

System of Political Finance Across Asian Democracies: Country Cases

October 2021



In 2020, Asia Democracy Research Network (ADRN) selected transparent political finance as the common requirement to prevent corruption and abuse in Asian democracy.

Against this background, ADRN published this special report to evaluate the current state of political finance systems in the region by studying the phenomenon and its impact within four different countries in Asia, as well as their key reforms in the near future.

The report investigates contemporary questions such as:

What is the legal mechanism in place to assure transparent political finance?

Does the legal framework on political finance place a bar on the use of money in politics?

Is money in politics effectively designed with a built-in oversight mechanism of political finance laws? How much transparency is established in the legal framework?

What are the key areas requiring reform in the political finance systems to achieve transparency?

Drawing on a rich array of resources and data,

This report offers country-specific analyses, highlights areas of improvement, and suggests policy recommendations for ensuring transparent political finance systems with integrity.

“Systems of Political Finance Across Asian Democracies: Country Cases”

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Executive Summary

The field of politics is not a sanctuary for money. Political campaigns, parties, and lawful lobbys require money. However, money in politics should be regulated according to due process to prevent a democracy from deteriorating into a plutocracy.

The system of political finance across Asian democracies, including the income and spending of individual political parties and candidates, is a key factor in facilitating democratic quality and institutional effectiveness, especially in newer democracies that may be vulnerable to the commercialization of politics and corruption.¹

Across democratic countries, there are various systems on which political parties and politicians are based to raise necessary funds for their campaigns and political purposes. To describe such funds, we use the term “political finance,” which provides important perspectives when searching for ways to achieve more transparent political systems. Well spent political funds can bring fruitful results in democratic countries, but when it is abused, problems of corruption and abuse will disturb the political system and the spirit of democracy. Creating and maintaining a system of checks and balances is, thus, decisive to ensure a level playing field for all actors involved in democratic politics.

With this in mind, the Asia Democracy Research Network (ADRN) has been conducting research on the System of Political Finance Across Asian Democracies based on the country cases since 2020. The research group comprises four member institutions from different countries: the Indonesian Institute of Sciences (Indonesia), the Institute for Democracy and Economic Affairs (Malaysia), the Pakistan Institute for Legislative Development and Transparency (Pakistan), and the Academia Sinica/Asian Barometer (Taiwan).

The research group presents a comparative country case studies with the following objectives: 1) to analyze the political finance systems in place from legal and institutional perspectives, 2) to evaluate the systems’ effectiveness and monitoring mechanisms, 3) to come up with comprehensive feedback of each system by providing the key areas requiring reforms to achieve better transparency in political finance.

Each participating member institution approached the research topic from different angles: government

¹ Ufen, Andreas, and Marcus Mietzner. “Political Finance Regimes in Southeast Asia: Introduction.” *Critical Asian Studies* 47, no. 4 (February 2015): 558-63. <https://www.tandfonline.com/doi/full/10.1080/14672715.2015.1082260>.

subsidies and political parties, the monetization of politics between diverse stakeholders, elections and the political finance mechanisms, and campaign financing in relation to the politics and donors.

Briefly speaking, our Indonesian partner focused on the role of political parties when running vibrant political funding programs in the country. The authors pointed out that the parties' endeavor to collect money from as many sources as possible is not a problem itself, however, such practices can lead to corruption and abuse which harm the integrity of the parties in the end. Together with the government, parties are asked to create concrete guidelines and legal repercussions regarding financial subsidies.

A case study on Malaysia also paid attention to the role of political parties and expressed concerns over the monetization of politics due to the 'black-box decisions' between political parties and Government-Linked Companies (GLCs). To ease the situation, adequate legal enforcement plans to punish such misdeeds are in need, and civic education to the (would-be) voters should be provided to empower the public with better political literacy.

Considering elections as an integral part of democracy, the paper from Pakistan looked into the role of money based on the country's electoral history and systems. The Elections Commissions of Pakistan (ECP) was described as an institutionally empowered framework for quality political finance. However, the system still faces challenges like low public trust and accessibility or less specific instructions in political campaigning and electoral expenses. By introducing reasonable limits on political party expenses, the author argues to fully address the appropriate role of money in politics.

Despite the experiences of economic development and democratization, Taiwanese politics also have difficulties in fulfilling transparent political finance. To fully realize the country's willingness to reduce potential coercive influences of wealthy donors from individuals, corporations, and foreign countries there are still many things to be achieved. Expanding the scope of institutional settings from the Political Finance Act to the anti-corruption law, the Lobbying Act, the Political Parties Act, the public official personal property filing law, and the election and recall law could be one of the choices.

Beyond the aforementioned points, above all, the authors emphasize the importance of securing the principle of political finance to achieve vibrant and transparent democratic systems. We hope that this study will give other countries with similar socio-political backgrounds or those with corresponding challenges insights when checking their politics from the perspectives of money (e.g., funding, financing, donating, monitoring) and considering ways forward to achieve a clearer and more democratic society.

Country Case 1: Indonesia

Indonesian Political Party Finance Laws for Better Accountability

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1. Introduction

In a democracy, political parties are essential institutions. The party functions as a channel to integrate the interests of individuals and groups into the political system and to mobilize and disseminate information to the public, especially in elections.³ Other vital roles of parties are to familiarize the public with democratic norms and practices, articulate and aggregate interests, and recruit and nominate political leadership.⁴ As Indonesia is a democratic country, political parties in Indonesia also play these important roles. The political parties that exist in Indonesia usually compete in the elections that are held every five years. Political parties become eligible to compete in the election only after completing many procedural activities, such as submitting information on the organization and structure of the political party to the General Election Commission (GEC) and undergoing a verification process. After receiving approval from the GEC, the political party is then eligible to take part in the election.

Although political parties have an important role in Indonesian democracy, they are regarded critically by the public. The political party is considered one of the corrupt and rent-seeking institutions that are controlled by the oligarchy. Therefore, the parlous condition of Indonesian political parties is considered to weaken the process of consolidating democracy in Indonesia.⁵ One critical issue in the management of political parties is party funding.⁶ The party financing system, such as membership fees, donations, and state subsidies, is dysfunctional: it results in political party cadres being involved in corrupt practices and encourages parties to raise funds illegally and seek funding from oligarchs.⁷

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³ Ingrid van Biezen, *Financing Political Parties, And Election Campaigns - Guidelines* (Council of Europe Publishing: Integrated Project "Making Democratic Institutions Work," December 2003), 11.

⁴ Natasha M. Ezrow, "The Importance of Parties and Party System Institutionalization in New Democracies," Institute for Democracy & Conflict Resolution - Briefing Paper (IDCR-BP-06/11), (2011).

⁵ Marcus Mietzner, "Party Financing in Post-Soeharto Indonesia: Between State Subsidies and Political Corruption," *Contemporary Southeast Asia* 29, no. 2 (August 2007): 238-263.

⁶ Marcus Mietzner, "Dysfunction by Design: Political Finance and Corruption in Indonesia," *Critical Asian Studies* 47, no. 4, (2015); 587-610.

⁷ Ibid.

This paper will explain the regulation of political party finances in Indonesia (including oversight and compliance mechanisms). It will then evaluate such regulation and identify its key problems. Finally, it will set out proposals for reform.

2. Political Party Finance Regulation: A Framework

Political party funding is defined as costs for campaigns and routine expenses such as permanent maintenance of the organization, development of party policy research, political education functions, and other regular party functions.⁸ Political finance is defined as financing used in the activities of political parties and election campaigns, both legal and illegal.⁹ Political parties need financial resources to maintain their organization, employ party personnel, conduct election campaigns, and communicate with voters.¹⁰

Interaction with voters in a dynamic movement can increase public participation in democratic life. For this reason, political finance is necessary because it can strengthen political parties and candidates and provide equal opportunities for individuals to participate.¹¹ Thus, funding is essential for building inclusive democracies, providing opportunities for parties and candidates to reach voters, and building long-term organizations.¹²

The relationship between money and politics is controversial, as money both provides necessary financial support and has a negative influence on the democratic process. The negative influence of money may in the form of diminishing democracy through cases of corruption, benefiting personal wealth, or undertaking illicit transactions.¹³ Money can also be used as a tool to influence the political policy making process by buying votes and policies.¹⁴ Therefore, an open and transparent financial mechanism is needed in political finance. Such a mechanism is essential for preventing acts of corruption while increasing public trust.¹⁵ In addition, there is a need for regulation of these financial resources to create equality in politics. This need for equality is seen, for example, when in a political campaign, a wealthy candidate or a party with wealthy supporters can spend significantly more funds than other candidates.¹⁶

Regulations or arrangements for political party finances need to include a framework to encourage transparency in financing the political party.¹⁷ Party finance regulations aim to prevent unlawful behavior,

⁸ Michael Pinto-Duschinsky, "Financing Politics: A Global View," *Journal of Democracy* 13, no. 4, (October 2002): 69-86.

⁹ Magnus Ohman, "Introduction to Political Finance," in *Funding of Political Parties and Election Campaigns: A Handbook on Political Finance*, ed. Elin Falguera, Samuel Jones, Magnus Ohman (Stockholm, Sweden: International IDEA, 2014), 2.

¹⁰ Biezen, op. cit, 2003: 12.

¹¹ Ohman, op. cit, 2014: 1.

¹² Krista Lee-Jones, "The Role Of Political Party Finance Reform In The Transition From Dominant To Competitive Party Systems," *U4 Anti-Corruption Helpdesk, Transparency International*, (2019): 4.

¹³ Biezen, op. cit, 2003: 12.

¹⁴ Ohman, op. cit, 2014: 2.

¹⁵ Ibid.

¹⁶ Duschinsky, op. cit, 2002.

¹⁷ Ingrid van Biezen and Petr Kopecký, "The State And The Parties: Public Funding, Public Regulation and Rent-Seeking in Contemporary Democracies," *Party Politics* 13. no. 2, (2007): 235-254.

creating transparency surrounding the money collected and spent. These rules are also meant to regulate sanctions and penalties as well as the mechanism of acquisition, control, and reporting.¹⁸ These rules will be appropriately implemented if accompanied by compliance with and respect for the law. Party financial management also requires a degree of professional capacity within political parties.¹⁹ Therefore, certain mechanisms to provide transparency and accountability are needed.

In democracies around the world, party funding is driven by rising election campaign costs due to advertising in the mass media and the decline in mass parties whose members are willing to pay dues for party funding.²⁰ These changes make it difficult for political parties fund themselves. When the spending of parties exceeds the funds sourced from party membership fees, political parties have to find other sources of finance. This motivated the introduction of public funding for political parties in Indonesia.²¹

The public financing of political parties, however, illustrates the weakening relationship between political parties and society. Whilst public financing does not mean that other resources are irrelevant, it indicates a growing interdependence between parties and the state. Public funding assumes broader interests in terms of building equal competition in a multiparty democracy.²² Therefore, such a financing mechanism has received varying responses. Some may believe that state subsidies tend to isolate parties from their social base and could encourage the formation of cartels. On the other hand, public financing is also seen as an effective way to prevent parties from doing illegal fundraising and being influenced by the oligarchy.²³

3. Party Finance Regulations in Indonesia

3.1. Disclosure Obligations

In Law Number 2 /2011 which amends Law Number 2/2008 governing political parties, political party finances are defined to include all possessions of political parties that can be valued as money, including cash, goods, and all forms of capital owned by political parties.²⁴ The Law stipulates that political finances must also be noted in the political party statutes and bylaws (*Anggaran Dasar/Anggaran Rumah Tangga*) or internal party regulations.²⁵ Political parties are required to submit accountability reports of revenues and expenditures which come from the State Revenue and Expenditure Budget (*Anggaran Pendapatan dan Belanja Negara/APBN*) to the Supreme Audit Agency (BPK) once a year to be audited no later than one month after the end of the fiscal year. The report audit mechanism is carried out in the three months after the end of the fiscal year. Then, the result of the audit is returned to political parties

¹⁸ Ohman, op. cit, 2014: 5.

¹⁹ Ibid.

²⁰ Mietzner, op. cit, 2015.

²¹ Ibid.

²² Biezen and Kopecký, op. cit, 2007.

²³ Mietzner, op. cit, 2015.

²⁴ Article 1, Law Number 2/2011.

²⁵ Article 2, Law Number 2/2011.

no later than one month after the audit.²⁶

The 2019 election law mandated that each political party must deliver their campaign finance report to the GEC according to the schedule provided by the GEC. This was not merely aimed to figure out the finances of parties' political campaigns—the greater purpose was to hold parties accountable for the management of their finances. As a public entity, the political party, therefore, is subject to financial disclosure.

3.2. Caps on Political Donations

Article 35 of Law Number 2/2011 gives flexibility to political parties to accept individual and business entity donations. This is the most current law governing political party financing and stipulates that political parties may obtain assistance from the following categories:²⁷

- a. Individual members of a political party where the implementation is regulated in the political party manifesto;
- b. Individuals who are not members of a political party, at most of IDR 1,000,000,000.00 (one billion rupiahs or roughly equal to USD \$70,919.60 as per the February 22, 2021 conversion rate) per person within one-year budget;
- c. Companies and/or business entities, at most IDR 7,500,000,000.00 (seven billion five hundred million rupiahs or roughly equal to USD \$531,897 as per the February 22, 2021 conversion rate) per company and/or business entity within one fiscal year.

The Law also states that the financial management of political parties shall be carried out in a transparent and accountable manner. Financial management is also audited by a public accountant every year and the result is announced periodically. Political parties are also required to make comprehensive financial reports, including information on actual expenditures, balance sheet reports, and cash flow statements.²⁸

Law Number 2/2011 increased the maximum amount of money that business entities can contribute to political parties from the limit of IDR 4,000,000,000.00 (four billion rupiahs or roughly equal to USD \$283,718.4 as per the February 22, 2021 conversion rate) which was stipulated by the former Law Number 2/2008 to IDR 7,500,000,000.00 (seven billion rupiahs or roughly equal to USD \$ 531,990.3 as per February 22, 2021 conversion rate). The amount of aid received from business entities sets a limit for the maximum amount that a political party can receive. This limitation is necessary to control possible conflicts of interest by avoiding the uncountable donation from companies or private enterprises that in turn are potentially dominating the policy making process in the political party.²⁹ In this law, it also

²⁶ Article 34A, Law Number 2/2011.

²⁷ DPR RI (The People's Representative Council of the Republic of Indonesia) "Law Number 2/2011 on Political Parties," https://www.dpr.go.id/dokjdih/document/uu/UU_2011_2.pdf (accessed May 14, 2021).

²⁸ Article 39, Law Number 2/2011.

²⁹ Emmy Hafild, *Laporan Studi: Standar Akuntansi Keuangan Khusus Partai Politik*. (Study Report: Financial Accountance Standard), (Jakarta: PT. Raja Grafindo Persada, 2003).

regulates that political party may receive financial assistance from the Government. When obtaining financial assistance from the government, a political party has to submit a financial report of the financial assistance they received from the government in the current year before the due date set by the GEC. If they fail to submit the information on time, the political party cannot receive financial assistance from the government for the next consecutive year.

The allocation of financial assistance for political parties is prioritized at 60% for political education and 40% for operational activities of these political parties. Article 26 of the Minister of Home Affairs Regulation Number 36 Year 2018 concerning political party financial assistance defines political education activities as seminars, workshops, and interactive dialogue. Article 29 of the same regulation defines party operational activities as general administration, subscription to electricity and other services, maintenance of data and archives, and maintenance of office equipment.³⁰

Political party finance arrangements must be distinguished from campaign finance arrangements. Political party finance arrangements regulate the income and expenditure of political parties to finance the operational activities of political parties throughout the year. The law holds that political parties are entitled to collect money specifically for campaign purposes.

Law Number 7/2017 on General Elections stipulates that campaign finances are regulated separately from general political party finances. There are regulations that state that campaign finance for the presidential election can be obtained from the candidate themselves, the political party supporting the presidential and vice presidential candidates, and other legal forms of donation.³¹ The law also regulates the sources of campaign financing for legislative election campaigns, limiting them to political parties, legislative candidates, and other legal sources of donation.³²

In addition to regulations regarding campaign financing for the presidential and legislative elections, the Law also stipulates that:³³

- a. Campaign donations originating from individual sources should not exceed IDR 2,500,000,000.00 (two billion five hundred billion rupiahs or roughly equal to USD \$177,480 as per the conversion rate on February 24, 2021).
- b. Campaign donations originating from groups, companies, or non-governmental business entities

³⁰ Peraturan Menteri Dalam Negeri Republik Indonesia Nomor 36 Tahun 2018 Tentang Tata Cara Perhitungan, Penganggaran Dalam Anggaran Pendapatan dan Belanja Daerah, dan Tertib Administrasi Pengajuan, Penyaluran, dan Laporan Pertanggungjawaban Penggunaan Bantuan Keuangan Partai Politik. (The Ministry of Home Affairs Regulation Number 36/2018 on Government Budgeting at the Local Level and accountability reports.)

³¹ KPU RI (The General Election Commission of the Republic of Indonesia), “Article 325 of Law Number 7/2017 on General Elections,” https://jdih.kpu.go.id/data/data_uu/UU_Nomor_7_Tahun_2017_-_Batang_Tubuh_-_Hal._151-317.pdf, p.202 (accessed May 15, 2021).

³² KPU RI (The General Election Commission of the Republic of Indonesia), “Article 329 of Law Number 7/2017 on General Elections,” https://jdih.kpu.go.id/data/data_uu/UU_Nomor_7_Tahun_2017_-_Batang_Tubuh_-_Hal._151-317.pdf, p. 204-205 (accessed May 15, 2021).

³³ KPU RI (The General Election Commission of the Republic of Indonesia), “Article 327 of Law Number 7/2017 on General Elections,” https://jdih.kpu.go.id/data/data_uu/UU_Nomor_7_Tahun_2017_-_Batang_Tubuh_-_Hal._151-317.pdf, p.203 (accessed May 15, 2021).

should not exceed IDR 25,000,000,000.00 (twenty-five billion rupiahs or roughly equal to USD \$1,774,800.00 per the conversion rate on February 24, 2021).

- c. Individuals, groups, companies, and/or entities and non-governmental businesses that contribute campaign donations must report such contributions to the GEC.
- d. The donors referenced above must have a clear identity.

The Law stipulates that provincial council candidates may obtain financial support for their campaigns from both their own funds and other legal sources of donation.³⁴ As stated in the law, council candidates are individual candidates who are not endorsed by a political party. Therefore, the law stipulates that political parties cannot finance provincial council candidate campaigns.

The Law allows candidates for DPD/*Dewan Perwakilan Daerah* /regional council to obtain campaign donations from legal sources, but places a different limitation on contributions from the regulations imposed on presidential and legislative candidates. Campaign donations to regional council candidates from individuals should not exceed IDR 750,000,000.00 (seven hundred and fifty million rupiahs or equal to USD \$ 53,199.0 per the conversion rate on February 22nd, 2021), and donations from other parties, groups, companies, and/or non-governmental and business entities should not exceed IDR 1,500,000.00 (one billion five hundred million rupiahs or roughly equal to USD \$ 106,398.0 per conversion rate on February 22nd, 2021). All such donors must have a clear identity.³⁵

Law Number 7/2017 also regulates campaign finance reports. Candidate pairs and campaign teams are required to provide initial reports on election campaign funds, and special accounts for campaign funds for presidential and vice-presidential candidates and campaign teams, to election organizers. This regulation also applies to political parties participating in the election for the national parliament (DPR), provincial parliament (DPRD Provincial level), and regency/municipal parliament (DPRD regency/municipal level). The same applies to candidates for the regional council (DPD).³⁶ The campaign finance reports in question, each of which includes revenues and expenditures, must be submitted to the public accounting office appointed by the GEC no later than fifteen days after voting.³⁷

This Law additionally stipulates sanctions if political parties ignore the provisions regarding their campaign finance reports. Sanctions for political party administrators participating in the election who do not submit initial information on campaign funds takes the form of cancellation as political party that

³⁴ KPU RI (The General Election Commission of the Republic of Indonesia), “Article 332 of Law Number 7/2017 on General Elections,” https://jdih.kpu.go.id/data/data_uu/UU_Nomor_7_Tahun_2017_-_Batang_Tubuh_-_Hal._151-317.pdf, p. 206 (accessed May 15, 2021).

³⁵ KPU RI (The General Election Commission of the Republic of Indonesia), “Article 333 of Law Number 7/2017 on General Elections,” https://jdih.kpu.go.id/data/data_uu/UU_Nomor_7_Tahun_2017_-_Batang_Tubuh_-_Hal._151-317.pdf, p. 206 (accessed May 15, 2021).

³⁶ KPU RI (The General Election Commission of the Republic of Indonesia), “Article 334 of Law Number 7/2017 on General Elections,” https://jdih.kpu.go.id/data/data_uu/UU_Nomor_7_Tahun_2017_-_Batang_Tubuh_-_Hal._151-317.pdf, p. 206 (accessed May 15, 2021).

³⁷ KPU RI (The General Election Commission of the Republic of Indonesia), “Article 335 of Law Number 7/2017 on General Elections,” https://jdih.kpu.go.id/data/data_uu/UU_Nomor_7_Tahun_2017_-_Batang_Tubuh_-_Hal._151-317.pdf, p. 206 (accessed May 15, 2021).

participate in the election. Likewise, for candidates for the DPD who participate in the election, the sanction is in the form of being disqualified from running the election. In addition, political parties that do not submit reports on the receipt and expenditure of election campaign funds will be subject to sanctions in the form of not being announced as elected candidate for members of the parliaments at national level, provincial parliaments, and regency/municipal parliaments. Candidates for the regional council who do not submit reports on receipts and expenditures of campaign funds are subject to administrative sanctions in the form of not being designated as elected candidates, even if they win the election.³⁸

Law Number 7/2017 further regulates the acceptance of donations. Election contestants and campaign executives are prohibited from receiving gifts of funds from foreign parties, unidentified contributors, money from a crime that has been proven based on a court decision that has a permanent law; the central government, local governments, BUMN/*Badan Usaha Milin Negara*/State Owned Enterprises, BUMD/*Badan Usaha Milik Daerah*/Local Owned Enterprises, village governments, and Village-Owned Enterprises.³⁹ Election contestants, campaign implementers, and campaign teams receiving such donations are prohibited from using them. They must report any such funds received to the GEC and submit the donations to the state treasury. There are sanctions embedded in this regulation. The Law also prohibits anyone from using the government budget, regional governments, State Own Enterprises, Local Owned Enterprises, village governments, and Village-Owned Enterprises to give money to campaign implementers.⁴⁰

The Law further regulates the financial management of political parties to promote transparency and accountability among parties and candidates in managing their finances. Legally stipulated financial arrangements provide an opportunity for political parties to manage finances from both income and expenditure sources. However, this financial regulation does not necessarily mean easy implementation. The challenge lies in implementing and enforcing the rules.

3.3. Public Financing

In Indonesia, there are legal provisions regarding political party finance aimed at achieving better accountability for political parties and preventing political corruption. Based on Article 34 of Law Number 2/2008 and Law Number 2/2011, there are three types of approved financial sources for political parties: membership fees, legal contributions, and financial assistance from the state revenue and expenditure budget (*Anggaran Pendapatan dan Belanja Negara/APBN*) or the regional revenue and expenditure budget (*Anggaran Pendapatan dan Belanja Daerah/APBD*).⁴¹ The APBN is the state government's annual financial plan which the House of Representatives approves. The APBD is the regional

³⁸ KPU RI (The General Election Commission of the Republic of Indonesia), "Article 338 of Law Number 7/2017 on General Elections," https://jdih.kpu.go.id/data/data_uu/UU_Nomor_7_Tahun_2017_-_Batang_Tubuh_-_Hal._151-317.pdf, p. 206 (accessed May 15, 2021).

³⁹ KPU RI (The General Election Commission of the Republic of Indonesia), "Article 339 of Law Number 7/2017 on General Elections," https://jdih.kpu.go.id/data/data_uu/UU_Nomor_7_Tahun_2017_-_Batang_Tubuh_-_Hal._151-317.pdf, p. 206 (accessed May 15, 2021).

⁴⁰ Ibid.

⁴¹ See Law Number 2/2008 on Political Parties and Law Number 2/2011 concerning Amendments to Law Number 2/2008 on Political Parties.

government's annual financial plan which is approved by the Regional People's Representative Council.⁴²

From the legal provisions above, it is clear that a political party's finances are not limited to their internal resources. The political parties that are able to pass the parliamentary threshold, that is, obtaining at least 4% of the total number of valid ballots nationally to be included in determining the seats for members of parliament,⁴³ receive financial assistance from the government through the disbursement of political financial assistance schemes regulated by Law Number 2/2011. The political party finance assistance scheme is implemented through the APBN. These funds are not only used to prepare for the election but also to turn the wheels of the party organization, both for the operation of office activities and for other political party activities such as supporting cadre education, political education for party members and the public, training, and enhancing human resource capabilities within political parties.

In order to host multiple activities, political parties try, to the best of their ability, to collect money internally. As financial assistance received from the government is calculated after the election, political parties have to find a way to finance their activities before the election. Although government assistance is considered too small amount by political party, it encourages political parties to institutionalize their activities. So far, financial aid from the government has been given to every political party whose votes have exceeded the 4% threshold. Every vote that a party can obtain at election time is rewarded with IDR 1,000 (IDR 1,000 is equal to USD \$0.07 as per the conversion rate on February 22, 2021) per valid vote at the national level, IDR 1,200 (IDR 1,200 is equal to USD \$0.09 as per conversion rate on February 22, 2021) per valid vote at the provincial level, and IDR 1,500 (IDR 1,500 is equal to USD \$0.11 as per the conversion rate on February 22, 2021) per valid vote at the regency or city level. This financial assistance is given at the national level, the provincial level, and the regency or city level in line with the structure of the political party committee.⁴⁴ Article 5(7) of Government Regulation Number 1 Year 2018 states that the amount of financial assistance (provincial, regency/city level) can be increased according to regional financial capacity after obtaining approval from the Minister of Home Affairs.⁴⁵ The financial assistance disbursement scheme should comply with Government Regulation Number 1 Year 2018.

4. Evaluation and Change: Encouraging Improvement

4.1. Lack of Transparency

The issue of political party finance has been in the spotlight in Indonesia, especially since 2004. According to Mietzner, this is due to a change in the electoral system, namely the implementation of a direct presidential election system, which was followed by a direct regional head election system in the

⁴² See Law Number 17/2003 on State Finance.

⁴³ See Law Number 7/2017 on General Elections.

⁴⁴ Ramlan Surbakti and Didik Supriyanto, *Pengendalian Keuangan Partai Politik* (Controlling the Political Party Finance) (Jakarta: Kemitraan bagi Pembaruan Tata Pemerintahan (Partnership for Government Reform)), 2011.

⁴⁵ Peraturan Pemerintah Nomor 1 Tahun 2018 tentang Perubahan Kedua Atas Peraturan Pemerintah Nomor 5 Tahun 2009 Tentang Bantuan Keuangan Partai Politik (Government Regulation Number 1 Year 2018 on the Second Amendment of the Government Regulation Number 5 Year 2009 on Financial Assistance to Political Parties).

following year. These changes affected the behavior patterns of political parties. Mietzner argues that with a direct election system, there will be an increase in the funds needed by parties to finance candidates, place advertisements, and hire political consultants.⁴⁶ These changes have meant that political parties are increasingly encouraged to seek funds both internally and externally. Parties raise funds through contributions from their parliament members, state funds, and by offering wealthy and famous non-party figures the opportunity to become candidates for public office.⁴⁷

Law Number 07/2017, Law Number 02/2011, and Government Regulation Number 1 Year 2018 state that political parties should adequately manage both political party finance and campaign finance. These three legal foundations for creating better accountability on the part of political parties do not force political parties to prepare financial reports based on correct accounting standards. The laws and rules themselves do not provide templates for financial statements or the state requirements on what to report. In addition, it is tricky for the public to access political party financial reports. Although each political party must submit their financial information to the GEC, only some political parties provide a detailed report. As a result, political parties appear to be increasingly elitist and even individualistic because they are controlled by people who can meet their operational funding needs.

The study conducted by Perludem shows how strong the influence of the political party elite is in the continuation of political party life. This influence is demonstrated by the increasing power of entrepreneurs in the political party elite and by the fact that the leadership of political parties increasingly depends on political party cadres who are executive public officials (president, minister, governor, and regent/mayor). In other words, current laws and regulations governing political party funds are not effective in regulating the finances of political parties. Thus, political parties tend to ignore the interests of their ordinary members and the public interest.⁴⁸

4.2. Corruption

Although financial assistance is available for political parties, the amount of financial aid offered by the government is considered very small due to the actual funds needed by a political party to organize activities. In Perludem's research,⁴⁹ government assistance accounts for no more than 1.3% of the total amount of funding required by parties to manage their organizations every year.⁵⁰ For this reason, political party managers try to collect money from many available sources. Some politicians engage in corrupt practices. Even if they do not engage in direct corruption, the way politicians collect funds to support their candidacy and campaign could in turn lead to corruption by some political party cadres or

⁴⁶ Mietzner, op. cit, 2015.

⁴⁷ Mietzner, op. cit, 2007.

⁴⁸ Veri Junaidi et al., *Anomali Keuangan Partai Politik: Pengaturan dan Praktek* (Political Party Finance Anomaly: Regulations and Practice) (Jakarta: Kemitraan bagi Pembaruan Tata Pemerintahan, 2011): 11-12.

⁴⁹ Perludem stands for *Perkumpulan Untuk Pemilu dan Demokrasi* (Association for Election and Democracy), a not-for-profit institution that concerns the dynamics of democracy and election affairs based in Jakarta.

⁵⁰ See <http://perludem.org/wp-content/uploads/2016/11/Buku-Bantuan-Kuangan-Partai-Politik.pdf> accessed on January 26, 2021; Didik Supriyanto and Lia Wulandari, *Bantuan Keuangan Partai Politik: Metode Penetapan Besaran, Transparansi, dan Akuntabilitas Pengelolaan* (Political Party Financial Assistance: Methods Of Determining Size, Transparency, And Management Accountability) (Jakarta: Yayasan Perludem, 2012).

politicians who are in power, either as an executive at the local level, members of parliament, or public figure. One indicate of this is the number of politicians who have been caught up in corruption cases. According to the Commission for Eradicating Corruption, the number of corruption cases involving politicians such as public officials, both executives and members of the legislature, related to political corruption have increased.⁵¹

It is obvious that political parties needs large amounts of funding for their organizations. Official sources of funding are insufficient and have not prevented political parties from taking illegal fundraising steps. This practice has had consequences for political parties. Several political party cadres are currently dealing with the Commission for Eradicating Corruption (KPK). From 2013 to 2019, at least five political party leaders were arrested by the Commission for Eradicating Corruption for committing corruption. In addition to party leaders, several party cadres have also faced the Commission for Eradicating Corruption after being charged with political corruption.⁵² Many politicians who are in power are considered to have abused public office for personal or group interests.⁵³ Political corruption also occurs at the local level. Local politicians use the resources they have to take advantage as power holder. For example, some local politicians use their relationships with party leaders to stay in power, or utilize the candidacy process for regional head elections to collect fees and increase funding for their respective political parties.⁵⁴

The high cost of democracy causes political parties to compete to seek political funds by competing for strategic positions in the government and seeking secret sponsors. According to the Commission for Eradicating Corruption, there are at least four types of activities that lead to corruption. These include receiving gratuities in the process of formulating the APBD, receiving gratuities while budgeting for government projects, receiving bonuses for social assistance and grants, and dividends for procurements.⁵⁵

On the one hand, political parties need a lot of money to conduct activities. On the other hand, political parties find it difficult to legally generate adequate funds to support their activities. It is almost impossible to expect political party members to collect fees amongst themselves to fund the party, although the law stated that political party may collect donation from their own members as membership fee. Therefore, the role that contributors, both individuals and legal entities, play in funding political parties is becoming increasingly important. The political party is ideally expected not to depend on those with access to capital to the extent that it centers its activities and policies around them. Therefore,

⁵¹ See Akbar Bhayu Tamtomo, "Infografik Korupsi oleh Aktor Politik dalam Angka (Infographics of Corruption by Political Actors in Numbers)," April 16, 2019, <https://nasional.kompas.com/read/2019/04/16/10411221/infografik-korupsi-oleh-aktor-politik-dalam-angka>, accessed February 4, 2021. Also see Ardhito Ramadhan, "KPK Catat 397 Pejabat Politik Terjerat Korupsi Sejak 2004 hingga Mei 2020 (KPK Records 397 Political Officials Involved in Corruption From 2004 to May 2020), September 30, 2020, <https://nasional.kompas.com/read/2020/09/30/11223141/kpk-catat-397-pejabat-politik-terjerat-korupsi-sejak-2004-hingga-mei-2020> (accessed February 4, 2021).

⁵² Hendra Try Ardianto, "Uang Dan Partai Politik: Urgensi Mengatur Keuangan Parpol dan Kandidat dalam Kompetisi Elektoral (Money and Political Parties: The Urgency of Regulating the Finances of Political Parties and Candidates in Electoral Competitions)," *Jurnal Ilmiah Ilmu Pemerintahan* 4, no. 1 (2019): 1-16.

⁵³ Faisal, Bariroh Barid, Didik Mulyanto, "Pendanaan Partai Politik di Indonesia: Mencari Pola Pendanaan Ideal untuk Mencegah Korupsi (Political Party Funding in Indonesia: Finding the Ideal Funding Pattern to Prevent Corruption)," *Integritas* 4, no. 1 (June 2018).

⁵⁴ Mohtar Mas'oeed and Amalinda Savirani, "Financing Politics in Indonesia," *PCD Journal* III, no. 1-2 (2011): 63-94.

⁵⁵ Tamtomo, op. cit, 2019.

political party finance must be better implemented so that political parties are not controlled by wealthy persons who are willing to make contributions in return for influence in policies, decisions, concessions, and political protection.

4.3. Inadequate Public Funds

The emergence of political corruption practices shows that the system or mechanism for funding political parties is problematic. In this regard, improvement efforts are important. One of the steps taken towards improvement is encouraging improvements in financial governance and additional funding for political parties by the state. With the addition of funding assistance for political parties by the state, it is hoped that the illegal practices carried out by parties in obtaining financial resources will stop. Studies conducted by the KPK and Indonesian Institute of Sciences (LIPI) show that the state's financial funding is still small compared to the needs of the parties. This reality implies that cadres are vulnerable to financial burdens or corruption cases, and political parties become dependent on capital owners or strong people.⁵⁶

The Commission for Eradicating Corruption and the Indonesian Institute of Sciences studies above provide an overview of the funding needs of political parties, estimating a figure of IDR 16,922 per vote. This amount is based on the average estimated needs of the five political parties studied, namely Golkar, PKB, PDIP, Gerindra, and PKS. This study positions that party funding assistance is a maximum of 50% of the maximum IDR 16,922 per vote or IDR 8,461 per vote. It is premised on the intention that political parties maintain autonomy in carrying out their functions. This assistance is only for operational needs and political education, and does not include funding for political contestation. The mechanism for this funding scheme is proposed to be given in several stages over five years. During the first year 30% is given from IDR 8,461 per vote, the second year 50% from IDR 8,461 per vote, the third year 70% from IDR 8,461 per vote, the fourth year 80% from IDR 8,461 per vote, and the fifth year will be 100% or IDR 8,461. In the first five year, the maximum amount of state aid will be 8,461 per vote.⁵⁷

The Commission for Eradicating Corruption (KPK) and the Indonesian Institute of Science (LIP)I studies also provide the basis for creating the activities of political parties in utilizing the financial assistance.. The government created this unit through the Ministry of Home Affairs and the Ministry of Finance and the Supreme Audit Agency (BPK). The financial assistance provided by the state to political parties are audited by the BPK and announced to the public. The financial assistancemanagement also requires review and monitoring in the fourth year. This step is an effort to assess the feasibility of continuing or discontinuing the provision of funds to parties according to the results of the review and

⁵⁶ See Moch. Nurhasim et al., research presentation for KPK and LIPI, "Ideal Scheme for Funding Political Parties by the State" available at https://www.kpk.go.id/images/Gallery/Photo/hakordia/Paparan-Pendanaan-Parpol_Pimpinan-KPK-11-Des1.pdf (accessed June 22, 2021).

⁵⁷ "Pembenahan Agar Parpol Transparan (Improvements to Make Political Parties Transparent)," KPK.go.id, December 11, 2019, <https://www.kpk.go.id/id/berita/berita-kpk/1417-pembenahan-agar-parpol-transparan> <https://www.kpk.go.id/id/berita/berita-kpk/1417-pembenahan-agar-parpol-transparan>, accessed June 22, 2021. Also see Moch. Nurhasim et al., research presentation for KPK and LIPI, Ideal Scheme for Funding Political Parties by the State, available at https://www.kpk.go.id/images/Gallery/Photo/hakordia/Paparan-Pendanaan-Parpol_Pimpinan-KPK-11-Des1.pdf (accessed June 22, 2021).

monitoring.⁵⁸ The proposal to increase state aid funds to political parties is accompanied by the requirement that political parties implement the System of Political Parties Integrity (SIPP), which is a political party integrity system consisting of a code of ethics, internal party democracy, regeneration, recruitment, and finance.⁵⁹

SIPP is a policy tool developed by the study conducted by the Commission for Eradicating Corruption and the Indonesian Institute of Sciences for political parties to produce candidate leaders with integrity, minimize political risks and abuses of power, provide instruments for compliance with SIPP, and create transparent and accountable financial governance.⁶⁰ This integrity system for Political Party is to prevent parties from diverting and accumulating profits from economic resources, to ensure that parties operate democratically, and to fashion parties as instruments for the articulation of political interests. This makes it easier for external parties to assess the party's commitment to preventing corruption.⁶¹ This study clearly shows that the addition of party funding by the state must be accompanied by an improvement in the integrity of political parties.

4.4. Ineffective Oversight and Compliance

In addition to the steps to increase funds, party financial systems also require regulatory reforms to improve and strengthen the systems themselves. The implementation of financial regulations for political parties aims to create healthy competition among political parties and prevent domination, support political parties so that they can carry out political education and regeneration, prevent corrupt behavior, increase public trust through financial transparency and accountability, and maintain the integrity of the process and results of elections.⁶² So far, the problem of party funding lies in the clarity of party financial management. Transparency here is more about identifying the sources of the funds used for party spending and activities.⁶³ Financial governance practices that are not transparent or that tend to be closed can encourage corruption.

The challenge to such transparency can be seen, for example, as reported by Kompas, from the results of the audit conducted by a public accounting firm appointed by the GEC. The audit reported on receipts and expenditures of campaign funds from parties participating in the 2019 general election. In these findings, nine out of sixteen political parties in the 2019 general election were categorized as non-compliant, while seven parties were judged to have fully complied with regulations or laws. Compliance was judged with regard to campaign finance reporting, which includes timely submission of reports, whether campaign funds were obtained from legal authorities or prohibited sources, and the

⁵⁸ Moch. Nurhasim et al., op. cit, 2021.

⁵⁹ Moch. Nurhasim et al., op. cit, 2021.

⁶⁰ Syamsuddin Haris et.al, *Kertas Posisi: Sistem Integritas Partai Politik* (Position Paper: Political Party Integrity System), (Jakarta: KPK & LIPI, 2017).

⁶¹ Ibid.

⁶² Surbakti and Supriyanto, op. cit, 2011: 54-55.

⁶³ Ayu Rachmaningtiyas, "Partai Belum Transparan Soal Laporan Keuangan (The Party Hasn't Been Transparent About Financial Reports)," May 25, 2016, <https://nasional.kompas.com/read/2016/05/25/11012741/partai.belum.transparan.soal.laporan.pengelolaan.keuangan.?page=all> (accessed June 22, 2021).

amount of campaign fund donations according to the set limits. Non-compliance was judged with regard to the periodization of late bookkeeping and personal campaign funds from legislative candidates that were not having special accounts for campaigns fund.⁶⁴

The financial system will be well managed when a strict monitoring mechanism for implementing party financial regulations can work. Such a mechanism must involve stakeholders and regulators, as well as civil society organizations and the mass media.⁶⁵ Implementation of regulations will be effective if accompanied by the involvement and support of stakeholders to comply with the principles of funding. Failure to comply with rules will lead to declining public trust in the supervisory system and parties easily ignoring existing rules.⁶⁶ Regulators, for example, need to disclose information to the public on how parties and candidates obtain and spend funds. Here, the mass media has a role in conducting investigations to uncover violations. Civil society also has a role to play in public awareness campaigns on the importance of monitoring party financial management.⁶⁷

Enforcement of sanctions is also a challenge in the implementation of party financial regulations. The regulatory strengthening framework requires political parties to comply with regulations, such as by publicizing their finances and being subject to independent oversight. Parties that violate these regulations must receive strict sanctions.⁶⁸ So far, the existing regulations state how party funds are managed and threaten sanctions. However, the challenge in Indonesia is that the enforcement of rules and the implementation of sanctions are still not transparent. This opens up space for political parties to break the rules.⁶⁹ There is also a structural challenge concerning the oligarchic and personal leadership of the party and the challenge of human resources. In this case, not all political parties have staff trained in accounting, so it becomes a problem when they have to carry out the obligations stipulated in the regulation on party funding.⁷⁰

Therefore, regulations governing party funding need to be accompanied by strict action against political parties that violate rules. For example, in the case of misusing finances given by the state, strict regulations might lead to sanctions like terminating public funding to parties for the next two elections and the parties being obliged to return any money received from the state.⁷¹ Administrative sanctions are another option. These could be heavy, such as the party being dissolved, moderate sanctions, such as being barred from participating in elections, or light, like not getting subsidies from the state.⁷² Strict

⁶⁴ Riana A. Ibrahim, "Keuangan Partai Politik dan Korupsi Politik (Political Party Finance and Political Corruption)," June 20, 2019, <https://www.kompas.id/baca/utama/2019/06/20/mengembalikan-harkat-partai-politik-dalam-tatanan-demokrasi-revisi/> (accessed June 22, 2021).

⁶⁵ Surbakti and Supriyanto, *op. cit.*, 2011: 59-60.

⁶⁶ Ohman, *op. cit.*, 2014: 4.

⁶⁷ Ohman, *op. cit.*, 2014: 35.

⁶⁸ Biezen, *op. cit.*, 2003: 51

⁶⁹ Nikolaus Harbowo, "Bantuan Keuangan Berbasis Kinerja Picu Kinerja Parpol (Performance-Based Financial Aid Triggers Political Party Performance)," January 21, 2021, <https://www.kompas.id/baca/polhuk/2021/01/21/bantuan-keuangan-berbasis-kinerja-picu-kinerja-parpol> (accessed June 23, 2021).

⁷⁰ Surbakti and Supriyanto, *op. cit.*, 2011: 78.

⁷¹ *Ibid.*, 54.

⁷² Sekar Anggun Gading Pinilih, "Mendorong Transparansi dan Akuntabilitas Pengaturan Keuangan Partai Politik (Encouraging Transparency and Accountability of Political Party Financial Arrangements)," *Mimbar Hukum* 29, no. 1, February 2017: 69-81.

enforcement of sanctions provides a deterrent effect for political parties and can encourage public confidence in political parties themselves as important institutions of democracy in Indonesia.

5. Conclusion

In order to have more transparent and accountable governance of the political party, financial control should be based on the use of a regulatory approach and financial subsidies from the state as the legal basis of political party governance. Without the provision of adequate funds to parties, party finance regulations will not be effective and cannot be enforced in the process of managing political party finance. Apart from fulfilling legal certainty, party financial regulations must be enforced by an independent institution with adequate authority and with clear sanctions. There must also be supervision by various groups, such as the mass media and civil society.

Financial subsidies from the state to political parties must be accompanied by clear objectives, such as encouraging political parties to carry out their functions as agents of democratization, creating fair competition between parties, and requiring parties to manage their finances in a transparent and accountable manner. The law should provide clear guidance for this particular purpose. Ideally, a political party should have a reasonable balance between public and private sources of finance and internal party sources (membership fees and cadre contributions). By creating a balance in campaign funding sources, the advantages of both forms of funding can be realized, with the benefits of one funding source correcting the weaknesses of the other. The party's internal financial sources will play a role in ensuring their financial independence. This will also be a mechanism to avoid the domination of certain people, who may take advantage of their influence and instill their personal interests within the political party. ■

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Country Case 2: Malaysia

Political Funding in Malaysia: Starting from the Ground-Up

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1. Introduction

Apart from basic rules about how much candidates can spend during elections, the political financing landscape in Malaysia remains unregulated. There are currently no rules regarding political donations or expenditures, which means that politicians are free to obtain limitless funding from any source within or outside of Malaysia. It was not until the 1Malaysia Development Berhad (1MDB) case came to light that Malaysians started to really ask where their politicians got their money from.⁴ The revelations from the 1MDB scandal sparked a national conversation about the severity of political corruption, the interconnectedness of the global financial system, and the need for transparency in political financing.

The financing of politics remains one of the main sources of corruption in Malaysia despite the movement for governance reforms having received a major boost in 2018 under the Pakatan Harapan (PH) government.⁵ The flagship document outlining the PH government's commitment to addressing and combatting corruption was the National Anti-Corruption Plan 2019-2023 (NACP), launched to great fanfare on January 29, 2019. The NACP cites corruption as something "... that has gone beyond the abuse of power by public officials to manifest itself deep within the moral and social fabric of the society as a whole." The NACP was the first government policy document that acknowledged the severity of political corruption and presented a concrete, time-bound plan to tackle the problem.

This paper will first analyze money politics by examining the nexus between business and politics in Malaysia. It will then explore another important aspect of political financing in Malaysia, which is the voters' expectations of their elected representatives. This paper will argue that these expectations are key to understanding why a transparent political financing ecosystem is important in Malaysia. It will present

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⁴ Shamim Adam, Laurence Arnold, and Yudith Ho, "How Malaysia's 1MDB Scandal Shook the Financial World," *The Washington Post*, July 28, 2020, https://www.washingtonpost.com/business/energy/how-malaysias-1mdb-scandal-shook-the-financial-world/2020/07/28/dade64d6-d094-11ea-826b-cc394d824e35_story.html

⁵ World Bank, *Enhancing Government Effectiveness and Transparency: The Fight Against Corruption* (World Bank, 2020), 333-339, <https://openknowledge.worldbank.org/handle/10986/34533> License: CC BY 3.0 IGO.

findings from a survey commissioned by IDEAS and from a series of workshops conducted with young politicians from across Malaysia on the topic of political financing. Finally, it will present several policy recommendations and conclude with the argument that political financing reform must become priority for the Malaysian government and civil society organizations. Any further attempt to delay the process will result in worsening patronage and corruption in Malaysian politics.

2. Literature Review

The literature surrounding the topic of political financing in Malaysia is extensive, but for the purposes of this paper, we mainly took into account Gomez and Dettman's work.⁶

For the larger topic of voter-political relations in political financing, we explored several papers by Dettman, Weiss, Saravanamuttu, and Mohammad. Following the fourteenth general election (GE14), there have been an increasing number of scholars looking into the voter-politician relationship in Malaysia. Dettman and Weiss (2018) argue in their analysis of political patronage in Malaysia that even though Barisan Nasional (BN) lost in GE-14, political patronage and clientelism has not changed very much. Pakatan Harapan (PH) has built their own clientelist relationships with their constituencies to allow better competition against their BN counterparts, who have a track record of providing real and targeted benefits to their loyal voters. Dettman and Weiss also bring up the important point of unequal allocation of funds between government and opposition constituencies, a practice that continued when PH won power, although PH did grant the then-opposition MPs one-fifth of their own MPs' annual allocation. PH also punished Malaysians who did not vote for them, albeit to a lesser extent than BN did. Weiss (2016) characterizes Malaysia as a competitive electoral authoritarian state governed by political parties who do not simply manufacture wins; instead, they focus on building real popularity among their voters. This makes reform difficult. She analyzes relational clientelism in terms of "network, resources and discretionary control over said resources and the effects of such practices for electoral outcomes and governance." Weiss further argues that PH partly mimicked BN's clientelist outreach and replicated some features that are within their capacity. This is an important point as it shows that clientelism is utilized consciously by both sides of the political divide as they compete to win over voters.

Saravanamuttu and Mohamad (2019) coined the term "monetization of consent" to describe the reliance on money to consolidate political dominance. Interestingly, the authors posit that monetization of consent is differentiated from money politics "as it represents a subtler notion of monetary transactions that does not always or necessarily imply any iniquitous, fraudulent or criminal use of money in the shaping of public opinion and consent." The authors then draw useful contrasts between money politics and monetization of consent, which are shown in the table below.

This classification is useful in understanding the relationship between voter and constituent as it distinguishes between vote-buying and practices such as cash payments to vulnerable groups who have

⁶ Sebastian C. Dettman and Edmund T. Gomez, "Political financing reform: Politics, policies, and patronage in Malaysia," *Journal of Contemporary Asia* 50, No.1 (2020): 36-55, <https://doi.org/10.1080/00472336.2019.1571218>

voting potential outside campaigning periods. This is an important distinction as it echoes Dettman and Weiss’s argument that “one-time or episodic vote-buying” does not happen much in Malaysia. Instead, they argue that the “material lures that marked GE-14 punctuated enduring relationships between politicians and their constituents.”

Table 1. Differences between the terms Money Politics and Monetisation of Consent

Table 1. Political financing	
Money politics	Monetisation of consent
Definition	
The corrupt use of money and monetised instruments for political gain. Law can usually establish the illegality of most acts. Money politics is thus likely to be on the wrong side of the law	Pacification and gratification of groups through cash payment of public funds and use of monetised instruments on a short-term programmatic basis. Although the legality of acts is not in question, in some instances it may constitute a grey area within law
Forms and practices	
Vote-buying and electoral financing in relation to political campaigning that are prohibited by law	Cash payments to groups with voting potential such as poor households, single mothers, youth, socially vulnerable groups and vote banks done even before or after electoral campaigning period
Source of funds is public institution but obfuscated by various transference mechanisms to conceal origin	Public funds distributed through state institutions but disbursed as direct cash payment. Public budget allocations are skewed towards massive cash pay-outs in relation to short-term and customised programmes involving palpable monetary benefits
Patronage leading to rent-seeking and crony capitalism which directly benefit party or elites within party Favouritism, nepotism in dispensing rents, licences, contracts and various monetary benefits Illegal dispensation and laundering of funds	Subsidies and credit schemes to clientelist bases rather than rents to party elites and cronies Favouritism of socially defined and “deserving” special interest constituents Not illegal but ambiguous and risky in terms of fiscal and budgetary justification and integrity

Source: Saravanamuttu, John and Maznah Mohamad (2019) , p. 4, Table 1.7

3. The Current Political Financing Ecosystem and Its Consequences

The current system, where any individual or corporation can give any amount of money to any political party or candidate they like, is fertile ground for corruption, patronage, and cronyism. In the absence of legislation, politicians can obtain money from questionable sources at home and abroad. A good example of this was the 1MDB scandal, where the then-Prime Minister Datuk Seri Najib Razak claimed that the RM2.6 billion found in his personal bank account was a “donation” from a Saudi Arabian prince, and this was perfectly legal. The problems in the current system are further exacerbated by the fact that Malaysia does not have an asset declaration law at the federal level. This means that there is complete opacity surrounding the amount of assets an elected representative owns. A state-level asset declaration law exists in Penang, but it is not sufficiently comprehensive and plenty of information is still not available to the public.

⁷ Saravanamuttu, Johan and Maznah Mohammad, “The Monetisation of Consent and its Limits: Explaining Political Dominance and Decline in Malaysia,” *Journal of Contemporary Asia* 50, no.1 (2020): 56-73, <https://doi.org/10.1080/00472336.2019.1569710>

The Malaysian government has undertaken three major anti-corruption initiatives: The National Integrity Plan (PIN) (2004), the Government Transformation Programme (GTP) 1.0 (2010), and the Government Transformation Programme (GTP) 2.0 (2012). The most recent initiative undertaken by the government is the National Anti-Corruption Plan (NACP) 2013-2019, which aims to achieve the internationally agreed-upon Sustainable Development Goals (SDGs) by 2030. SDG Goal 16, referring to Peace, Justice, and Strong institutions, simultaneously implies the urgent need to address the growing corruption within a country.⁸

Early in the Pakatan Harapan administration, there was an attempt by the Malaysian Anti-Corruption Commission (MACC) to display the amount of assets belonging to each MP on a publicly accessible website. The attempt is commendable but was inadequate, as the amount displayed was not broken down into detail. According to Article 19 of the Election Offences Act 1954,⁹ expenses are capped as follows:

- a. Two hundred thousand ringgit in the case of an election to the Dewan Rakyat;
- b. One hundred thousand ringgit in the case of an election to a Legislative Assembly;
- c. Ten thousand ringgit in the case of an election to a local authority other than a local council;
- d. Three thousand ringgit in the case of an election to a local council.

It should be noted that paragraphs (c) and (d) have no application in Sabah and Sarawak (East Malaysia). Not only have the capped limits not been revised to adjust for inflation and current political expenses, there is also no law that requires the disclosure of political financing throughout the year. These oversights prove that the current political financing landscape has inadequate law enforcement.

In the effort to address these issues, civil society organizations (CSOs) such as G-25 Malaysia and Transparency International Malaysia (TI-M) have played an active role in research and advocacy for better transparency and accountability in Malaysia's political financing. Both G-25 and TI-M have each created proposals for the regulation of political financing as a result of the 2008 general election. TI-M, for instance, has proposed a twenty-two point recommendation list. TI-M's points of reform mainly revolve around (1) full public disclosure of the amounts and sources of party finances and expenditures, (2) limits on political donations, and (3) the channeling of political contributions through party accounts rather than individual accounts.¹⁰

Similarly, the National Consultative Council on Political Funding (NCCPF) has proposed a thirty-two point recommendation list grounded in six key principles: the supremacy of the rule of law, the enhancement of civic participation, the protection of civil rights, transparency, accountability and integrity, and healthy political competition. Unlike the recommendations made by TI-M, the NCCPF also included recommendations on the implementation process (Recommendations 1-3) as well as recommendations to

⁸ Prime Minister's Department, *The National Anti-Corruption Plan (2019- 2023)*, July 16, 2019, <https://www.pmo.gov.my/2019/07/national-anti-corruption-plan/>

⁹ Election Offences Act 1954, Art. 19

¹⁰ Dettman and Gomez, *Political financing reform*, 36-55

address wider and longer-term issues (Recommendations 30-32) such as discrimination against or victimization of donors, political favors through government contracting, and the commitment to inculcating integrity.

A comparison of the lists of recommendations proposed by both organizations finds several common features. First and foremost, both sets of recommendations call for the amendment of several related pieces of legislation and the creation of mechanisms and regulatory measures for a more efficient and transparent process of political financing. Most notably, both highlight the need for an independent and autonomous body or group of auditors to oversee party expenditures (Recommendation 7 by NCCPF and Recommendation 3 by TI-M). Both organizations also agree that donations or contributions to a political party should be disclosed and should be channeled through a party account. On this point, however, there is a slight difference. The NCCPF puts forth that donations under RM 3,000 do not have to be published, whereas TI-M insists that all sources of financing should be disclosed. This contradiction extends to the donation/contribution amounts made to a political party. TI-M's Recommendation 14 suggests that there should be an imposition of a cap on an individual's contribution to a party. In contrast, Recommendation 20 by the NCCPF states that there shall be no cap on the amount that can be donated/contributed. Here, the term "individual" is supported under Recommendation 22 by NCCPF on "third-party" support where "third party" is clarified as being, "...a registered or non-registered entity or individual."

Other common features are the introduction of state funding for political parties and the prevention of political parties from being either directly or indirectly involved in state-owned enterprises (Recommendation 28 in the NCCPF list) and businesses (TI-M Recommendation 17). Furthermore, although both organizations touch on the expenditure limits of political parties, NCCPF's Recommendation 23, contrary to TI-M's Recommendation 16, suggests that limits on party or candidate spending should be removed during campaign periods.

Despite continuous efforts by CSOs to push for such reforms as in the case of TI-M, who conducted a series of meetings with both BN and the opposition parties back in 2009, the reforms were neither taken up by the government, nor did the opposition provide alternative suggestions. During this period, reforms recommended by CSOs remained stalled.¹¹

4. What IDEAS Has Done So Far

4.1. Politicians as Allies

Beginning in 2020, IDEAS has undertaken a new strategy in advocating for a transparent political financing mechanism. We have sought to include political parties more directly in our research and advocacy work and to view politicians as allies, rather than adversaries, in our effort to introduce a regulatory framework for political financing. We took this approach because of the increasing realization that no reforms to the political process can be realized without buy-in from politicians themselves.

¹¹ *Ibid.*

In September 2020, IDEAS organized two workshops on the importance of transparency in political financing. The workshops saw participation from the youth wings of UMNO, MIC, Gerakan, PBRs, PKR, Amanah, and DAP. The objectives of the workshops were as follows:

- a. Create a “safe space” where political parties and civil society can interact openly with each other,
- b. Identify the challenges faced by political parties in obtaining and managing political funds, and
- c. Build a network of sustainable cooperation between civil society and political parties.

The workshops were extremely useful in revealing what politicians face in their day-to-day work with their constituents on the ground. The main takeaways and lessons learned from the workshops are as follows:

4.1.1. Funding for political parties and constituency development should be kept separate in practice
According to a report done by BERSIH 2.0 and IDEAS on Constituency Development Funds (CDF), the MPs and ADUNs receive CDF-type funds which are known to the public as “MP allocation”, “*Peruntukan Ahli Parlimen*” or “*Peruntukan ADUN*” but information about these allocations remain both minimal and elusive.¹² The report further highlights at the Federal level, the Prime Minister is entitled to a “*Projek Khas*” (“Special Project”) allocation which suggests that the Prime Minister is able to fund projects proposed by cabinet members, senators, MPs and ADUNs via this allocation. Unfortunately, the Implementation Coordination Unity (ICU) under the Prime Minister’s Department reports that the process of distributing said funds are left undisclosed. At the State level, these funds are not listed in the State’s annual budget documents.

There are generally two types of “projects” that the MPs are allowed to fund based on the allocation received. They are (1) *Projek Khas* (Special Project) and (2) *Projek Mesra Rakyat* (Citizen-friendly Project). The *Projek Mesra Rakyat* enables MPs to provide public facilities or fund small infrastructure projects. This project does not encompass donations or the running of service centers and is referred to as an allocation for development projects. The *Projek Khas*, however, can be used for a more diverse purpose which includes donations for the poor and vulnerable, running the service center, assisting NGOs and building or maintaining small public infrastructures.

The CDFs allocated for the MPs and ADUNs are means for each representative to address the immediate development and welfare needs in each of their constituencies which could range from assistance for low-income families to the maintenance of educational and health facilities.

Although in theory, funding for political parties should be kept separate and independent from development funds, the current situation is that these funds are usually mixed and used interchangeably. Oftentimes, the elected representatives themselves do not understand the difference between the two or

¹² Sri, Murniati, Jason R.J. Lee, Danial Ariff, Armand Azra, and Jeffrey Law, “Removal or Reform: Charting the Way Forward for Malaysia’s Constituency Development Funds,” *Bersih & Adil Network Sdn. Bhd.*, (2021), 12-30, <https://www.bersih.org/download/removal-or-reform-charting-the-way-forward-for-malaysias-constituency-development-funds/>

the importance of keeping them separate. Therefore, based on the facts stated above, the inability to keep these funds separate becomes an issue when these funds – which are meant to aid the citizens in need – are instead channelled for campaigning purposes, leaving issues faced by the citizens to continue to be either partially or completely left unaddressed.

4.1.2. Transparency in funding must begin from within political parties themselves

Even within political parties, there is little transparency amongst party members about where funds come from. Unless one is in the upper echelons of power within the party, it is not likely that one will understand from whom and where political funds are raised.

4.1.3. Public funding for political parties is needed to mitigate reliance on single, large donors

Overall, there is a general agreement that some form of public funding is necessary to mitigate the negative effects of solely relying on wealthy tycoons and large corporate funders.

4.1.4. There is a lack of clarity on the actual role of elected representatives

All participants shared the same concerns about the difficulties faced by elected representatives who must attempt to juggle the dual roles of policymaker and “twenty-four hour on-call welfare officer,” as well as their party obligations. There were also differing viewpoints on what the actual role of an elected representative is. Many understood that they are meant to be policymakers, but acknowledge the reality of needing to cater to the “KBSM” (*Kahwin, Bersalin, Sakit, Mati* (marriage, giving birth, illness, and death)) to ensure their political survival.

4.1.5. Concerns regarding the exposure of donors must be mitigated

Nearly all participants expressed concerns about their donors being exposed and persecuted for choosing to donate to a certain political party. This concern must be taken into account when framing any legislation on political financing.

4.1.6. The public must be made aware of the actual role of their elected representatives

There was general agreement on the need to improve political literacy amongst the public. The root cause of many of the problems identified lies in the public’s expectations that their elected representatives should assist them with matters that concern their livelihoods. In reality, this is not a role that should be played by Members of Parliament (MPs) or State Assemblypersons (Ahli Dewan Undangan Negeri (ADUNs)), as their main duty should be policymaking.

4.1.7. The reliance on elected representatives by constituents signals a breakdown in social security systems and other state institutions

The fact that constituents expect their elected representatives to pay their bills and provide goods, services, and cash handouts signals a breakdown in social security systems and other state institutions that

warrants further research by IDEAS in the future.

Out of the seven lessons learned, points four and six are particularly pertinent. It was interesting that many of the problems the participants shared can be traced back to the role of the MP/ADUN itself. Many constituents, especially those in rural areas, rely almost completely on their MPs and ADUNs to provide various forms of aid including food and shelter and services such as paying telephone bills and repairing infrastructure like clogged drains, fallen trees, potholes, and so on. Despite this, many participants also understood and acknowledged that the role of “welfare officer” is not a role that MPs and ADUNs should be playing, at least not as their main duty. An MP or ADUN, once elected, should primarily be involved in the policymaking process at the federal and state levels respectively. Instead of being the primary provider of aid to their constituents, elected representatives could instead direct their constituents to the correct government agency or act as a “nudge” for welfare bodies to provide the aid needed in their constituency.

One of the key findings from the workshops was that constituents have become accustomed to asking their MP or ADUN for basic needs and help with infrastructure problems, because politicians “move things faster” and are more responsive compared to government agencies, state welfare bodies, and local governments. Constituents often face a barrage of bureaucratic red tape and long waiting times when dealing with government agencies. This leads to them turning to their MP who, because of their power, can either channel resources to get things done more quickly or can compel government agencies to attend to their requests immediately. Thus, one of the biggest takeaways from the workshops was that government agencies and the civil service will need to be reformed and improved as well if the people’s reliance on MPs and ADUNs is going to be reduced.

4.2. Voter Perception Survey

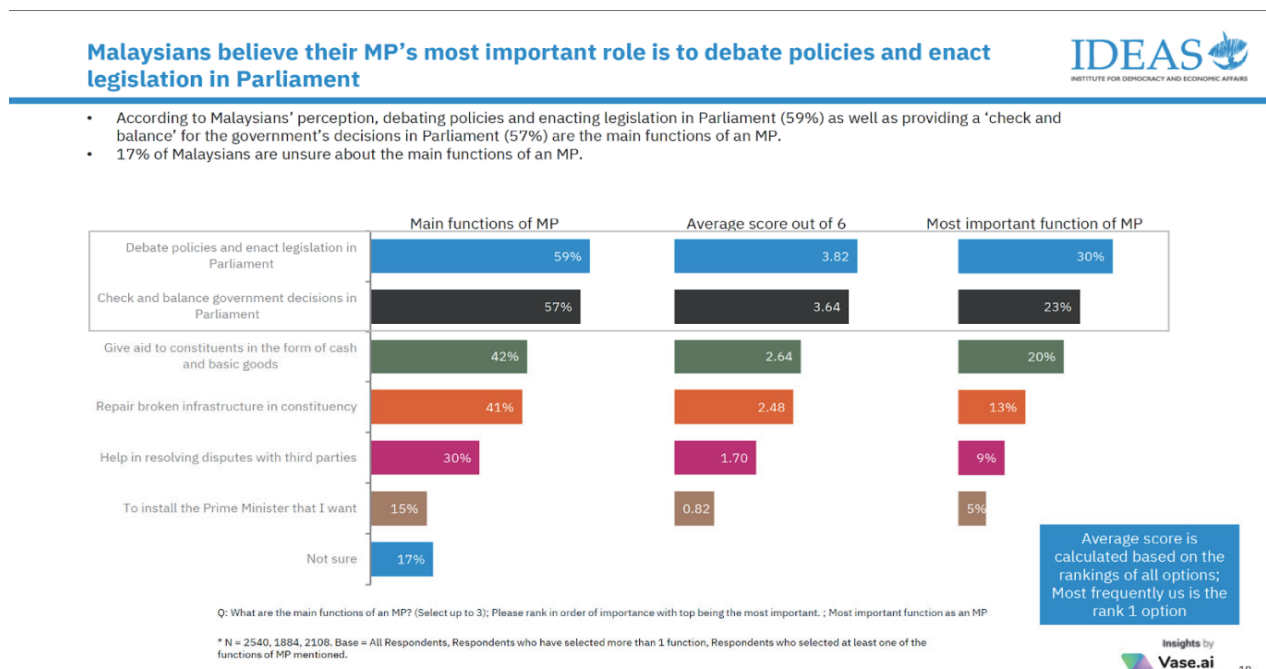
Apart from workshops, to better understand voter expectations towards their elected representatives, IDEAS commissioned a survey that began on May 25, 2021. The survey was conducted online and collected a total of 2,540 responses.

The objectives of the survey were twofold:

- a. To understand how Malaysians perceive the roles of their elected representatives
- b. To learn how Malaysians perceive money and financial aid in politics

The survey presents several interesting findings. Only 59% of respondents chose “debate policies and enact legislation in Parliament” as the main function of their MP. Fifty-seven percent of respondents chose “check and balance government decisions in Parliament.”

Figure 1. Malaysians' Perception on the Role of MPs



Forty-two percent of respondents believed that an MP's role is to "give aid to constituents in the form of cash and basic goods." This is an important finding as it shows that a significant number of Malaysians expect their MP to be a provider of basic needs such as cash and goods. This reflects the clientelist nature of politics and the weakness of the role of state agencies in providing such needs for the people. Forty-one percent of respondents chose "repair broken infrastructure in the constituency," a job that is supposed to be carried out by local authorities, not MPs.

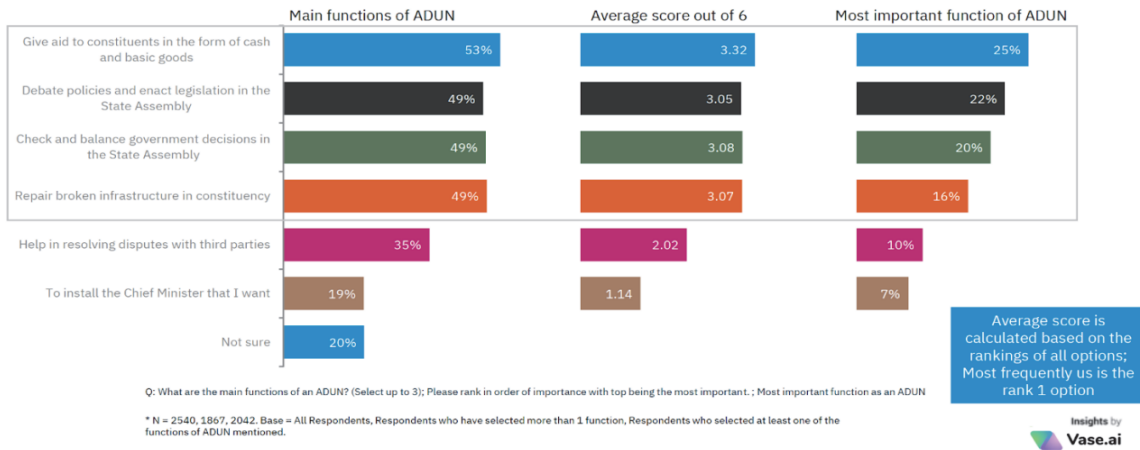
When asked about the role of an ADUN, 53% of respondents believed that their main function is to "give aid to constituents in the form of cash and basic goods," although "debate policies and enact legislation in the State Assembly" came a close second at 49%. Importantly, 20% of respondents were "not sure" what the function of an ADUN is.

Figure 2. Malaysians’ Perception on the Role of ADUNs

Malaysians believe ADUN’s most important role is to give aid to constituents in the form of cash and basic goods



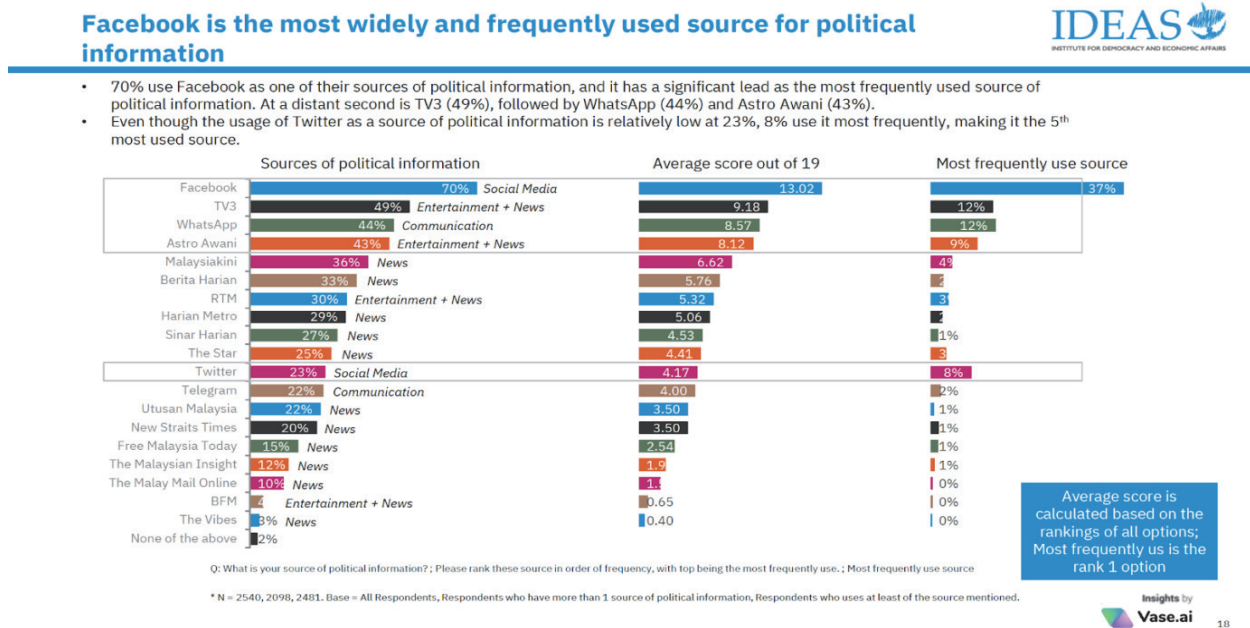
- About half of Malaysians say that the main functions of an ADUN is to give aid to constituents in the form of cash and basic goods (53%), to repair broken infrastructure in constituency, to check and balance government decisions in the State Assembly as well as to debate policies and enact legislation in the State Assembly (49% each).
- 20% of Malaysians are unsure about the responsibilities of ADUN.



Theoretically, an ADUN works in a much closer capacity to their constituents compared to an MP, which means that ADUNs are in a better position to attend to the basic needs of their constituents like food, cash, and other necessities. Moreover, the State Assemblies in Malaysia only sit for a few days each year, and ADUNs do not have much of a role to play in the State Assembly beyond the customary annual passing of the state budget. Select committees are virtually non-existent in State Assemblies. This institutional weakness of Malaysia’s State Assemblies contributes significantly to the welfare officer role that ADUNs play in their constituencies. Interestingly, 47% of respondents who said they have never met their ADUN also chose “give aid to constituents” as the main function of an ADUN.

When drafting the survey questions, we also wanted to find out where Malaysians obtain their political news. News sources are important when determining the level of political awareness and literacy amongst the public. The survey results show that an overwhelming 70% of respondents chose Facebook as their source of political information, with 37% choosing Facebook as their most frequently used source. TV3 (a television channel with primarily Malay language content), WhatsApp, and Astro Awani (a news channel with primarily Malay language content) came in second, third, and fourth respectively at 12%, 12%, and 9%.

Figure 3. Source of News Information among Malaysians



The results for this question are perhaps not too surprising, considering how social media has come to dominate political campaigns around the world.

The survey results are useful in providing an understanding of how voters perceive the roles of their elected representatives, which is an important factor when thinking about reforms. The link between voter perception and political financing is interesting to try to determine, but it is beyond the scope of this paper.

5. Problems in Malaysia’s Political Financing System

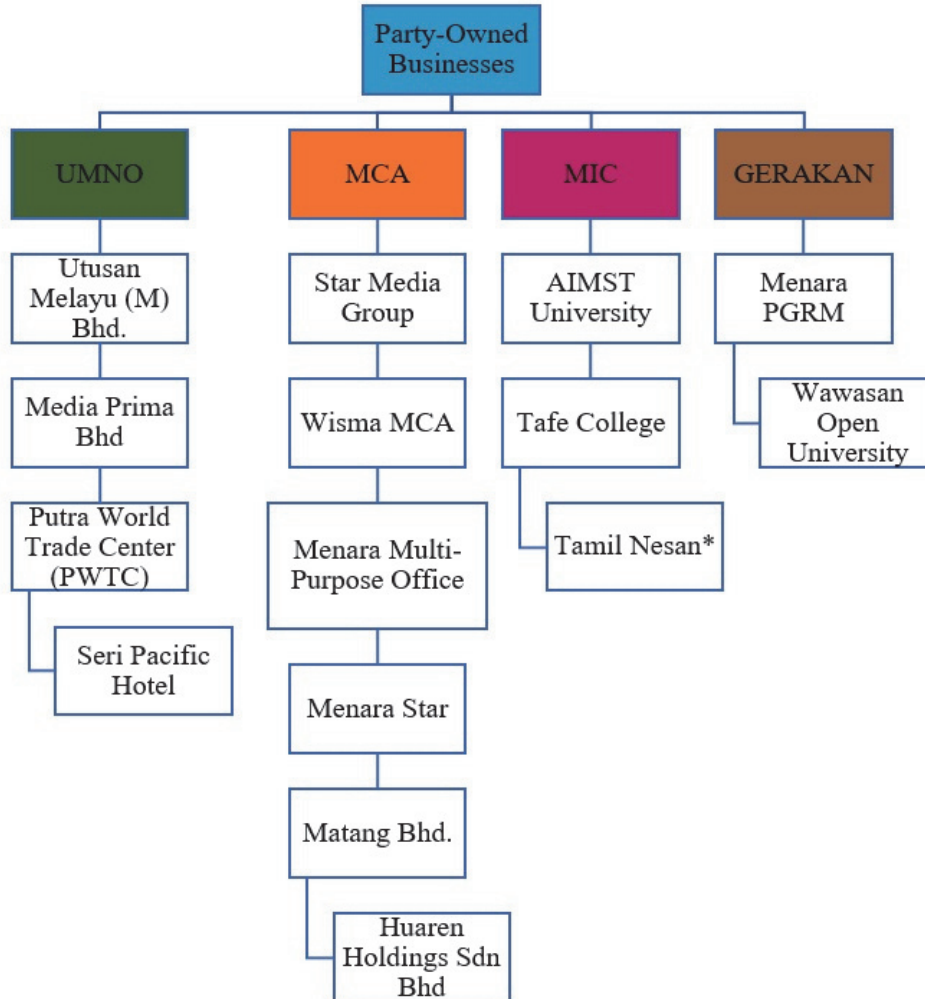
5.1. Political parties owning businesses

According to Gomez and Tong (2017), the monetization of politics stems from the practice of “vote-buying” in the 1980s which had well filtered down to the grassroots level by the 1990s. This necessitated an enormous amount of funds. Over the years, the practice expanded away from the grassroots level and into businesses. Here, the term “grassroot” is used within the context of Malaysian politics – more specifically UMNO – where during this time period, the majority of its party support were rural-based. The culture of money politics had shifted UMNO’s rural-based membership to businesspeople where “networks” were formed to facilitate access to more money. As iterated by Gomez (2012) in Gomez and Tong (2017, p. 2), this shift resulted in the corrosion of party support and the proliferation of patronage culture in Malaysian politics.

Political parties in Malaysia are unique as they are heavily involved in many different business sectors. Some are well publicized, such as UMNO’s ownership of the World Trade Center Kuala Lumpur and the Malay language newspaper, Utusan Malaysia, as well as the MCA’s stake in The Star Media

Group. Figure 4 below illustrates some of the party-owned businesses in Malaysia.

Figure 4. Some Party-owned Businesses in Malaysia



Note: Chart is the authors' own.¹³ *Tamil Nesan closed its operations on February 1, 2019.

¹³ Sources:

- (1) Choe Choe Tan, Chester Tay, "Cover Story: A battle for control of MCA's business empire," *The Edge Markets*, November 8, 2018, <https://www.theedgemarkets.com/article/cover-story-battle-control-mcas-business-empire>
- (2) Kamarul Azhar, "Cover Story: What do the others own?," *The Edge Markets*, November 8, 2018, <https://www.theedgemarkets.com/article/cover-story-what-do-others-own>
- (3) Loghun Kumaran, "With about RM3b in assets, MCA unlikely to fade away soon," *Malay Mail*, June 25, 2018, <https://www.malaymail.com/news/malaysia/2018/06/25/with-about-rm3b-in-assets-mca-unlikely-to-fade-away-soon/1645147>
- (4) MalaysiaKini, "Tamil Nesan to shut down on Feb 1.," *MalaysiaKini*, January 28, 2019, <https://www.malaysiakini.com/news/462100>
- (5) The Edge Markets, "Who Owns Malaysia's public-listed media companies," *The Edge Markets*, August 30, 2019, <https://www.theedgemarkets.com/article/who-owns-malysias-publiclisted-media-companies>

5.2. Party funds vs. development funds vs. private funds

Both the workshops and the survey findings revealed that there is a lack of clarity when it comes to where an MP or ADUN gets funding. Constituency development funds (CDF) that are provided by the government through the Prime Minister's Office are often thought to be "political funds," when in reality these are funds that are meant to be used for developmental purposes. During the BN administration, opposition MPs did not receive CDFs, and during the PH administration, BN MPs received a significantly smaller amount compared to PH MPs.

At the party level, the means by which funds are raised and spent differ. One key finding from the workshops was that there is very little transparency within political parties themselves when it comes to funding. Because the system is unregulated, some parties in Malaysia own a large amount of assets and businesses, while some others are unable to raise much money at all.

Individual politicians also raise their own funds independently of their political parties. For opposition MPs, who are already discriminated against in terms of receiving CDFs, a lack of institutional support when it comes to funding means that they need to compromise on research officers, parliamentary officers, and interns. This is problematic because these officers and interns are critical to the capability of MPs to credibly play the role of effective policymaker. Furthermore, working as a research officer or intern of a politician is often the first step towards a political career for many young people.

5.3. The link between voter expectations and political financing

Many Malaysians expect their elected representatives to provide them with various forms of aid and welfare and fulfil their basic needs, which in turn causes politicians to be pressured to constantly have large amounts of cash with them because of this clientelist relationship with their constituents. The means of obtaining the funds, however, become an issue of contention as the method of procuring these funds remain obscure to the public. Furthermore, the unregulated political financing ecosystem has therefore, becomes a vehicle through which patronage, corruption, and rent-seeking occurs. Weiss contends that these praxes push elected representatives to focus more on local issues rather than national issues—although participants from the workshops agree that constituency work creates more opportunities to build a better reputation with voters than legislative work, it further exacerbates the clientelist culture in Malaysian politics.

5.4. Unequal access to funds

Malaysia allocates 1% of its budget for CDFs. In 2020, the allocation for CDFs set by the Implementation Coordination Unit (ICU) of the Prime Minister's Office was approximately RM 482,774,500.¹⁴ However, as mentioned above, the effectiveness of these funds is hindered by the lack of accountability and transparency despite evidence suggesting that the CDF could potentially address urgent

¹⁴ "Penambahbaikan Peruntukan Pembangunan Kawasan di Malaysia," produced by Bersih 2.0, March 30, 2021, Youtube video, 5:37, https://www.youtube.com/watch?v=dEUMODR9Vu0&ab_channel=BersihTV

development needs and constituency gaps. The CDF is instead used as a tool by ruling parties in efforts to influence voters. The primary form of malpractice is the unequal distribution of the funds. Fund distribution is dependent on either (1) the decision of the Prime Minister at the federal level for MPs, or (2) the State Economic Planning Unit at the state level for the ADUNs. Other forms include the withholding of funds from opposition representatives.¹⁵

Table 2. Distribution of CDF According to Ruling Coalition

Ruling Coalition	2013 Barisan Nasional*		2020 Pakatan Harapan**		2021 Perikatan Nasional**	
	BN	Opposition	PH	Opposition	PN	Opposition
Allocated Funds (RM)	RM 185.5 million	Funds were directed to an area coordinator politically inclined to the ruling coalition instead of the area representative	RM 3.5 million	RM 100,000	RM 3.7 million	RM 100,000 or none at all

Note: Adapted from the BersihTV Video.

*In 2013, RM 185.5 mil. was allocated for 222 constituents. By right, each constituent was entitled to RM 835, 000 if equally divided, but the opposition did not receive any funds.

**Approximate amounts. UMNO claimed they received only RM 100,000 whereas DAP MP Hannah Yeoh claimed they had received none.

5.5. Covert funds

The issues of transparency in political financing resurfaced due to the barrage of investigations during the 1MDB scandal and brought political financing into sharp focus. Missing money amounting to RM2.6 billion from 1MDB was deposited into Najib Razak’s personal account, which then was speculated to have been used for the 2013 General Elections. Despite clear evidence of embezzlement and charges against the ex-PM, no punitive measures were executed, highlighting Malaysia’s inadequacy when it comes to law enforcement.¹⁶

5.6. Inadequate law enforcement

According to Dettman and Gomez (2020), reforms were opposed by both UMNO (due to the perception that supporting reforms would give the dominant party leverage in the elections) as well as the opposition (more speculative towards the reforms suggested).¹⁷ The Committee also did not address the 1MDB scandal. Instead, they deliberated on tenets of a new law without considering institutional reforms.

¹⁵ Sri et al., *Constituency Development Funds*, vii

¹⁶ Rebecca Ratcliffe, “1MDB scandal: Najib Razak handed 12-year jail sentence,” *The Guardian*, July 28, 2020, <https://www.theguardian.com/world/2020/jul/28/1mdb-scandal-najib-razak-verdict-malaysia>

¹⁷ Dettman and Gomez, *Political financing reform*, 36-55

Furthermore, the institutional reforms and proposals that were recommended by civil society issued later were watered down with key provisions removed. The ambiguity surrounding the legislation on political financing has provided the ruling government opportunities to engage in manipulation to hold on to power.

Following G-25 Malaysia's proposal on political funding reformations, there are several key pieces of legislation that were addressed:

- a. Federal Constitution: Call for the independence and impartiality of the Election Commission (EC), Office of Public Prosecutor (PP), and a code of conduct for a caretaker government and access to funding.
- b. EOA 1954: Call for rules on access to funding, limits on contributions, expenditures, disclosure and reporting, monitoring and enforcement capabilities of the EC.
- c. Societies Act 1966: Call for the independence and impartiality of the Registrar of Societies (ROS), registration and supervision of conduct and financing of political parties, including financing of political elections.

5.7. Weak institutions

G-25 Malaysia also highlights three institutions that require reform: the EC, the ROS, and the Attorney General's Chambers (AGC). All of the reform suggestions center around the need for independence and impartiality, but it is important to point out that reforms recommended for the AGC pertain to matters on the prosecution of election offenses. Another major point in considering institutional reforms is the interactions between dominant parties, oppositions, and civil society. Understanding the dynamics between these three parties is essential to understanding the "currents of reform and entrenchment in political finance."¹⁸

5.8. The role of state institutions in providing welfare

The expectations placed upon politicians to provide welfare aid begs the question—what are state welfare institutions supposed to do? Reforming the political financing system will not solve the problem completely unless government agencies that are supposed to provide welfare for the people are improved at the same time. Analyzing the effectiveness of government programs such as Bantuan Rakyat 1Malaysia (BR1M), Bantuan Sara Hidup, and others is beyond the scope of this paper, but it is worth noting that individual politicians are still very much relied upon despite numerous welfare provisions by the state. The culture of clientelism and patronage halts any incentive to implement inclusive programmatic policies and discourages efficient and fair economic allocation.

This has been especially apparent in this pandemic as many Malaysians struggle to retain their jobs and suffer from fiscal deficits. State institutions are also finding it difficult to keep up with providing

¹⁸ *Ibid.*

welfare. A group of less-abled people came forward regarding late payments due to bureaucratic and inefficient services from the Social Welfare Department. This further cements the serious role that state institutions should play to provide welfare for the public while highlighting the need for much reform raise the effectiveness of the existing provisions. Despite possessing programmatically delivered healthcare, education, infrastructure, and government programs, most of these services have been heavily politicized over the past few decades.

Participants from the workshops concede that MPs spend most of their time building relationships with voters by providing personal assistance, which may conjure feelings of obligation and gratitude among the voters. Thus, MPs/ADUNs are left with little time to work on policymaking or to focus on parliamentary structures or resources to facilitate policymaking. This culture trivializes the role of nonpartisan institutions and the provisions which are already available. Those who are desperately in need turn to their elected representatives for help because doing so offers a fast and direct process to request aid.

6. Recommendations for Reforming Malaysia's Political Financing System

6.1. Political Financing Act

What Malaysia needs most urgently is a Political Financing Act. This Act should contain rules and procedures surrounding how a party can raise money, manage that money, and how that money can be spent. There should be a requirement for party accounts to be audited and the financial report made available to the public. There should also be clear enforcement mechanisms for those who violate the rules. Furthermore, limits should be imposed on the amount that can be donated and the amount of tax exemptions available for donors. Donations from foreign corporations or individuals and government-linked companies (GLC) should also be prohibited.

There are three possible ways to regulate political financing. Firstly, donation limits must be capped for Malaysian individuals, companies, or organizations who contribute funds to political parties. Ideally, donations from companies should be prohibited to avoid underground deals and contracts, but this will not be passed in parliament as these corporations are an important component of politics in Malaysia. Secondly, a list of non-permitted donors must be created. This list should include GLCs, non-citizens, and foreign organizations as mentioned above. Datuk Seri Najib Razak stated during his premiership that there should be a law to regulate political financing and outlaw foreign donations, yet no reforms have been made until today.¹⁹ Thirdly, for donations that exceed a certain threshold, political parties must disclose the donors and the amount that was received. Funding declaration is important to rebuild the public's trust in political institutions—it crowds out donations that are abused to consolidate an individual or organization's power over political decisions. It must be remembered that any law on political financing, while necessary, is only the first step along the long journey to curb money politics.

¹⁹ G25 Malaysia, "Time to pass law regulating political financing," *New Straits Times*, July 17, 2020, <https://www.nst.com.my/opinion/letters/2020/06/601257/time-pass-law-regulating-political-financing>

6.2. Introduction of Vote-Based and Seat-Based Direct Public Funding

There is also support for some form of public funding for political parties, similar to the German model. Malaysia does not have a public funding framework in the current system, but it is high time to adopt public funding for political parties. There are two types of public funding: (1) direct public funding, and (2) indirect public funding.²⁰ Direct public funding is mostly for the purpose of general election campaigns, the duties of the parliamentary group (including the administrative staff, legislative research, and/or publication needs), policy research and development, training of political party members or candidates, activities in support of raising the participation of minority groups, voter and civic education, and anything that requires the use of money. The introduction of public funding for political parties is crucial to the creation of a more equal playing field. Public funding creates a stable and reliable source of funding for the political parties, thus reducing their dependence on private funds.

The Coalition for Clean and Fair Elections, BERSIH, proposes direct and annually allocated public funding with a maximum of 0.05% of the annual budget administered by the EC. The table below shows the upper limit of public funding derived from the last 10 years of the federal budget and multiplied by 0.05%.²¹

Figure 5. Federal Budget, 2011-2020

Table 7: Federal budget, 2011-2020	
Year	Amount
2011	RM 212 billion
2012	RM 233 billion
2013	RM 252 billion
2014	RM 264 billion
2015	RM 274 billion
2016	RM 267 billion
2017	RM 261 billion
2018	RM 280 billion
2019	RM 315 billion
2020	RM 297 billion
Median	RM 265 billion
0.05% of median	RM 133 million (rounded up to next million)

Source: BERSIH 2.0: Public Funding of Political Parties Policy Research p. 65.²²

²⁰ Kok Hin Ooi, "Public Funding of Political Parties in Malaysia: Debates, Case Studies and Recommendations," *Bersih & Adil Network Sdn. Bhd.*, (2021), 18-20, <https://www.bersih.org/wp-content/uploads/2021/01/Bersih-Policy-Research-Public-Funding-of-Political-Parties.pdf>

²¹ Ooi, *Public Funding*, 65-66

²² Ooi, *Public Funding*, 65

The average public funding threshold globally is set at 3.5%, and thus it is proposed that a regional-based threshold set at 2% should be implemented in Malaysia. This means that in order for a political party to qualify for an allocation of direct public funding, they must pass the 2% threshold of votes in at least one of the three regions: Peninsular Malaysia, Sabah, and Sarawak (East Malaysia). The threshold is set at 2% due to: (1) Malaysia's first-past-the-post practice rather than proportional representation and (2) for the purpose of reducing discrimination against regional parties. The proportion of direct public funding allocated will be calculated according to the vote shares gained by the participating parties in the general election instead of the number of seats won. This is to avoid any involuntary funding of political parties that the voters did not support, which is a common objection from the public to the provision of public funding. The upside to implementing direct public funding is that political parties will now have a regular source of funds for elections and campaigns, thus lessening their dependence on private funders. As successfully done in the United Kingdom, a sum of direct public funding is meant to be used for policy research, known as the Policy Development Grants (PDG),²³ which enables parties to carry out research and preparations for public policy.

6.3. Voter Education

Extensive voter education is integral to the implementation of public funding. A common misconception about public funding is that the total funds will be channeled to the political parties only. However, if a proper framework is put in place, a large amount of the funds will be used for the public's benefit. Voter education plays an imperative role in ensuring that proper political literacy is provided to further consolidate democracy.²⁴ It also protects the democratic system, as citizens are able to make informed political decisions, and acts as an organic check and balance in the system. When voter education is prioritized, new voters and even older voters in the system are able to effectively exercise their democratic rights, which not only include voting, but also rights like expressing their concerns about the transparency and accountability of political parties. Voter education equips citizens with healthy democratic habits instead of encouraging emotion and rhetoric-influenced decision making. Voters have a right to demand that political parties disclose the sources of their funding. Thus, enough pressure from the public can help to create a domino effect of eradicating corrupt practices in politics.

6.4. Indirect Public Funding

Indirect public funding refers to any resource that holds monetary value that can be provided from the government to political parties.²⁵ Examples of indirect public funding can be listed as follows:

- a. Media access (in terms of advertising slots in publicly-owned media),

²³ "Public funding for political parties: Policy Development Grants," The Electoral Commission, updated 10 June, 2021, <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/financial-reporting/donations-and-loans/public-funding-political-parties>

²⁴ "Civic and voter education." Ace Project. Accessed 2021, https://aceproject.org/ace-en/topics/ve/explore_topic_new

²⁵ "Indirect public funding of parties and candidates." Ace Project. Accessed 2021, <https://aceproject.org/ace-en/topics/pc/pca/pca02/pca02a/pca02a5>

- b. Interest-free loans for campaigns, free printing and distribution of ballot papers,
- c. Free or subsidized office space to be used as political party headquarters or local branches (ADUN),
- d. Subsidized public transportation for candidates and party activists and supporters of political rallies,
- e. allowing the use of government-owned buildings (schools, administrative buildings, sports areas),
- f. Tax-free donations to provide public donors with tax incentives in support of building democracy, and
- g. Free or subsidized telephone networks, and many other intangible resources.

In the UK as an example, several forms of indirect funding are given to political parties. The UK allows political parties to broadcast on state-owned broadcasting platforms such as the BBC, which has a formal obligation under its Charter Agreement. Advertising at commercial rates would impose greater annual costs for political parties, especially during election years. Parties are also allowed to utilize public spaces and buildings such as schools and town halls for meetings during an election period. Additionally, free post is available during elections, entitling candidates to free postage for election mailing amounting to over 20 million GBP for general elections.

Currently, in Malaysia, mass media businesses are one of the main components of political financing. Media businesses such as television stations and newspaper outlets are dominated by UMNO, allowing unprecedented media broadcasting and exposure. In the age of new media and the internet, social media and sources such as MalaysiaKini and The Sarawak Report have enabled a large number of Malaysian citizens to acquire less biased news and information. Freedom of media is an important electoral reform to equalize the playing field for political parties.²⁶ Parties must be prohibited from owning media outlets to ensure that more transparent news and information can be published.

A three-pronged approach should be taken to create a fair system of political finance in Malaysia. Reforms in political parties to enhance transparency and accountability of funds, public policy by the government to fairly allocate direct and indirect political finances, and empowerment of the public through civic and voter education. Public funding, both direct and indirect, is imperative for three reasons: (1) it curbs corruption within the political system; (2) it empowers the public as tax-payers and voters; and (3) it raises accountability and transparency within political financing. The main worry over adopting public funding for political parties is the readiness of the Malaysian political landscape. According to Transparency International Malaysia, about 71% of Malaysians surveyed deemed government corruption a big problem and 39% believe Members of Parliament to be the most corrupt.²⁷ The 1MDB scandal is a significant example of corruption in money politics that has deterred the public from trusting political institutions. There is also evidence that the need for civic education regarding money politics is crucial. As mentioned previously, common objections to public funding are that it is a waste of public funds and an involuntary political contribution by taxpayers. Most taxpayers would rather public funds

²⁶ Amalia Salabi, "Why Malaysia Needs Political Party Financial Reform," *Rumah Pemilu*, last modified February 10, 2020, <https://rumahpemilu.org/why-malaysia-need-political-party-financial-reform/>

²⁷ Arjuna Chandran Shankar, "71% Malaysians view government corruption as a big problem," *The Edge Markets*, November 25, 2020, <https://www.theedgemarkets.com/article/71-malaysians-view-government-corruption-big-problem-says-tim>

be used to build hospitals, schools, and public spaces instead of funding political parties, as they fear that the funds would be mismanaged. This fear stems from Malaysia's long history of corruption and kleptocracy that has become the essence of politics in the country. Political parties and politicians must realize that transparent political financing is a journey that government and civil society must take hand in hand, and that it will be a long time before there are any tangible results.

6.5 Disclosure of donors

Nearly all of the political parties express varying degrees of concern regarding the exposure of their donors. The opposition parties in particular argue that their donors might be persecuted if revealed. Parties on both sides know that in more than one instance, they share the same donor(s). The donors themselves fear reprisal and a loss of credibility for "hedging their bets" on both sides of the political divide. These concerns have led some to suggest that donations only be disclosed to an independent controller and not to the public. Another suggestion is to only disclose donations that exceed certain amounts. From a civil society perspective, there can be no compromise on transparency. A political financing system that does not prioritize transparency above all else will not achieve its purpose. Greater emphasis on the importance of transparency needs to be communicated to politicians across the board.

7. Conclusion

Welfare and money are highly politicized by political parties in Malaysia. This politicization has caused the abuse of state institutions, where corruption remains the root of the problem. This culture is then absorbed and learned by new players in the political landscape, creating a cycle of corrupt practices. This paper concludes that the current political financing system is inadequate to regulate the funds flowing in and out of political parties. Transparency and accountability should be prioritized when reforms are made in Malaysia's political finance system to reinstate public trust in the institution as both effective and functionally democratic. Therefore, political parties must be the main stakeholder in any discussion involving political financing. They must not view the law as punitive, but rather as a tool with which democratic norms and transparency can be fully enforced.

The Malaysian case presents an interesting study because of its unregulated system. This means that reforms can be constructed from scratch, and there is plenty of opportunity for civil society to contribute. Malaysia's political uncertainty presents a significant challenge to reform initiatives. IDEAS has made progress in identifying and recruiting allies in the civil society and political arenas, but much more needs to be done with regard to institutions and the private sector. All of these reforms take time to implement, and a more transparent political financing ecosystem should be thought of as a journey rather than the destination. ■

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Country Case 3: Pakistan

Regulating the Use of Money in Politics: The Case of Pakistan

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1. Introduction

Elections are integral to democracy. It is not possible to think of a democratic political system without free, fair, and transparent elections because the notion of the primacy of people cannot materialize without providing them with a fair and free opportunity to elect their representatives. Elections play a fundamental role in nation-building as everybody has one equally counted vote regardless of gender, caste, age, tribe, and minority, etc.²

With elections comes the role of money in politics. The term Political finance is used to describe the role of money raised and spent for political purposes. While this largely revolves around elections and electoral contests and campaigns, political finance also includes the use of money in all political contests run by parties and candidates.

The role of money in financing politics is neither a new phenomenon nor relevant to a country or region. Money has always been an integral part and a key vehicle for financing politics, political participation, campaigning, and representation around the world. However, without effective regulation, the use of money in politics can undermine representation and representative democracy. As globally, there has been a rise of the use of money in politics, it has brought to the fore concerns about how difficult it is for a person of average means to contest the election and how the use of money has made politics a forte of the rich and away from an inclusive democracy. This is not just true for political parties that do not have access to large funding opportunities, it especially hurts the prospects of influence and political power for the traditionally marginalized communities in politics across societies including women, young people, religious minorities and differently-abled who struggle to find level-playing field in political participation and democratic governance.

The use of money has also changed the global conversation about regulating the raising and spending of money in politics. When money is raised from sources outside the political parties such as corporations and other entities, another question emerges on how that must be regulated to avoid conflict

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² Dr. Hasan-Askari Rizvi and Dr. Ijaz Shafi Gilani, *The First 10 General Elections of Pakistan*, (PILDAT, August 2013), <https://pildat.org/electoral-reforms1/the-first-10-general-elections-of-pakistan-2>.

of interest in democracies as well as the dangers of ‘policy capture’ or even ‘state capture’³ through political funding by the wealthy entities.

There is, therefore, consensus that states must effectively regulate the role of money in politics and place reasonable bars not just to regulate donations and spending but also to address concerns of transparency by making sure that the public has easy and open access to how parties and candidates raise and spend money for electoral and political campaigns.

Advancements in technology and political processes relying on newer mediums for political and electoral campaigns such as the digital platforms have allowed a greater level playing field for parties and candidates with lesser resources. However, digital campaigning has also opened up the democratic process to vulnerabilities through disinformation, interference in elections, etc. Newer strategies are made globally to managing political finance in the digital age.⁴

Regulation of political finance in a country determines the integrity, transparency, and accountability in representative democracy and democratic governance. This paper evaluates the system of political finance in Pakistan, the challenges posed by the role of money in politics, its regulation, and what are some of the ways that the system can be further strengthened.

The paper begins by providing a concise political and electoral background of Pakistan’s political and electoral system, structures, institutions, constitution, and legal framework to contextualize the role of money in politics in Pakistan. The paper also discusses the legal architecture put in place to regulate political finance in Pakistan, limitations to its effective implementation, and some key reforms that are required to both strengthen the legal regime and its effective implementation.

2. Political System of Pakistan

The Islamic Republic of Pakistan is a federal parliamentary democracy. It has a bicameral legislature at the federal level, while each of the four provinces have unicameral legislatures. The Parliament of Pakistan has the constitutional responsibility to legislate on a vast number of subjects contained in the Fourth Schedule of the Constitution, while each Provincial Assembly can legislate on subjects under the constitutional authority of the provinces. At the federal level, the Prime Minister is elected from a population-based house, the National Assembly, where seats are allocated to each province and the federal capital on the basis of population. Elections are held under the first-past-the-post (FPTP) system, and seats reserved for women and members of the non-Muslim population are chosen through a proportional representation (PR) system. Members of the National Assembly and Provincial Assemblies each have a five-year term. The executive authority of the Federation is exercised in the name of the President by the federal government, which consists of the Prime Minister and the Federal Ministers. This is also the case in provinces where Chief Ministers, together with provincial cabinets, exercise executive authority over

³ Joo Cheong Tham, “How Might Digital Campaigning Affect the Problems of Political Finance?,” IDEA June 2, 2021, <https://www.idea.int/publications/catalogue/how-might-digital-campaigning-affect-problems-political-finance>.

⁴ Ibid.

each of the four provinces. Seats in the Senate of Pakistan are equally allocated to each of the four provinces and are filled through a PR system by means of the single transferable vote. The Senate does not have a fixed term, but elections on half of its seats are carried out every three years.

3. Brief Electoral History of Pakistan

Pakistan gained independence from the British colonial rule of the Indian sub-continent on August 14, 1947. It was divided into two wings, i.e. East and West Pakistan, each wing located on either side of the newly independent India and separated by a distance of over 1000 miles.

Since its inception, the political history of Pakistan is a troubled one, marked by power struggles. Military regimes have ruled Pakistan for more than half of its existence. The Army enforced Military Governments in the country in 1958, 1969, 1977 and 1999.

Since independence in 1947, eleven General Elections based on adult franchise have been held in Pakistan. General Elections were held in the years 1970, 1977, 1985, 1988, 1990, 1993, 1997, 2002, 2008, 2013 and 2018.

Before 1970, elections for the National Assembly, Provincial Assemblies and the office of President were held through indirect manner in 1965. This was done under a Presidential Form of Government and through devising a system of 'Basic Democracy' (BD). Under the system of basic democracy, something akin to but not exactly local governments, 120,000 BD Members were elected by the people from all over the country. Together the members from these basic democracy included representatives of constituted local, municipal bodies and the Electoral College for the election of the President, the National Assembly and the Provincial Assemblies.

Earlier, however, Pakistan chose to be a parliamentary form of democracy at the beginning of its independence in 1947. Father of the Nation, also known as Quaid-i-Azam, Mr. Muhammad Ali Jinnah chose to become the first Governor General of Pakistan instead of opting for becoming Prime Minister of Pakistan. Instead, Mr. Liaquat Ali Khan became the first Prime Minister of India. In the office of Governor General, Mr. Jinnah was followed by Khawaja Nazimuddin, Malik Ghulam Muhammad and acting Governor General Iskandar Mirza. Later, the office of the President was created to replace that of the designation of Governor General.

The fledgeling democracy of Pakistan after 1947 received its first shock in October 1954 when the then-Governor General Mr. Ghulam Muhammad dissolved the Constituent Assembly on October 24, 1954. Despite a legal battle opposing the move, the Federal Court at the time upheld the action of Mr. Ghulam Muhammad.

Pakistan's first constitution was passed by the then-Constituent Assembly on February 29, 1956 while it received the assent of the Governor General assent on March 2, 1956 followed by its promulgation from March 23, 1956. The 1952 Constitution also opted to retain the Parliamentary form of Government.

During August 15, 1947 to October 7, 1958, a total of seven Prime Ministers served in Pakistan. The system, however, was once again, interrupted as the first martial law was imposed in Pakistan on

October 7, 1958 by President General Iskandar Mirza with the help of the then-Army Commander-in-Chief, General Ayub Khan. Under General Ayub Khan, a new constitution was carved and promulgated on March 1, 1962. This was followed by General Election on March 28, 1962. Martial law was lifted only on June 8, 1962 as the first session of the newly-elected National Assembly was held. According to the new 1962 Constitution of Pakistan, parliamentary system was not preferred and instead a Presidential form of government and the principle of Basic Democracy were introduced.

In 1965, the second election for the President and National and Provincial Assemblies was held under the 1962 Constitution. However, long and widespread street agitation against President General Ayub Khan led him to resign from office on March 25, 1969. Instead of handing over power to the elected representatives, General Ayub Khan chose to again leave power to the Commander-in-Chief of the Pakistan Army, General Muhammad Yahya Khan, marking it as second martial law in Pakistan.

Under Gen. Yahya Khan's martial law, General Election for the National Assembly were held in Pakistan for the first time on the basis of adult franchise on December 7, 1970. Awami League, a party mainly finding public support in the Eastern Wing of Pakistan, emerged as the single largest party in the National Assembly. The Awami League contested election mainly on the issue of provincial autonomy for East Pakistan. Public sentiment in East Pakistan was weary of perceived exploitation of East Pakistan resources by the West Pakistan by the civil and military elite. Based on the election result, Gen. Yahya Khan declared the head of Awami League, Sheikh Mujib-ur-Rehman, as the Prime Minister of Pakistan. However, despite clear victory of Awami League in General Election, transfer of power to the party was delayed. As a result, discontent in East Pakistan led to public protests. Instead of appeasing the protests by hastening transfer of power, Gen. Yahya Khan used the Army under his command to militarily manage public protests and political agitation in East Pakistan. That further ignited the political unrest which turned into a struggle for independence in the East Pakistan. The struggle transformed into an armed struggle for liberation which was strategically assisted by the neighbouring India, turning into a full-fledged war between Pakistan and India in 1971. The Western wing lost the war and the East Pakistan became a separate independent state called Bangladesh in 1971. This led to resignation by Gen. Yahya Khan who transferred power to Mr. Zulfikar Ali Bhutto of the Pakistan Peoples Party (PPP) which had emerged as the single largest party among the remaining members of the National Assembly. Mr. Bhutto first took over power as President and Chief Martial Law Administrator of Pakistan and later as Prime Minister of Pakistan. Gen. Yahya Khan's martial law was termed unlawful by the Supreme Court of Pakistan after his resignation. Instead of holding him to trial, however, the Supreme Court condoned the acts of the Martial Law regime.

The 1973 Constitution was adopted in Pakistan through a political consensus by political parties represented in the Assembly under the regime of Prime Minister Bhutto. The next General Election was held on March 7, 1977 but in political perception, it was termed as largely rigged leading again to political unrest in Pakistan. Once again, the Army under the then Army Chief General Muhammad Ziaul Haq usurped power through another coup d'état and overthrew another elected government on July 05, 1977. This time, however, the 1973 Constitution was not abrogated but held in abeyance. Prime Minister Zulfikar Ali Bhutto was put behind bars on trumped up charges against him and was later hanged on the

orders of the Supreme Court. Instead of terming the martial law unconstitutional, the Supreme Court upheld the martial law on the basis of the 'doctrine of necessity,' giving the Gen. Zia-ul-Haq's martial law a lease of life for years to come.

It was only in 1985, eight years after the imposition of martial law that Gen. Zia-ul-Haq held another General Election in the country on February 25, 1985. However, fearing the return of the late Mr. Bhutto's Pakistan Peoples Party (PPP), the General Election was held on non-party basis. After the election, martial law was lifted and the 1973 constitution was restored though major amendments were made in the Constitution by Gen. Zia-ul-Haq. Mr. Muhammad Khan Junejo was appointed as Prime Minister of Pakistan after the election. The newly-elected Parliament ratified the massive changes made in the constitution by Gen. Zia including his power to dissolve the National Assembly. However, despite clipping the powers of the Prime Minister, Gen. Zia-ul-Haq developed differences with Prime Minister Junejo and dismissed him and dissolved the National Assembly on May 29, 1988. On August 17, 1988, Gen. Zia-ul-Haq died in a plane crash leading to the then Senate Chairman, Mr. Ghulam Ishaq Khan taking oath as acting President according to the 1973 constitution.

The next General Election was held in Pakistan on November 16, 1988 resulting in the victory of PPP under the leadership of Ms. Benazir Bhutto, daughter of former Prime Minister Zulfikar Ali Bhutto. Ms. Bhutto took oath of office of Prime Minister on December 02, 1988. She remained in power only for 20 months between 1988 to 1999 and her elected government was dismissed by the President on August 07, 1990. The dismissal of Prime Minister Bhutto's first government was challenged in the court but the Supreme Court again upheld the dissolution.

The decade of the 1990s is often referred to in Pakistan as being akin to a game of musical chairs in which Prime Ministers were dismissed one after the other without completing their tenures. During the decade both Ms. Benazir Bhutto, leader of the PPP, and Mr. Muhammad Nawaz Sharif, leader of the Pakistan Muslim League-Nawaz (PML-N) were elected twice to serve as Prime Ministers. In each of their two tenures, their governments were dismissed and National Assembly dissolved on charges of corruption.

Fresh General Election was held on October 24, 1990 through which Mr. Muhammad Nawaz Sharif took oath of office as Prime Minister. His government, however, was also dismissed by the then-President Mr. Ghulam Ishaq Khan on April 18, 1993. For the first time, the Supreme Court declared the dissolution of the National Assembly unlawful and restored the government of Prime Minister Nawaz Sharif. Tensions between the President and Prime Minister, however, continued leading to the then-Army Chief stepping in to broker an agreement between the two which led to the resignation of both the President and the Prime Minister.

Another general election held on October 6, 1993 brought in Ms. Benazir Bhutto's PPP with the largest number of seats in the National Assembly. Once again Ms. Bhutto took oath of office as Prime Minister. Even though the newly-elected President, Sardar Farooq Leghari originally belonged to Ms. Bhutto's PPP, her second government as well as the National Assembly were dismissed by President Leghari on November 5, 1996. This time the Supreme Court upheld the President's decision to dissolve the National Assembly.

The 1997 General Election was held on February 3, 1997. Mr. Muhammad Nawaz Sharif of the

PML-N got two-thirds majority in the National Assembly and took oath of office the second time as Prime Minister of Pakistan. Under his tenure, the Constitution was amended to be restored to its original form by clipping the powers of the President. However, his second term in office was also truncated though this time it was through another military coup d'état, bringing yet again to a grinding halt the fledgeling democracy of Pakistan.

The then Army Chief Gen. Pervez Musharraf took over power by overthrowing the elected government of Mr. Nawaz Sharif on October 12, 1999. This time under the martial law, third in Pakistan's history, the National Assembly was first suspended though later it was dissolved. The 1973 Constitution was not abrogated but in the style of Gen. Zia's martial law, it was held in abeyance. The martial law was challenged in the Supreme Court of Pakistan which, instead of terming it unconstitutional and high treason according to the 1973 constitution, gave Gen. Musharraf's rule a long lease of life by upholding the coup. The Supreme Court, however, directed Gen. Musharraf to hold fresh general election not later than three years.

Spanning over nearly a decade, in his dictatorial rule, Gen. Pervez Musharraf first appointed himself as the "chief executive" of the country. Later, in June 2001, Gen. Pervez Musharraf assumed the additional role of the President of Pakistan on June 20, 2001. Through a massively rigged Presidential referendum held in his favour on April 30, 2002, he took over as 'elected' President of Pakistan. In the style of first martial law by Gen. Ayub Khan, instead of holding general election, Gen. Pervez Musharraf held Local Government Elections between December 2000 to July 2001 in five phases. Many changes were made to the 1973 constitution by Gen. Musharraf.

Fresh General Election for National Assembly and four Provincial Assemblies was held under Gen. Musharraf's rule in October 2002. The general election, being held under martial law, was massively rigged resulting in the victory of a new political party, the Pakistan Muslim League-Quaid-e-Azam (PML-Q), carved out of membership of Mr. Nawaz Sharif's PML-N. A coalition of Islamic parties, the Muttahida Majlis-e-Amal (MMA) also got a number of seats. In the typical dictatorial style, Gen. Pervez Musharraf changed many Prime Ministers. Initially, Mir Zafarullah Khan Jamali of the PML-Q became Pakistan's new Prime Minister on November 23, 2002. However, the National Assembly was marred by opposition's protests over the legitimacy of the constitutional changes made by Gen. Musharraf and his continued status as the Army Chief and the President. In December 2003, an agreement was constructed between Gen. Musharraf and the MMA which ended the deadlock and the agreement to bring the constitutional amendments made by Gen. Musharraf before the Parliament in the form of 17th constitutional amendment. Part of the agreement was also that Gen. Musharraf would resign from his military office by December 31, 2004. However, he reneged from that deal and decided to continue as Army Chief beyond December 2004 while making the Parliament pass a controversial law allowing him to continue holding the two offices of Army Chief and President until the end of 2007. In August 2004, Gen. Musharraf also brought in Mr. Shaukat Aziz as new Prime Minister. In 2007, a crisis hastened the end of the dictatorial rule of Gen. Musharraf. On March 9, 2007, Gen. Musharraf summoned the then Chief Justice of the Supreme Court to his office and asked him to resign. On the Chief Justice's refusal, Musharraf first announced his removal but later changed it into suspension and filed a reference against

him to the Supreme Judicial Council. As the Chief Justice left the Presidency, images of police manhandling him to enter his car became viral and together with his suspension, the issue triggered a nationwide response led initially by the lawyers community and was later joined by all walks of life including youth, political parties, media and citizens. Commonly referred to as the Lawyers Movement in Pakistan, this movement turned the tide of public wrath and sentiments against General Pervez Musharraf and the Army that he commanded at the time.⁵

As the political situation got out of Musharraf's control, he imposed a State of Emergency on November 3, 2007, held the Constitution in abeyance again and issued a provisional constitutional order requiring the judges to take a new oath of office. The majority of judges of the Supreme Court and Provincial High Court either refused to take the new oath or they were not invited to take the new oath. All such judges lost their job. The political re-action was most negative and ignited public protest once again. On November 28, 2007, Gen. Musharraf finally stepped down from the office of Army Chief and appointed General Ashfaq Pervez Kayani as the new Chief of Army Staff. Gen. Musharraf took the oath of office as the civilian president for second term on November 30, 2007. He yet again made changes to the constitution in December 2007 to suit and strengthen his position after which he withdrew emergency on December 15, 2007. The National Assembly of Pakistan elected in October 2002 completed its tenure in November 2007. The system of a caretaker government was created in the constitution earlier through which a caretaker Prime Minister was appointed by Gen. Musharraf on November 16, 2007 who served until March 25, 2008. The General Election was earlier scheduled to be held on January 8, 2008. However, due to the assassination of Ms. Benazir Bhutto on December 27, 2007, the date of election was changed.⁶

Fresh General Election was held in February 2008. After a long shadow of Gen. Pervez Musharraf's military rule, the election provided an opportunity to civilian political parties and groups to pursue an expanded role in political and societal affairs. The election results gave a split mandate and no political party got an absolute majority in the National Assembly. The PPPP(Pakistan Peoples Party Parliamentarian) emerged as the single largest party with 95 general seats. This number rose to 122 by adding the reserved seats for women and non-Muslims won by the PPPP. The PML-N came second with 72 general seats and 20 reserved seats for women and non-Muslims (Total 92). The erstwhile ruling PML-Q won 41 general seats and 12 reserved seats (Total 53). The MQM(Muttahida Quami Movement) won 19 general seats, all from urban Sindh. Its strength reached 25 by adding reserved seats. The ANP(Awami National Party) won 10 general seats, all from NWFP (Khyber-Pakhtunkhwa). It also won 3 reserved seats for women. Independent candidates won 10 seats. The election results showed that despite a decade-long effort by a military dictator to marginalize the PPP and the PML-N, both the parties returned to Assemblies based on mandate by the people. Syed Yousuf Raza Gillani of the PPPP took oath of office as Prime Minister on March 25, 2008. He served as Prime Minister until April 26, 2012 when he was disqualified by the Supreme Court. In June 2012, Raja Pervez Ashraf of the PPP took oath

⁵ Dr. Hasan-Askari Rizvi and Dr. Ijaz Shafi Gilani, *The First 10 General Elections of Pakistan*, (PILDAT, August 2013), <https://pildat.org/electoral-reforms1/the-first-10-general-elections-of-pakistan-2>.

⁶ Ibid.

of office as Prime Minister of Pakistan. Even though an elected prime minister could not complete the full 5-year term of office as Prime Minister between 2008 and 2013, the elected government of the PPP completed the 5-year term in office between 2008 and 2013. Through an all-party consensus in the Parliament, 18th amendment to the constitution was passed in April 2010 changing nearly 1/3rd of the 1973 constitution. The amendment mainly restored the powers of the Prime Minister, took away the powers allocated to President which were not in sync with the parliamentary form of government, allocated vast powers to the provinces from the centre in keeping with the demands of the provinces for greater provincial autonomy.

The 10th General Election was held in May 2013 resulting in the PML-N emerging as the largest party. Mr. Imran Khan's Pakistan Tehreek-e-Insaf (PTI) also emerged as a new political party with increased representation in the National Assembly while formed government in the Khyber Pakhtunkhwa. The 2013 General Election, held for the first time under a civilian-elected President, proved that political civilian government can be changed through peaceful, constitutional and electoral process. Mr. Muhammad Nawaz Sharif took oath of office as Prime Minister of Pakistan on June 5, 2013. Once again, he could not complete the tenure of Prime Minister and was disqualified by the Supreme Court on July 28, 2017. He was succeeded by Mr. Shahid Khaqan Abbasi, a senior leader of the PML-N as Prime Minister.

The 2018 General Election was held on July 25, 2018. While Pakistan was better prepared than at any other time in its history to hold a free, fair and professionally managed 11th General Election, many political parties and individuals questioned the fairness and management of General Election 2018. The hope and expectation of a free, fair and professionally conducted General Election was not just due to the excellent administrative preparation by the Election Commission of Pakistan (ECP) but also due to the major constitutional and legal reforms that been instituted in Pakistan since after the 2008 and 2013 General Elections.⁷ The PTI emerged as the largest party in the 2018 election and managed to form a government in the centre, Punjab, KP(Khyber Pakhtunkhwa (earlier North West Frontier Province (NWFP)) and a coalition government in Balochistan. Sindh remains the only province not governed by the PTI as the PPP has formed government in Sindh. Apart from the winning PTI and the parties with which the PTI had agreed to balance seats ahead of the 2018 general elections, 7 major political parties rejected the results of the 2018 general elections. While the PML-N and the PPP rejected the results, they decided to return to the assemblies.⁸

4. Context of Electoral Reforms in Pakistan

Electoral reforms have been an ongoing process in Pakistan. In the past few decades, significant and critical electoral reforms have been put in place by various regimes. However, political consensus is a

⁷ "Assessment of the Quality of General Election 2018," PILDAT, September 2018, <https://pildat.org/electoral-reforms1/assessm-ent-of-the-quality-of-general-election-2018>.

⁸ Ibid.

key requirement to institute electoral reforms. Despite comprehensive constitutional and legal powers and protection given to the electoral system in Pakistan, public credibility of election remains weak which shows weakness in implementation of existing electoral reforms. While Pakistan enjoys one of the most comprehensive constitutional and legal frameworks in ensuring independence of the election commission and its vast powers, the trust deficit stems from lack of effective implementation of the available powers.

5. Electoral Reforms by Regime

From 1999 to 2009, the Musharraf regime in Pakistan made major legal changes relating to elections. These changes have included reduction in voting age to 18, increasing of seats in Assemblies, increasing seats for women, changing definition of foreign funding for Parties and making it mandatory for legislators to submit annual statements of Assets & Liabilities.

In the PPP tenure from 2008 to 2013, the ECP was made as full time and permanent body. A bi-partisan process was adopted for appointment of the Chief Election Commissioner (CEC), Members of the Election Commission and caretaker governments. Computerised National Identity Card (CNIC) was made mandatory for voter registration and vote casting. Computerized electoral rolls were made for the first time in Pakistan as the basis to hold elections. Full-time and dedicated Election Tribunals were appointed and an ordinance was issued on voting by Overseas Pakistanis.

Under the PML-N tenure from 2013-2018, electoral reforms instituted included the 22nd Amendment to the constitution which removed the earlier requirement of CEC & Commissioners to be from judiciary. This has meant that persons from any background can be appointed as CEC and commissioners. All election laws were consolidated into the Elections Act, 2017 which included electronic voting & Biometric, voting for Overseas Pakistanis. Two key but little known amendments made were made in the Elections Act, 2017 which include a loophole through which spending by other than the candidate has been made exempt from legal ceiling of election spending, (Sec 132 (5) in contrast to defunct Representation of People Act (ROPA) Sec 49 (1) and corporate funding to Political Parties has been allowed through Sec 204 (3) of Elections Act, 2017 which was earlier prohibited under Sec 6 (3) of defunct Political Parties Order,2002.

In 2021, electoral reforms debated in Pakistan include the Elections (Amendment) bill, 2021 passed by the National Assembly and waiting scrutiny at the Senate. Key amongst these proposed electoral reforms are biometric verification of voters, use of electronic voting machines and voting by Overseas Pakistanis. The question of secret or open ballot for Senate election, reserved seats for Overseas Pakistanis in Parliament, allowing dual nationals to contest election, etc. are also some of the key electoral reforms.

6. Regulation of Political Finance in Pakistan

6.1. Disclosure obligations

In Pakistan, the system of political finance is determined under the Elections Act 2017, and before that, the Representation of People Act. Under the law, the Elections Commission of Pakistan (ECP) is legally charged with the responsibility to implement clauses dealing with financial matters in the electoral and political domains.

An entire chapter, Chapter VIII on Election Expenses and Statement of Assets and Liabilities, is devoted to the subject in the Elections Act 2017. The chapter details limits on election expenses, how to submit election expenses, and other areas and legal dimensions of political finance.

6.2. Spending Limits

The election laws in Pakistan have traditionally set a spending ceiling for candidates contesting the National Assembly and each of the four Provincial Assemblies. The Elections Act 2017 increased the allowable expense ceiling from the previous PKR 1.5 million (roughly equivalent to USD 9,575) to PKR 4 million (roughly equivalent to USD 25,534) for candidates contesting a seat in the National Assembly and from the previous PKR 1 million (USD 6,384) to PKR 2 million (roughly equivalent to USD 12,767) for Provincial Assembly candidates.

6.3. Oversight and Compliance Mechanisms

Every candidate is required by law to open a separate bank account for election campaign expenditures. The law also stipulates that when submitting nomination papers, a declaration has to be included which shares the details of the exclusive account with a scheduled bank for the purpose of election expenses. Further, every candidate is required to submit details of their election expenses within 30 days of an election to the ECP. Such expenses must remain under the legal spending limit determined by the Parliament.

Clause 132 of the Elections Act 2017 defines electoral expenses for each candidate. These include expenses incurred by any person or political party on behalf of the candidate or by a political party specifically for the candidate. If another person incurs any election expenses on behalf of a candidate, whether for stationery, postage, advertisements, transport, or any other item, such expenses shall be deemed to have been incurred by the candidate. However, unlike the previous laws, the Elections Act 2017 has left it open for others to spend on a candidate's campaign such that the candidate is not answerable instead of strengthening the provisions of election expenses for candidates. However, Clause 132(5) states that if a candidate's election expenses are disputed, the Commission may conduct an inquiry to ascertain whether the election expenses incurred by persons other than the candidate were incurred with his or her permission. If the expenses were incurred without the candidate's permission, they would not be deemed to be election expenses on behalf of the candidate. Immediately after an election, every candidate is required to submit all bills, receipts, and other documents for payments made as election

expenses for over PKR 1,000.

The ECP has 90 days from the receipt of election expenses from candidates to scrutinize the election expenses. However, capacity in the ECP is a key issue, and despite the establishment of a section on political finance within the Commission, election expenses are not scrutinized.

In addition to submitting election expenses, members of the Parliament and Provincial Assemblies are legally bound to submit their individual statements on income and assets to the ECP annually. These statements are public in nature and are published in an official Gazette. Clause 137 of the Elections Act 2017 makes it legally binding to submit an annual statement of assets and liabilities, including the assets and liabilities of spouses and dependent children. The ECP is empowered by law to suspend the membership of legislators until they submit the statements, and also to make public the names of any members who fail to submit the requisite statement.

Another key legal requirement is the submission of key financial data of each candidate contesting an election at the time of submitting nomination papers. The Elections Act 2017 stipulates that every candidate has to provide a statement of their assets and liabilities and of their spouse and dependent children for the year preceding June 30th.

Since the ECP does not have the capability to actively scrutinize political finance, as a result little or no financial verification is actually carried out. Nomination papers are public documents, and the media and public can and do obtain them for prominent candidates. However, the nomination papers are not proactively placed on the ECP website to invite public scrutiny.

The Election Commission of Pakistan is empowered by law to frame a Code of Conduct in consultation with political parties. This Code applies to political parties, contesting candidates, election agents, and polling agents. The ECP is also empowered to frame a Code of Conduct for security personnel, media, and election observers. Clause 233(3) of the Elections Act 2017 states that political parties, candidates, election agents, polling agents, security personnel, members of the media, and observers shall follow the Code of Conduct during an election. The ECP publishes this Code in the official Gazette and on its website. The latest Code of Conduct was framed by the ECP ahead of the 2018 general election in Pakistan.

7. Problems with the Regulation of Political Finance in Pakistan

Although candidates have long demanded an increase in electoral spending given the large constituency sizes in Pakistan, the increase in electoral spending limits does not equally serve everyone. The issue specifically hurts female politicians. In Pakistan, Parliament and Provincial Assemblies have a reserved quota of seats for women. However, women who are members of political parties believe that they are not often selected as candidates because they do not have the financial resources to run their own election campaigns. They believe that it is the parties, and not the female candidates, who should spend money on their electoral campaigns. Women candidates believe that increase in the ceiling of election expenses is specifically unfair to them making it more difficult for women and other persons with modest

means, to contest elections.⁹

While the role of money in politics is a question for each election, the use of big money in politics is especially questioned in the Senate election held every 3 years. Election to the Senate of Pakistan is an indirect election in which seats in the Senate of Pakistan are equally allocated to each of the four provinces and are filled through a PR (Proportional Representation) system by means of the single transferable vote. Every 3 years, therefore, ahead of the Senate election, the country witnesses an allegation galore through which Senate candidates are perceived to use big money to buy votes of MPAs and MNAs. While no credible claim is ever offered with evidence to substantiate these allegations, the wide-held perceptions give way to some political demands that the mode of election to the Senate must be amended. As per the existing constitutional procedure, the Senate election is held by a secret ballot. The constitution also does not bar elected legislators in the National and Provincial Assemblies to vote for the Senate candidates based on party lines only. In fact, the constitution only binds elected legislators to vote according to party lines in four cases: the election of Prime Minister, vote of confidence or no confidence, a money bill or a constitutional amendment. Since the constitution does not stop elected legislators from voting as they see fit, if someone votes against party lines to elect a Senator, it is not considered a defection and therefore does not constitute grounds for disqualification. However, the constitutional process of voting by secret ballot in the Senate election has been called into question. While the ruling PTI has not amended the constitution, ahead of the 2021 Senate election, it sought opinion from the Supreme Court on holding the Senate election by secret or open ballot. In its opinion, the Supreme Court has upheld the constitutional provision of holding the Senate election by secret ballot but has opened door for a possible change in the process of election in the future.¹⁰

Although Pakistan's election laws have traditionally set limits on election spending by individual candidates and these limits have been considerably enhanced in the new law, there has never been a limit placed on election spending by political parties. Even though political parties have to submit details of their election expenses to the ECP in addition to annual statements of party accounts, there is no legal limit to the election expenditures that a political party must follow. Every party is required by law to submit an annual consolidated statement of accounts audited by a Chartered Accountant to the ECP. However, the new law has also, unlike in the past, allowed corporations to donate to political parties.

Clause 204(2) of the Elections Act stipulates that every political party must duly record fees, contributions, or donations made by a member or a supporter of a political party. Clause 204(3) prohibits foreign funding to parties and specifies that any contribution or donation made, directly or indirectly, by any foreign source including any foreign government, multinational or public or private company, firm, trade, or professional association or individual shall be prohibited. This includes contributions or donations made in cash, kind, stocks, transport, fuel, and provision of other such facilities. However, any contribution to a political party by an overseas Pakistani will not constitute foreign funding. Clause 212(3) stipulates that any aid, financial or otherwise, from any foreign government or political party of a foreign country, or any portion of its funds from foreign nationals can result in the dissolution of a

⁹ Ahmed Bilal Mehboob, "Financing Poll campaigns," Dawn, April 02, 2018. <https://www.dawn.com/news/1399077>.

¹⁰ Ibid.

political party.

In the more traditional election campaigns of the past in Pakistan where candidates belonging to most political parties took care of election expenses, the question of placing limits on election spending of political parties was never risen. However, due to a variety of reasons, political parties have come to play a much enlarged role in influencing electoral choice of citizens. On the national scale, political parties launch electoral campaigns that are no longer local but utilise electronic media and social media to influence voter choices. This means that political parties get to raise and spend a lot more financial resources in electoral campaigns which are national in nature which necessitates a serious conversation on placing a limit on electoral spending of political parties in addition to limits placed on candidates. While the Parliament pondered over the draft of the Elections Act, 2017, it also considered placing a limit of spending of PKR 200 million for each party. However, in the final legislation passed by the Parliament, this was not included.¹¹

As discussed before, the Elections Act, 2017 stipulates that every political party must duly record fees, contributions, or donations made by a member or a supporter of a political party. The Act also prohibits foreign funding to parties. Despite the provisions of the Act, a few major parties are under investigation by the ECP on the issue of foreign funding. It is important, therefore, that the next cycle of electoral reforms in Pakistan consider placing a limit on electoral spending by political parties.

8. Conclusion

This paper argues that Pakistan has in place reasonable checks and limits on regulating the role of money in politics. However, lack of effective implementation of the existing electoral laws constitutes a major problem in this regard. Although the ECP has set up a political finance section, it does not have adequate capacity to monitor, scrutinize and enforce the provisions of the Elections Act, 2017 relating to political finance.

Despite enjoying immense constitutional and legal powers, the Election Commission of Pakistan has generally been criticized for its perceived or real inability to fully enforce its powers. It suffers low public trust mainly due to this inability to assert its authority and to use the sweeping powers available to it under the Constitution and the Elections Act 2017.

The need of the hour is to build and enhance the capacity of the Election Commission of Pakistan to fully analyse and enforce a reformed system of political finance. This does not just require hiring the right professionals and catering to the need of greater public access and transparency, but also asserting and effectively utilizing powers of the Election Commission of Pakistan.

The Election Commission of Pakistan requires greater capacity building to effectively review and monitor these through an effective public finance wing. In addition, in the interest of improving public access and transparency, all documents relating to expenses, assets, nomination forms, etc. must be

¹¹ Ibid.

proactively made public by the Election Commission of Pakistan through its website.

The role of money in politics is not fully addressed just by placing limits on electoral expenses. The far more serious issue is that of regulating public, private, and corporate funding to political parties and candidates. Strict legal terms must be defined on the allowable size of donations, their purpose, the name of the donor, and the utilization of funding by both parties and candidates. The ECP's capacity to engage in financial scrutiny of the same needs to be enhanced.

One major area of reform is the requirement to place a reasonable limit on electoral spending by political parties. Applying a limit on candidate electoral expenses while leaving electoral expenses open-ended for political parties does not cover the entire gamut of electoral expenses. To ensure a level playing field, parties must also have to adhere to an expense limit which must be effectively scrutinized and enforced by the ECP. In addition, political parties should not be allowed to use media or social media for campaign purposes. If such use is not prohibited, effective spending limits on the use of media and social media for political parties must be effectively enforced. ■

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Country Case 4: Taiwan

Campaign Finance and Clean Politics Acts in Taiwan

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1. Historical Background

Often hailed as a successful model of economic development and democratization, Taiwan experienced tremendous success in economic development and democratization in the late twentieth century. The authoritarian ruling party announced political liberalization in 1986, lifting martial law and allowing for the organization of political parties and the issuance of independent newspapers. In 1992, Taiwan held its first general election for members of parliament, which marked the beginning of democracy. In the year 2000, it passed the two party-turnover test of democratic consolidation suggested by Samuel Huntington.

Along with political openness, money politics unfolded³. When election expenses are huge and political parties or candidates have insufficient funds, politicians and parties can only rely on substantial donations from enterprises. In order to obtain preferential policies from the government, some companies donate substantially to political parties. In some cases, companies that have financial problems still donate to political parties and candidates to ask for their help to survive.

During the late 1990s, both parties strongly endorsed the Political Donations Act. Many drafts were proposed in the Legislative Yuan, but the legislators could not reach a consensus. After the DPP came to power in 2000, it implemented a series of reform policies, including strict bribery investigation, prosecuting elected leaders and civil representatives involved in corruption, and accelerating the speed of investigation. The Political Donations Act was finally promulgated during the Chen Shui-bian administration right before the presidential election of 2004, eighteen years after the beginning of the country's political liberalization.⁴

In this article, we first introduce the regulatory framework of the Political Donations Act and then

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⁴ Several members of the Citizen Congress Watch in Taiwan provided important information for this report. They include Kun-Lu Wu, Jian-Yuan Zeng, Hong-Lin Zhang, Dong-Ru Hsieh, Jun-Yang Tian, and Shun-Ji Gan. I also want to thank Yan-Tu Su and Jia-Hong Tsai for providing important insights and comments. I greatly appreciate their help.

discuss the problems with the existing framework. We then discuss several clean-politics acts that are related to campaign finance and discuss the complementary nature of these acts. While focusing on the Political Finance Act is important, it is not enough. Many laws related to clean politics are complementary and should be carefully examined and strengthened. These laws may include the anti-corruption law, the lobbying law, the political party act, the public official personal property filing law, and the election and recall law. Moreover, political finance should not only focus on campaign donations. Public subsidies for elections should also be examined, as these two finance issues are intricately related.

2. Regulatory Framework

The Political Donations Act is the most important law regulating the political finance system in Taiwan. The basic legal framework was set up in accordance with the proposals submitted by the Executive Yuan (the executive) and passed by the Legislative Yuan (the parliament) in 2004, after which it was amended multiple times. The Ministry of Interior is responsible for drafting and amending the law. The Control Yuan (the ombudsman) is responsible for donation account registration and accounts approval. Individuals, political parties, civil organizations, and companies can make contributions to parties and individuals through designated accounts after being approved by the Control Yuan⁵. Political donations are to be deposited into the designated account within fifteen days of being accepted. The law regulates campaign contributions for all types of elections. Due to space limitations, this article focuses only on presidential and legislative elections. All of the laws described here are based on the Laws & Regulations Database of the Republic of China.

The Political Donations Act also specifies the period during which contributions can be accepted. For presidential candidates, this period begins one year before the end of the current president's tenure and lasts until one day before the election. Political donations can be made to parliamentary candidates starting ten months before the end of the legislator's tenure up until one day before the election. Compared to the US, where a politician can receive political donations at any time, the period during which donations are allowed is relatively short in Taiwan.

The act also imposes a cap on the amount of money individuals, for-profit businesses, and civil associations can contribute to candidates, parties, and political associations. When donating to parties and political associations, individuals can donate up to NT \$300,000, while civil associations and for-profit businesses can donate up to NT \$2,000,000 and NT \$3,000,000, respectively. In recent years, thirty Taiwan Dollars are roughly equal to one US Dollar. The law also sets upper limits on the total amount of donations individuals, associations, and companies can contribute to different political parties or political associations. This clause is intended to reduce the overall influence of wealthy donors. Individuals can donate up to NT \$600,000, and civil associations and for-profit businesses can donate up

⁵ Control Yuan. 2020. "Q&A of the Political Campaign Finance" 監察院, 〈監察院陽光法令政治獻金法問答集〉, https://sunshine.cy.gov.tw/News.aspx?n=27&sms=8864&_CSN=27

to NT \$4,000,000 and NT \$6,000,000 respectively.

For individual candidates, individuals can donate up to NT \$100,000 and civil associations and for-profit businesses can donate up to NT \$500,000 and NT \$1,000,000 respectively. The law also sets upper limits on the total amount of donations individuals, associations, and companies can contribute to different candidates. Individuals can donate up to NT \$300,000, and civil associations and for-profit businesses can donate up to NT \$1,000,000 and NT \$2,000,000 respectively. This clause is also meant to reduce the overall influence of wealthy donors. Parties are also allowed to donate money to candidates. The upper limits of such donations are NT \$25,000,000 for presidential candidates, NT \$2,000,000 for legislative candidates, and NT \$2,000,000 for governors of municipalities or counties.

Some enterprises are barred from making donations. These include (1) public enterprises or civil enterprises in which the government holds no less than 20 percent of the capital; (2) manufacturers that have signed large government procurement contracts or investment contracts for important public construction and are currently performing the contract; (3) profit-seeking businesses in a cumulative deficit that has not been made up in accordance with relevant provisions; (4) manufacturers that have signed large procurement contracts with companies operated by or invested in by political parties, and that are currently performing the contract; and (5) businesses operated by or invested in by political parties. The law also prohibits religious associations from making campaign donations. In addition, people who live in Taiwan but have not acquired citizenship (the right of suffrage) are not allowed to make campaign contributions.

The law additionally prohibits foreign actors from making campaign donations. Since influence and threats from abroad (especially from the People's Republic of China) are immense and imminent, donations from abroad are banned by the Political Donations Act. These foreign forces include "citizens, juridical persons, associations, or other institutions in foreign countries, the People's Republic of China, Hong Kong, and Macau." In addition, juridical persons, associations, or other institutions comprising people mainly from foreign countries, the People's Republic of China, Hong Kong, or Macau are barred from making political donations.

As an oversight mechanism, the law stipulates that the Control Yuan should receive the accounting reports of political parties or political associations within five months of each year's end and that individual candidate should submit their reports within three months of election day. The Control Yuan then publicizes the reports online within six months of the declaration deadline.

The Political Donations Act stipulates the punishment for violations. Donors may be imprisoned for no more than three years and fined a sum between NT \$200,000 and NT \$1,000,000 if they open a donation account without permission from the Control Yuan. For donations that surpass the specified upper limits, the donation recipient shall be fined a sum double the amount of the donation accepted. Donors who make illegal contributions shall be fined a sum less than double the amount of the donation they made. If someone uses their official power or employment relationship to arrange or hinder political donations, he or she may be fined a sum between NT \$200,000 and NT \$1,200,000. If a profit-seeking business, manufacturer, association, institution, juridical person, or individual evades or refuses an audit, they shall be fined a sum between NT \$60,000 and NT \$1,200,000.

Political parties and candidates shall be fined a sum of no less than NT \$60,000 and no more than NT \$1,200,000 for violating the reporting procedure. Such behaviors include failing to deposit accepted political donations into the designated account, failing to issue receipts or vouchers for political donations accepted, failing to declare, follow the proper declaration procedure, or intentionally make a false declaration, failing to set up an account book of income and expenditures or compile or publish an accounting report, and so on. The law states that “no one may contribute donations in the name of others or contribute secret donations of more than NT \$10,000.” To be able to track donations, the law also stipulates that “donations in cash of more than NT \$100,000 shall be paid by check or bank transfer.”

A candidate who receives political donations from foreign countries, Mainland China, Hong Kong, or Macau and does not hand in the money to the authorities within the designated time allowed to do so is subject to a maximum five-year sentence. For foreign donations, the Anti-Infiltration Act (反滲透法) passed by the Legislative Yuan in 2020 further tightens the regulations on campaign donations from China. The law stipulates that anyone who receives orders or money from China and then makes an election campaign contribution or donates money for a referendum campaign will be punished with up to five years in prison and fined up to NT \$10,000,000.

To guide the public, the Political Donation Act is available online in both Chinese and English. The Control Yuan has posted clear instructions and a Q&A on their website. The law clearly specifies that those who hold a designated campaign account are required to submit accounting reports to the Control Yuan. They should also comply with any investigation requests issued by the Control Yuan. Following the government’s open data commitment, the Control Yuan has published data on its website (<https://ardata.cy.gov.tw/home>) including the names of the owners of designated accounts, the names of the donors to these accounts, and the amount they contributed. The public can search campaign contributions by recipient, party, individual, company, or specific election. While the Control Yuan does not formally publish an overall compliance review, it regularly publishes the “Clean Politics Special Issue” (廉政專刊) which features cases of rule violations and the fines and penalties that were issued (Control Yuan, various years).

The law imposes a cap on the total amount of money that individual donors can contribute, but it does not set an upper limit on the total amount that candidates, parties, and political groups can receive. The law also does not regulate what specific items political donations can be spent on as long as the money received is spent on campaign activities or other politics-related activities. Moreover, the law does not set a limit on the total amount candidates or parties can spend in elections. Any unspent contributions can be used to finance post-election expenses, be donated to a candidate’s party, be donated to “educational, cultural, public interest, charity institutions or associations,” or be kept for a future election campaign. The money, however, should be spent within four years of having been declared. Once the deadline passes, the candidate or party should deposit any unused money in the national treasury.

3. The Complementary Nature of Several Clean Politics Acts

Currently, Taiwan relies mainly on the Political Finance Act to regulate political finance. However, while focusing on the Political Finance Act is important, it is not enough. Many laws related to clean politics are complementary and should be carefully examined and strengthened. These laws may include the anti-corruption law, the lobbying law, the political party act, the public official personal property filing law, and the election and recall law. Moreover, political finance should not only focus on campaign donations, public subsidies for elections, self-owned funds, and funding from religious organizations, and donations made to politician-affiliated non-profit foundations should also be carefully documented and revealed.

The design of the various clean politics acts must be intertwined, and all relevant supervision forces like property declaration, lobbying, and the election process must be connected. The increase and decrease of property and the use of actual political funds are interlocked, and there must be a bill that forms a complete set. We will discuss this in the following sections.

Under Taiwan's system, various penalties under clean politics acts are set but not used, and their effectiveness is limited. The SOGO case can be used as an example. The accused legislators were Su Zhen-qing, Liao Guo-dong, Chen Chao-ming, Zhao Zheng-yu, Xu Yong-ming, Zhang Chang-cai, and Zhong Shao-he, but only Zhang Chang-cai and Zhong Shao-he were sentenced. The two who were sentenced were punished under the Anti-Corruption Act rather than the Political Donations Act that only punishes very specific actions. This suggests that government organizations and society as a whole do not pay sufficient attention to the importance of the Political Donations Act.

Currently, regulating political finance is a task carried out by the Control Yuan under the Ministry of the Interior. One question that is frequently raised is whether this responsibility should be transferred to the Central Election Commission, a committee under the Executive Yuan, the highest executive organization in Taiwan. While the Central Election Commission is responsible for granting permission for national referendum fundraising, property declarations of politicians, and election bulletins, the Control Yuan is responsible for property declarations and political donations. Answers to the question above are mixed. Both organizations have the capacity to perform this function. It may be a good idea to leave regulatory capacity outside the representative institutions, i.e., the executive branches, to maintain neutrality. Moreover, the Control Yuan is also responsible for recording property declarations made by various levels of politicians, making it easier to check political finance and politicians' properties at the same time. Alternatively, maintaining and strengthening the independence of the Central Election Commission could also be a good solution, should all these tasks be reassigned to the commission.

4. Failure to Correctly File Donations

According to a report by Commonwealth Magazine (天下雜誌) in 2021, although the law prohibits businesses from donating over NT \$1,000,000 to the same person, corporations have been skirting the rules by contributing under the names of their many subsidiaries. This workaround allows a single

corporation to make contributions which surpass the allowable limit. This often happens when a corporation manages to bet on both political parties, which is roughly equivalent to purchasing insurance to make sure that no matter which party wins, it will not enact policies that disfavor the company.

The SOGO case⁶ reveals that many companies and businessmen do not donate money through government-designated accounts. Instead, they use other financial maneuvers to transfer money to politicians under the table. For some people, cash delivery is still the preferred mode of transferring money, which leaves the authorities with little evidence to track.

Some minor violations of the campaign donation law are frequent, as the Control Yuan reveals. A review of past years of the Control Yuan's Clean Politics Special Issue finds that typical cases involve failure to file campaign donations on time, failure to issue receipts, companies with accumulated deficits making donations, and individuals making contributions that exceed the upper limit. Still, the total number of minor violations has been decreasing over the years.

Politicians and political parties in Taiwan that fail to deposit political donations into designated accounts within the designated time period, do not make declarations, or make false declarations, only face a fine and a requirement to return the illegally obtained money. In some countries like Japan, politicians who commit such behaviors will be asked to resign.

Another issue concerning the use of money in politics in Taiwan is the non-profit foundations established by prominent politicians. Presidents, mayors of special municipalities, and senior legislators may create foundations affiliated with them to promote certain agendas and improving their image by doing charity work. These foundations can receive money from businesses which will not be considered a campaign donation. In practice, they frequently act in concert with political parties and politicians during the election period.

This issue also comes down to who donates more. It can be observed that for-profit businesses that are more willing to donate have undertaken many government bids in the past. The logistics, mining, real estate, pollution remediation, and other such industries are closely related to government policies. Businesses in these industries are more likely to make contributions. Companies that have long-term contracts with government enterprises are also more likely to make contributions. The motivations for political donations appear to be directly related to government policies. There is a close correlation between the industries of companies that are willing to provide financial support for candidates and policy makers.

Who will oversee the enforcement of regulations? The organization must have the ability to proactively investigate rather than passively accept registrations. There is nothing wrong with registering donations in accordance with the law. Although there is a limit of NT \$1,000,000 for corporate donations, some enterprises use holdings and subsidiaries to make donations and eschew the regulations. It is important to close this loophole and limit the amount of donations that can be made by large companies as a whole. In addition, the regulatory organization must have the capacity to supervise the filing behaviors and detect those who violate the law.

⁶ In order to regain control rights of the SOGO department store chain, businessman Lee Heng-lung bribed several members of the Legislative Yuan to push for an amendment to the Company Act which would have favored him in his pursuit.

5. Limited Regulatory Capacity

The supervision unit was established in the Control Yuan to make legislation enforceable. It uses selective methods to supervise every public officer in the local and central governments. However, with limited manpower and other affairs to deal with, the Control Yuan's ability to supervise money in politics is limited.

The Control Yuan is meant to report and check the property of all public officials, but the total annual check ratio is about five percent. They attribute the low ratio to low manpower and legal provisions, but this method leaves a huge loophole. If an independent institution or the Central Election Commission were to take on the role of supervising body, aided with investigatory power of the Control Yuan or prosecutorial power from the prosecutor's office, it may work out well. Expanding supervision of daily administration and establishing a subsequent punishment system requires collaboration from authorities that are able to access the data and have enough manpower to function.

The participation of civil society organizations in supervision is also important. Citizen Congress Watch, a civil society organization which mainly supervises the Congress, is one example of an organization actively performing this job. Since the early 1990s, the Political Donations Act has governed political finance in elections. Legislators themselves made the laws without external input, relying solely on self-discipline. It is difficult to imagine that the legislators could restrain themselves in order to amend the Act and implement the system from the most ideal point of view. Therefore, external supervision is needed. Through evaluation, issue promotion, press conferences, alliances, street activities, and campaigns against some bad candidates, Citizen Congress Watch hopes to gradually reveal more information and pressure legislators to exercise self-discipline. However, Citizen Congress Watch has limited energy and resources available to help outstanding legislators be elected and deter those candidates who have performed poorly. They can only make simple evaluations of whether candidates adhere to campaign finance regulations.

The supervisors and finance committee of Citizen Congress Watch used to advocate for and supervise the performance of specific policies of specific political parties, but this work was very difficult. They considered writing an annual white paper with an assessment of political party performance. However, the organization currently finds itself strained in terms of manpower and financial resources, and it is already very difficult to do a good job supervising legislators and related initiatives by the Legislative Yuan.

In the past year, supervisory groups have been independently established. The groups have their own ideas. The Citizen Congress Watch assisted in combining these groups to create local council supervisory groups. Citizen Congress Watch will set up a platform in Taipei to maintain contact between these groups and the national media, which will make it easier to bring their work into the national spotlight. They meet every season and the transparency survey of the local councils is made public every two years.

Local assemblies are more difficult to supervise, and the local political ecology is intricately intertwined with social network. The lower the government level, the weaker the political party organization tends to be. Local politics are mainly about local affairs rather than issues. Supervision at

this level mainly focuses on individual politicians. The sheer number of local level politicians makes supervision more difficult compared to central level politicians.

After the passage of the Political Parties Act, the local councils were required to make all council processes open and transparent, and include procedures that allow voters and opponents to supervise each other. Since this has the potential to be used as a tool for competitors to attack each other during elections, it has become the most effective means of supervision. The limited manpower and resources of civil society organizations makes the cycle of mutual supervision by legal groups a better means by which to maintain a democratic system.

6. Political Activities Not Regulated by Existing Law

There are a few money-related political activities that are not regulated by the existing laws as follows.

- (a) Primary elections are less regulated than elections.
- (b) Only money contributed during elections is regulated. Existing laws do not regulate contributions made during other periods.
- (c) The definition of political quid pro quo in Taiwan depends only on whether there are any unidentified sources of income. It does differentiate between registered and unregistered lobbyists, so it is difficult to regulate lobbying behaviors. We will turn to this issue below.
- (d) Property declaration requirements for family members of politicians only covers minors and does not include adult family members.
- (e) There is an upper limit for campaign donations and election expenditures, but the penalties for violating these limits are insignificant, enabling political donations to become an excuse for corruption. It is important to increase regulations and transparency, and exert pressure through public opinion to reveal the source of political donations.
- (f) There is no mechanism to return illegal political donations when election bribery is involved. If an elected official is convicted of breaking the law, such as by committing vote-buying, it might be necessary to ask the politician to return election subsidies and political donations.
- (g) Even some foundations feel that their money is paid by the chairman himself, so they do not need to produce financial reports. But this is not the case. As long as non-profit organizations are entitled to tax deductions, they need to produce financial reports, and they must clearly explain the use of their own money. Otherwise, elections will become the best opportunity for money laundering.

Moreover, to date, despite rapid advancements in information technology, there are no relevant regulations to cover digital donations, including virtual currency and payments made through various electronic mobile payment methods.

Religious group backing for political candidates is another issue that is not addressed in the current regulations. The Religious Groups Act that was proposed by the DPP government in 2017 required that religious groups reveal their financial accounts. However, the DPP-controlled parliament failed to pass the bill due to fierce opposition from the religious groups. These days, when candidates who represent religious groups participate in elections, they are able to receive unlimited money from religious groups and spend such funds however they wish without disclosing any information. This is also a big loophole. The Religious Groups Act needs to be passed soon to level the playing field and avoid the influence of large amounts of unreported money in elections.

7. Data Disclosure

In recent years, the Political Donations Act has facilitated great progress. In the past, online disclosures were limited to accounting reports. In 2018, the revision of the Act included details. The increase in information transparency has allowed such information to become subject to greater public supervision as well as the supervision of competing electoral candidates. It is too difficult to rely on the Control Yuan and government agencies alone to supervise the establishment of political funds for every politician. The most effective way to manage such funds is to allow political opponents to check each other's political finance accounts. To do that, we need to make sure that political finance information is fully open and disclosed. Information disclosure, accessibility of information, and public participation in disclosure and inspection are the most effective methods to accomplish this goal. Government departments, courts, and the transitional justice committees have overly narrow concepts of information disclosure.

Electronic payment for small donations should also be encouraged and regulated so that smaller donations can easily be made by ordinary people. This would induce politicians to pay more attention to the needs of ordinary voters instead of relying on for-profit enterprises to solve the problem of financing. Otherwise, companies will give money to the candidates they support by buying tickets, and policies will be affected by interest groups, as can be seen from the recent obstruction of the Factory Act.

In addition to increasing the possibility of public supervision, the less costly and more convenient the declaration system is, the more helpful it is for politicians to declare their finances. The Control Yuan now has an electronic declaration system, and 70 percent of candidates use electronic declarations. The more convenient the system, the easier it is to encourage people to obtain information and make honest declarations. This will be a very important factor in the success of this filing and regulatory system.

It should also be considered when information about campaign contributions should be disclosed. If it is not made public on the internet for future reference and if it is not disclosed during the election process but is rather announced after the election, then the effectiveness of anti-fraud regulation is worth checking. Following the 2020 revision of the Guo Tai-ming clause, candidates must announce property declarations before the election, and candidates must make such a declaration within 10 days of registration and publish it online.

Property declaration by government officials and legislators is also an important and related issue to

campaign finance. Open and accurate declaration of property can prevent politicians from turning campaign donations and public funding for elections into personal wealth. Right now, the Act on Property Declaration regulates this issue. Article 4 of the Act on Property Declaration by Public Servants stipulates the agencies (institutions) in charge of property declarations as follows. The property declaration agencies for the election candidates of the president, vice president, and other public servants above the county (city) level shall declare their property. Article 6 of the Act on Property Declaration by Public Servants stipulates that after accepting the declarations from the election candidates for president and vice president and those for other public servants above the county (city) level, the responsible property declaration agencies (institutions) shall, within ten days, review the received declarations, which will be compiled for public access.

Declarations made by the president, vice president, premier, vice premier, president and vice president of the Legislative Yuan, Judicial Yuan, Examination Yuan, and Control Yuan, officers of political affairs, legislators, mayors of special municipalities, and governors of counties (cities) shall be published regularly in the government gazettes and online in addition to the compliance procedures mentioned above. Rules governing review and public access to declarations shall be promulgated by the Executive Yuan in collaboration with the Examination Yuan and Control Yuan. Currently, the higher political levels have stricter rules mandating accuracy and transparency. In addition, information about higher level politicians is easier for the public to check. In contrast, information about property declarations made by the local level politicians is often opaque and not faithfully declared.

8. Use of Self-Owned Funds

The regulations on the openness of party finances are not sufficient to carry out comprehensive control. Government agencies are not aware of the sources or amount of political funds that are not registered in government agencies. One possible blind spot is the lack of clarity on the usage of self-owned funds by political candidates⁷.

Candidates who aim to challenge the incumbent have a larger need for funds. If their funding is constrained by limits on the period when a political candidate can receive political funds, they have no choice but to rely on loans or self-owned funds, which affects political competition and campaign regulation. Expenditures made by candidates themselves are not made public. There is a lack of clear distinction between public election subsidies and self-owned funds. There is also difficulty in filing donations in kind like billboards and office space. To strengthen the effectiveness of regulation on political funds, it's better to include all forms of political funding.

In the age of globalization, distribution of wealth is uneven. Wealthy people can run for office on their own funds, and campaign balances can be donated to political parties. Taiwan has no restrictions on self-owned funds, but regulation is necessary. If there is no such law, elections become a competition

⁷ Su, Yen-tu. 2019. "To What Extent Do We Know about Money in Politics? An Assessment of the Political Finance Disclosure Law in Taiwan" *Electoral Studies (Taiwan)*, 26(1): 1 - 30.

where candidates face an uneven playing field, with the richer ones at great advantage. The current situation is based on the principle of special accounts, and candidates who use their own funds to participate in elections are very different from those who apply for special accounts in accordance with the Political Donations Act. Candidates who use their own funds for their campaign cannot be properly regulated by the Political Donations Act.

It is recommended that candidates who use their own funds also be required to declare the use of money in campaigns (that the income and expenditure items of the Political Donations Act be applied), and that their applications be disclosed in accordance with the law. If the legislative purpose of the Political Donations Act is to expose the flow of election funds, then candidates with their own funds should also be required to keep records and make their election expenses public.

The regulations on the openness of party finance are also not sufficient to carry out comprehensive control. Government agencies and the society have no idea about the sources and magnitude of political funds that are not registered with the government agencies. For example, for the three decades after democratic transition, the Kuomintang has enormous party assets and revenues and this situation results in an uneven playing field between the rich parties and the poor ones during the elections. In the past few years, the ruling DPP governments has discussed the issue of transitional justice and plan to push through the Political Parties Act that aims to confiscate the part of KMT's party assets that are illegally acquired. This is another piece of evidence that clean politics acts need to work together to be more effective.

9. Recall Elections

In order to establish a fundraising mechanism for recall activities, the draft amendment to the Political Contribution Act should be passed to allow any leader who launches a recall campaign and the politicians whom the recall case targets to receive political donations from the day the recall case is opened. In Taiwan, a recall begins when a campaign receives enough signatures. This amendment will also strengthen relevant management regulations so that political contributions can be clearly presented in an open and transparent way.

Under Article 5 of the Political Contribution Act, only political parties can receive political contributions for recall activities. However, recall activities are mainly centered on the leader of the recall campaign which is in some cases organized by civil society organizations and the politician being recalled, so the proposed amendment should allow the leader or the organizer of a recall proposal and the person being recalled to receive political donations and then are required to declare the income and expenses.

10. Lobbying

10.1. Quid Pro Quo

Clean politics acts such as political donations and property declarations must complement each other to see their relevant context and footprints; the Lobbying Act must be implemented. According to government reports, a large share of the violations of the Campaign Donation Act concerned the recipients. There have been a few convictions for minor violations such as incorrect filings and failure to file on time. The more complex cases involve quid pro quos. The Political Donations Act stipulates that political donors may not ask the recipient, candidate, or party to deliver undue benefits. Otherwise, they shall be fined up to a sum double the amount of the donation accepted. This clause essentially suggests that the law already regulates quid pro quo behavior. The issue that remains is the definition of activities that violate the existing law.

Because of the complexity of quid pro quo relationships, it is crucial to closely examine the actual implementation of law enforcement agencies. Proving quid pro quo is a hard task for judges. Judges need to prove the causal relationship between the receipt of money and the taking of measures that favor the donors. Basically, members of parliament are tasked with asking the executive branch to answer concerns about their decisions, pass laws, and pass a budget. They do not directly enforce the law by issuing licenses, distributing money, or inking construction contracts. Therefore, in practice, it is difficult to prove quid pro quo based on the behavior of MPs. In contrast, it is relatively easier to prove whether elected officials and legislators in local governments are abusing their power.

Judges in Taiwan have established precedents that clarify some of these issues. If a political donation involves donating money to a candidate long before the election period begins, giving a large sum of money through a middleman, or clearly asking for a policy favor from a politician, then it is very likely to be considered bribery rather than a political campaign donation.

As it is difficult to prove quid pro quo, several cases have involved donations from occupational associations to a group of legislators. The judicial process takes years, and nearly all those accused were ultimately acquitted. Two notable cases involved donations from the Chinese Medicine Association and the Dental Association in Taiwan to several parliament members. Since the judges did not have enough evidence to prove a quid pro quo, the legal battle dragged on for twenty years without a final verdict. Prosecutors have sometimes eavesdropped on bribery suspects to prove the existence of quid pro quo. In the Taipei Twin Star BOT case, a big development project near the Taipei main station, the prosecutors wiretapped Su-Ru Lai, a Taipei City Councilor and a rising star within the KMT. They found evidence that she had received money and promised to help a company get construction permits in exchange.⁸ In the SOGO bribery case, prosecutors raided the offices of several legislators and seized boxes containing details of their communications. Several legislators have been prosecuted for receiving bribes from Lee Heng-lung.

⁸ Ex-KMT Taipei City Councilor Su-Ru Lai received NT \$1,000,000 in exchange for supporting Taipei Gateway International Development to win the bid for a skyscraper building project. Although Lai claimed that the money was legally donated, she did not deposit it into the designated account and the act of quid pro quo made the donations illegal.

Taiwan's weak lobbying law further complicates the issue of bribery and legal donations. The Lobbying Act has not been amended since its promulgation in 2007. Individuals, associations, and companies are all allowed to lobby. Government officials and organizations that can be lobbied include (1) the president and vice president; (2) legislators of representative bodies at various levels, and (3) the mayor and deputy mayor of special municipalities, counties/cities, and townships/cities. The law stipulates that "A lobbied person shall, after receiving lobbying materials, inform the agency's responsible unit of the following items within seven days: (1) the lobbyists; (2) the lobbying time, place, and method, and; (3) the content of the lobbying."

A great majority of lobbyists choose not to register, instead hiding their lobbying behaviors. They prefer to contact legislators behind closed doors, and sometimes hand over a suitcase of cash under the table. The SOGO case in 2020 revealed that a businessman who had not legally registered with authorities secretly visited lawmakers. Although the Lobbying Act requires lobbyists to register with the lobbied government agency, in practice very few lobbyists do so. According to government records, between the time the Act was passed in 2007 and 2020, only 427 lobbyists had registered.

The law also states that lobbyists shall not offer, promise, or give a bribe or other improper benefit to a lobbied party. With these clauses in the Lobbying Act and the prohibition of donations with "expectation of undue benefits" in the Political Donations Act, lobbyists who seek special favors from the government often find it difficult to operate. In addition, lobbying by itself still contain a negative image in this society and is still not well accepted by the general public as a proper way to influence decision-making. Therefore, lobbyists tend to contact legislators through backdoor means. Legislators also do not want to leave records of endorsing or making deals with interest groups. In fact, since the promulgation of the Lobbying Act, the government has not issued any fines for violations of this law.

Another issue relates to the period during which election campaign contributions can be made, which is specified by the Political Donations Act. This period is usually one year before the end of the current elected officer's tenure and lasts until one day before the election. Presidential and legislator elections are held in early January, the elected candidates are inaugurated in late May. In other words, the campaign donation period begins eight months before the election. Although restricting the period allowed for donations is good for reducing quid pro quo behaviors, it is unrealistic for national-level election campaigns that normally mobilize a large amount of people for a relatively long period of time. Moreover, it may create an uneven playing field for the challengers that face a limited period of time to raise money, while incumbents are able to rely on the incumbent advantage even before the campaign periods begin. This issue is particularly pronounced for independent candidates who do not have party support.

10.2. Strengthening Regulations on Lobbying

It is impossible to determine whether there is a quid pro quo situation when discussing the Political Donations Act without also discussing the Lobbying Act. Therefore, the Political Donations Act and the Lobbying Act should be strengthened and aligned to work together.

In Taiwan, non-governmental organizations who constantly advocate public issues normally do not use the Lobbying Act to achieve that end. The lobbyists tend to be individuals and companies who seek special interests. They tend to lobby the legislators without registration and are outside the parliament. Members of the Legislative Yuan tend to prioritize constituency service. When MPs meet with lobbyists, both sides consider such activities as petition and thus is part of the constituency service rather than lobbying. In general, the term lobbying in Taiwan often carries a negative connotation, making the legislators want to avoid revealing the lobbying activities. The lobbying activities are often not transparent. There is no lobbying firm in Taiwan as there are no companies that specifically employ lobbyists. Official lobbying is not closely related to the actual practices of congressional lobbying, which are done behind the door without official records, and there are also no think tanks that engage specifically in lobbying or that were created for that purpose.

There is a need to amend the bylaw of the Legislative Yuan which lays out general norms and has become inconsistent with the Lobbying Act. The current actual practice is as follows: (a) Lobbyists fill out an application form online, and (b) send it to the lobby registration office of the Legislative Yuan (c) specifying the lobbying target and period. The legislator's office then (d) returns the record to the registration office and the registration office announced online. Theoretically, the name of the specific legislative member should be revealed in this process. In practice, the lobbyists in most cases just put “all members of the parliament” instead of revealing specific MP they will visit. Nowhere in this process do the lobbyists need to reveal who they will visit. Moreover, lobbying case record forms (to be filled in by the lobbying target) are revealed voluntarily by MPs. This means that it is only possible to know whether or not lobbying has occurred if the office has returned the registration form. Those who follow the bylaw of the Legislative Yuan are mostly the 10th New Section Committee members. The senior members of parliament tend not to reveal any lobbying information.

In addition, lobbyists commonly circumvent lobbying registration by utilizing Article 5 of the Lobbying Act, which stipulates that the Act is not applicable to: 1) civil servants who are performing public duties in accordance with the law; 2) personnel accredited or dispatched by a foreign government or an internal government organization who are performing duties assigned; and 3) people or organizations who are seeking to express their opinion via application, petition, plea, or statement. In essence, this clause helps blur the line between a petition and a lobbying activity. Many lobbying behaviors can be achieved through petitions. In practice, they do not classify most such activities as lobbying, but rather identify them as a petition. The rare exception is lobbying from trade unions. The definition of a lobbying act in the Lobbying Act itself is limited. The direct result is that lobbying restrictions have no effect, and they are not really enforced, making it difficult to restrain political parties and politicians.

The Lobbying Act should be used to regulate the legislature. In an ideal situation, anyone who wants to speak to a legislator, they must register. Such visits can be called lobbying or petitioning but all types of such activities should be subject to the regulation of the law. The important thing is that there must be a much higher degree of transparency. Moreover, the scope of the Act's coverage cannot be limited only to the activities within the Legislative Yuan because lobbying activities or contact with MPs can take

place in various locations. Moreover, the lobbying actors, the assistants of the legislators, and related persons should all be subject to regulation and reveal their activities.

The current law requires registration of lobbying activities in the Legislative Yuan, but it also regulates lobbying taking place in Presidential Office Building, the central units, the Ministry of the Interior, the Judicial Yuan, and all levels of governments and the assemblies. However, there are still gray areas. Currently, the penalty for violating the Lobbying Act is minor, and politicians who violate the lobbying law are not disqualified. It is important that the law require lobbyists and politicians to reveal the lobbying activities.

One problem with Taiwan's legislators of various levels is they often cannot secure enough money to cover their daily expenses for constituency services and office staff. These deficits often lead to much illegal and unmanageable bribery and corruption that accompany lobbying on policy. If politicians are able to secure enough money for campaign and constituency services, there are fewer incentives to seek money under the table. There are two contrasting views on how to deal with this problem. The first view is that constituency services are unavoidable and are part of the social norms. Therefore, it is better to amend the campaign finance law and allow representatives to accept donations to cover the costs of constituency services and office staff rather than just campaign expenses. The other one is that constituency services are often associated with special interests. It is better to encourage legislators to scale down constituency services and focus on supervising the executive branches and reviewing bills.

11. Public Funding for Elections

In addition to political donations, public subsidies for election campaigns, tax deductions for campaign donations, and public subsidies for political parties are all essential parts of political finance. From the perspective of the clean politics acts, voters should know that subsidies also help politician and parties, not just that campaign donors make contributions. Every taxpayer has subsidized the election process for all politicians and political parties that have seats in Congress and have obtained a certain number of votes.

While part of legislature and presidential elections subsidies are transferred to parties who are required to file accounting reports each year, those subsidies that are given to candidates themselves are not required to disclose their use. Since these funds are from taxpayers, the use of these funds should be disclosed regardless of the amount, just like political donations, and the items purchased should be truthfully disclosed. Taiwan needs to push through reforms that separate personal property from election subsidies. All public subsidies for candidates should go into a separate account, rather than candidates' private accounts. This way, the public's belief that politicians participate in elections to make money, and that election subsidies benefit politicians, could be diminished.

The election subsidy system should be reformed. At present, political donations are only allowed to be collected in the year before the election, spending must be done within the three years before the election, and subsidies are given after an election. Nearly all of each candidate's election campaign

income and expenditures are used for running campaigns. However, politicians also depend on election subsidies to finance their other political activities, such as constituency services, so there must be better legislative supervision and transparency regarding the subsidies.

It is necessary to take Taiwan's political environment into account when regulating political finance. After the electoral reform that established the single-district two-vote system, the importance of the role of political parties increased, but personal vote is still a key determinant of voting behaviors. Constituency services that are provided by candidates in local level elections are more important than parties. In other words, politicians need money to provide constituency services. This is acceptable, but the politicians need to deposit the publicly financed money in designated accounts and keep public records of their expenditures from these accounts.

The current election subsidies which are provided after elections in Taiwan are intended to subsidize election and political funds. However, the money is not used entirely as political funds for campaigns, but instead is directly allocated to the candidates' personal accounts. The structure of publicly funded elections should be changed, at least so that public money is allocated to a special account for political finance. Special accounts are used for special purposes. There are restrictions on the use of money, but such restrictions do not limit the use of subsidies to elections. Daily political operations, staff salary expenditures, and campaign activities are all supported, but the money cannot be used for private use. All public finance for election should be deposited in the designated accounts and politicians need to reveal the spending regularly.

Politicians always face up to the actual financial needs of managing a political team that collectively provides constituency services. From the regulatory perspective, a better way is to let the political team as a whole form an accounting unit to manage income and expenditure and to file the accounting reports. Through this process a more open, transparent, and effective method of fund management could be reached.

To date, public funding for elections is transferred according to the election results. This practice essentially turns the subsidy for election into a post-election subsidy. In addition, public subsidies for elections restrict to candidates who exceed a certain threshold of votes. As an alternative and better approach, as long as a certain proportion of small donations is raised, the government can provide subsidies to candidates that are several times the amount of the money during the campaign period. This could be useful and timely especially for new and young candidates who have no funds, as they could access the amount of subsidies they are entitled to and engage in campaign activities accordingly.

In addition, public subsidies given afterwards have a higher likelihood of becoming the private property of politicians. The money mainly goes to constituency services, such as participating in weddings and funerals, rather than actually being used on future campaign expenses. It is better to establish an online platform through which individuals could make donations directly into candidate accounts and enhance candidates' fundraising ability to receive donations during the campaign period, avoiding the situation that public funding for campaign activities occur only after the election has already ended.

The Constitution guarantees people freedom to participate in elections, and people who do not have much less funds should not be deterred by the election deposit system. Instead, the system should set a

standard that individual candidates and small parties can work to achieve. Perhaps a combination of citizen signatures and election deposit can be used to better protect the participatory rights of the small parties and individual candidates.

Several measures can reduce post-election subsidies and increase instant subsidies available during the campaign period. The Central Election Commission and local election agencies can provide free web and social-media resources and unified bulletin boards. In addition to online resources, the government should provide materials and hold more candidate debates. Through these mechanisms, all candidates can gain equal exposure and have fair opportunities to compete and reduce the influence of big money in elections. This can also prevent candidates with more resources from getting even more resources while candidates with fewer resources struggle to obtain a minimum amount of resources.

12. Small Contributions and Assistance for Small Parties

It is estimated that in the 2018 magistrate/mayoral elections, the composition of campaign contributions was 58.59 percent individuals, 35.66 percent enterprises, and 5.75 percent others. For the 2020 legislative election, it is estimated that 54.72 percent came from individuals, 36.55 percent enterprises, and 8.73 percent others. In the 2020 presidential election, 67.92 percent came from individuals, 19.65 percent enterprises, and 12.43 percent others.⁹

The high number of individual donations raises the suspicion that at least some of these individual donations come from for-profit businesses. At all three levels of elections, donations from individuals and for-profit enterprises are the main source, while donations from civil society organizations and political parties are smaller. The total amount of individual donations is also higher than that of for-profit enterprises. If anonymous donations are added to the individual donations, the percentages do not change much.

Comparing the average amount of individual and for-profit enterprise donations allows us to understand which kind of donation may have a greater influence. The average donation from for-profit enterprises in magistrate/mayoral elections exceeds NT \$200,000, the average donation in the presidential election is close to NT \$200,000, and the average donation in the legislative election is about NT \$150,000. The average amount of donations from for-profit enterprises is higher at all election levels.

The total amount of individual donations is proportionately higher than that of for-profit enterprises at all three levels of elections. Individual donations for candidates during presidential elections have been as high as 68 percent. It appears that presidential candidates are particularly attractive to individuals, and that the influence of for-profit businesses in these elections has become smaller. Compare the average amount of campaign donation, the average amount donated by for-profit enterprises is higher than that of individuals for all types of elections. The average donation amount of for-profit enterprises in magistrate/mayoral elections is larger than that of the presidential election. This is likely because

⁹ Tsai, Jia-Hong provided the information during the Workshop on Political Finance in July 2021. I greatly appreciate his help.

for-profit enterprises believe that every penny has a greater influence at the local level as it is the local governments who have the power to decide the construction permit, pollution supervision, and urban zoning.

The most effective way to increase micro donations and enlarge its significance in election is first to reject the influence of big money in elections by setting an upper limit on the expenditures a candidate is allowed to spend during a campaign. If a candidate is caught spending beyond the limit, it can be the same as election bribery. This would allow the court to rule the election invalid, which would in turn make it easier to enforce mandatory restrictions on the influence of money in elections. At the same time, Taiwan needs to reduce the cost of campaigns and allow more candidates from small parties to participate in elections, which will also increase the significance of micro donations.

13. Conclusion

In this paper we reviewed the regulation and implementation of the Political Finance Act. We demonstrated that focusing on the Political Finance Act is important, but is not sufficient. Many other laws related to clean politics should also be carefully examined and strengthened. These may include the anti-corruption law, the Lobbying Act, the Political Parties Act, the public official personal property filing law, and the election and recall law. Moreover, Taiwan should expand the focus on political finance from campaign donations to include public subsidies for elections, self-owned funds, funding from religious organizations, and donations made to politician-affiliated civil society organizations. Therefore, the design of the various clean politics acts must be intertwined. Finally, Taiwan needs to expand the regulatory capacity of government agencies and coordinate their supervision power that may include campaign donation declarations, personal property declarations, party finance declaration, and lobbying. ■

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