

Regulating Money in Electoral Politics: an International Perspective

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Money in Politics: A Problem Shared, not a Problem Solved

Across the world, money in politics is the issue of our times. Recently it has been joined, as a regulatory dilemma, by the spread of misinformation often micro-targeted to voters via social media. But money in politics still poses the biggest challenges for the law of electoral politics across most democracies. A problem shared, however, is not necessarily a problem solved.

Regulating money in politics may be a widespread concern. Yet when we look across the wider world we find *no normative template*. There is no international model that we could import to help clean up politics, the way we might import solar power to provide clean energy.¹ In fact, when it comes to the role and regulation of political parties generally, and money in politics particularly, we find as much dispute internationally as we find consensus.²

The consensus that does exist is at a very general level. Everyone agrees, at some level, that in a large, modern democracy:

1. elections are important *public* affairs.
2. *parties* have a significant role to play.
3. politics needs *resources*.
4. politics cannot be an unregulated market.

The last and most important insight can be put simply. The *currency of democracy* is not the power of money. It is the compromise of collective interests to find a greater public good. To borrow from Professor Denny Indryana: ‘duitokrasi is not demokrasi’.³

Beyond that general agreement, values and context differ. So do definitions of the nature and scale of the problem. We find those differences within countries as well, just as we find differences within Indonesia about the goals and methods for regulating parties and money in politics. One such fault line is between those who argue for high levels of public funding of parties, and those who fear parties becoming dependent on the state – or even existing parties colluding like a ‘cartel’, to exploit state resources to secure their funding and cement their position over future rivals.

Differences in values are obvious. Some countries stress political freedom. Money remains fluid, and campaign techniques are unrestrained. This stress on freedom reinforces economic

¹The best source on the diversity of approaches internationally is International IDEA’s *Political Finance Database*: <https://www.idea.int/data-tools/data/political-finance-database> For a region by region comparison, see Elin Falguera, Samuel Jones and Magnus Ohman (editors), *Funding of Political Parties and Election Campaigns: A Handbook on Political Finance*. (Stockholm, International IDEA, 2014). For recent, detailed studies of countries and themes, see Jonathan Mendilow and Eric Phélippeau (editors), *Handbook of Political Party Funding* (Cheltenham UK, Edward Elgar, 2018).

²Anika Gauja, ‘The Legal Regulation of Political Parties: Is there a Global Normative Standard?’ (2016) 15 *Election Law Journal* 4.

³Duit = money. Denny Indryana, ‘Killing Demokrasi: Duitokrasi and Electoral Corruption’, paper to ERRN/CILIS panel, Melbourne University.

interests; but it may also enable new movements to rise quickly to challenge established parties. Other countries prioritise political equality. They are frugal and tightly manage campaign sources, costs and practices. This may keep electoral politics under close rein, and focused on stable parties. Some countries only worry about integrity. They focus on shining light on money in politics, through rapid disclosure of finances and strong auditing bodies. These are not just differences in legal values and political culture. Context is also very important.

- Take the United States. US Parties do not control pre-selection of candidates (the law requires ‘primary’ elections). Nominally, the US is a two-party system, and this is reinforced by first-past-the-post voting laws. Formal party structures however are relatively weak. In the name of integrity, parties and candidates are limited in the amounts and sources of donations. Candidates cultivate direct relationships with donors and run on strong personal identities. Meanwhile, non-party groups spend huge sums supporting their favourite causes and candidates. Expenditure limits are unconstitutional: political equality is not a strong value compared to political freedom and huge amounts of money flow both through non-party groups and through smaller donations to parties/candidates. Integrity is also served through a sophisticated system of disclosure.
- The United Kingdom, in contrast, has parties built on strong internal rules binding a paid membership. Whilst government in the UK is now devolved to three levels, parties retain hierarchies that evolved when government was unitary.⁴ Senior party administrators keep a tight rein on the cultivation of donors. In the UK, individual legislators are disciplined by party ‘whips’, to ensure they vote the way the majority in the party or its leadership requires. Whilst party members have a say in the selection of party leaders, those leaders can only become Prime Minister or First Minister at sub-national level by gaining a legislative majority. Parties meanwhile work within a restrained campaign culture that stresses political equality and a focus on parties. Donations are unlimited, allowing trade unions a big say in the Labour Party and business to bankroll the Conservative Party. Spending in election years is capped. And television and radio advertising cannot be bought for political advertising at any time (parties instead get free air-time).
- In comparison, Indonesia has a young democracy and a remarkable diversity of geography and ethnic/language groups. It has four levels of elected administration (notionally like the US). The party system continues to evolve, but unlike the countries in the Anglophone tradition, its use of proportional representation, with fairly low thresholds for election, ensured a multiplicity of parties. Their numbers have stabilised stable, but the party system has become more candidate-centred over time.⁵ That latter shift might be expected, given the Court-directed move to ‘open party-list’ elections where electors can pick and choose within a party’s list of candidates, and with so many directly elected executives (President, governors, district heads, mayors). Presidential candidates for instance may attract cross-party nomination and select a running-mate from another party to their personal affiliation. Of course a directly elected executive may lack a legislative majority. Indonesia is more multi-partisan than the US, but more candidate-centred than the UK.

This diversity is no surprise. There is no agreed conception of representative, electoral democracy. Just look at the idea of ‘representation’, on which representative democracy rests. There is the general idea that political representation is to make ‘present’ those interests and voices that

⁴ Leaving aside regional devolution, the lack of any constitutional basis for local government keeps that level of administration subordinate to the parliamentary level above it.

⁵ Marcus Mietzner, *Money, Power and Ideology: Political Parties in Post-Authoritarian Indonesia* (Singapore, NUS Press for the Asian Studies Association of Australia, 2013) at 39-41, 43 and 46-47.

otherwise will not be heard. Beyond that there are many, often competing, conceptions of how one can be a ‘representative’ in a plural society.⁶

Indeed, within election studies generally there are no necessary clear metrics to measure what is ‘best’ practice. The exception is agreement about the essential requirement for ‘free and fair elections’. As the ground-breaking *Free Elections* book observed, that term distills into the principle that ‘the election depends on the voters’ choice’.⁷ Elections *must* consist of a ballot that is open to a variety of candidates or parties, where everyone entitled to vote can do so free of intimidation, and all votes are counted.

That is a vital idea: ‘free elections’ as peaceful, impartially administered and culminating in a reliable aggregation of the votes cast. But it is a thin ideal. Beyond that, people argue about a whole range of basic questions:⁸ Who should vote (citizens abroad, residents, prisoners)? How should we vote (proportional representation or ‘majority rules’)? What should we vote for (directly elected executives, or a parliamentary system; a single legislature or a house of review as well)? What is a vote worth (must electorates be equal size, or can rural or regional areas have extra weight)? Must political parties be internally democratic, or are they be free to associate in whatever structure they wish, as long as there is external competition between parties?

Finding a Common Language for Regulating Money in Politics

To admit there are conflicts in approach is *not* to say the debate is too hard. To throw up our hands would leave things where they happen to be currently. It would also leave the law at the mercy of the self-interest of whichever group happens to make the law: legislators, party officials and their close advisers and supporters. Indeed one recent criticism of Indonesian law on political finance has not been a lack of law. On the contrary, the law has often been complex and, at least on paper, interventionist.⁹ Rather, the criticism is that the law lacks an overall design and holistic approach, and laws have been rewritten without clear principled reasons.¹⁰

Given the conflicts over values and variety of contexts, we need a *common conceptual language* to guide legal debate. Professor Keith Ewing’s taxonomy helps here. He identifies 3 ‘guiding principles’:

- (i) anti-corruption,
- (ii) fair competition, and
- (iii) adequate funding of parties.

Alongside those 3 principled aims, Ewing also identifies a regulatory ‘menu’, with three dishes:

- (a) transparency through financial disclosure,
- (b) public funding,
- (c) caps or limits on donations or spending.¹¹

⁶ Hannah Pitkin, *The Concept of Representation* (Berkeley, University of California Press, 1967). A politician can represent party, ethnicity, socio-economic group or industry sector, the dominant view of their region on any issue, their perception of overall national interest, or their conscience. Charting evolving nature representation, see Bernard Manin, *The Principles of Representative Government* (New York, CUP, 1997).

⁷ WJM Mackenzie, *Free Elections* (London, Allen & Unwin, 1958) 12.

⁸ Graeme Orr, ‘The Law of Electoral Democracy: Theory and Purpose’ in Alan Bogg, Alison Young and Jacob Rowbottom (eds), *The Constitution of Social Democracy* (Oxford, Hart Publishing, 2019).

⁹ Marcus Mietzner, Indonesia’ in Pippa Norris and Andrea Abel van Es (editors), *Checkbook Elections? Political Finance in Comparative Perspective* (Oxford, OUP, 2016) 84 at 84.

¹⁰ Indryana, above n 3.

¹¹ Keith Ewing, ‘Political Party Finance: Themes in International Context’ in Joo-Cheong Tham, Graeme Orr and Brian Costar (editors), *Electoral Democracy: Australian Prospects* (Melbourne, MUP, 2011) 143 at 147-149 and 151-153.

There is obvious overlap between Ewing's principles and the general aims which the law of politics can adopt. 'Anti-corruption' captures the familiar goal of integrity. 'Fair competition' is a marriage of the sometimes competing ideals of political equality and freedom of political participation. Ewing's emphasis on 'adequate funding of parties' is distinctive, it injects a stress on the importance of parties. This follows the British tradition of strong parties. In this view, money in politics is primarily about a law of 'party finance': a law that focuses on, and reinforces, parties as the key players in the electoral field. There are two other options for the scope of the law here.

1. 'Party finance' focuses on the *status* of political parties as the key ongoing actors across the parliamentary term (MPs and candidates as treated as under their party's wing).
2. 'Election finance', in turn, offers a *temporal* focus. It centres on election period activity, but includes the electioneering and finances of third-party groups beyond the parties.
3. 'Political finance', by comparison, sees political influence occurring through both permanent political campaigning and including many groups and forces in society. This view is *holistic*. But since it is hard to define where 'politics' begins and ends, its borders are not clear, and it risks treating a small movement to advance a cause as the equivalent of a powerful party or electoral donor.

Transparency Through Financial Disclosure

Disclosure means an obligation to reveal: to reveal the sources and amounts of the various revenues that impact on political campaigns. The goal of disclosure is transparency, especially of private donations. Transparency can work in three ways. The first aim is that contributions with strings attached will be deterred and, if not, investigated by the media and political opponents. A second justification is that shareholders and members of organisations that provide political funds deserve to know about such largesse. A final hope is that the electorate, via the media, might learn something about the different parties and candidates, from the sectors that back them and the company they keep.

The transparency rationale shares something with the administrative law ideal of freedom of information. Parties are not arms of the state, so they are not subject to administrative law. But parties are not purely private entities either. Transparency also is the basis for pecuniary interest registers. These registers require serving politicians to reveal their personal and family wealth and business interests, and gifts received privately (as opposed to political disclosure, which relates to their professional/electoral funding). Transparency is often seen as the minimum requirement for the regulation of money in politics: for instance it is the only part of the regulatory menu mandated in the Bangkok Declaration on Free and Fair Elections.¹²

Indonesia's disclosure rules require the national electoral commission (KPU) to lead in the auditing of annual party accounts. The official integrity agency (BPK) also has to audit the use of public funding. But these audits are not published. Also, tighter formal rules and potential sanctions have not led to greater enforcement of the key disclosure rules about private sources of income. On the contrary. According to Professor Marcus Mietzner, lax enforcement in Indonesia is part of 'dysfunction by design'/'deliberately maintained dysfunction'.¹³ It preserves a wide freedom for party bosses and established politicians to channel money as they please, a freedom which was heightened by the de-regulation of public funding and donation caps in the mid-2000s.

¹² *Bangkok Declaration on Free and Fair Elections* (10/12/2012) article 7.

¹³ Marcus Mietzner, 'Dysfunction by Design: Political Finance and Corruption in Indonesia' (2015) 47 *Critical Asian Studies* 587 and Mietzner, above n 9 at 99-100.

In Australia, disclosure is hobbled at national level by its untimeliness. Parties do not need to disclose until many months after the end of the financial year. Those disclosures are not published until the following February (ie up to 19 months after a donation is made). The scope of the national disclosure law however is being increased, to reach well into ‘political finance’, as large activist groups that campaign about federal political issues are being required to register and give annual disclosure like parties and many trade unions. In contrast, ‘real-time’ online disclosure obligations are being introduced at State level, as noted in the table at the end of this paper. This means regular disclosure of any significant donations, including by non-party groups if they wish to use such donations in electioneering.

Public Funding

The electoral role and potential power of political parties and candidates is enough to justify laws making them disclose key financial information. That justification is even stronger when parties and candidates receive public funding. Providers of ‘clean money’ (the residents who pay taxes) deserve to know it is not mixed with unclean money (especially private donations buying influence over the party or candidate).

Public funding of parties, is not always popular.¹⁴ How then is it justified? Today we laugh at the idea that candidates or parties would print their own ballot papers: but that was common in the 19th century, it was a private cost. Free and fair elections in the minimal/essential sense described earlier, cost taxpayer rupiah: for official ballot papers, polling stations and security, an independent election commission and so on. That kind of public expenditure is needed to run an electoral contest neutrally, ensuring everyone can vote, free of intimidation, and that all the votes are counted. It is the cost of staging the beauty contest, not the costs of dressing the participants who perform in that contest.

Public funding of electoral politics therefore needs a deeper rationale, beyond just the assertion that electoral politics is a quintessentially public affair. Its justification must be found in:

1. the role that parties (or candidates) play in campaigning and competing for office, and
2. the risks of the alternative model, in which only private money funds their activities.

In Indonesia, the Abdurrahman Wahid government introduced public funding, at reasonably generous levels, at the turn of the millennium. The funding was based on votes won, a discrete model that directly respects voter’s choices. District level administrations adopted the public funding option as well. Parties soon became more dependent on those subsidies than on other sources – not in itself a bad thing. This outcome was also made possible by donation caps, although these were quite generous by international standards. So a company could give in the order of Rp750-800 million to a national party annually, and a similar amount to its legislative or presidential campaigns.¹⁵

But within a few years the Susilo Yudhoyono administration cut public funding at the national level, affecting central party offices much more than local ones.¹⁶ Indonesian parties responded by gasping for money and the caps on donations were then raised: by a factor of five in 2008 and almost doubled again in 2011 (see below). Funding was also tied to seats won, not votes won, a model that normally focuses the benefit on the established and larger parties. Funding was reversed to votes won in 2008 (provided the parties have MPs),¹⁷ but the amount of funding remained frozen. Public funding, whose use in Indonesia is now subject to integrity agency audit,

¹⁴ Mietzner, above n 9 at 90-91 on opposition within Indonesia.

¹⁵ Mietzner, above n 9 at 89.

¹⁶ Mietzner, above n 9 at 91-94 and above n 13 at 598-599.

¹⁷ *Political Party Law*, Article 34(3).

is not to be used for electioneering. (This inverts the rationale for public funding in most other countries, where it is seen as defraying election campaign costs).

When Australia introduced public funding in the early 1980s, two reasons were given.¹⁸ The first was that it would introduce ‘clean money’ into political finance. Public funding comes in predictable and calculable doses and without strings attached. The second justification was that public funding would aid political equality. Private money usually follows power and incumbency.¹⁹ The imbalance of private funding in favour of parties in power and against parties in opposition including minor parties, can be partly mitigated by public funding.²⁰

The public funding systems in Australia are outlined in a column in the table at the end of the paper. There are two elements to consider. One is the *form* of public funding. The other is its *level* or generosity. As to form:

1. The common model pays parties (and independent candidates) *for every vote received, to assist with election campaign costs.*
2. A newer model, used in many States, adds a second, *additional layer of funding for the year-round ‘administration’ of parties.*

As to generosity, the national system has been static for the past 2 decades. The amount paid per vote is indexed to allow for inflation. Today, A\$5.50 follows each elector’s choice at the national election every 3 years. The money flows to one or two parties, according to how that elector casts her two votes (one ballot for a local candidate in the House of Representatives, one for a party list in the Senate). In some States and Territories, between A\$7 and A\$9 follows each elector in the 4 yearly regional election. In several States, parties can even receive some of this money *in advance* of the State election.²¹ This makes life easier for parties, and may reduce the need to raise big donations or rely on a friendly banker. Australia has compulsory voting, which means opinion polls are fairly accurate and the larger parties can predict their likely public funding. (Voting in Indonesia is not compulsory; but although turnout has declined from remarkably high levels post-Suharto, it remains high by international standards at over 70%).

A further element of generosity is shown in many States and Territories. They provide a second fund of public money to help cover the administrative costs of parties. Unlike election funding, parties must have MPs to qualify for administrative funding.²² This is only a threshold requirement however. The money goes to the parties, not to the MPs or parliamentary caucus for their legislative or electorate work. (Other parliamentary allowances and staffing cover that).

Caps or Limits on Donations or Spending

Limits on political donations can include caps on the size of donations, and bans on certain sources of donations. Either or both is common in many countries. Their aims are inter-related. One is to reduce the influence of any single donor on a party or candidate. The other is to reduce the

¹⁸ See further Joo-Cheong Tham, *Money Politics: the Democracy We Can’t Afford* (Sydney, UNSW Press, 2010) ch .

¹⁹Iain McMeniman, ‘Business, Politics and Money in Australia: Testing Economic, Political and Ideological Explanations’ (2008) 43 *Australian Journal of Political Science* 377.

²⁰ Joo-Cheong Tham and David Grove, ‘Public Funding and Expenditure Regulation of Australian Political Parties: Some Reflections’ (2004) 32 *Federal Law Review* 397 at 401, 403-404 (on equalising effect of public funding).

²¹*Electoral Funding Act 2018* (NSW) s 72 and *Electoral Act 1992* (Vic) ss 212A-B (instalment payments’).

²²To be fair to newer parties, New South Wales has a fund to assist them: they can even use that money for election campaigning.

chance of donations buying significance influence or favour. In the case of bans on particular sources, this aim extends to countering the fear that industry that is dependent on government decisions, or a class of donors such as corporations or unions, will reinforce their power through donations. A subsidiary and more positive goal of limits on donations is to encourage parties and candidates to connect more widely with ordinary or ‘grass roots’ supporters.

Some very liberal capitalist countries, like the US, have caps on donations. Why are such limits not seen as crude restrictions on freedom of political expression? As the United States Supreme Court held in *Buckley v Valeo*, donation limits only indirectly affect speech, by potentially reducing campaign budgets.²³ By nature, political donations are made privately so they are mute; they are not acts of public expression. (Otherwise, disclosure laws would be unnecessary!) In *Buckley’s* terms, any political expression in a donation ‘rests solely on the undifferentiated, symbolic act of contributing’.²⁴ A donation then is, at most, an act of political association, assuming it aligns the donor with a cause and is not an attempt at bribery or an act of political prostitution. A larger donation, then, is really a signal of a desire to buy a bigger share of influence (over the party or within the cause) rather than a stronger act of expression.

Indonesia caps donations from both individuals and corporations. As noted earlier, those caps were raised from already fairly generous levels, to very high levels, in a tenfold increase between 2008 and 2011. As amended in 2011 and applying today, article 35 of the *Party Funding Law of 2008* sets a higher cap for corporations, and different caps for different levels of elections/party organization. The generosity of the caps, by world standards, has been the subject of criticism.²⁵ The cap on a corporate donation to a national party, of Rp7.5 billion per annum, is close to US\$500 000 in nominal dollars and US\$1.8m in purchasing power/PPP dollars. This is a very high cap in absolute terms. It would enable a wealthy interest to make contributions as one way to leverage influence over politicians and electoral politics. Whilst donation caps do not apply to the central offices of national parties in Australia, they do apply to those parties in the two largest States. Those limits, in nominal terms, are about 1/1000th of the Indonesian caps (see table below, for New South Wales and Victoria).²⁶

These caps are also high in relative terms, say compared to the average wage in Indonesia. They do not create incentives for parties to raise money from small donations from a wide base of members or supporters.²⁷ In any event, the caps do *not* apply to party members. In a parts of Australia, membership *fees* are not capped: but that is an exception to allow trade unions to affiliate with the Labor Party by paying a sum per trade unionist they represent. In Indonesia, the absence of a cap on financial contributions by members permits very wealthy individuals to assume leadership positions within parties, leveraging their financial support.²⁸ Parties also supplement their finances with ‘off-balance’ sheet contributions (that is undisclosed sources) and with ‘tithing’ of elected officials (that is by taking a share of their salary). Such tithing is not unique to Indonesia.

²³*Buckley v Valeo* 424 US 1 (1976). Similarly see the Australian High Court in *McCloy v New South Wales* (2015) CLR .

²⁴*Buckley v Valeo* 424 US 1 (1976) at 20.

²⁵ Nurkholis Hidayat, ‘Restoring Indonesia’s Politic from Oligarchs to People’ (December 2016).

²⁶ In Victoria, the cap only applies to donations intended or used for State or local elections. But in New South Wales the caps apply to the parties entire activities within that State, including their national election campaigns there. (Although this is subject to an attempt by the current Federal government to override that law and limit the cap to New South Wales State or local election funding).

²⁷ Mietzner, above n 9 at 95 states that, in any event, the requirement for donors to cite their tax file number creates an unintended hurdle as many ordinary Indonesians do not have one. On the other hand, current President Joko Widodo attracted 40 000 smaller donors for his successful 2014 campaign.

²⁸ Mietzner, above n 9 at 96.

But it may encourage officials to inflate their salaries or supplement them in unsavoury ways. Inflating salaries to compensate for such a private tax creates, in effect, a disguised public subsidy to the parties, but one available only to parties with MPs.

Expenditure limits, in turn, aim to address concerns about a campaign ‘arms race’. Donation limits focus on the supply of money: expenditure limits address the demand for political money. They seek to suppress gluttonous appetites for electioneering, stoked by fear of being out-spent by rivals. Legally and practically, expenditure limits best fit an electoral culture that values modesty. (It is not just first amendment speech doctrine that forbids expenditure limits in the US, but the cacophonous nature of that country’s media.) Besides taking pressure off the demand for dubious donations, expenditure limits also seek to promote political equality, especially between parties.

Expenditure limits are touted as more enforceable than contribution limits, since campaign expenditure is on activities that have a public presence. Advocacy must be public to have an electoral effect, and parties can and do monitor their rivals. In contrast, donations invariably occur in private. But as with the splitting of gifts, a group can try to inflate its expenditure cap by swapping funds and planning campaigns in tandem with like-minded groups. So regulating expenditure is not simple. There is also the question of the scope of the expenditure net: does it cover only parties, and only during the election period? Or any body that is politically active in that period?

In some countries, electioneering begins long before the formal election period; and may even be part of a ‘permanent campaign’ of year-round, organised attempt to manage public opinion. Limiting the size of campaigns by groups other than parties may be a dangerous thing for a state to do. But if parties expenditure is restricted, but other groups are not, there is a real risk of encouraging ‘astro-turfing’. That is, that campaign groups will be set up artificially, to exploit multiple expenditure caps and to disguise the true source of spending and communication. That is a particular problem if the political culture is meant to focus electoral attention on parties: parties are at least publicly accountable, in government and legislatures and through the media, in ways that non-party groups are not.

Indonesia has begun trialling expenditure limits for regional elections (Law 8/2015).²⁹ Australia also only employs them for certain State elections (see table below).

Comparisons and Conclusion

This paper has focused on broad principles and means of regulation. In practice, there are at least four regulatory challenges and opportunities that also need to be addressed. These cannot be overcome merely by writing and passing more laws:

- *Complexity*. Laws that are badly drafted, or poorly explained, can be a trap for newer and smaller political parties and groups. The larger parties are more likely to have good legal and financial advice, to either uphold the law or look for ways around it.
- *Holes in the law*. These are almost inevitable. They will naturally arise because of oversights or ambiguity in drafting laws. They can also be generated by ‘creative’ judges, lawyers, accountants and administrators of political parties looking for ways to constrain the law. Regulators need flexibility to repair such gaps. For example by issuing binding guidelines. Or, by having a cross-party committee of legislators that regularly reviews the

²⁹ See further Hidayat, above n 25.

implementation of the law, takes advice from the electoral authorities and proposes amendments.³⁰

- *Capacity building.* A comprehensive political finance system needs to build capacity. Both with education, such as easy to follow materials and checklists for the parties, candidates and other groups involved. And through training party administrators and politicians.
- *Enforcement.* As we have noted, a common complaint about Indonesian efforts to date is insufficiency of enforcement in the country. It is not enough for electoral commissions to be independent. They need a range of powers, and sufficient resources and skills. Electoral authorities must be able to understand and track complex money flows. These are different skills to those needed to run an election, which is a logistical event like a big sports tournament. In political finance, those skills include forensic accounting and high level information technology skills, to police party activity and to analyse and publish financial records. Electoral authorities also needs powers beyond the ability to demand records or to prosecute. They need a range of regulatory powers, including administrative ‘sticks and carrots’ that do not require courts. A good example of a stick is the ability to withhold public funding when a party has breached the rules.³¹ An example of a carrot is incentives to comply with the law such as positive recognition of parties that disclose fully, with clean audits, and on time.

At the start of the paper I stressed that there is no ‘international model’ for Indonesia, or any other country to import. Each system will be shaped by its values, its political and party system, and the history or path dependency of its existing laws. We saw however that there is a shared language to guide regulatory debates, including a set of aims to balance or accommodate, and a ‘menu’ of regulatory options.

Those advocating significant reform in Indonesia complain of undue influence by wealthy interests and even oligarchs. They complain that political finance and the lure of donations and threat of their withdrawal are not just one form of lobbying, but can be used by oligarchs to assume positions of power within parties. In part, these reformers blame legal changes in the mid-2000s that helped privatise political finance. So their response is to call for a full smorgasbord of regulation: a more comprehensive system with lower donation caps, significant public funding and election campaign expenditure limits to bridge the funding gap caused by limiting big private donations.³² Similar law reform debates have taken place in Australia for the past 1-2 decades. Can Australia offer any lessons for Indonesia?

Perhaps. But comparisons are worthless if they do not take into account culture and socio-economics. Australia ranks highly in ensuring core human needs. On the Social Progress Index (which measures general well-being, not simple economic outcomes) Australia is just behind the Scandinavian countries. Indonesia, in contrast, ranks in the middle, in a group of rapidly emerging powers and developing countries including China and the ‘-stans’ of the former Soviet Union.

³⁰ A model is the Australian Parliament’s Joint Standing Committee on Electoral Matters, which reviews the operation of the law after each national election.

³¹ Such a power exists in the Indonesian *Political Finance Law*, article 47(3): but if public funding is not a big part of national party finances, then the stick is a small one.

³² Indryana above n 3; Hidayat, above n 25.

Indonesia's democratic aspirations and more open society however shape its ambitions differently from those more controlled countries.

Australia has a 35 year history of public funding to offset parties' election campaign costs. In the past decade, at State level, it has both increased that funding and spread it to annual administration costs. At its national level, Australia has not embraced caps on either donations or expenditure. So Australia's national system is rather one-sided: national party offices enjoy the stabilising effect of predictable public funding every 3 years but without obligations to avoid big donors or to keep campaign costs frugal.

Australian public funding is significant by Indonesian standards. At the 2019 election, for the bicameral national legislature (there is no presidential race in Australia), it will amount to around A\$70m across the national parties. That is over Rp200 billion in nominal terms, or about Rp750 billion adjusted for purchasing power. To put it another way, Australia's parties will receive public subsidies to help cover their national election costs worth, in relative terms, 100 Indonesian corporations donating to the maximum cap on annual donations to a national party in that country. Australian parties however will spend considerably more on the election campaign. The size of their campaigns is not bound by donation or expenditure limits, but by other factors.³³

This may seem like a recipe for corruption. Yet Australia's national politics remains relatively clean, at least according to Transparency International and similar measures. This does not mean that lobbying and donations, from banking and mining sectors in particular, do not influence policy. They surely have. But that influence is not *quid pro quo* and is tempered by the high profile of such policy debates and interests in the media and the desire of governments to appear balanced and responsive to public concerns.

Australia's States have been experimenting with tighter political finance laws. They have been encouraged to do so in particular due to concerns about the corrupting influence of, for example, property developers on State and local environmental and land planning decisions. Whilst the laws have been tightened in those States, the pill is sweetened by enhanced public funding. In some Australian States public funding is now well over half the cost of campaigns for State parliaments.³⁴ In those States, parties also receive millions more in regular payments to defray their administrative costs. In New South Wales in particular, a dedicated Electoral Funding Act and a well-empowered commission offer *comprehensive* regulation of at party and election finance.

Indonesia could study and learn from the New South Wales experience and laws. Mietzner believes comprehensive reform, if it can overcome inertia and powerful interests, will be a 'main' contributor, together with the KPK anti-corruption commission, to lessening the power of clientelism and patronage in Indonesia.³⁵ Political finance of course is just one part of a socio-economic jigsaw puzzle. If a country has great disparities in or concentration of wealth, political

³³ Some factors help limit costs: compulsory voting means Australian parties do not have to spend much money energizing their 'base', or physically helping supporters to the polls; advertising costs are reduced because Australia has a relatively homogenous media market and one dominant language; Senators are elected on a party-ticket and do little direct campaigning. Other factors increase costs: the country is geographically huge; and campaigning focuses on expensive television and social media production and distribution.

³⁴ 'Full' public funding has not been attempted. If nothing else, it is not easy to calculate what a fair amount for parties' non-campaign budgets each year (this depends on the size of the party, how inclusive and consultative it is, and its non-electoral outreach): Graeme Orr, 'Full Public Funding: Cleaning Up Parties, or Parties Cleaning Up?' in Mendilow and Phélippeau, above n 1, 84.

³⁵ Mietzner, 'Dysfunction by Design', above n 13.

finance laws can at best partly mute wealth's power in funding election campaigns or parties. It may also help re-balance electoral democracy towards its goal of equalising voices and representation. Reforming political finance laws however will not muzzle the voice of powerful entities or families – and their ability to lobby, network and engage in interest group advocacy on issues that suit their worldview or self-interest – let alone guarantee a more egalitarian economic system long-term.³⁶

Ultimately, every system must remember there is no 'solution'. Money in politics is an endless cat-and-mouse game: some political actors respond to regulation by looking for weak links in the law or its enforcement. It also cannot change political and business culture overnight: at best it can give a slow nudge towards better practices.

Regulation in Australia – as from December 2018³⁷

Jurisdiction	Spending Limits	Donation Limits	Party Disclosure	Public Funding
National ³⁸	No	Ban on foreign donors	Annual, gifts over \$13800	Post-election, \$2.73 per vote.
New South Wales ³⁹	~\$11.43m limit on state-wide party campaign (with limit in target seats), plus \$122,900 per candidate campaign. Third-party limit \$500 000 (with limit in target seats). Covers last 6 months of parliament.	\$6100 pa limit to party (excluding affiliation fees). Ban on property developer, gambling, tobacco and alcohol industry donations. Ban on foreign donors.	Bi-annual, gifts over \$1000; expedited in pre-election period.	Per election, \$4 per vote (Assembly) and \$3 per vote (Council, rising to \$4.50 per vote for Council only parties). Plus administrative funding for parties and independent MPs, and payments for parties without MPs.
Victoria ⁴⁰	No	\$4000 per electoral cycle to party (excluding affiliation fees). Ban on foreign donors.	Annual by parties. Continuous by donor when \$1000pa threshold reached.	Per election, \$6 per vote (Assembly) and \$3 per vote (Council). Plus administrative funding for parties and independent MPs.
Queensland ⁴¹	No (expenditure caps repealed 2014).	Ban on property developer donations.	Continuous when \$1000 per half year threshold reached.	Post-election, \$3.14 per vote (halved for independents).

³⁶ As even optimists for reform recognize: see Hidayat, above n 25, drawing on Jeffrey Winter's account of oligarchy in Indonesia.

³⁷ Table taken from Graeme Orr, *The Law of Politics: Parties, Elections and Money in Australia* (2nd ed, Sydney, The Federation Press, 2019) ch 11. Monetary amounts are in AUD.

³⁸ *Commonwealth Electoral Act 1918* (Australia) Part XX.

³⁹ *Electoral Funding Act 2018* (NSW). See also *Electoral Funding Regulations 2018* (NSW)

⁴⁰ *Electoral Act 2002* (Vic) Part 12. These laws fully apply from after the 25/11/2018 Victorian election.

⁴¹ *Electoral Act 1992* (Qld) Part 11.

		Ban on foreign sourced donations. (Donation caps repealed 2014)		Plus funding for parties with MPs.
Western Australia ⁴²	No	No	Annual, totalling \$2500 gifts over	Post-election, \$1.91 per vote.
South Australia ⁴³	~\$4.27m limit on party electioneering (with limit in target seats). Limit is optional, as condition of public funding. Covers last 9 months of parliament.	No. But \$500 limit for 'pay for access' events.	Bi-annual, totalling \$5310; expedited in election years. Continuous disclosure of gifts over \$25,000.	Post-election, \$3.19 per vote. (Rising to \$3.72 per vote for parties without MPs and independents). Plus administrative funding for parties with MPs.
Tasmania ⁴⁴	Upper house: candidate limit of \$16 500. Prohibition on party spending.	No	No	No
Australian Capital Territory ⁴⁵	~\$1.03m limit on party campaign. Third-party limit \$40 000. Covers election year.	No (donation caps repealed 2014)	Quarterly when \$1000pa threshold reached; expedited in election years.	Post-election, ~\$8.24 per vote. Plus quarterly administrative funding for parties with MPs and independent MPs.
Northern Territory subject to inquiry ⁴⁶	No	No	Annual, totalling \$1500 gifts over	No

⁴² *Electoral Act 1907* (WA) Part VI.

⁴³ *Electoral Act 1985* (SA) Part 13A.

⁴⁴ *Electoral Act 2004* (Tas) Part 6.

⁴⁵ *Electoral Act 1992* (ACT) Part 14.

⁴⁶ *Electoral Act 2004* (NT) Part 10 subject to recommendations in Inquiry into Options for the Reform of Political Donations in the Northern Territory, *Final Report* (June 2018).