
| RESEARCH ARTICLE

Legal Analysis of Criminal Sanctions for Electoral Offenses in Indonesia

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| ABSTRACT

Electoral crimes remain a persistent challenge in Indonesia's democratic system. Despite constitutional guarantees under Article 1(2), Article 18(4), and Article 28D of the 1945 Constitution (UUD 1945), as well as statutory frameworks such as Law No. 7 of 2017 on General Elections, Law No. 10 of 2016 on Regional Head Elections, the KUHP, and the ITE Law, weak regulatory provisions, inconsistent sanctions, and ineffective enforcement mechanisms continue to undermine the legitimacy of elections and the democratic process. This study seeks to analyze the weaknesses in Indonesia's legal framework on electoral crimes and to reconstruct penal provisions and enforcement mechanisms to ensure justice, integrity, and transparency in electoral processes. The research adopts a doctrinal legal approach, examining primary legal sources such as the 1945 Constitution, electoral laws, the KUHP, and Constitutional Court decisions, supplemented by secondary sources including academic analysis and international comparative perspectives. The study finds that Indonesia's enforcement of electoral criminal law remains fragmented and often influenced by political interests. The study recommends key reforms include: (1) harmonizing electoral crime regulations into a coherent legal framework; (2) strengthening penal sanctions to improve deterrence; (3) establishing a special judicial mechanism dedicated to electoral crimes; (4) improving coordination among law enforcement agencies; and (5) expanding civic and legal education to promote electoral integrity. The Study concluded that, Elections are the foundation of democratic legitimacy in Indonesia, yet their credibility depends on effective enforcement of electoral laws. Current frameworks inadequately prevent or address electoral crimes, risking erosion of public trust and weakening democratic consolidation. Reconstruction of electoral crime regulations, guided by constitutional principles of justice and people's sovereignty, is thus imperative to ensure that elections serve as a fair, transparent, and democratic mechanism for leadership selection.

| KEYWORDS

Electoral, Crimes, Indonesia, Democracy, Penal, Sanctions

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1. Introduction

Elections play a crucial role in the formation of a legitimate democratic government. However, the legitimacy of a democratic government is contingent upon the level of trust in elections and the perception that they are conducted in a free and fair manner. Concurrently, competition is an intrinsic aspect of elections, which may lead participants to commit various forms of misconduct throughout the multiple phases of the electoral process. This

includes the improper disqualification of voters or candidates, electoral fraud, interference with electoral procedures by both election officials and voters, as well as violations related to campaign financing.¹

Election-related crimes often draw significant attention during electoral processes, highlighting the importance of understanding how different countries regulate such misconduct. According to the International IDEA Electoral Justice Database Report, out of 171 countries studied, only two the Czech Republic and Eritrea lack legislation criminalizing electoral misconduct. In contrast, 169 countries have legal frameworks that classify various forms of misconduct or irregularities during elections as criminal offenses in one way or another.²

Electoral offences refer to illegal or wrongful actions or failures that hinder the execution of constitutional and legal principles essential for free and democratic elections. These acts are committed with intent and are defined by law as violations pertaining to the electoral process. From this definition, three key paradigms can be identified; illegal or wrongful actions or failures, the intention to obstruct or undermine the electoral process, and lastly, law must be defined.³

Electoral crime is not a recent occurrence. In the democratic societies of ancient times, it was essential to penalize actions that constituted an assault on public duties or the unimpeded expression of the vote. For instance, the ancient Greeks imposed the death penalty on a citizen who cast their vote twice or engaged in the buying or selling of a vote; the Romans enacted the *Lex Julia de Ambitu*, which penalized the use of illegal methods to gain access to public office. Subsequently, the term *broglio* emerged in Rome, which can now be interpreted as electoral fraud or vote-buying.⁴

This historical concern continues in modern democracies, including Indonesia, **where Article 18(4) of the 1945 Constitution (UUD 1945)** mandates the direct election of governors, regents, and mayors. Upholding popular sovereignty government by the people, from the people, and for the people requires safeguarding elections from fraud and irregularities, ensuring that democracy remains the foundation of legitimate leadership and governance.⁵

1.1 Problem Statement

The enforcement of electoral criminal law in Indonesia remains far from optimal, particularly in addressing black campaigns and other electoral offenses. Weak regulatory provisions and the absence of strict sanctions against perpetrators undermine the credibility of elections as the highest manifestation of democracy. Such deficiencies threaten not only the democratic order but also diminish the legitimacy and “aesthetic value” of elections as an expression of popular sovereignty guaranteed under Article 1(2) and Article 28D of the 1945 Constitution (UUD 1945).⁶

The core issues may be formulated as follows: First, how adequate are the existing legal provisions governing the enforcement of electoral criminal sanctions in Indonesia? Second, what obstacles hinder the effective enforcement of electoral penalties, particularly in relation to institutional conflicts of interest and political intervention? Third, what legal reconstruction is required to ensure stronger, fairer, and more independent enforcement of electoral

¹ Abdurashid Solijonov, ‘Electoral Justice Regulations Around the World: Key findings from International IDEA’s: Global Research on Electoral Dispute-Resolution Systems’ (2015), International IDEA Electoral Justice Database Report, available at <https://www.idea.int/sites/default/files/publications/electoral-justice-regulations-around-the-world.pdf>.

² *Ibid*, pp. 47

³ Peter Obi Okonkwo, Mbah Jane Chijioke, ‘Underrating Electoral Crimes at The Risk of Epileptic March Towards Free and Fair Electoral Process’ (2023), *UNIZIK, LAW JOURNAL* 19, (2), <file:///C:/Users/previ/Downloads/2297-2996-1-PB.pdf>.

⁴ Jesús Orozco-Henríquez, ‘Electoral Justice: An Overview of the International IDEA Handbook’ (2010), P. 43 para 104, Available at <https://www.idea.int/publications/catalogue/electoral-justice-international-idea-handbook>.

⁵ Andi Hakim Lubis et al, ‘The Problematics of Law Enforcement Against the Execution of Electoral Penalties in Indonesia’ (2024), *Semarang Law Review (SLR)* /Vol.5, No.1, PP. 143-169 available at <file:///C:/Users/previ/Downloads/yogie.+12.+Andi+Hakim+Lubis.+Fahrizal+S.Siagian.+Panca+Sarjana+Putra.+Saied+Firouzfar.pdf>.

⁶ Andrea Woodhous, ‘Village Justice in Indonesia Case studies on access to justice, Village Democracy and Governance’ Published by World Bank Group (2004), Available at <https://documents1.worldbank.org/curated/en/560911468756330215/pdf/316160ENGLISH0sdp6201public1.pdf>.

criminal law? These guiding questions form the basis of this research, which adopts a methodological, systematic, and coherent analysis of electoral criminal law and its enforcement mechanisms.⁷

The novelty of this study lies in its proposal to optimize the enforcement of electoral criminal law by creating a more coherent legal framework. Current enforcement mechanisms, such as the Integrated Law Enforcement Center (Sentra Gakkumdu) established under Bawaslu Regulation No. 9 of 2018, later revised into **Bawaslu Regulation No. 31 of 2018**, have yet to function effectively. Legal certainty is often undermined by political interference, and the absence of statutory-level provisions specifically regulating electoral criminal law enforcement or a special judicial process for election crimes further compounds the problem. **Articles 476-487 of Law No. 7 of 2017 on General Elections** outline the mechanism for handling electoral crimes, yet in practice enforcement remains weak.

Empirical evidence from the 2019 General Elections highlights recurring challenges in handling electoral crimes, despite preventive measures by electoral organizers. Similarly, Law No. 10 of 2016 on Regional Head Elections provided even fewer substantive provisions on criminal sanctions, leaving gaps in enforcement. These problems reflect not only institutional weaknesses but also a lack of public awareness and participation in safeguarding democracy. Representative democracy in Indonesia must go beyond formal institutions like the DPR; it must also ensure that all electoral processes are conducted fairly, transparently, and in line with constitutional guarantees of justice.⁸

A. Concept of Democracy

The term “*democracy*” originates from Ancient Greece, first expressed in Athens in the 5th century BC. That state is often considered the earliest example of a system connected to modern democratic law. However, the meaning of the term has evolved over time, with its modern definition developing since the 18th century alongside the emergence of ‘democratic’ systems in many countries.⁹ The word *democracy* comes from two Greek words: *demos* meaning “people,” and *kratos/cratein* meaning “rule” or “government,” thus democracy can be interpreted as “rule of the people,” more commonly understood as government *of the people, by the people, and for the people*.

In terminology, democracy according to Joseph A. Schumpeter is an institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote. In a narrower sense, Schumpeter views democracy as a political mechanism for selecting political leaders.¹⁰

Jimly Asshiddiqie explains that democracy is a concept based on the idea that power derives from, by, and for the people. In a more participatory sense, democracy is even described as power from, by, for, and together with the people. This means that power essentially originates from the people, and therefore it is the people who determine direction and actually carry out the life of the state.¹¹

Furthermore, Munir Fuady states that democracy, within the concept of a democratic state, is intended as a system of government in which citizens have equal rights, obligations, status, and authority in conducting their lives and in participating in the exercise of state power. Thus, the people are entitled to participate in governing the state or supervising the exercise of power, either directly—such as through the public sphere—or indirectly through their fairly and honestly elected representatives. Governance must be carried out solely for the benefit of the people, so

⁷ Hudson, B. et al, ‘Policy Failure and The Policy-Implementation Gap: Can Policy Support Programs Help? Policy Design and Practice’ (2019), 2(1), 1–14. <https://doi.org/10.1080/25741292.2018.1540378>.

⁸ Olu Awofeso, ‘Observers Report and The 2019 General Elections in Nigeria: A Focus On Electoral Violence and Lessons for Future Elections’ (2020), *Global Journal of Political Science and Administration*, Vol.8, No.4, pp.21-32, available at <https://ejournals.org/wp-content/uploads/Observers-Report-and-the-2019-General-Elections-in-Nigeria.pdf>.

⁹ Laurian, Lucie. “This Is What Direct Democracy Looks like: How Athens in the 5th Century BC Resolved the Question of Power.” (2012) *The Town Planning Review*, Vol. 83, no. 4, pp. v–xi. JSTOR, <http://www.jstor.org/stable/41509859>.

¹⁰ Ricci, David M. “Democracy Attenuated: Schumpeter, the Process Theory, and American Democratic Thought.” *The Journal of Politics*, Vol. 32, No. 2, 1970, pp. 239–67. JSTOR, <https://doi.org/10.2307/2128653>.

¹¹ Laurence Bherer et al, ‘The Participatory Democracy Turns: An Introduction’ (2016), *Journal of Civil Society*, 12:3, 225-230, available at <https://www.tandfonline.com/doi/pdf/10.1080/17448689.2016.1216383>.

that the system of government in such a state originates from the people, is exercised by the people, and serves the people (*from the people, by the people, to the people*).¹²

B. Democracy in Indonesia and Its Development

Since gaining independence on August 17, 1945, Indonesia has adopted a democratic governance system. This principle is embedded in the **1945 Constitution (UUD 1945)**, which explicitly states that Indonesia is a democratic nation. In terms of its leadership structure, the President is responsible to the People's Consultative Assembly, whose members are chosen by the populace, thus confirming that sovereignty lies with the people.¹³

Historically, democracy in Indonesia has undergone various phases: beginning with the Old Order (1956) when the first free general election was held, followed by Soekarno's declaration of Guided Democracy, then the New Order era under Soeharto (1967) marked by Pancasila Democracy a façade used to sustain authoritarian power. After the collapse of Soeharto's regime in 1998, Indonesia entered the Reform Era, which transformed its democratic system through the implementation of direct elections, ensuring a more genuine democratic process.¹⁴

In the early years following independence, Indonesia's founding leaders demonstrated a firm commitment to establishing political democracy, shaped by their education and conviction that democracy should be both an ideal and a practice. This commitment was embodied in Article 2(2) of the 1945 Constitution (prior to amendment), which affirmed that sovereignty lies in the hands of the people and is fully exercised by the People's Consultative Assembly (MPR).¹⁵

Afan Gaffar highlights key developments during this period: (1) concerns over the risk of presidential dictatorship led to the issuance of *Maklumat No. X*, which created the Central Indonesian National Committee (KNIP) and curtailed the President's legislative authority under Article IV of the Transitional Provisions of the 1945 Constitution, thereby redistributing power to KNIP; (2) a Vice Presidential Decree authorized the establishment of political parties, laying the groundwork for Indonesia's multiparty system. Nevertheless, democracy in this era remained limited, largely expressed through parliamentary debates and the role of the press in supporting the independence struggle. Broader democratic practices were constrained by the immediate priority of defending sovereignty. Political parties proliferated but primarily served revolutionary goals, promoting anti-imperialist sentiment and fostering national consciousness, while conditions did not yet allow for the conduct of general elections.¹⁶

The next phase, the parliamentary democracy era, was anchored in the **Provisional Constitution of 1950 (UUDS 1950)**, which set the constitutional foundation for Indonesia's political framework. This period is often described as the height of parliamentary supremacy in Indonesian politics. Representative institutions held a dominant influence in decision-making, political accountability was strong, and political parties operated with wide latitude to develop. Although only one general election was held in 1955, it was widely regarded as a genuine democratic exercise conducted with integrity.¹⁷

However, the eventual breakdown of liberal and parliamentary democracy was framed by many as proof of the unsuitability of "Western-style democracy" for Indonesia. This conclusion neglected the reality that the collapse was

¹² Munir Fuady, *The Concept of a Democratic State*, (Bandung: PT. Refika Aditama, 2014), p. 2.

¹³ Mohammad Wahyu, 'Indonesian State System Based on Pancasila and the 1845 Constitution: A Contemporary Developments' (2022), Indonesian Journal of Pancasila dan Global Constitutionalism, Volume 1 Issue 1, available at https://www.researchgate.net/publication/361790021_Indonesian_State_System_Based_on_Pancasila_and_the_1945_Constitution_A_Contemporary_Developments.

¹⁴ Liddle, R. William. "Indonesia's Democratic Past and Future." *Comparative Politics*, Vol. 24, No. 4, 1992, pp. 443–62. JSTOR, <https://doi.org/10.2307/422154>.

¹⁵ Nihaya, M, 'Democracy and its challenges in Indonesia. In Proceedings [Conference paper 2016]. Semantic Scholar. <https://api.semanticscholar.org/CorpusID:135435002>.

¹⁶ Afan Gaffar 'Indonesian Politics: Transition to Democracy (2023) Yogyakarta: Student Library, available at [Afan Gaffar Indonesian Politics: Transition to Democracy. Yogyakarta: Student Library.](#)

¹⁷ Tom R. Burns, 'The Evolution of Parliaments: A Comparative, Historical Perspective on Assemblies and Political Decision-making' (2002), *Handbook of Historical Sociology*, Sage Publications, London,

less about cultural incompatibility and more about the fragility of political institutions, the absence of a firm ideological-cultural foundation, and weaknesses in the country's economic structure at the time. These vulnerabilities ultimately paved the way for President Soekarno to introduce Guided Democracy as an alternative system of governance.¹⁸

1.2 Criminal Penalties for Electoral Violations in Indonesia: The Issue of Black Campaigning

The enforcement of criminal penalties against individuals who commit electoral offenses especially negative campaigning is firmly established within Indonesia's legal framework. **Law No. 6 of 2020**, which outlines Government Regulation in Lieu of Law (Perppu) concerning Regional Head Elections, specifies that a person can only be penalized once it has been legally and convincingly demonstrated that they have engaged in an electoral crime. Although general regulations addressing election-related offenses were historically included in **Articles 148 and 153 of the Criminal Code (KUHP)**, these provisions are considered *lex generalis*. The *lex specialis* is articulated in laws that specifically regulate elections, particularly **Law No. 7 of 2017** on General Elections and its predecessors, including **Law No. 8 of 2012 and Law No. 1 of 2015**, which categorize election crimes as breaches of prohibited provisions within electoral legislation.

Under the **provisions of Article 69 regulating Regional Head Elections**,¹⁹ specifically letter (a) through (h), identifies acts constituting electoral crimes, including: questioning the state foundation Pancasila and the **1945 Constitution**; insulting individuals, religions, or political parties; engaging in slander, incitement, or provocation; employing violence or threats to disrupt public order; treason against a legitimate government; damaging campaign props; and misuse of government facilities for campaigning. These prohibitions are reinforced by **Article 280(1)(d)** criminalizes incitement during campaigns, prescribing sanctions of up to two years' imprisonment and a fine of **IDR 24,000,000**.²⁰ Likewise, **Article 63 of Law No. 10 of 2016** underscores that campaigns must serve as political education, advancing democracy responsibly, while **Article 65(1)(e)** further stresses compliance with prohibitions.

At the constitutional level, **Article 28 of the 1945 Constitution (UUD 1945)** guarantees freedom of association, assembly, and expression, reflecting the Fourth Principle of Pancasila (democracy guided by deliberation and representation). Complementing this, **Article 28C (2) UUD 1945** secures citizens' rights to elect and be elected, subject only to judicial restrictions. Thus, while democracy guarantees participation, it also requires accountability through lawful conduct in elections.²¹

Black campaigns, when linked to criminal liability, may also fall under broader provisions of the **Criminal Code**²² **Articles 242–243** criminalize insults, while **Article 433(1)** punishes verbal attacks on reputation (defamation) with up to nine months' imprisonment or fines, increasing to one year and six months if conducted through written or visual media (Art. 433(2)). Defenses remain available when acts serve the public interest or self-defense (Art. 433(3)). Furthermore, black campaigns conducted online may invoke the **Electronic Information and Transactions Law** of **Article 27(3)** prohibits the electronic dissemination of defamatory content, with penalties reaching four years' imprisonment and fines up to **IDR 750,000,000**.²³

Institutionally, **Bawaslu (Election Supervisory Agency)** plays a central role in addressing electoral crimes. Under **Article 94(2)(c) of Law No. 7 of 2017**, **Bawaslu** is mandated to receive, examine, and adjudicate allegations of electoral violations, while **Article 95(g)** empowers it to collect evidence and request information. **Article 98(2)** further requires provincial-level **Bawaslu** to submit findings on suspected election crimes or ethics breaches to the

¹⁸ Teeple, G. 'The Completion of Politics and the End of Liberal Democracy. In: The Democracy That Never Was' (2024) Marx, Engels, and Marxisms. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-031-68020-5_13.

¹⁹ Law No. 10 of 2016

²⁰ Law No. 7 of 2017

²¹ The 1945 Constitution of the Republic of Indonesia (*Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*), as amended. Available at: <https://www.mkri.id/public/content/infoumum/regulation/pdf/UUD45%20ENG.pdf>.

²² Law No. 1 of 2023

²³ ITE Law, Law No. 19 of 2016 jo. Law No. 11 of 2008

national *Bawaslu*. Collectively, these provisions reflect Indonesia's layered enforcement structure aimed at safeguarding electoral integrity.²⁴

Thus, while Indonesia's legal framework provides criminal, administrative, and supervisory mechanisms against electoral crimes particularly black campaigns gaps remain in clarity and consistency, creating enforcement challenges. The intersection of constitutional guarantees, electoral statutes, the Criminal Code, and the ITE Law highlights the complexity of balancing freedom of expression with protection of electoral integrity.²⁵

1.3 Recommendations and Conclusion

To strengthen electoral justice in Indonesia, several steps are necessary:

Harmonization of Laws: Electoral crime provisions scattered across the Criminal Code (KUHP), Law No. 7 of 2017 on General Elections, Law No. 10 of 2016 on Regional Head Elections, and the ITE Law should be harmonized into a clear, integrated framework. This would eliminate overlapping provisions and enhance certainty in law enforcement and sanctions for electoral crimes should be made more proportionate and deterrent. For instance, increasing penalties for systematic violations that undermine electoral integrity can serve as a preventive measure.

Specialized Judicial Mechanism: The establishment of a special electoral court or chamber within existing courts could ensure faster, fairer, and more consistent adjudication of electoral crimes, minimizing political interference.

Public Education and Awareness: Civic education programs must emphasize the dangers of black campaigns, vote buying, and defamation during elections. A stronger democratic culture will reduce tolerance for misconduct and empower citizens to report violations.

2. Conclusion

Elections represent the cornerstone of democracy in Indonesia, as mandated by the 1945 Constitution (Articles 1(2), 18(4), and 28D). However, the persistence of electoral crimes, particularly black campaigns, threatens the credibility, fairness, and legitimacy of the electoral process. While Indonesia's legal framework comprising Law No. 7 of 2017 on General Elections, Law No. 10 of 2016 on Regional Head Elections, the KUHP, and the ITE Law provides mechanisms to penalize electoral misconduct, weaknesses in clarity, consistency, and enforcement undermine their effectiveness.

The research underscores that electoral crime enforcement in Indonesia remains hindered by weak sanctions, political interference, and institutional inefficiencies. Without reform, these shortcomings will continue to erode public trust and the aesthetic value of elections as the embodiment of popular sovereignty.

Therefore, reconstruction of electoral crime regulations and sanctions is an urgent necessity. By harmonizing laws, strengthening enforcement institutions, and embedding the principle of justice into electoral regulations, Indonesia can ensure that elections not only uphold constitutional guarantees but also fulfill their democratic function as fair, transparent, and legitimate instruments of leadership selection.

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