based on the above description, the author formulated the problems in this study as follows:

1) What is the philosophy of legal policyas the preventingtoward bribery crime within regional head election?
2) What are the characteristics of bribery crime committed within regional heads election?
3) What is the ideal policy in preventing the bribery crime within the regional head general?

2. Research Design

2.1 Type of Research

This research is normative legal; Pater Marzuki (2011: 11) argues that is a process to find the rule of law, legal principles, and legal doctrines to answer the legal issues discussed. Normative legal research always takes a legal issue as the norm-system used to provide prescriptive justification of a legal event.Hence, normative legal research makes the norm system as the center of it study (Fajar & Achmad, 2010: 36). Furthermore, Ranuhandoko (2003: 419) states that the norm system in the simplest sense is the method or rule system. The basis of the normative study here mean is the norm obscurity in which the regulation of the notary's denial of rights is unclear or obscure so as to give rise to different interpretations

2.2 Research Approach

This research uses 3 research approach; statute approach, conceptual approach, and case approach.The statute approach is conducted by reviewing all laws and regulations relevant to the legal issues being discussed. The case approach is conducted by examining cases related to the issues faced that have become court decisions that have had steady powers. While the conceptual approach is the approach that moved from the views and doctrines that developed in the science of law (Marzuki, 2011, 93-95).

2.3 Research Material

This research uses two legal materials as a material analysis, namely primary and secondary legal materials. Primary legal materials consist of the 1945 Constitution, The Criminal law, Law No. 20 year 2001 on the Amendment of Law No. 31 Year 1999 on the Eradication of Corruption, Law No. 23 Year 2014 on Regional Government, Law No. 1 Year 2015 on Stipulation of Government Regulation in Lieu of Law No. 1 Year 2014 on the Election of Governors, Regents, and Mayors Becoming Law, Law No. 8 Year 2015 on the

Amendment of Law No. 1 Year 2015 on Stipulation of Government Regulation in Lieu of Law No. 1 Year 2014 on the Election of Governors, Regents, and Mayors Became Law, Law No. 10 Year 2016 on the Second Amendment to Law No. 1 Year 2015 on Stipulation of Government Regulation in Lieu of Law No. 1 Year 2014 on the Election of Governors, Regents, and Mayors Became Law, Government Regulation no. 6 of 2005 on the Election, Legalization, Appointment and Dismissal of Regional Head and Deputy Regional Head. Whereas, the Secondary legal materials consist of textbooks written by legal experts, as well as supporting journals, research results, dissertations related to issues research, and government policy documents at both the central and regional levels related to the research problem.

3. Result and Discussion

3.1 The Philosophy of Legal Policies for the Prevention of Criminal Bribe within Regional Head Election

The generalelection is a process in which citizens choose their deputy to fill certain political posts. The positions here are diverse, ranging from the President, people's representatives at various levels of government, to the village head. Based on Law No. 3 of 1999 on General Elections,Election is the implementation of the people sovereignty in the unitary state of the Republic of Indonesia grounded on Pancasila and the 1945 Constitution values. Thus, the highest authority of a country comes from ourpeople, hence, all the state leader was chosen at the will of the people.

General election take place in Indonesia was based on the following grounds:

1) Pancasila: The Fourth Precept of Pancasilathat id Democracy led by the wisdom of deliberations among representatives.
2) Juridical - Constitutional Platform, namely the 1945 Constitution: general elections based on the principle of direct, public, free, secret, honest and fair.This principle is the right of every Indonesian citizen in having the people's representatives.

Within it practice, elections are held by direct, publicly secret, honest and fair on the principle in question shall be described as follows:

1) Direct: The people as voters shall be entitled to directly vote in their conscience without any intermediaries and coercion.
2) General: The election shall mean wholly to all citizens who have met the requirements without distinction of ethnicity, religion, race, regionalism, occupation or social status.
3) Free: Every citizen is entitled to vote for anyone based on his conscience, without the influence of pressure, threats, coercion, from anotherand with anything, and by exercising his right in his security guarantees in making his choice.
4) Secret: The voters are secured by the apparatus in voting not to be known by anyone and in any way in determining his vote.
5) Honest: Every state organizer, election participants, election supervisors, election observers, voters and all concerned must be honest without any fraud or manipulation in accordance with applicable laws and regulations.
6) Fair: Every voter as well as candidate is treated equally and free from any party cheating.

General election has relued by legislation that has been set by the government as has been described in the Law of the Republic of Indonesia No. 15 Year 2011 About the Organizer of General Election, then in Article 2 explained that the election observers are guided by the principle; a) independent, b) honest, c) fair, d) legal, e) order, f) public interest, g) openness, h) proportionality, i) professionalism, j) accountability, k) efficiency, l) and effectiveness.

The General election system is usually regulated in legislation, containing at least three main variables:

1) Voting (balloting): The ordinance to be followed by voters who are eligible for voting.
2) Electoral district: The provisions governing the number of seats of the people's representatives for each electoral district.
3) The election formula: The formula used to determine who or what political party wins a seat in an electoral district.

The Indonesian Constitution provides for elections in Indonesia in the 1945 Constitution of Article 22E, to ensure the right of the Indonesian people electing their leaders and representatives. In the 1945 Constitution of Article22E explained that elections are held directly, publicly, freely, secretly, honestly and fairly every five years. Some of the principles of elections that need to be guaranteed are:

1) Justice
   This principle is indispensable for all peoples for having the same right to vote or to be elected. In addition, this principle is also required for all participants of the general election, whether in the form of political parties, individuals, or independent get equal treatment from the organizer. Without justice, there is no guarantee that people's sovereignty can be realized.
2) Honesty
   Honesty should not only be aimed at the elections organizer (KPU) to bear the legitimate result but also need to be addressed by election participants (both parties, individuals, and independent groups) and voters.
3) General
   This principle implies that all people without any exception have the right to vote. This general principle is proposed to ensure the loss of factors that in the past have often been the basis of discrimination, partly because of social status, skin and race, sex, religion, political views and so on.
4) Freedom
   This principle is essential to ensure that the elections are not carried out in intimidation. The people should have the freedom of expressing their political choices because this principle will ensure the information about the will of the people actually, regarding who is believed to be a

representative or a political official by the people, as well as what ideology, programs and political activities are chosen by most people.

5) Secrecy
   Optional secrecy is a very important principle because it ensures voters will not get bullied because of their political choice.
6) Directly
   The people must immediately vote his political choice. Therefore, the electoral administration is designed in such a way that any person, including persons with disabilities, can directly vote without the need to represent them to others.

Indonesia has repeatedly held general elections called the party of democracy, both during the old order, the new order and the reform order. In political science, it is known that there are various electoral systems, but it generally revolves around two basic principles: single-member constituency and proportional/multi-member constituency.

The district system (single-member constituency) is organized on the basis of the location of the electoral district, in the sense of not distinguishing the population, but oriented to a designated place, so the less populated areas have the same representation as the densely populated areas. The disadvantage of the system is many votes are wasted, but because the representative to be elected is the person directly, the voter will be familiar with his deputy; the district data usually has one representative.

The advantages of using the district system are as follows:

1) This system is more pushing towards the political parties integrity since the seat contested in each electoral district is only one;
2) Party fragmentation and the tendency to form a new party can be dammed;
3) Due to the district smallness, the elected representatives may be recognized by the community, so that constituent relationshipare closer;
4) For large parties this system is profitable since the distortion effect can win votes from other voters, so as to obtain the position of the majority;
5) It is easier for any party to reach a majority seat in parliament, so there is no need forcoalitions with other parties;
6) The system is simpler and cheaper.

However, the implementation of this district system has some disadvantages include:

1) District system is less concerned with the existence of small parties and minorities group, especially if this group is scattered in several districts;
2) District system is less representative in the sense that the candidate loses in a district, losing the supporting votes he/she has. This means that there are a number of votes that are not taken into account at all;
3) District system is considered to be less effective within plural societies because of the diverse of ethnic, religious, and tribal groups;
4) The elected candidate tends to pay more attention to the interests of the district as well as the citizens of his district, rather than the national interest.

By the finding above, the use of district system is more suited to a homogeneous country with only two parties. The district system is more likely to lead to decentralization. Therefore, Indonesia appliesthe district system in the holding of regional head elections, elections to elect representative council (DPD) members.

Whereas, the general election by the proportional system (multi-member constituency) is the electoral vote oriented-based on the number of residents who will become voters. This system intended to eliminate some weaknesses of the district system. By this system the more votes obtained by a party or group in an electoral district may be added to the number of votes received by the party or group in another electoral district, to fulfill the number of votes required to obtain an additional seat. Similar to the district system, the proportional system has also advantages and disadvantages.

The advantages of a proportional system are:

1) Proportional system is considered to be more qualified since the number of seats in parliament agreed with the number of publicvotes;
2) Proportional system is considered more democratic, meanshas more egalitarian sense because it is practically devoid of distortion.

As for the weaknesses in this proportional system, among others:

1) Proportional system does not encourage any parties to integrate or cooperate with one another and exploit existing equations, but instead, tend to sharpen differences;
2) Proportional system facilitates party fragmentation. If a conflict arises in one party, its members tend to break away and establish a new party;
3) Proportional system provides a strong position to the party leaders;
4) The elected person may be loosely bound to his constituents;
5) Because of the many competing parties, it is difficult for a party to reach a majority seat in parliament, which is necessary to form a government.

The proportional elections system just preferred as well as campaigning forthe program or ideology of these political parties. In contrast to the district system that prioritizes one's popularity. This proportional system in Indonesia is used at the time of the election to elect members of both DPR and DPRD.

3.2 The Characteristics of Criminal Bribe within the Regional Head Election

Literally the term corruption has a very broad meaning, namely: 1) Corruption is a misappropriation or embezzlement of state money, company and so either for personal or others' interests; 2) Corruption is rotted,

damaged, likes to use goods or money entrusted to it, maybe bribed (through its power for personal interests).

Law No. 20 of 2001 on the Eradication of Criminal Acts of Corruption, provides an understanding of the criminal act of corruption is the act of enriching themselves or others by unlawfully which may harm the state's finances or the state's economy or the act of using the authority, opportunity or means available to it due to position or position with the aim of benefiting oneself or others and may harm the state's finances or the economy of the country.In addition.the definition of criminal acts of corruption is a bribe to officials or civil servants (Hartanti, 2007: 23).

The law that specifically set out the criminal bribe is Law No. 11 of 1980 on the CriminalBribe. Article 2 and Article 3 of the Bribery Law are two forms of bribery, namely Active bribeand Passive bribe. Called active bribe because of the subject does bribe, and is called passive bribe because the subject is not doing business or accepting gifts and following the will of the giver/briber.

In addition, Law No. 31 of 1999 jo Law No. 20 of 2001 on the Eradication of Corruption, bribery as mandated by the previous Law. For the briber has been arranged in Article 5 and Article 6 that accommodate Article 209 of the Criminal Code and 210 of the Criminal Code, while for the bribed regulated in Article 11 and Article 12 that accommodate Article 418 of the Criminal Code, 419 KUHP, 420 KUHP, Article 423 of the Criminal Code, Article 425 of the Criminal Code and Article 435 of the Criminal Code (Mulyadi, 2007: 45).

As it has been known that Bribery is part of corruption, wherein some elements to identify bribery in the provisions of Law no. 31 of 199 jo Law no. 21 of 2001 are:

1) Break the Law.
2) Enriching oneself, others or the corporation.
3) harm the state finance or economy.
4) Aims to take benefit ofoneself, others or a corporation.
5) Abuses the authority, opportunity or any means available to him because of his position.

While the provision on Bribery is set out in Articles 2 and 3 of Law no. 11 of 1980, which states that:

Article 2 that whoever gives or promises something to a person in order to persuade the person to do something or to do nothing in his or her duties, which is contrary to his or her authority or obligation concerning the public interest is punished for bribery with imprisonment of 5 (five) years imprisonment and a fine of up to Rp. 15.000.000.

Article 3 that whoever accepts something or a promise, while he knows or can reasonably suspect that the giving of a thing or a promise is meant to do something or not to do something in his duty, which is contrary to his authority or obligation in the public interest, is punished for accepting a bribe by imprisonment for a maximum of 3 (three) years or a fine of up to Rp. 15.000.000.

On the basis of both articles formulation above, the subjective element is defined in the phrase "Whoever" (the legal subject) who commits a deliberate act, in order for the bribe recipients to perform or not to perform the duty that should be done. Based on the word of whoever, it appears that the formators of the Law use the formulation contained in the Criminal Code, therefore it can be concluded that the subject of individual law that can be criminalized. But in the development of the needs of law,a corporation is also a legal subject in Criminal Acts of Bribery.

The objective element of the criminal bribe in the form of a gift or a pledge to give some money or in the form of other goods to a person having authority and or power concerning the public interest (active bribery), and the recipient of a bribe (passive spoon), if he suspects or is suspected, that the gift is related to the position of authority it has, then it has been said the objective element.

Criminal Bribe as formulated in both Articles 2 and 3 using formal formulation, means that the threat of criminal activity is not a consequence. However, in order to impose criminal sanctions on the active bribery, it must be proved that there is an element of intention/willingness to be directed by the maker, whereas the recipient is sufficiently suspect / objective, that the recipient knows/is well worth knowing that the gift of something or promise is related to authority or obligation that he has.

As it has been ruled by Act, both active and passive briberyare equally threatened with imprisonment and penalties. The Lawmakers provide the same criminal penalty for both of them is Rp 15,000,000. The legislator distinguishes his criminal sanctions, passive spoils are threatened with heavier penalties (maximum 5 years in prison) while the active bribery of his criminal penalty is maximum 3 years in prison.

Bribery is a stipulated term of law as a gift or promise (*giften/beloften*) granted or received including active bribery and passive bribery. There are three essential elements of a bribery offense:

1) Receive a gift or appointment,
2) In relation to the inherent power,
3) Contrary to its obligations or duties.

In the Criminal Code, there are articles on active bribery offenses (Articles 209 and 210) as well as passive bribery (Articles 418, 419 and Article 420) which are then all withdrawn in Article 1 paragraph (1) sub C of Law No. 3 of 1971 which is now Article 5, 6, 11 and Article 12 of the Corruption Eradication Act (PTPK) Act 2001.

Likewise, active bribery in the explanation of Article 1 paragraph (1) sub D Law No. 3 of 1971 (now Article 13 of the 1999 PTPK Act) and a passive bribery offense under Articles 12B and 12C of the PTPK Law 2001.

Article 209 and Article 210 of the Criminal Code mean to a Public Servant is a person who is appointed by the general authority to a public official to perform the duties of the government or its parts. Contrary to his obligations, for

example, infiltrating some money under the pile of letters on the counter of the civil servant, or giving the cover of a letter containing some money to the civil servant. Accepted or not by the civil servant, the "bribe" is still prosecuted under this article.

Article 210 of the Penal Code implies bribery towardboth judges and their legal counsel in court and Article 420 of the Criminal Code regulating judges and legal counsel who accept bribes. The extension of the criminal bribe in the form of gratification stipulated in Article 418 of the Criminal Code is then also operated as a criminal act of corruption and formulating gratification as a wide gift and includes, giving money, goods/rebates/discounts, commissions, interestless loans, travel tickets, lodging, travel, free treatment and others.

Thus the criminal act of bribery has been extended, the introduction of corruption eradication norms has put active bribery as the subject of corruption because the bribery offense in the Criminal Code only regulates passive bribe. Delik bribes are not always tied to the perception of the occurrence of giving money or gifts, but with the giving of promises alone is still the object of bribery.

The existence of logging (trial) bribery has been regarded as a complete offense which means the precondition as the beginning of the alleged bribery implementation was already considered a criminal act of corruption. The recipient is required to prove that the gift is not a bribe, therefore the defendant will prove that the gift is not related to office and not contrary to his duty or duty, while the element of receiving a gift or a fixed promise must first be suspected by the Prosecutor.

The definition of receiving gratuities has stipulated in the explanation of Article 12B of the PTPK Law 2001 and from the explanation of Article 12B paragraph (1) may be drawn some conclusions such as the definition of an active bribe, meaning it cannot be to blame and accountable by imposing a penalty on the gratification bribe according to this article.

The principle of the criminal law is the Presumption of Innocence which applied for only to certain cases, which are related to corruption offenses especially to new offenses relating to bribery. This gratuity is addressed to civil servants in a broad sense and state organizers (vide Article 2 of Law No. 28 of 1999) and has done work contrary to its obligations. Giving is considered a bribe until it is proved not a bribe by a bribe recipient.

3.3 Great Policy as the Prevention of Criminal Bribe within the Regional Head Election

Crime prevention efforts could be conducted through 2 paths: *first*, a Penalpath which is more focused on the nature of the repressiveact (suppression/eradication/crackdown) after the crime has occurred.*second*, the Non-Penal path in which more focused on the nature of the preventive act (guard/preventive/control) before the crime occurred.

Instead of countermeasures with the penal path, non-penal is the preferred path. Considering that non-penal path holds more crime prevention efforts, the main objective is to address the conducive factors that cause crime. These conducive factors, among other things, center on social problems or conditions that can directly or indirectly generate or nourish crime. Thus, judging from the macro and global politics of criminality, nonpenal efforts occupy key and strategic positions of overall criminal political effort.

Some of the social problems that constitute a conducive factor in the cause of crime become problems that cannot be solved solely by penal. This is where the limitation of the penal path and therefore should be supported by the non-penal path.
The most strategic non-penal effort is every effort to bring inthe healthy social and environmental (materially and immaterial) from criminogenic factors. This means the community with all its potential must serve as an antidote to the crime or the "*Antichriminogen*" factor that is an integral part of the overall criminal politics. In addition to pon-penal efforts can be pursued by healthy society through great social policy and by multiplying the potential that exists within the community itself (Nawawi, 2010: 29).

Therefore, the function of Indonesian law in development is as a means of community renewal. This is based on the preassumption that order in development, the law is important and indispensable. In addition, the Non-penal effort is the framework of future national legal development (*IusConstituendum*). Since the crime prevention must be able to view the social reality of society, law as commander should be able to create a social order through social policy.

The optimization of the non-penalpath was in line with the ideals of the nation and the purpose of the state, as stated in the Preamble of the 1945 Constitution which contains the Pancasila. All forms of development must depart from the values of Pancasila because essentially Pancasila is a milestone of many kinds of ideas and thoughts on the basic philosophy of state discussed deeply by the Indonesian founding fathers.

By the state preamble above, some experts say that theoretically, a direct election is more democratic than a representative election. Throughout direct elections, the people are the main actors and determinants of power in the regions. The people were originally only as spectators of the local democratic process dominated by elites (DPRD and political parties).in another word, the directelectiongives more freedom for the people to chosetheir representatives in the regions. By this election, Hijacking of the people's authority by leaders or representatives is expected to no longerhappen. And the last, by this Elections voter, will also be free to choose without pressure and coercion. Hence, it bringsgreater accountability.

4. Conclusion

The money politics behavior, in the present political context,often named as aid, giving, charity,and others. The shifting term of moneypolitics into this moral term indirectly has resulted in social protection through the cultural norms of society that is indeed prevalent. In addition, Article 73 Paragraph (1) of Law No. 1 Year 2015 (State Gazette of the

Republic of Indonesia Year 2015 No.23, Supplement to State Gazette of the Republic of Indonesia No. 5656) states "candidates and/or campaign teams are prohibited from promising and/or providing money or other materials for influencing voters. The problem is the absence of criminal sanctions for violations of Article 47 and Article 73 Paragraph (1) so that Efforts to prevent and combat the practice of bribery crime is still on the reactive level, in the sense of cracking down after it happened. In the context of criminal law politics, that crime prevention efforts include bribery, it can be pursued by two approaches: penal (using criminal law) and non-penal without using criminal law. By means of penal which has always been prepared for it, its character is more repressive, has limitations, in addition, it is only in the form of systematic treatment. Meanwhile, if through a non-penal approach, it is more preventive in nature, in the sense of preventing it before it occurs, looking for the cause and even a more strategic approach.

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