MONEY POLITICS IN GENERAL ELECTIONS: A COMPARATIVE ANALYSIS

Topo Santoso

Abstract
This article is intended to compare and see the differences and similarities between money politics in Indonesia and Malaysia. Corruption in the electoral process is a breach of public trust and an illegal act. Enforcing the legal framework is essential to maintain electoral integrity. Without enforcement, the best legal framework or electoral systems can be bypassed or ignored. We can notice several characteristics of bribery, i.e.: (i) committed by one who gives or promises or offers money or any valuable inducement to an elector; or (ii) in order to corruptly induce the latter to vote in a particular way; or (iii) to abstain from voting; or (iv) as a reward to the voter for having voted in a particular way or abstain from voting. It can be stated that the arrangement of bribery in Indonesia is very brief compared to its arrangement in Malaysia. The substance of the offences has been contained in the general elections laws in Indonesia and Malaysia. However, the number, the types and the scopes of the election offences in these two countries are different from one another. The general election legal frameworks in Indonesia and Malaysia have elaborated punishment for certain violations of law. The legal framework in these two countries has attempted to ensure the fairness of elections, which required a number of technical and legal measures designed effectively to protect the process from bias, fraud or manipulation. Such measures included, inter alia, provisions for outlawing and punishing corrupt practices.

Keywords: money politics, bribery, general elections, democracy, crime

A. Introduction
This article will observe the differences and similarities between election offences in Indonesia and Malaysia, particularly election offences named Bribery. The question is, whether the arrangement of Bribery in these two countries is the same or different and what their differences and similarities are. Definition of election offences in this article is: "All violations of provisions related to general election process as far as such violations are threatened by criminal sanctions under the laws regulating general elections".

Referring to the United Nations’ Human Rights Standards Regarding Elections especially concerning the Common elements of Electoral Laws and Procedures wherein stated that the national electoral law must also protect the political process from
corruption, official misfeasance, obstruction, undue influence, personation, bribery, treating, intimidation and all other forms of illegal and corrupt practices. Indonesia and Malaysia have also stipulated those types of election offenses.

B. The Corrupt Practice of Bribery/ Money Politics

In this part, we will discuss one types of election offenses which are frequently, become the highlights since they are considered dangerous for the democracy process, i.e., bribery/money politics. These offenses in Indonesia are so-called “politik uang”. This bribery/money politics, in Malaysia is categorized into the Corrupt Practices.

The term corrupt practice has no standard meaning which can be applied uniformly to all the statutes dealing with the subject. In fact, corrupt practices, have been declared as illegal by many countries since the 19th century because they are considered very influencing the utilization of right to vote.

The literary meaning of the term is wider than the legal meaning. Therefore, both the literary and legal meanings of the term do not exactly correspond to each other. According to a dictionary the meaning of the word ‘corrupt’ is “depraved”, “evil”, “to make subject to improper influence”, “to degrade with un sound principles”, “or ‘moral values’, “to become morally debased or perverted from right principles”, “of debased political morality”.

According to another dictionary, the term ‘corrupt’ means, “to destroy or pervert the integrity or fidelity (a person) in the discharge of duty”, “to induce to act dishonestly or unfaithfully”, “to make venal”, “to bribe.” The term ‘Practice’ means, “to make use of”, “use”, “employ.” Thus, corrupt practice means to use or employ evil in elections. However, not all types of evil or dishonest practice necessarily mean corrupt practice within legislation.

The scope of these corrupt practices also develops that it covers more aspects, such as, the size of expenditure, contribution and the specification of purposes for which the money could be spent. In the United States of America, the term corrupt practices can be found in the Corrupt Practices Act of 1925. While in Britain, we can find this term in the Corrupt and Illegal Practices Prevention Act 1883. According to the Corrupt and Illegal Practices Act 1883, the corrupt practices cover: (1) bribery, (2) treating, (3) undue influence, (4) personation, and (5) unauthorized expenditure. While, other fraud, such as, paid conveyancing, advertising, hiring without authority committee rooms, voting without qualification, etc., are included in the category of Illegal Practices.

Corruption in the electoral process is a breach of public trust and an illegal act. Enforcing the legal framework is essential to maintain electoral integrity. Without enforcement, the best legal framework or electoral systems can be bypassed or ignored. Corruption is a crime of calculation, not a crime of passion. When the size of the bribe is large, the chance of being caught small, and the penalty if caught meager, many officials will succumb.

In Britain, bribery and the lesser offence of “treating” are punishable as corrupt practices. A person found guilty of a corrupt practice is liable upon conviction up to one year in prison, a fine, or both. In Japan, the Public Office Elections Law (1996 revision) invalidates elections results if campaign managers, campaign accountants, secretaries of the candidate, or the prospective candidate were convicted of vote buying and punished with a fine or heavier penalty. In addition, the candidate will be banned from becoming a candidate or holding public office in the same electoral district for five years.

C. Bribery/Money Politics and the Process of Democracy

The elections process now influenced by money power is probably the heightened effect of commercialization. Huge sums of money are now spent by candidates in order to lure voters. Using lure of money or such other gratification to influence person to take a favorable stand in an election or to offer gratification to induce electors to vote for a particular candidate or political party, would come under the definition of the term bribery.

Bribery, in West Africa, is known as dash. In Latin America, la mordida (“the bite”); in Italy, la bustarella (“the little envelope”); in France, pot de vin; in the United States, “grease.” Under whatever name, bribery is a universal phenomenon with roots that stretch far back into human history. The Code of Hammurabi, created by the king who founded the first Babylonian empire almost four thousand years ago, held that if a man was bribed to give false witness against another, he must bear the penalty imposed in the case. An edict by one Egyptian Pharaoh proclaimed the death penalty for any official or priest who accepted a bribe for the performance of his judicial duties.

In Islamic teaching, the person who bribes and the person who is being bribed will be placed in hell. This principle applies from back then up to the present time.

Bribery is one type of corruption which is not unfamiliar in the Southeast Asia. The effort to overcome corruption has become the central theme in this region, not exceptional in Indonesia and Malaysia. Concerning the perception of corruption, Indonesia occupies lower rank (122), while Malaysia is far above it (37).

The effort to improve the overcoming of corruption in Indonesia has been imple-
mented. Nevertheless, the periods of Habibie, Abdurrahman Wahid, and then Megawati have not yet succeeded in up lifting this condition. Recently, President Susilo Bambang Yudhoyono has been proclaimed a corruption elimination movement by issuing several policies. This country has just issued a new anti-corruption law and formed the anti-corruption institution which has a broad range of authority. Meanwhile in Malaysia, has been set out a complete, detailed and integrated corruption elimination system to be implemented by the executives, legislators and the judiciary, both in the central government and in all of the States, especially the Anti Corruption Agency (Badan Pencegah Rasuah/BPFR).

The political science has long formulated and agreed that the sources of political authorities are especially consisting of five types: the physical strength, the authority, the charisma, the science and technology, and the money or the economical strength. Through this fifth source, someone or a group of people can buy and control many things, including the acquiring of power. As one of the sources of power, money is not parted from the utilization requirements in the democratic political order. The richer anyone or a group of people is, the higher political power stairway, which can be gained, however this parallelism does not automatically take place.

The hallmark of representative democracy is that all people have the fundamental right to vote for those who will administer and make the laws. Those in power have often defined this principle of democracy, however, they have minimized, neutralized, or even negated the voting privileges of the lower classes, minorities, third parties, and the opposition.

As a democratic political process, the general elections have a function as the facility for political representatives. The citizens surrender part of their individual sovereignty to such persons, which they elect to sit in the representative institutions. With periodic general elections, the citizens can continuously control their representatives. If they consider that such sovereignty has been abused, they will revoke such sovereignty in the succeeding general elections to be delivered to other representatives. Based on this thought, the utilization of money in the general elections should be arranged in a manner, which would not violate the principle of democracy. One of the rules related to this is the prohibition to conduct bribery/money politics practices in the general elections law or in the election offences law.

Democracy is a system of government that expresses the will of the people. In theory, since all persons and groups have a right to contribute to the candidate or party of their choice, all interests and points of view will be represented. In practice, however, wealthy individuals and large organizations provide the most money and have the greatest influence on the political process.

D. The Definition of Bribery

What is bribery? The Black’s Law Dictionary provides the definition of bribery as follows:

(i) The offering, giving, receiving, or soliciting of something of value for the purpose of influencing the action of an official in the discharge of his or her public or legal duties; (ii) The corrupt tendering or receiving of a price for official action; (iii) The receiving of offering any undue reward by or to any person concerned in the administration of public justice or a public officer to influence his behavior in office. Any gift, advantage, or emolument offered, given, or promised to, or asked or accepted by, any public officer to influence his behavior in office; (iv) Any direct or indirect action to give, promise or offer anything of value to a public official or witness, or an official’s or witness’s solicitation of something of value.

Meanwhile, according to the Indian Penal Code, bribery is defined as:

(i) Gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right, commits the offence of bribery; (ii) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification; (iii) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a motive for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

How does bribery relate to the general elections process? Concerning this matter, the Black’s Law Dictionary explains as follow:

“The offence committed by one who gives or promises or offers money or any valuable inducement to an elector, in order to corruptly induce the latter to vote in a particular way or to abstain from voting, or as a reward to the voter for having voted in a particular way or to abstain from voting”.

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6 For further discussion concerning corruption problems in some countries in Asia, including corruption in Indonesia see Tim Lindsey and Howard Dick, 2002, Corruption in Asia, The Federation Press, Annadale, New South Wales.


11 This means, the wealth does not automatically generate political authority, if it is not used to influence the political process. Herman Sulastyo and A. Kadar 2000. Uang & Keausaan dalam Politik 1999 [Money & Power on 1999 General Election], KIPP Indonesia, Jakarta, p. 1-4.


13 In fact, this bribery is not only considered dangerous for the process of democracy but also dangerous for a nation (not always in the context of political process). Bribery is a part of corruption. Corruption is so dangerous that the historians state that the bankruptcy of VOC in the Netherlands Indies was caused by corruption. All the same with political and economical experts who analyze that the severe economic crisis which struck Indonesia in 1997/1998 is also caused by corruption which has spread out to many sectors in this country. Not surprisingly that one of the demand of Reformasi in Indonesia is to destroy KKN (Korupsi-Kelompok, Nepotisme, Corrup- tion, Collusion and Neptunism).


16 Indian Penal Code Section 171-B.

17 Ibid.
Based on the above mentioned definition, we can notice several characteristics of bribery, i.e.: (i) committed by one who gives or promises or offers money or any valuable inducement to an elector; or (ii) in order to corruptly induce the latter to vote in a particular way; or (iii) to abstain from voting; or (iv) as a reward to the voter for having voted in a particular way or abstain from voting.

E. Bribery/ Money Politics in General Elections

1. Indonesia

From 31 election offences stipulated in the Law Number 12 of the year 2003 which regulates legislative general elections in Indonesia, it turns out that there is only one election offence which can be classified as bribery, i.e., stipulated in the Section 139 paragraph (2). As has been mentioned, in accordance with the Indonesian general elections law, offences are not categorized, as in Malaysia or Singapore, into corrupt practice or illegal practice; otherwise they are categorized into four sections which appeared to be related to certain general elections stages (even though not absolute). Section 139 consists of eight offences which almost entirely relate to the voting stage. Observing the formulation of Section 139 paragraph (2), actually bribery can occur at any general elections stages (not merely voting stage). However, in this law, it is not stipulated if any one gives money or goods which can be valued with money, after the holding of voting (different with the definition in the Black’s Law Dictionary as mentioned above). Section 139 paragraph (2) states:

"Any one who deliberately gives or promises to give any money or other material to any one else in order to not use the voting right, or to choose certain general elections participant, or to use the voting right in a certain manner therefore the ballot becomes invalid."

The criminal sanction to bribery in this law is imprisonment for at least two months or at the most 12 months and/or a fine of at least Rp. 1,000,000.00 (one million Rupiah) or at the most Rp. 10,000,000.00 (ten million Rupiah).

With respect to its development, in fact, there is no development in terms of stipulation of bribery in Indonesia law. In fact, what really occurred is the lack of rules. Before the existence of the general elections law, the Indonesian Penal Code has stipulated bribery in the elections, i.e., as can be seen in Section 149 of the KUHP, which states:

"(1) Any person who on the occasion of an election held by virtue of a general regulation by gift or promise bribes somebody either not to exercise his franchise or to exercise it in a certain manner, shall be punished by a maximum imprisonment of nine months or a maximum fine of three hundred Rupiah.
(2) The same punishment shall apply to the elector who by gift or promise allows himself to be bribed to exercise or not exercise his above mentioned rights."

According to the above mentioned section, it is not only the person conducting bribery/ money politics who will be imposed with criminal sanction, but the person receiving bribe can also be imposed with criminal sanction. The same provision can also be found in the first General Elections Law, i.e., Law No. 7 of the year 1953. Offence stipulated in Section 120 of Law No. 7 of the year 1953, both its substance and its wording is very much similar to Section 149 of the KUHP. And then, in the general elections laws during the New Order period, i.e., Law No. 15 of the year 1969 as amended by Law No. 4 of the year 1975, Law No. 2 of the year 1980, and Law No. 1 of the year 1985 were, also very similar in stipulating bribery. All the same, with Law No. 3 of the year 1999, it is practically the same as the previous rules. According to Section 73 paragraph (3) of this law, both bribing and receiving bribe can be punished. However, the punishment is changed from five years into only three years in prison.

There were three bribery/money politics cases occurred in the 1999 Indonesian general election, which related to the person conducting bribery/money politics and the person receiving bribery. Those three cases have similarity, i.e., they were based on the Section 73 paragraph (3) of Law Number 3 of the year 1999. Section 73 paragraph (3) is divided into two types of actions, i.e.,

1. conducting bribery/money politics; and
2. receiving bribery. In the case of Charis Widyarso and the case of Sri Mulyanto, they were accused for conducting actions of bribery in general elections, while in the case of Atmo Semo22; he was accused for receiving bribery in general elections. For conducting actions of bribery in general elections accused to Charis Widyarso and Sri Mulyanto, two district courts issued different decisions. Rembang District Court which trialed the defendant Charis Widyarso decided that all elements of the offence was proven and fulfilled and declared the defendant Charis Widyarso of being guilty for bribery offence in the general elections as stipulated in the Section 73 paragraph (3) of Law Number 3 of the year 1999. While, Boyolali District Court declared that the elements of offences in Section 73 paragraph (3) of Law Number 3 of the year 1999 were not proven and release the defendant Sri Mulyanto from the accusation of bribery in general elections.

If both of the above-mentioned cases can be mentioned as an action of giving bribe, the third case, i.e., Atmo Semo who was also trialed in Boyolali District Court can be mentioned as case of receiving bribe.

The odd thing is that even though it was trialed in the same Court, and even with the same Council of Judges, in the case of Sri Mulyanto, the Council of Judges had different considerations.23

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18 The obvious difference between those two are in the criminal sanction matter. The criminal sanction in Section 149 of KUHP is only at the maximum nine months of imprisonment or a fine of at the most four thousand five hundred Rupiah, while Section 120 of Law No. 7 of the year 1953 contains a much severe sanction, i.e., five years of imprisonment.
19 Whomsoever at the time of the polling according to this law bribes a person by giving a present or promise in order not to use his right to vote or to vote in a certain way, will be imprisoned for three years maximally. The punishment also applies to the voter who by accepting bribes in the form of a present or promise commits a certain act.
20 Decision of Rembang District Court (Central Java Province) No. 87/Pid/B/1999/PN Rbg
21 Decision of Boyolali District Court (Central Java Province) No. 155/Pid/B/1999/PN B
22 Decision of Boyolali District Court (Central Java Province) No. 156/Pid/B/1999/PN B
23 In the case of Atmo Semo, the judges were having the opinion that to be proven of conducting any bribery receiving any bribery in general elections, it is not necessary to be conducted through expressed statement which requested the receiver at the voting period to vote for a certain party, therefore, it can also be conducted by pointing the picture of the intended party or by enclosing such giving with a picture of such party, or by requesting not to win such party. All of these actions can be interpreted as requests to choose certain parties in voting period.
therefore, since the first General Elections in 1955 up to the General Elections in 1999, the rules regarding bribery are more or less the same, except for the sanction in the Law No. 3 of the year 1999, which has been reduced to only three years of imprisonment. In Law No. 12 of the year 2003, the number and types of bribery do not change, it remains only one offense. The change only relates to one matter, i.e., person-receiving bribe is no longer threatened by criminal sanction.

In the 2004 General Elections, there were 1022 decisions over general election offenses, 46 out of all cases were bribery/ money politics cases according to Section 139 paragraph (2) Law No. 12 of the year 2003. These cases occurred in North Sumatra (six cases), West Sumatra (one case), Bengkulu (one case), Lampung (three cases), West Java (one case), Central Java (11 cases), and Yogyakarta (five cases), Banten (five cases), South Kalimantan (seven cases), Central Sulawesi (one case), and South Sulawesi (five cases). From respective cases, it can be seen the application of general election offenses of bribery/ money politics in the 2004 General Elections.

Based on Section 139 paragraph (2), the elements of bribery are: (i) any one; (ii) intentionally; (iii) giving or promising money or other material; (iv) to any one; (v) in order not to use his voting right, or to choose certain general elections participants, or to use his voting right in a certain manner therefore his ballot will be invalid.” In certain cases, the action of distributing a package of sembako (nine basic needs) and bags with the logo of political parties or stickers can be categorized as bribery actions. What is declared by fulfilling such section is not only by giving away the nine basic needs but also by giving away cigarettes and calendars of political parties. In several cases, the fulfillment of elements of bribery offense is by the presence of giving money/material accompanied by things which represent such political parties or candidates for the members of DPR/DPD/DPD in the form of pictures, photographs, calendars, etc.

Is a promise to give part of his salary to the people if he is elected can be considered as bribery? The Decision of the Judges of the Metro Lampung District Court in the case of Agus Gunawan Bin Ceece Arifin and Muhammad Ali Paksi Bin Marzuki affirmed that such promise could be considered as bribery. In this case, those two convicts who become the candidates for members of DPRD are accused for making agreement on stamp duty, which contains the providing of compensation fund for every month if they were elected as members of the DPRD of the City of Metro.25

2. Malaysia

In Malaysia, bribery is clearly categorized in the corruption practices. Different from Indonesian General Elections Law (Law No. 12 of the Year 2003) which only recognize one bribery, in the Election Offences Act 1954, there are nine election offenses which could be categorized as bribery, i.e., as stipulated in Section 10 (a) to Section 10 (i). The sanction for bribery is imprisonment for a term not exceeding two years and to a fine not exceeding one thousand ringgit and not more than five thousand ringgit, and in any other cases, to imprisonment for a term not exceeding one year and to a fine not exceeding two thousand ringgit. In addition to the above-mentioned sanctions, Section 11 (2) affirmed that incapacity for any one proven of conducting corrupt practice, i.e., “become incapable of being registered or listed as an elector or of voting at any elections or of being elected at any elections.”

With nine types of bribery in general elections, it can be stated that the scope of bribery in this country is much broader and more detailed compared to bribery in Indonesian Elections Law. According to the provision of Section 10, the threatened sanction can be imposed both to the giver of bribe and to the receiver of bribe. Section 10 (a), for example, referring to the giver of bribe, i.e., person who “gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavor to procure, any money or valuable consideration to or for any elector or voter...”, while Section 10 (d) is relating to the person receiving or accepting bribe: “every person who upon or in consequence of any gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavors to procure, the elections of any person, or the vote of any elector or voter at an election.”

The sanction of bribery can also be imposed on any one who directly or indirectly giving bribe or receiving bribe, i.e., with the elements of “directly or indirectly, by himself or by any other person on his behalf” which are contained in Section 10 (a), Section 10 (b), Section 10 (c), Section 10 (g), Section 10 (h), and Section 10 (i).

In Indonesia, implicitly, bribery is conducted before voting, while in Malaysia, such bribery can be conducted before or after voting, therefore any one who receives a gift after he had voted for a certain candidate, he/she shall be punished for bribery. Section 10 (a), the last sentence states: “or corruptly does any such act as aforesaid on account of such elector or voter having voted or refrained from voting at any elections.” All the same, Section 10 (g) states that: “every person who directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or to refrain from voting at any such elections.” This is the same as the definition of bribery in general elections as meant in the Black’s Law Dictionary.

The provision in the Section 10 also clearly states the manner in giving bribe, i.e., gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavor to procure. Bribe can also be in the form of any money or valuable consideration or by any office, place, or employment. Bribery herein is not only in the form of vote buying, but also bribery in the form of...
be nominated or to withdraw from nomination. As mentioned above in Section 10 (i): “...to agree to be nominated as a candidate or to refrain from becoming a candidate or to withdraw if he has become a candidate...”

Actions as mentioned above must be proved to be conducted “in order to induce any elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such elector or voter having voted or refrained from voting.” If this element is not proven, the bribery accusation will fail, as occurred in the case of Wong Sing Nang v. Tong Thai King.27 This case indeed settled through elections petition, therefore, it did not go trough criminal proceeding. However, the provision underlying such petition is Section 10 (a) which is categorized as bribery offence.

That donation is conducted “in order to induce any elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such elector or voter having voted or refrained from voting” is not easy to prove, since such giving can be intended for other purposes. In this case, the petitioner submitted that a few days before the polling day, the respondent had handed over a cheque for RM 200,000 in favor of the United Association of Private Chinese Secondary School Boards Management, Sibu to its chairperson, Lau Siew Nyoong (Lau). The petition alleged that the donation was a personal donation of the respondent and was made in order to induce the voters of Lanang to vote for him. The respondent, on the other hand, said that the donation was given as an advance on behalf of his company, the Rimbunan Hijau Group of Companies, of which he was a director, and was not different from other donations made by the company for the purposes of promoting Chinese education and culture in Sibu.

On the evidence, the petitioner had failed to prove beyond reasonable doubt that the donation of RM 200,000 was a personal donation and that it was given with the illegitimate motive of influencing or inducing the voters in the Lanang constituency to vote for the respondent.

Can a statement that if a candidate wins, he will give a contribution to the people be considered as bribery? This can be observed in the case of Toh Telk Huat v. Lim Keean Siew & Ayner.28 In this case, the petitioner was a voter and the Democratic Action Party unsuccessful candidate in by-elections for the Penang State constituency of Pengkalan Kota. He applied to nullify the election of the first respondent, a Barisan Nasional candidate, who was returned as duly elected, on the sole ground that a corrupt practice under section 32 (e) of the Election Offences Act 1954 been committed by Tengku Razaleigh Hamzah the then Minister of Finance. The petitioner claimed that the Minister, in the course of speaking to a crowd of over 1,500 voters in the constituency, had said, “If the Barisan Nasional win, I will personally give more money for the improvement of Pengkalan Kota”.

The petitioner claimed that the statement was published in the New Sunday Times on the following day and contended that the statement must have induced the voters in the constituency to vote for the first respondent in the by-elections. In his evidence, the Minister denied making the alleged statement. He stated that what he had said to the people, in bazaar Malay, was to the effect that “If we (meaning the Barisan Nasional) win, we shall make allocation in the Malay version using the words ‘plenty of money’) to bring more development for the benefit of the people in the area.” He claimed that what appeared in the newspaper the following day was a wrong translation in English of what he had said in an extemporaneous address, given impulsively, when he was called upon to speak. His statement was further corroborated by the Minister of Housing and by the Deputy Finance Minister, who were both present at the gathering and testified in court.

In this case, the Judges stated that what the Minister had said, whilst addressing the crowd in his bazaar Malay, was that if the Barisan Nasional wins, he would promote projects and development programs for the benefit of the people in the constituency. The statement in question even if it was made, which on the evidence was not, does not amount to bribery within the meaning of section 10 (a) of the Election Offences Act and it follows, there has been no corrupt practice under section 11.

With more number of election offences in the form of bribery, its scope is also broader (compared to bribery in the Indonesian General Elections Law). Section 10 (e), for example, contains one of the types of bribery. This Section contains the following elements: (i) every person who; (ii) advances or pays or causes to be paid any money to, or to the use; (iii) any other person with the intent that such money or any part thereof shall be expended in bribery at any elections; (iv) or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any such elections.

All the same with Section 10 (f) which contain the following elements: (i) every elector or voter who; (ii) before or during any elections; (iii) directly or indirectly; (iv) by himself or by any other person on his behalf; (v) receives, agrees, or contracts for any money, give, loan, or valuable consideration, office, place or employment; (vi) for himself or for any other person; (vii) for voting or agreeing to vote or to refrain from voting or agreeing to refrain from voting at any such elections.

F. The Comparison of Regulation Concerning Election Offences

It is clear that those two countries, i.e., Indonesia and Malaysia have criminal provisions to be used to protect the purity of the general elections process, which are regularly held in those countries. In Indonesia, the legislative election offences are stipulated based on the Law No. 12 of the year 2003 which stipulates actions categorized as offences as stipulated in Chapter XV, i.e., Section 137, Section 138, Section 139 and Section 140, which in total are 31 election offences.

In Malaysia, election offences can be found in particular law separated from general elections law or penal code, that is Election Offences Act 1954. Election offences in Malaysia can be categorized into three classifications, i.e.: electoral offenses, corrupt practices, and illegal practices. If being added up the entire general election offences contained in the Election Offences Act 1954 are 68 election offences.

27 Wong Sing Nang v. Tong Thai King [1996] 1 AMR 1044
28 [Penang - Elections Petition No. 1 of 1981], February 9, 10 & 12, 1981.
Among various election offences, bribery is one of the most important to be observed. The sources of political power especially consist of five types: the physical strength, authority, charisma, science and technology, and money or economical power. Through the fifth source of political power, any one or a group of people can buy and control many things, including acquiring power. Therefore, the utilization of money in general elections becomes a universal phenomenon that the arrangement of bribery usually exists in the laws of each of those countries.

Comparison of bribery arrangement according to the general elections laws in Indonesia and Malaysia can be summarized in the following table:

It can be stated that the arrangement of bribery in Indonesia is very brief compared to its arrangement in Malaysia. As a description, we can take the one and only general elections offence stipulated in Section 139 paragraph (2) and compares it with one of the provision, which is the most similar in the other countries. We can perceive that its scope is the narrowest. For clarity, can be observed from the below table.

### Table 1
**Bribery Arrangement in Two Countries**

<table>
<thead>
<tr>
<th>Law</th>
<th>Law No. 12 of the year 2003</th>
<th>Election Offences Act 1954</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section</td>
<td>139 paragraph (2)</td>
<td>10 (a) - 10 (i)</td>
</tr>
<tr>
<td>Number of Bribery Offences</td>
<td>1</td>
<td>9</td>
</tr>
<tr>
<td>Sanctions</td>
<td>Imprisonment of 2 - 12 months and/or fine of Rp1.000.000,00 - Rp10.000.000,00</td>
<td>Imprisonment for a term not exceeding two years and to a fine of not less than one thousand ringgit and not more than five thousand ringgit, and, in any other case, to imprisonment for a term not exceeding one year and to a fine not exceeding two thousand ringgit.</td>
</tr>
<tr>
<td>Incapacity</td>
<td>----</td>
<td>Become incapable of being registered or listed as an elector or of voting at any elections or of being elected at any elections</td>
</tr>
</tbody>
</table>

### Table 2
**Comparison of Elements of One Type of Bribery in Two Countries**

<table>
<thead>
<tr>
<th>Indonesia</th>
<th>Malaysia</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Any one</td>
<td>i) every person</td>
</tr>
<tr>
<td>(ii) deliberately</td>
<td>ii) who directly or indirectly,</td>
</tr>
<tr>
<td>(iii) gives or promises money or other material</td>
<td>iii) by himself or by any other person on his behalf,</td>
</tr>
<tr>
<td>(iv) to any one</td>
<td>iv) gives, lends, or agrees to give or lend,</td>
</tr>
<tr>
<td>(v) in order to not use his voting right, or to choose certain general elections participant, or to use his voting right in a certain manner therefore the ballot becomes invalid.&quot;</td>
<td>or offers, promises, or promises to procure or to endeavor to procure any money or valuable consideration</td>
</tr>
<tr>
<td>to or for any elector or voter, or to or for any person on behalf of any elector or voter or to or for any other person,</td>
<td>v) to or for any elector or voter, or to or for any person on behalf of any elector or voter or to or for any other person,</td>
</tr>
<tr>
<td>in order to induce any elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such elector or voter having voted or refrained from voting at any elections</td>
<td>vi) in order to induce any elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such elector or voter having voted or refrained from voting at any elections</td>
</tr>
</tbody>
</table>

It can be stated that each country has mentioned several election offences, which are considered dangerous, and threatening the sanctity of the free and fair general elections. Each country has considered what actions are considered dangerous and determined them as election offences either in the general elections law or in specific law regarding election offences. Several election offences, which are universally known, have been stipulated in these two countries.

Referring to the United Nations’ Human Rights standards regarding elections especially concerning the common elements of electoral laws and procedures, it mentions that the national electoral law must also protect the political process from corruption, official misfeasance, obstruction, undue influence, personation, bribery, treating, intimidation and all other forms of illegal and corrupt practice.

The substance of the above-mentioned offences has been contained in the general elections laws (including election offences act) in Indonesia and Malaysia. However, the number, the types and the scopes of the election offences in these two countries are different from one another. For example, for elections categorized, as illegal practices in Malaysia, there are 23 offences. All the same with other types of election offences, such as, corrupt practices or offences related to the obligation to maintain secrecy.

The general election legal frameworks
in Indonesia and Malaysia have elaborated punishment for certain violations of law.\textsuperscript{29} The legal framework in these two countries has attempted to ensure the fairness of elections, which required a number of technical and legal measures designed effectively to protect the process from bias, fraud or manipulation. Such measures included, inter alia, provisions for outlawing and punishing corrupt practices.\textsuperscript{30} Electoral laws in Indonesia and Malaysia have attempted to protect the political process from corruption, official misfeasance, obstruction, undue influence, personation, bribery, treating, intimidation and all other forms of illegal and corrupt practice.\textsuperscript{31}

G. Conclusion

Indonesia and Malaysia for some level have already adopted international norms regarding election offences settlement. To prevent the widespread of election offences which are very dangerous for democratic process, Indonesian and Malaysian legal framework have several legal provisions that address these serious problems. The importance of those provisions is related to creation of a free and fair atmosphere during the process of general elections. The legal framework of these two Asian countries are not only provide several prohibitions and sanctions related to election offenses, but also provide certain procedure to handle such actions.

The critical issues related to election offenses, among others, are the definition, the coverage, and the elements of election offenses. With respect to money politics, the Indonesian legal framework still need to be reformed due to some lacks and weaknesses. One of the weakness is a very limited number of criminal provisions and coverage of money politics in General Election Laws. Compare to Malaysia legal system, we can conclude that Malaysian legal framework regarding election offenses is more comprehensive than that of Indonesia, particularly in money politics. There are a number of manipulative conducts related to money politics which are not yet prohibited in Indonesian general elections law, because the formulation of such offence is very limited. In the next general elections, we need more provisions to prevent those particular offenses.

\textsuperscript{31} Ibid., p. 672.
al Election]. KIPP Indonesia, Jakarta.
Umar, Musni and Syukri Ilyas (ed), 2004, 
Korupsi Musuh Bersama [Corruption 
the Common Enemy], Lembaga Pence-
gah Korupsi, Jakarta.
United Nations, 1994, Professional Training 
Series No. 2 Human Rights and Elec-
tions A Handbook on Legal, Technical, 
and Human Rights Aspects of Elections, 
Webster’s, 1968, Third New International 
Dictionary of the English Language.
Wu Min Aun, 1975, An Introduction to the 
Malaysian Legal System, Heinemann 
Educational Books (Asia) Ltd, Kuala 
Lumpur.