

## The Use of Proceeds from Criminal Activities for Election Campaign Contributions

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### Abstract

The utilization of proceeds from criminal activities for political campaign purposes in the context of General Elections, as donations from external sources, is feasible under money laundering practices. Relevant criminal provisions addressing this issue include Article 339, paragraph (1) of letter c of the Election Law, Article 5, paragraph (1) of the Money Laundering Law, and Article 137 of the Narcotics Law. Given that these provisions are *lex specialis*, it is essential to elucidate the parameters that will guide law enforcement officials in addressing the use of criminal proceeds for political campaigns and other electoral contests. This research employs normative juridical legal methods, focusing on an inventory of positive law. The findings indicate that the *lex specialis derogat legi generali* principle applies in implementing Article 339 paragraph (1) letter c of the Election Law, particularly concerning campaign participants receiving campaign fund donations from criminal activities. Article 5, paragraph (1) of the Money Laundering Law pertains to individuals who receive money or assets from criminal activities without the election participants' status. Election participants who accept the proceeds of crime for campaign funds may be suspected of being active perpetrators of money laundering or as parties who commit or facilitate money laundering.

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### Introduction

Money laundering is a secondary crime aimed at concealing the origins of assets derived from illegal activities.<sup>1</sup> The widespread circulation of such criminal assets within a country poses a significant threat to the stability and integrity of its financial system.<sup>2</sup> The primary objective of money launderers is to legitimize the assets obtained from criminal activities, allowing them to be used freely and safely.

<sup>1</sup> Lisanawati, Go. Unravelling Legal Issues Related to Financial Transactions in Money Laundering. *AML CFT Journal* 1(2) (2023): 183-204, <https://doi.org/10.59593/amlcft.2023.v1i2.59>.

<sup>2</sup> Sirait, N. N. & Rangkuti, L. H. Y., Non-Profit Organisations (NPOs) as Media for Money Laundering Crimes. *AML CFT Journal* 1(2) (2023): 132-145, <https://doi.org/10.59593/amlcft.2023.v1i2.54>.

The practice of concealing the origins of illicit money dates back centuries, with historical instances such as Chinese traders transporting merchandise and proceeds from illegal trade.<sup>3</sup> Over time, money laundering techniques have evolved, adapting to technological advancements. The rapid progress of technology and regulatory frameworks struggling to keep pace provide money launderers with new opportunities to obscure the origins of criminal assets. Laundered proceeds can be directly enjoyed by criminals or reinvested to fund various illegal activities, including political endeavors. These funds may be used to support specific candidates in general elections who are perceived to further the interests of criminals. Additionally, criminals might use these funds for election logistics and garner support.

It is widely acknowledged that the circulation of money from illicit sources has become commonplace in politics. Even in countries with well-established democracies, political donations are often viewed as investments.<sup>4</sup> The campaign process is critical for gaining support and votes, but conducting an extensive and dynamic campaign requires substantial financial resources. According to Ahmad Sholikin,<sup>5</sup> the rise in basic prices due to annual inflation increases the overall cost of campaign needs. Additionally, the current landscape demands significant expenditure, where nearly all promotional activities involve digital content and influencer services.

Campaign logistics are not the only factor driving the high political costs. Money politics also plays a substantial role in escalating the funding required by General Election participants. According to Almas Ghaliya,<sup>6</sup> money politics manifests in various forms and stages, including political dowries at the nomination stage, vote-buying during the campaign and voting stages, bribes to election officials during vote counting and recapitulation, and bribes in the resolution of election disputes. Arif Amrullah notes that election contestants are aware that winning an election requires substantial funds, which may lead them to seek financial support from illegal sources, including proceeds from money laundering activities.<sup>7</sup>

The significant need for campaign funds often drives political parties to seek donations from external sources.<sup>8</sup> These donations may come with the expectation of kickbacks from the donors.<sup>9</sup> According to Laurensius Arliman,<sup>10</sup> candidates might resort to money laundering proceeds from corruption to meet their substantial campaign financing needs. Additionally, there is potential for

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<sup>3</sup> Ariesiyani, A. E. N., & Alham, L. G. Money Laundering in APEC Countries: A Gravity Model Analysis of Attractiveness and Destination Choices. *AML CFT Journal* 1(2) (2023): 146-166, <https://doi.org/10.59593/amlcft.2023.v1i2.56>

<sup>4</sup> Reza Syawawi, "Memutus Oligarki dan Klientelisme Dalam Sistem Politik Indonesia Melalui Pembaharuan Pengaturan Pendanaan Partai Politik Oleh Negara [Breaking Oligarchy and Clientelism in the Indonesian Political System Through the Reform of Political Party Funding Arrangements by the State]," *Jurnal Legislasi Indonesia*, Vol.18 (1) (2021).

<sup>5</sup> Ahmad Solikin, "Mahalnya Ongkos Politik dalam Pemilu Serentak Tahun 2019 [The Expensive Political Costs in the 2019 Simultaneous Elections]," *Jurnal Transformatif*, Vol. 5 (1) (2019): 99. <https://doi.org/10.21776/ub.transformatif.2019.005.01.6>.

<sup>6</sup> Putri Sjafrina, A. G. Dampak Politik Uang Terhadap Mahalnya Biaya Pemenangan Pemilu dan Korupsi Politik. *Integritas: Jurnal Antikorupsi*, 5(1) (2019): 43-53. <https://doi.org/10.32697/integritas.v5i1.389>

<sup>7</sup> M. Arief Amrullah, *The potential of money laundering in the regent election in Indonesia*,

<sup>8</sup> Reza Syawawi, "Memutus Oligarki dan Klientelisme Dalam Sistem Politik Indonesia Melalui Pembaharuan Pengaturan Pendanaan Partai Politik Oleh Negara [Breaking Oligarchy and Clientelism in the Indonesian Political System Through the Reform of Political Party Funding Arrangements by the State]," *Jurnal Legislasi Indonesia*, Vol.18 (1) (2021).

<sup>9</sup> Veri Junaidi, et al. *Anomali Keuangan Partai Politik, Pengaturan dan Praktek [Political Party Financial Anomalies, Regulation and Practice]*. Jakarta: Perludem, 26. 2011.

<sup>10</sup> Laurensius Arliman "Keterbukaan Keuangan Partai Politik Terhadap Praktik Pencucian Uang dari Hasil Tindak Pidana Korupsi [Financial Disclosure of Political Parties to the Practice of Money Laundering from the Proceeds of Corruption Crimes]" , *Jurnal Cita Hukum*, Vol 4 (2) (2016): 233.

using proceeds from narcotics crimes for political campaigns. Police Commissioner Jayadi,<sup>11</sup> Deputy Director for Narcotics Crime at the Criminal Investigation Agency of the Indonesian National Police, indicated that legislative members arrested by his team in various regions were suspected of planning to use funds from illicit narcotics trafficking for the 2024 elections.

Various regulations govern campaign finance. Article 5, paragraph (1) of the Money Laundering Crime Law prohibits individuals from receiving, controlling, or spending assets they know, or reasonably suspect are derived from criminal activities. Similarly, Article 339, in conjunction with Article 527 of Law Number 7 of 2017 on Elections, prohibits election participants from accepting donations to campaign funds that aim to conceal or disguise the origins of assets obtained through criminal acts. According to these provisions, if an election participant receives and uses money from a crime to purchase campaign materials, it raises the question of which legal provision should be applied. Additionally, if the money received is from narcotics crimes, the Narcotics Law has sanctions for those who spend or use such illicit funds.

Laurensius Arliman suggests that utilizing the proceeds of corruption by potential candidates during elections, extending to the general election phase, is customary. This assertion finds support in the observations of Reza Syawawi, who notes that the circulation of money from illicit sources is prevalent in the political sphere.<sup>12</sup> Moreover, Arief Amrullah identifies electoral campaigns as a means of concealing or laundering the proceeds of criminal activities, where candidates and financiers collaborate for mutual gain.<sup>13</sup> Further insights into the utilization of criminal proceeds for political campaigns were provided by Aditya Wiguna, who examined the intersections between the Money Laundering Crime Law and the Election Law.<sup>14</sup> Given these observations, there is a pressing need for a comprehensive analysis of the potential liabilities and distinguishing parameters in applying relevant legal provisions when election participants utilize assets derived from criminal activities as campaign funds.

The determination of the application of legal articles relies on specific parameters or variables, along with the application of criminal law principles such as *Lex Specialis Derogat Legi Generali* and *Lex Consumens Derogat Legi Consumptae*. These principles dictate the selection of criminal provisions to be applied in conflict between two *Lex Specialis* provisions. This study employs a normative juridical research method with a conceptual approach, analyzing secondary data encompassing the perspectives and doctrines of various experts who have contributed to the evolution of legal scholarship.<sup>15, 16</sup>

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<sup>11</sup>Wartakota, "Polisi Temukan Adanya Indikasi Uang dari Peredaran Narkoba untuk Dana Kampanye Pemilu, Ini Kata KPU [Police Find Indications of Money from Drug Trafficking for Election Campaign Funds, This Is What the KPU Says]," diakses pada 30 oktober 2023, <https://wartakota.tribunnews.com/2023/05/25/polisi-temukan-adanya-indikasi-uang-dari-peredaran-narkoba-untuk-dana-kampanye-pemilu-ini-kata-kpu>.

<sup>12</sup>Reza Syawawi, "Memutus Oligarki dan Klientelisme Dalam Sistem Politik Indonesia Melalui Pembaharuan Pengaturan Pendanaan Partai Politik Oleh Negara [Breaking Oligarchy and Clientelism in the Indonesian Political System Through the Reform of Political Party Funding Arrangements by the State]," *Jurnal Legislasi Indonesia*, Vol.18 (1) (2021).

<sup>13</sup>Amrullah, M. A., The potential of money laundering in the regent election in Indonesia. *Jurnal Cakrawala Hukum*, 13(3) (2022): 231-241. doi:10.26905/idjch.v13i3.8856.

<sup>14</sup>Sanjaya, A. W. The Intersect of Money Laundering and Electoral Crimes in the Context of Election Campaign Finance. *AML CFT Journal* 2(1) (2023):35-44, <https://doi.org/10.59593/amlcft.2023.v2i1.70>.

<sup>15</sup>Peter M. Marzuki, *Penelitian Hukum Edisi Revisi [Legal Research Revised Edition]*, (Jakarta: Kencana), 135. 2017.

<sup>16</sup>Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat [Normative Legal Research: A Brief Review]*, (Jakarta: Raja Grafindo), 13. 2015.

## The Use of Proceeds from Criminal Activities as Election Campaign Contributions

In response to global challenges and the significant growth of money laundering crimes, Indonesia's anti-money laundering regime, with the Financial Transaction Reports and Analysis Center at its core, continues to evolve to address these challenges and maintain the integrity of the country's financial system. A historic milestone was reached on October 25, 2023, when Indonesia was officially declared a member of the Financial Action Task Force (FATF) by acclamation.<sup>17</sup> However, Indonesia now faces the imminent challenge of the 2024 General Election. General elections are fundamental for exercising citizens' human rights and affirming popular sovereignty. Through these elections, public officials and representatives, expected to originate from the people, are tasked with executing the people's will and dedicating themselves to public welfare.<sup>18</sup>

As a battleground for the people's mandate, general elections require all participating parties to maximize their efforts to garner votes and support. Competing ideas, programs, and political promises are used to win the sympathy and backing of the electorate, ideally aligning with the majority's aspirations. Every political contestant employs various strategies to secure victory in the electoral contest.<sup>19</sup> Periodic general elections are a cornerstone of a democratic system, and the success of democracy hinges on the conduct of honest and fair elections.<sup>20</sup> Periodic general elections are a cornerstone of a democratic system, and the success of democracy hinges on the conduct of honest and fair elections. A recurrent challenge in election implementation is the potential for regulatory violations. The fierce competition for executive and legislative seats often leads to various issues and infractions.<sup>21</sup>

A common issue arising from the intense competition for executive and legislative seats is the significant expenses candidates must bear. These costs are not only due to the high expenses of outreach and campaigning but also political dowries, which are required to secure support from certain parties. A political dowry refers to the sum of money a candidate must spend to gain backing from a specific party, representing a form of money politics. According to Ibrahim and Fahmy,<sup>22</sup> money politics involves any election stage that can be influenced by money to benefit a political party or candidate or to harm another. Political operatives often present money politics as a routine and pervasive practice.<sup>23</sup> Political dowries are essentially covert transactions where candidates provide substantial funds to the political parties facilitating their campaigns.<sup>24</sup>

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<sup>17</sup> Subiyanto, Achmad Edi. "Pemilihan Umum Serentak Yang Berintegritas Sebagai Pembaruan Demokrasi Indonesia [Simultaneous General Elections with Integrity as a Renewal of Indonesian Democracy]". *Jurnal Konstitusi* 17, no. 2 (2020): 355–371.

<sup>18</sup> Badaru, Baharuddin. "Pemahaman Hukum Terhadap Kejahatan Pemilihan Umum Kepala Daerah Yang Dilakukan Oleh Aparatur Sipil Negara [Legal Understanding of Crimes in Regional Head General Elections Committed by State Civil Apparatus]". *UNES Law Review* 6, no. 1 (2023): 1669-1679.

<sup>19</sup> Jimly Asshiddiqie, *Pokok-Pokok Hukum Tata Negara Indonesia, Pasca Reformasi [Principles of Indonesian Constitutional Law, Post-Reform]*. (PT Bhuna Ilmu Popular: Jakarta), 752. 2007.

<sup>20</sup> C.S.J Kilapong "Pertanggungjawaban Pidana Bagi Pelaku Tindak Pidana Pemilihan Umum Menurut Undang-Undang Nomor 7 Tahun 2017 [Criminal Liability for Perpetrators of General Election Crimes According to Law Number 7 of 2017]", *Jurnal Lex Crimen*, Vol.IX (3) (2020): 218.

<sup>21</sup> Fransiska Adelina, "Bentuk-Bentuk Korupsi Politik [Forms of Political Corruption]", *Jurnal Legislasi Indonesia*, 16 (1) (2019): 60.

<sup>22</sup> Ibrahim Z. Fahmy Badoh, Abdullah Dahlan, *Korupsi Pemilu di Indonesia [Election Corruption in Indonesia]*. (Jakarta: Indonesia Corruption Watch), 19.

<sup>23</sup> Burhanuddin Muhtadi, *Kuasa Uang, Politik Uang dalam Pemilu Pasca Orde Baru [The Power of Money, Money Politics in the Post-New Order Regime]*. (Gramedia: Jakarta), 6. 2020.

<sup>24</sup> Amsari, F., & Febrinandez, H. L. Menjerakan Pelaku "Uang Mahar" Pemilu [Trapping the Perpetrators of Election "Dowry Money]". *Integritas: Jurnal Antikorupsi*, 5(1) (2019): 97–110. <https://doi.org/10.32697/integritas.v5i1.412>

Another prevalent form of money politics is voting buying. Pfeiffer<sup>25</sup> identifies direct voter bribery during elections as a prominent example of political corruption.

The high costs associated with political campaigns often drive candidates to seek alternative funding sources for campaign expenses and other election-related needs. Arif Amrullah states<sup>26</sup> that these illicit practices persist because candidates and sponsors have mutually beneficial relationships. Candidates require significant funds for their political campaigns, while sponsors need to launder their illegal money. These agreements are typically made secretly between candidates and sponsors.

Corruption is not the only primary source of illicit funds used to finance election campaigns. In several instances, illegal funds for election activities have also been derived from other criminal activities, such as narcotics trafficking and environmental crimes. Additionally, there are indications of substantial illegal funds originating from mining and fisheries crimes, as noted by Ivan Yustia Vandana, the Head of the Indonesian Financial Transaction Reports and Analysis Centre.<sup>27</sup>

While using money from narcotics crimes for election purposes remains speculative, the National Police Criminal Investigation Directorate will collaborate with the Financial Transaction Reports and Analysis Center for further investigation.<sup>28</sup> This suspicion is reinforced by the arrest of several Regional People's Representative Council members linked to drug-related offenses, with some even identified as dealers.<sup>29</sup> The substantial financial outlay required by candidates compels them to maximize their efforts to win elections. For candidates who are not well-known or lack a positive track record, vote-buying becomes a rational and immediate strategy to mobilize voters.<sup>30</sup> Once elected, their primary concern often becomes recouping the capital spent on their campaign. This situation leads to political corruption through influence peddling and abusing the power or position obtained.<sup>31</sup>

### **The Use of Proceeds from Criminal Activities for Election Activities: Between Money Laundering and Election-Related Crimes**

The formulation of an offense in criminal law serves two primary functions. Firstly, it ensures the concrete application of the principle of legality, wherein criminal sanctions are only applicable to actions pre-defined as punishable by legislation, thereby safeguarding against arbitrary enforcement. Secondly, it operates as a guide for evidence in criminal procedural law.<sup>32</sup>

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<sup>25</sup> Silke Pfeiffer, *Vote Buying and Its Implication for Democracy: evidence from Latin America*, TI Global Report, 76, 2004.

<sup>26</sup> Amrullah, M. A., *The potential of money laundering in the regent election in Indonesia*, 42.

<sup>27</sup> CNBC Indonesia, "Dugaan PPAK hasil tambang liar masuk ke dana pemilu [Allegations that PPAK from illegal mining went to election funds]," accessed on October 30, 2023, <https://www.cnbcindonesia.com/news/20230214171543-4-413791/dugaan-ppatk-hasil-tambang-liar-masuk-ke-dana-pemilu>.

<sup>28</sup> Humas POLRI, "Telusuri dana kampanye pemilu 2024 Bareskrim POLRI gandeng PPAK [Exploring the 2024 election campaign funds, POLRI collaborates with PPAK]. Accessed on October 30, 2023, <https://humas.polri.go.id/2023/05/25/telusuri-aliran-dana-kampanye-pemilu-2024-bareskrim-polri-gandeng-ppatk/>.

<sup>29</sup> *Ibid*

<sup>30</sup> Putri Sjafrina, *Dampak Politik Uang Terhadap Mahalnya Biaya Pemenangan Pemilu dan Korupsi Politik [The Impact of Money Politics on the High Cost of Winning Elections and Political Corruption]*, 50.

<sup>31</sup> Satria, H. *Politik Hukum Tindak Pidana Politik Uang dalam Pemilihan Umum di Indonesia [Legal Politics of Money Politics in General Elections in Indonesia]*. *Integritas: Jurnal Antikorupsi*, 5(1) (2019): 1–14. <https://doi.org/10.32697/integritas.v5i1.342>

<sup>32</sup> D. Schaffmeister, N. Keijzer, E.P.H. Sutorius, *Hukum Pidana [Criminal law]*, (Bandung, Citra Aditya Bakti), 25. 2011.

As highlighted by Eddy O.S. Hairiej,<sup>33</sup> the formulation of an offense embodies the principle of legality and serves as evidentiary criteria within the context of criminal procedural law. In this context, evidence comprises parameters or elements necessary to establish whether an individual's actions constitute an offense.

The provisions outlined in the Election Law prohibit various entities, including election participants, campaign organizers, and campaign teams, from accepting donations from foreign entities and governmental bodies, including State-owned and Regional-owned enterprises, for election campaign funds. Moreover, these regulations extend to donations from individuals with ambiguous identities and assets derived from proven criminal activities, as determined by court decisions with permanent legal force, or to conceal or disguise illicit proceeds.<sup>34</sup> Violations of these provisions incur penalties of imprisonment for up to three years and fines of up to IDR 36,000,000.00.<sup>35</sup>

Of particular interest within this provision is the clause about "*receiving donations from the proceeds of criminal acts that have been proven based on court decisions that have permanent legal force and/or are aimed at hiding or disguising the proceeds of criminal acts.*" Within this context, it can be inferred that if fund transfers or campaign contributions are received when no court decision with a permanent legal force exists, the receipt of such funds may not fulfill the requirements for offense formulation. However, Article 339 of the Election Law provides further elucidation regarding donations to Election Campaign funds aimed at concealing or disguising the results of criminal activities. This provision introduces the phrase "*and/or,*" indicating alternative conditions that satisfy the offense formulation even if the initial condition is unmet. In essence, election participants may be deemed to have violated the provisions of Article 339 of the Election Law even if donations have not been designated as proceeds of criminal acts by a court decision but are intended to conceal or disguise the origins of assets derived from criminal activities.

Explicitly, election participants can be penalized under Article 339, paragraph (1), letter c, provided that the donation originates from criminal proceeds and the purpose of the donation is to disguise the origin of the wealth. Additionally, this provision mandates that election participants receiving such donations must know or at least have an understanding that the donation aims to conceal or hide criminal proceeds. However, Article 339 of the Election Law does not clearly define the level of knowledge the recipients require.

At first glance, the formulation of Article 339, paragraph (1), letter c, appears similar to Article 5 of the Money Laundering Law,<sup>36</sup> which prohibits individuals from receiving, controlling, or spending assets they know, or reasonably suspect originate from criminal activities, including grants or donations. Nevertheless, there are significant differences between these provisions. The legal subjects under Article 339, paragraph (1), letter c, of the Election Law are election participants, including campaign implementers and campaign teams, while Article 5, paragraph (1), of the Money Laundering Law applies to all individuals and corporations.<sup>37</sup> Another difference concerns the knowledge element of the recipient. Article 339 paragraph (1) letter c of the Election Law does not specify whether the recipient must fully know or at least reasonably suspect the criminal origin of the funds. Conversely, Article 5 of the Money Laundering Law stipulates that the perpetrator does not need to have full knowledge but can be held liable if there is an indication that the individual reasonably suspects the assets are from criminal activities. Lastly, there is a disparity in the severity of penalties. Under Article 5,

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<sup>33</sup> Eddy O.S. Hairiej, *Prinsip-Prinsip Hukum Pidana [Principles of Criminal Law]*. (Yogyakarta: Cahaya Atma Pustaka), 130. 2016.

<sup>34</sup> Vide Article 339 Paragraph (1) of the Election Law.

<sup>35</sup> Vide Article 527 of the Election Law.

<sup>36</sup> Vide Article 1 No. 9 of the Money Laundering Law.

<sup>37</sup> Vide Article 137 Paragraph (1) of the Narcotics Law.

paragraph (1) of the Money Laundering Law, the maximum penalty is five years of imprisonment and a fine of up to IDR 1,000,000,000.00. In contrast, Article 339, paragraph (1), letter c, of the Election Law prescribes a maximum penalty of three years of imprisonment and a fine of up to IDR 36,000,000.00. In general, the differences in these provisions can be seen in Table 1.

**Table 1. Differences between Article 339 Paragraph (1) Letter C of the Election Law and Article 5 Paragraph (1) of the Money Laundering Law**

No	Article 339 Paragraph (1) Letter c of the Election Law	Article 5 Paragraph (1) of the Money Laundering Law
1.	Originates from criminal activities with a final and binding court decision	Does not require a final and binding court decision related to the acquisition of criminal proceeds
2.	Does not specify the element of the recipient's "knowledge"	Includes provisions regarding the recipient's knowledge: "knows or reasonably suspects"
3.	Maximum penalty of 3 years imprisonment	Maximum penalty of 5 years imprisonment
4.	Applicable to election participants	Applicable to all individuals

Another legal provision that prohibits using proceeds from criminal activities is Law Number 35 of 2009 concerning narcotics (Narcotics Law). Article 137, paragraphs (1) and (2), of the Narcotics Law prohibits the use of money or property derived from narcotics crimes and/or narcotics precursor crimes.<sup>38</sup> The maximum penalty in paragraph (1) is 15 years of imprisonment, while in paragraph (2) it is 10 years. Notably, Article 137, paragraph (1), of the Narcotics Law does not include the term "knowledge," whereas paragraph (2) mentions explicitly "known to him/her." The distinct feature of Article 137 is its exclusive focus on assets obtained from narcotics crimes or narcotics precursor crimes.

### **Parameters for the Application of Offenses Related to the Use of Proceeds from Criminal Activities for Election Purposes: Between Money Laundering and Election Crimes**

Article 339 paragraph (1) letter c of the Election Law, Article 5 paragraph (1) of the Money Laundering Law, and Article 137 of the Narcotics Law all prohibit individuals from receiving or using assets derived from criminal activities. The key distinctions among these provisions are the legal subjects and the sources of funding they address. There is a need for a clear framework to determine the most appropriate article to apply in cases involving illicit funds.

In legal dogmatics, there are three principles of preference: 1) *Lex Superior Derogat Legi Inferiori* (higher rules override lower rules); 2) *Lex Posterior Derogat Legi Priori* (new rules override previous rules); and 3) *Lex Specialis Derogat Legi Generalis* (special rules override general rules).<sup>39</sup> *Lex Specialis Derogat Legi Generalis* indicates that special criminal laws take precedence over general criminal laws. Article 339, paragraph (1), letter c of the Election Law, Article 5, paragraph (1) of the Money Laundering Law, and Article 137 of the Narcotics Law are all special laws, or *Lex Specialis*. However, the *Lex Specialis Derogat Legi Generalis* principle does not resolve juridical disputes when an action violates more than one special law. In such cases, the systematic *Lex Specialis* principle is applied, a derivative of the *Lex Specialis Derogat Legi Generalis* principle. According to Rummelink, this principle is known in Dutch law as

<sup>38</sup>Vide Article 137, Paragraph (2) of the Narcotics Law

<sup>39</sup> Eddy O.S Hiariej, Asas *Lex Specialis* Systematis Dan Hukum Pidana Pajak [Principles of *Lex Specialis* Systematis and Tax Criminal Law]. *Jurnal Penelitian Hukum De Jure*. Volume 21(1) (2021). <http://dx.doi.org/10.30641/dejure.2021.V21.001-012>

"*specialiteit juridis*" or "*systematische specialiteit*," while Enschede refers to it as "*logische specialiteit*."<sup>40</sup>

When two or more special criminal laws govern the same issue and cannot be resolved or create enforcement challenges, the *Lex Consumen Derogat Legi Consumte principle* is applied (one special criminal law absorbs another special criminal law). By applying *Lex Consumen Derogat Legi Consumte*, the choice of applicable articles is determined based on the most dominant facts of the case.<sup>41</sup>

When an election participant uses funds derived from criminal activities for campaign expenses, the relevant provision to apply is Article 339, paragraph (1), letter c of the Election Law. This provision is more specific because it requires that the offender be an election participant. The status of an election participant is the dominant factor in determining the applicable article, referring to the *Lex Consumen Derogat Legi Consumte principle*. According to Article 1, Number 27 of the Election Law, election participants include political parties for the election of members of the Council of Representatives, provincial and district/city Regional People's Representative Councils, individuals for the Regional Representative Council, and candidates nominated by political parties or coalitions for the Presidential and Vice-Presidential Elections. Furthermore, Article 1, Number 29 of the Election Law defines Election Contesting Political Parties as those that have met the requirements to participate in the elections for members of the People's Representative Council and the Regional People's Representative Councils. Thus, an election participant is a political party or individual who has fulfilled the necessary requirements and is officially registered as a participant with the General Election Commission.

However, these conditions are not absolute, and certain circumstances can justify overriding the provisions of Article 339 paragraph (1) letter c of the Election Law. The first parameter is related to *tempus* (timing), which holds a crucial position.<sup>42</sup> If an election contestant receives money from a criminal act before attaining the status of an election participant, the applicable provision is Article 5, paragraph (1) of the Money Laundering Law. Under specific conditions, Article 3 of Law No. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering (Money Laundering Law) can also be applied. This regulation stipulates that all actions intended to hide or disguise the origin of proceeds from criminal activities are classified as money laundering offenses.

## Conclusion

The significant political costs incurred by candidates in general elections often lead participants to seek funding from illicit sources or the proceeds of criminal activities. Several factors contribute to these high political costs, including expensive campaign expenditures, the practice of money politics, and political dowries required to secure support from certain political parties. The prohibition on using the proceeds of criminal acts is governed by various provisions, including Article 339, paragraph (1), letter c of the Election Law, Article 5, paragraph (1) of the Money Laundering Law, and Article 137 of the Narcotics Law. These provisions are considered *Lex Specialis*. According to the *Lex Consumen Derogate Legi Consumte principle*, the most

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<sup>40</sup> Eddy O.S Hiariej, *Op.Cit*, 5

<sup>41</sup> *Ibid*

<sup>42</sup> There are five significant aspects of "*tempus delicti*" (the time of the crime). First, to determine whether, at the time the act was committed, it was already classified as a criminal act. Second, to assess whether the Defendant was capable or incapable of responsibility at the time the act was committed. Third, to determine if the Suspect/Defendant was of sufficient age at the time the act was committed. Fourth, to establish the statute of limitations and to determine if there were any aggravating circumstances at the time the act was committed. For further details, see Eddy O.S. Hiariej, *Prinsip-prinsip Hukum Pidana* [Principles of Criminal Law], *Op.Cit*, 295-296.

applicable article for cases involving illicit funds in elections is Article 339, paragraph (1), letter c of the Election Law. However, if an individual receives donations from criminal activities before obtaining the status of an election participant, the provisions of Article 5, paragraph (1) of the Money Laundering Law would apply. In specific circumstances, election participants who receive proceeds from criminal activities for campaign funding may be suspected of being either active participants or accomplices in money laundering.

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