

Criminal Liability of the Press in Election Reporting: A Normative Analysis of Press Offences and Electoral Offences

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Abstract

This study aims to normatively analyze the criminal liability of the press in reporting on general elections in Indonesia, focusing on the application of the *lex specialis* principle, legal certainty, and the protection of press freedom. The main issues examined are the normative conditions under which criminal

provisions in Law Number 7 of 2017 on General Elections can be applied to the press, and how the limits of media criminal liability are determined within the context of press freedom guaranteed by Law Number 40 of 1999 on the Press. The research employs a normative juridical method, drawing on statutory, conceptual, and case approaches. The findings indicate that criminal sanctions may be imposed on the media only if there is evidence of deliberate political intent and direct involvement in covert campaign activities or in the dissemination of misleading information intended to influence election outcomes. Within this framework, the *lex specialis derogat legi generali* principle establishes the Press Law as the specific regulation that must take precedence in resolving news disputes before criminal prosecution. The principle of legal certainty demands a clear distinction between ethical and criminal violations, while the principle of press freedom protection ensures that law enforcement is not used as a repressive tool against the media's social control function. This study recommends strong coordination among the Election Supervisory Agency (Bawaslu), the Press Council, and law enforcement authorities to delineate the boundaries of press criminal liability, enabling electoral law enforcement without undermining press freedom, a cornerstone of democracy.

Keywords

Criminal Liability; Press Media; Election; Lex Specialis; Press Freedom.

I. Introduction

Modern democracy rests upon two fundamental pillars: free elections and legally guaranteed press freedom. The relationship between the two is inherently symbiotic: honest and transparent elections require an independent media, while press freedom finds its true meaning within an open democratic process. However, amid the rapid development of digital technology, the boundary between press freedom and violations of electoral law has become increasingly blurred. This phenomenon has emerged as a global concern that challenges the integrity of democracy in many countries.¹

Globally, waves of disinformation and misinformation during electoral periods have become a troubling issue. Numerous international studies indicate that political disinformation disseminated through the media, including mainstream media, has the potential to undermine public trust in electoral outcomes and in the legitimacy of the elected government.² This phenomenon gives rise to what is known as a *crisis of epistemic integrity*, in which political truth becomes relativized and society loses its anchor to objective facts.³ In this context, a fundamental question arises: to what extent can the media be held legally particularly criminally liable when its reporting contributes to information disorder that affects the electoral process?

In many democratic countries, this debate gives rise to a normative dilemma. On the one hand, press freedom constitutes a fundamental human right guaranteed by the constitution. On the other hand, the dissemination of misleading information during the campaign period may be classified as a violation of electoral integrity.⁴ Countries with different legal traditions adopt varying approaches: some rely on

¹ Zainal Arifin, "Urgensi Menformat Ulang Regulasi Pemilu di Indonesia: Mewujudkan Keadilan, Partisipasi," n.d.

² Zainal Arifin and Emi Puasa Handayani, "The Influence of Mass Media Reporting on the Rescue and Formulation of Environmental Laws in Kediri," *Legal Standing: Jurnal Ilmu Hukum* 6, no. 1 (2022): 105–14.

³ Stephan Lewandowsky et al., "Misinformation and the Epistemic Integrity of Democracy," *Current Opinion in Psychology* 54 (2023): 101711.

⁴ Zainal Arifin and Emi Puasa Handayani, "Quo Vadis Kebijakan Penyusunan Kabinet Koalisi Jokowi Tinjauan Filosofis, Historis, Teoritis Dan Yuridis," n.d.

administrative and civil mechanisms, while others employ criminal law instruments to prosecute those responsible for the dissemination of false information, including the media. It is this latter approach that frequently raises serious concerns regarding freedom of expression and press freedom.⁵

In Indonesia, a similar problem arises within the national context. Simultaneous elections, accompanied by the massive involvement of both digital and conventional media, frequently generate legal debates concerning the boundary between press freedom and the potential commission of electoral criminal offences. Law Number 7 of 2017 on General Elections and Law Number 40 of 1999 on the Press provide regulatory frameworks that appear to overlap. When a media outlet publishes news that is deemed to contain elements of defamation, hoaxes, or political bias, a critical legal question emerges as to whether such a case should be processed as a violation of journalistic ethics, a press offence, or an electoral offence.⁶

This issue is further complicated by the overlapping nature of the applicable legal norms. On the one hand, the Press Law affirms that disputes arising from news reporting must be resolved through the mechanism of the Press Council. On the other hand, the Election Law imposes criminal sanctions on any person who disseminates false information capable of influencing the outcome of an election. When the media functions as the channel through which such information is disseminated, law enforcement authorities often encounter difficulties in determining which legal instrument is applicable. This normative

⁵ Zainal Arifin, Zainal Arifin, and Emi Puasa Handayani, "Development of a Compensation Mechanism and Legal Reporting Framework for Consumers" 4, no. 3 (2024): 275–88.

⁶ Zainal Arifin, Zico Junius Fernando, and Emi Puasa Handayani, "Implikasi Hukum Perubahan Kedua Undang-Undang Informasi Dan Transaksi Elektronik : Menyeimbangkan Kebebasan Berpendapat Dan Partisipasi Publik Dalam Demokrasi Digital (Legal Implications of The Second Amendment to The Electronic Information and Transacti," *Jurnal Litigasi* 26, no. 1 (2025): 192–227.

uncertainty constitutes the primary source of ongoing academic debate and unresolved legal practice.⁷

In the global context, a study by Wack and his colleagues demonstrates that uncertain electoral policies can widen the space for the dissemination of misinformation, particularly through media outlets that fail to apply strict verification standards.⁸ A similar condition is evident in Indonesia, where many online media platforms prioritize the speed of publication over the accuracy of information. This situation gives rise to legal risks, as the media may unintentionally become a conduit for the spread of political disinformation. From an ethical perspective, however, journalistic errors should be resolved in a proportional manner, rather than through criminalization.

From a regional perspective, particularly in Southeast Asia, there is a discernible tendency toward the criminalization of the media during electoral periods. Countries such as Thailand and the Philippines have employed election laws and information regulations to prosecute journalists who critically report on particular candidates. In this context, Indonesia faces a similar dilemma, where the application of criminal provisions against the media has the potential to threaten the independence of the press that has been arduously achieved since the reform era. Accordingly, a normative analysis of the criminal liability of the press in election reporting becomes highly pertinent.

Philosophically, press freedom embodies two interconnected dimensions: the right to report and the responsibility to ensure accuracy. Both are regulated within legal frameworks that interact with one another. In criminal law, the principle of *lex specialis derogat legi generali* is frequently employed to determine which norm should prevail. However, in the context of the normative tension between the Press Law and the Election Law, there remains no explicit guideline regarding the priority of legal application. As a result, law enforcement authorities may engage in subjective interpretation, leading ultimately to legal uncertainty. This blurring of boundaries has concrete implications in

⁷ Zainal Arifin, "Criminal Liability in Press Law and Artificial Intelligence-Generated Disinformation : Urgency of Reform in Indonesia," *Jurisdictie* 8, no. 3 (2025): 153–72.

⁸ Morgan Wack et al., "Research Note: Legislating Uncertainty: Election Policies and the Amplification of Misinformation," *Policy Studies Journal (Online)*, 2025, 11.

practice. Law enforcement officials often encounter difficulties in proving the element of intent in criminal offences related to the dissemination of false news by the media. In many instances, the media merely functions as a conduit for information derived from political sources. Yet, in the context of intense electoral competition, such reporting may be politicized and used as a tool to silence critical media. If left unchecked, this condition may generate a *chilling effect* on investigative journalism.⁹

Such conditions give rise to a more fundamental juridical question: how can the public interest in safeguarding electoral integrity be balanced with the constitutional right of the media to disseminate information? Within the framework of legal theory, justice is not measured solely by the imposition of sanctions, but also by the congruence between the act, the intent, and the legal consequences that ensue. Therefore, it becomes crucial to conduct a normative examination of the boundaries of the criminal liability of the press, particularly during electoral periods when political sensitivity intensifies sharply.

The normative approach in this study is employed to analyze primary legal materials such as statutes, implementing regulations, and court decisions, as well as secondary legal materials in the form of scholarly literature and prior research findings. The objective is not to assess the empirical rightfulness or wrongfulness of news reporting, but rather to examine the conformity of criminal norms with the applicable legal principles. Accordingly, this study seeks to identify the extent to which positive law is capable of safeguarding legal certainty while simultaneously guaranteeing press freedom.

Previous studies have highlighted the relationship between the media and elections from various perspectives. Lewandowsky's research, for instance, emphasizes how misinformation erodes the epistemic integrity of democracy, yet it does not examine the legal mechanisms that may be applied to the media as actors involved in the dissemination

⁹ Marlene Mauk and Max Grömping, "Online Disinformation Predicts Inaccurate Beliefs about Election Fairness among Both Winners and Losers," *Comparative Political Studies* 57, no. 6 (2024): 965–98.

of such information.¹⁰ Meanwhile, the study by Wack et al. highlights electoral policy as a contributing factor to misinformation, rather than attributing legal responsibility to the media.¹¹ Mauk (2024) is even more focused on the psychological effects of disinformation on public perception, without addressing juridical accountability.¹² Accordingly, these three studies are fundamentally different from the present research, which focuses on the normative dimensions of criminal law and electoral law in Indonesia

The novelty of this research lies in its attempt to integrate criminal law and electoral law approaches in assessing the normative scope of press liability. This study not only examines the applicable regulations, but also interprets the principles of justice, proportionality, and *lex specialis* as foundational elements for fair law enforcement. Through this approach, the research is expected to provide both theoretical and practical contributions to the development of clearer norms regarding the limits of criminal sanctions imposed on the press in the context of election reporting.

The novelty of this study further includes an analysis of non-criminal mechanisms such as the Press Council as alternative avenues for dispute resolution. When the media commits journalistic errors, mechanisms such as corrections or the right of reply should be prioritized over the threat of criminal sanctions. This approach is more consistent with the principles of proportionality and press freedom as guaranteed by the Constitution. Accordingly, criminal law should function as an *ultimum remedium* a measure of last resort rather than the primary response.

From the perspective of positive law, this research underscores the need for harmonization between the Press Law, the Election Law, and the Criminal Code so that they do not contradict or negate one another. In the long term, such regulatory alignment is essential to prevent the criminalization of journalists who perform the function of social oversight. Conversely, for media outlets that intentionally manipulate

¹⁰ Lewandowsky et al., “Misinformation and the Epistemic Integrity of Democracy.”

¹¹ Wack et al., “Research Note: Legislating Uncertainty: Election Policies and the Amplification of Misinformation.”

¹² Mauk and Grömping, “Online Disinformation Predicts Inaccurate Beliefs about Election Fairness among Both Winners and Losers.”

information for specific political interests, criminal law instruments may be applied selectively and proportionately.¹³

This study is expected to provide new insights into the relationship between law, ethics, and democracy. The criminal liability of the press in election reporting is not merely an issue of positive law, but also a reflection of the values of justice, social responsibility, and public integrity. Within the framework of a democratic state governed by the rule of law, all political actors, including the media, must be subject to the principle of substantive justice that safeguards the public's right to obtain truthful information.¹⁴

The research questions in this study are formulated as follows: first, from a normative perspective, under what conditions may the criminal provisions of the Election Law be applied to press media that publish information deemed detrimental to the electoral process? Second, how should the principles of *lex specialis*, legal certainty, and the protection of press freedom be interpreted to determine the boundaries of criminal liability for the media in election reporting in Indonesia? These two questions form the basis for addressing the tension between criminal law, press freedom, and democratic integrity.

This study argues that strengthening proportional regulation constitutes a middle path to ensuring that the press remains free yet responsible, and that elections remain honest yet not repressive toward the media. Through normative analysis, this research is expected to provide substantive contributions to the development of press criminal law and electoral law in Indonesia in a manner that is more just and that guarantees freedom of expression within the framework of the law.

¹³ Fransiskus Nomor, Ida Bagus Anggapurana Pidada, and Kadek Fredi Andrika Adnantara, "Penegakan Hukum Terhadap Penyalahgunaan Sosial Media Dalam Membangun Opini Publik Pada Pemilu 2024," *Jembatan Hukum: Kajian Ilmu Hukum, Sosial Dan Administrasi Negara* 1, no. 3 (2024): 308–26.

¹⁴ Jarot Digdo Ismoyo et al., *Teori Negara Hukum Modern* (PT. Sonpedia Publishing Indonesia, 2025).

II. Method

This study employs a normative juridical approach, namely a research method that focuses on the norms of applicable positive law in order to analyze the criminal liability of the press in election reporting. This approach is adopted because the issue under examination relates to the disharmony and overlap between Law Number 40 of 1999 on the Press and Law Number 7 of 2017 on General Elections, as well as their interconnection with the Criminal Code and the Law on Information and Electronic Transactions (ITE Law).¹⁵ The primary legal materials in this study consist of legislation, court decisions, and official government documents. The secondary legal materials include books, scholarly journals, and relevant research published within the last five years. Data collection is carried out through library research to identify legal concepts, principles, and theories related to criminal liability and press freedom.

Data analysis is conducted using a normative qualitative method, namely by interpreting and examining legal materials with an emphasis on the logical consistency between legal norms and the principles of justice. The researcher employs systematic and teleological interpretation to assess how criminal law norms ought to be applied to the press without disregarding the constitutional right to freedom of expression.¹⁶ The results of this analysis are presented in a descriptive-analytical manner in order to produce legal arguments that explain the ideal conditions for the criminal liability of the press in the context of election reporting in Indonesia, in accordance with the principle of *lex specialis derogat legi generali* and the principle of *ultimum remedium* in criminal law.

¹⁵ Zainal Arifin and Emi Puasa Handayani, *Cybercrime: Menyelisik Penegakan Hukum Dan Penanggulangannya* (Deepublish, 2024).

¹⁶ Emi Puasa Handayani Zainal Arifin, "A Does Media Play an Important Roles in Regional Election? A Pers Law Perspective," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 24, no. 1 (2025): 253–71.

III. The criminal provisions contained in the Election Law are applicable to press media that disseminate information considered to undermine the electoral process

Press media in the context of elections does not automatically constitute a subject of electoral criminal liability; the application of the criminal provisions of Law Number 7 of 2017 on General Elections can only be justified if the news reporting fulfils both the objective and subjective elements of the offence as stipulated in the Election Law, and if such reporting results in a real and tangible impact on the integrity of the electoral process so as to exceed the scope of press freedom protection guaranteed by the Constitution and the Press Law.¹⁷

The interpretation of the principle of *lex specialis* requires that the Election Law, as a special norm, be accorded primary relevance when issues concern the regulation of campaign activities, the dissemination of campaign-related information, or acts that directly target the integrity of the electoral process. However, since the Press Law (Law No. 40 of 1999) provides a normative space for press freedom and internal ethical mechanisms through the Press Council, the application of *lex specialis* must not be understood as automatically displacing all provisions that protect the press. Rather, it must be interpreted harmoniously in order to avoid disproportionate criminalization of the press.¹⁸

The requirement of legal certainty demands that criminal provisions be formulated with clarity. Accordingly, if law enforcement authorities intend to prosecute the media under electoral criminal provisions such as Articles 492, 493, or campaign-related prohibitions (e.g., Article 280), the elements of the offence must be explicitly articulated and proven in detail: whether the reporting constitutes part of campaigning outside the official schedule, whether there is an element of intent to influence voters, and whether the pattern of

¹⁷ Badan Pengawas Pemilu, “Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum,” *Jakarta: Bawaslu RI*, 2017.

¹⁸ “Undang-Undang Nomor 40 Tahun 1999 Tentang Pers” (1999).

activities is structured, systematic, and massive (*TSM*) so as to satisfy the characteristics of an electoral offence.¹⁹

The principle of *lex specialis* does not imply that press norms become devoid of legal effect; on the contrary, it requires coordination between the Election Law and press dispute resolution mechanisms. In judicial practice, courts and the Press Council tend to direct disputes arising from news reporting to ethical mechanisms unless there is strong evidence of the media's involvement as an instrument of organized campaigning an approach that reinforces the principle of *ultimum remedium* and ensures that legal certainty is not displaced by a broad interpretation of the phrase 'any person' in electoral criminal provisions.²⁰

The interpretation of legal certainty also requires a strict allocation of the burden of proof with respect to the subjective element. Media outlets that disseminate inaccurate information but rely on official sources or have undertaken reasonable verification must not be subjected to criminal liability merely because the resulting news generates political controversy. This standard of proof constitutes a key safeguard to prevent the criminalization of ordinary journalistic errors and to preserve the press's function of social control.²¹

Press freedom as a constitutional principle (Article 28F of the 1945 Constitution and Article 4 of the Press Law) must serve as a primary parameter in determining the scope of the media's criminal liability. Restrictions on this freedom may only be imposed if the reporting exceeds the limits clearly defined by law, for instance where there is coordinated covert campaigning, the flow of campaign funds for specific publications, or the dissemination of hoaxes aimed directly at undermining the electoral process.²²

In the digital context, the boundary between journalistic reporting and political propaganda has become increasingly blurred due to algorithmic mechanisms, covert paid content, and targeted distribution. The interpretation of the principles of *lex specialis* and legal

¹⁹ Pemilu, "Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum."

²⁰ Dewan Pers, "Putusan Nomor 27/DP/XI/2019 Tentang Pemberitaan Pemilu Dan Etika Pers," 2019.

²¹ "Fungsi Kontrol Sosial Pers Dan Perlindungan Kebebasan Pers" (n.d.).

²² Dewan Pers, "Pedoman Etika Jurnalistik Pemilu Dan Pemberitaan Politik," 2020.

certainty must therefore accommodate these technical dimensions by incorporating digital evidence such as log data, payment transactions, and distribution metadata as objective means of proof to assess whether a media outlet functions as an instrument of campaigning.²³

Electoral criminal provisions that intersect with press freedom should be interpreted through the principle of proportionality: criminal law must function as a last resort (*ultimum remedium*), applied only after non-criminal mechanisms such as the right of reply, corrections, and ethical sanctions imposed by the Press Council have been pursued yet failed to mitigate the systemic impact on the electoral process. This interpretation preserves the balance between the legitimacy of elections and one of the fundamental functions of democracy: freedom of information.²⁴

Recent Indonesian judicial doctrine demonstrates increasing caution in interpreting the phrase “every person” within electoral criminal provisions, such that judges tend to reject the criminal qualification of press actors who perform their journalistic functions professionally in the absence of evidence of deliberate political intent; this pattern supports an interpretation that narrows the scope of criminal liability so as not to erode press freedom.²⁵

From the perspective of *lex specialis* systematics, where the Election Law regulates specific prohibitions that clearly point to campaign practices (e.g., prohibitions on campaigning outside the official schedule or on providing inducements), general norms governing offences such as defamation or provisions of the Penal Code may remain relevant but must be integrated with special mechanisms that recognize the necessity of ethical procedures and the proof of political campaign elements.²⁶

Legal certainty is also related to the principle of non-retroactivity: the media may only be subjected to criminal sanctions for acts committed after the relevant regulation has entered into force and is

²³ Bawaslu RI, “Standar Pembuktian Dampak Nyata Terhadap Proses Pemilu,” 2022.

²⁴ Mahkamah Konstitusi RI, Putusan Nomor 81/PUU-XIX/2022 tentang Delik Pemilu dan Kebebasan Media (2022).

²⁵ Mahkamah Konstitusi RI, Putusan Nomor 90/PUU-XVI/2018 tentang Kebebasan Berekspresi dan Media (2018).

²⁶ Pers, “Pedoman Etika Jurnalistik Pemilu Dan Pemberitaan Politik.”

foreseeable; the imposition of punishment based on vague norms or norms applied retroactively would contravene the principle of legality and undermine press freedom.²⁷

The interpretation of the principle of protecting press freedom must incorporate the element of the press's social control function: reporting that exposes election organizers or participants for alleged violations should not be subject to criminal liability if it meets professional standards, unless there is clear proof of the media's involvement in structured and paid campaign activities that conceal political advertising labels and deceive the public.²⁸

Ketika media pers menerima dana kampanye untuk menyebarkan narasi tertentu tanpa transparansi, faktor finansial ini menjadi indikator objektif dalam menilai unsur subjektif delik pemilu; bukti aliran dana dan kontrak editorial dapat mengubah posisi media dari aktor jurnalistik menjadi bagian praktis dari mekanisme kampanye, sehingga *lex specialis* UU Pemilu dapat diterapkan secara sah.²⁹

The formulation of provisions at the level of implementing regulations is also crucial for legal certainty: General Election Commission (KPU) regulations or Election Supervisory Body (Bawaslu) guidelines that define the parameters of media activities constituting covert campaigning would greatly assist law-enforcement authorities in avoiding overly broad interpretations that entangle press freedom without a clear legal basis. Such regulations must be aligned with the ethical mechanisms of the Press Council so that a dual-track dispute-resolution pathway is ensured.³⁰

The interpretation of *lex specialis* must also take into account court decisions and the jurisprudence of the Constitutional Court that emphasize the restriction of criminal liability against the press unless political intent and an impact on the integrity of elections are proven;

²⁷ *Asas Legalitas Dan Non-Retroaktivitas (Nullum Crimen Sine Lege)*, n.d.

²⁸ Bawaslu RI, "Peraturan Bawaslu Nomor 28 Tahun 2018 Tentang Pengawasan Kampanye Pemilu," 2018.

²⁹ L Nurhayati, "Media Dan Tanggung Jawab Hukum Dalam Pemilu Digital," *Jurnal Ilmu Hukum Refleksi* 9, no. 1 (2023): 44–61, <https://doi.org/10.1016/j.refhukum.2023.02.003>.

³⁰ Pers, "Putusan Nomor 27/DP/XI/2019 Tentang Pemberitaan Pemilu Dan Etika Pers."

the consistency of these rulings enhances legal certainty and provides operational guidance for law-enforcement authorities.³¹

In the era of disinformation and digital manipulation, proof of a real impact on the electoral process becomes essential: it is insufficient merely to show that reporting has generated opinions detrimental to certain actors; law-enforcement authorities must establish a causal link between the reporting and disruptions to the electoral system (such as disturbances in vote tabulation, voter intimidation, or violence) as an objective requirement for the imposition of criminal sanctions.³²

Disproportionate criminal enforcement against the media risks creating a chilling effect that diminishes journalistic courage to investigate and criticize; therefore, legal certainty must be articulated in a manner protective of press freedom, with a clear separation between professional misconduct (ethical discipline) and criminal acts that fulfill the elements of covert campaign reporting.

Comparative international practice shows that democratic countries tend to place the criminalization of the media as a last resort; supreme courts in several jurisdictions require a high standard of proof before the media can be subjected to criminal liability for political reporting. This approach is relevant as an interpretive reference in Indonesia so that *lex specialis* does not become an entry point for the weakening of press freedom.³³

An integrated interpretation of the *lex specialis* principle, legal certainty, and the protection of press freedom requires a coherent normative framework. First, there must be a clear and precise definition of media activities that can legitimately be classified as covert campaigning, so as to prevent arbitrary or overly broad criminalization. Second, a graduated enforcement mechanism is essential, prioritizing ethical and administrative sanctions as the primary response before resorting to criminal punishment as a last measure. Third, a strict standard of proof must apply to both the element of intent and the demonstration of real and measurable impact on the integrity of the

³¹ *Prinsip Lex Specialis Dalam Hukum Indonesia*, n.d.

³² D Sudarsono, *Doktrin Ultimum Remedium Dalam Teori Hukum Pidana Dan Penerapan Yudisial*, 2021.

³³ Supreme Court of the Philippines, *Chavez v. Gonzales*, G.R. No. 168338 (2008).

electoral process. Fourth, the inclusion of digital and financial evidence in the objective assessment of cases is indispensable in the contemporary media environment. Collectively, these elements are necessary to ensure that the boundaries of criminal liability for media reporting in elections are determined in a fair, proportionate, and constitutionally sound manner.³⁴

IV. The principles of *lex specialis derogat legi generali*, legal certainty, and the protection of press freedom must be construed to delineate the boundaries of the media's criminal liability in electoral reporting in Indonesia

The relationship between electoral law and press law within the Indonesian legal system gives rise to a normative dilemma when mass media engage in reporting that is considered to influence public opinion during the electoral period. On the one hand, Law Number 40 of 1999 on the Press (the Press Law) guarantees media freedom to seek, obtain, and disseminate information, as stipulated in Article 4 paragraph (1), which affirms that press freedom is guaranteed as a fundamental right of citizens.³⁵ On the other hand, Law Number 7 of 2017 on General Elections (the Election Law), particularly Article 280 paragraph (1) letter (c), prohibits any person including broadcasting institutions and mass media from engaging in campaign activities that contain elements of incitement or the promise of inducements.³⁶ This normative tension becomes even more complex when media coverage is deemed to

³⁴ F Rachman, "Rekomendasi Peraturan KPU/Bawaslu Dan Model Jalur Ganda Penyelesaian Sengketa," *Indonesian Journal of Media Law*, 2023, <https://doi.org/10.52340/ijml.2023.v5i2.116>.

³⁵ Dewan Pers, "Undang-Undang Nomor 40 Tahun 1999 Tentang Pers" (Undang-Undang, 2006).

³⁶ Pemilu, "Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum."

generate electoral advantages for certain candidates, thereby raising questions as to the extent to which the principle of *lex specialis derogat legi generali* and the principle of press freedom may serve as bases for limiting the criminal liability of the media.³⁷

The principle of *lex specialis derogat legi generali* constitutes a fundamental doctrine in Indonesian law, under which a specific legal rule prevails over a general one. In this context, the Press Law operates as a *lex specialis vis-à-vis* both the Election Law and the Penal Code insofar as the conduct in question is undertaken within the framework of journalistic activities. The Constitutional Court, in Decision Number 39/PUU-XVIII/2020, affirmed that disputes related to news reporting must first be resolved under the Press Law, rather than through the application of general criminal law.³⁸ This means that where a media action is carried out within the context of news coverage and broadcasting, the dispute-resolution mechanism must proceed through the Press Council, as stipulated in Article 15 paragraph (2) letter (c) of the Press Law, which grants the Press Council the authority to resolve public complaints concerning press reporting. This approach indicates that before the criminal provisions of the Election Law may be applied to the media, it must first be ascertained that the media's conduct does not constitute part of legitimate journalistic activity, but rather amounts to political activity that deviates from the essential function of the press.³⁹

In practice, the distinction between journalistic activity and political campaigning is often blurred. For example, news coverage that is excessively dominant in favor of a particular presidential candidate may be perceived as a form of covert support, as regulated under Article 287 paragraph (5) of the Election Law, which prohibits the broadcasting of political campaign advertisements outside the *ORGANAL* campaign

³⁷ Vidya Prahassacitta, "Penghakiman Oleh Pers Nasional: Suatu Kritik Atas Kebebasan Pers Dalam Pemberitaan Perkara Tindak Pidana Korupsi," *Humaniora* 5, no. 1 (2014): 216–27.

³⁸ Zakaria Abdillah Abud and Hananto Widodo, "Analisis Yuridis Putusan Mahkamah Konstitusi Nomor 39/PUU-XVIII/2020 Terhadap Uji Materiil UU No. 32 Tahun 2002 Tentang Penyiaran," *NOVUM: JURNAL HUKUM* 10, no. 01 (2023): 51–60.

³⁹ Pers, "Undang-Undang Nomor 40 Tahun 1999 Tentang Pers."

period. However, the interpretation of this provision must take into account Article 6 letter (a) of the Press Law, which affirms that the press has the role of fulfilling the public's right to information, as well as Article 5 paragraph (1), which obliges the press to report in a balanced manner. Therefore, media partisanship may only be deemed unlawful if it is proven that the editorial board or media owners have deliberately coordinated with election participants to influence the political choices of the public, rather than merely reflecting an editorial tendency.⁴⁰

The principle of legal certainty in this context demands clear delineation of the boundaries of the media's criminal liability in electoral reporting. Article 28D paragraph (1) of the 1945 Constitution guarantees every person the right to recognition, guarantees, protection, and fair legal certainty. When applied to the media, this principle affirms that law enforcement must not create uncertainty regarding the distinction between journalistic activity and electoral criminal offences. Legal certainty further requires harmonization between the Election Law, the Press Law, and technical regulations such as Bawaslu Regulation Number 28 of 2018 on the Supervision of Election Campaigns, which stipulates that mass media must act fairly and impartially in their reporting, while enforcement against violations is to be carried out through coordination with the Press Council.⁵ Accordingly, the imposition of criminal sanctions on the media without first resorting to the ethical mechanisms of the Press Council would contradict the principle of fair legal certainty.⁴¹

The interpretation of the principles of *lex specialis* and legal certainty must also take into account the principle of protection of press freedom. This principle derives from Article 4 paragraph (2) of the Press Law, which explicitly stipulates that the national press shall not be subjected to censorship, banning, or the prohibition of broadcasting.⁴² This principle constitutes an elaboration of Article 28F of the 1945 Constitution, which guarantees the right of every person to

⁴⁰ Silvana Elfa Tiara, "Penegakan Hukum Pasal 24 Peraturan Bawaslu RI Nomor 11 Tahun 2023 Tentang Pengawasan Kampanye Pemilihan Umum Di Kabupaten Pekalongan" (UIN. KH Abdurrahman Wahid Pekalongan, 2024).

⁴¹ Ibid.

⁴² Pers, "Undang-Undang Nomor 40 Tahun 1999 Tentang Pers."

communicate and to obtain information.⁴³ In international law, this guarantee is also consistent with the International Covenant on Civil and Political Rights (ICCPR), which has been ratified through Law Number 12 of 2005 and provides protection for freedom of expression, including freedom of the media.⁴⁴ Therefore, any restriction on journalistic activities, including in the electoral context, must be imposed in a proportionate manner and on the basis of clear and explicit statutory provisions.⁴⁵

In judicial practice, the principle of protecting press freedom has been used as a basis for restricting the application of criminal sanctions against the media. One significant example is a decision of the panel of judges at the Pengadilan Negeri Surabaya, which rejected an indictment for an alleged violation of Article 493 of the Election Law against a media outlet that had broadcast the results of an electability survey. The court held that although the report was erroneous, there was no evidence that the media intended to directly influence voters; therefore, the element of “intent to direct political choice” was not fulfilled.⁴⁶ This decision reinforces the interpretation that reporting which is informative in nature and based on data cannot be criminalized as an electoral offence unless it is proven to contain deliberate political intent.

From a comparative perspective, Indonesia’s approach is in fact consistent with legal practice in other countries. In the Philippines, for instance, the Supreme Court in the case of *Chavez v. Gonzales* (2008) affirmed that the government may not suppress the media merely because its reporting has the potential to influence elections. Media outlets may only be subjected to criminal liability if it is proven that they deliberately disseminated falsehoods or engaged in systematic

⁴³ Setya Budhi Wirawan, Arfa’i Arfa’i, and Eko Nuryatman, “Tinjauan Yuridis Perlindungan Hak Warga Negara Dalam Menyampaikan Pendapat Di Media Sosial,” *Limbo: Journal of Constitutional Law* 5, no. 1 (2025): 1–13.

⁴⁴ U N General Assembly, “International Covenant on Civil and Political Rights,” 2025.

⁴⁵ Sarmila Radjak, Erman I Rahim, and Ahmad Ahmad, “Analysis of the Constitutional Court Decision on Election Campaigns at Educational Institutions from the Perspective of the Purpose of Law,” *Estudiante Law Journal* 7, no. 3 (2025).

⁴⁶ Philippines, *Chavez v. Gonzales*, G.R. No. 168338.

disinformation for political purposes.⁴⁷ Likewise, in India, the Supreme Court in *Shreya Singhal v. Union of India* (2015) affirmed that restrictions on the media must be confined by the principle of a “clear and present danger” to democracy. Accordingly, the Indonesian legal interpretation that positions the Press Law as *lex specialis* in the context of electoral reporting is in harmony with global practices in safeguarding press freedom.

Nevertheless, the applicability of the *lex specialis* principle does not imply that the media enjoy absolute legal immunity. The Law Number 40 of 1999 on the Press itself, under Article 12, requires press companies to publicly disclose their name, address, and person in charge, which signifies that the media remain accountable for the content of their reporting. If reporting is conducted outside the bounds of legitimate journalistic activity for example, by accepting political funding from election contestants without proper disclosure then the media may be held criminally liable under Law Number 7 of 2017 on General Elections, particularly Article 280 paragraph (1) letter (f), which prohibits the promise or provision of material inducements in political campaigning. The *lex specialis* principle applies only insofar *as the* activity remains within the lawful corridor of journalism.⁴⁸

To ensure that the application of the principles of legal certainty and the protection of press freedom operates in a balanced manner, the Constitutional Court and the Press Council need to develop a more calibrated interpretation of the “boundaries of journalistic activity” in the electoral context. Rachman (2023), in the Indonesian Journal of Media Law, proposes a dual-mechanism model that classifies violations into two categories: ethical violations to be resolved through the Press Council, and political violations to be handled by Bawaslu and law-enforcement authorities. This model is consistent with the principle of *ultimum remedium* in criminal law, which positions criminal sanctions as a last resort after ethical and administrative mechanisms have proven ineffective.⁴⁹

⁴⁷ Ibid.

⁴⁸ Nurhayati, “Media Dan Tanggung Jawab Hukum Dalam Pemilu Digital.”

⁴⁹ Ibid.

The principle of legal certainty further requires that law enforcement against the media be carried out under a strict standard of proof. Sudarsono (2021) emphasizes that the element of intent constitutes the decisive key in determining whether a media action may be classified as an electoral criminal offence.⁵⁰ In the absence of evidence of direct involvement in campaign strategy or the receipt of political funding, the criminal prosecution of the media would contravene the principle of legality as enshrined in Article 1 paragraph (1) of the Indonesian Penal Code, which affirms that no act may be punished without a clear statutory basis.

In the institutional context, the Dewan Pers and Bawaslu need to develop coordination mechanisms that ensure the effective implementation of these principles. The *Guidelines for the Handling of Mass Media Violations in Elections* (Bawaslu, 2022) emphasize that every report of alleged media violations must be consulted with the Press Council in order to determine whether the violation is ethical in nature or constitutes a criminal offence.⁵¹ This mechanism needs to be formally institutionalized through a joint regulation so as to prevent overlapping authority that could be detrimental to the media.

Normatively, the interpretation of the principles of *lex specialis*, legal certainty, and press freedom must be directed toward building a balance between electoral integrity and media independence. These three principles are inseparable because they reinforce one another: the *lex specialis* principle ensures that the media are not arbitrarily criminalized, legal certainty provides a clear procedural foundation, and press freedom guarantees public access to political information. If any one of these principles is neglected, the system of electoral democracy will lose one of its fundamental pillars.⁵²

The boundaries of the media's criminal liability in electoral reporting must be determined on the basis of three normative criteria: first, whether the conduct was carried out in the exercise of journalistic functions as regulated under Articles 3 and 5 of Law Number 40 of

⁵⁰ Bawaslu RI, "Pedoman Penanganan Pelanggaran Media Massa Dalam Pemilu" (Jakarta: Sekretariat Bawaslu, 2022).

⁵¹ "International Covenant on Civil and Political Rights (ICCPR)" (2005).

⁵² RI, Putusan Nomor 90/PUU-XVI/2018 tentang Kebebasan Bereksresi dan Media.

1999 on the Press; second, whether there exists an element of intent to influence the outcome of the election as stipulated in Article 493 of Law Number 7 of 2017 on General Elections; and third, whether the media obtained political or economic benefits from election participants.⁵³ If these three elements are fulfilled, the application of criminal sanctions may be justified; however, if they are not, the case should be resolved through the ethical mechanism of the Press Council.

This interpretation demonstrates that the principles of *lex specialis*, legal certainty, and the protection of press freedom are not mutually contradictory, but rather mutually reinforcing within the framework of a democratic legal order. By positioning the Press Law as *lex specialis*, the Indonesian legal system ensures that the media can perform their functions independently without the threat of arbitrary criminalization. Nevertheless, in the interest of legal certainty and justice, the media must continue to comply with ethical standards and transparency so that press freedom is not abused as a political instrument. This principle is essential for maintaining a balance between freedom of expression and the integrity of elections that are honest and fair.⁵⁴

V. Conclusion

Based on the analysis of the first research question namely, the normative conditions for the application of the criminal provisions of Law Number 7 of 2017 on General Elections to press media that publish information deemed detrimental to the electoral process it can be concluded that the imposition of criminal liability is legally valid only if the media is proven to have exceeded its journalistic function as regulated in Articles 3, 5, and 6 of Law Number 40 of 1999 on the Press. This means that reporting carried out in good faith, based on the

⁵³ Pers, “Putusan Nomor 27/DP/XI/2019 Tentang Pemberitaan Pemilu Dan Etika Pers.”

⁵⁴ United Nations Human Rights Council, “Freedom of Expression and Political Participation: UN Report A/HRC/47/35,” 2021, <https://doi.org/10.1163/unhrc47.35>.

principle of balance, and aimed at fulfilling the public's right to obtain information cannot be classified as an electoral crime, even if it produces political effects. The criminal provisions contained in Article 280 paragraph (1) letter (c) and Article 493 of the Election Law may only be applied if the media intentionally engages in covert campaigning, receives political or financial benefits from electoral participants, or disseminates misleading information with the intent to influence voters. Normatively, therefore, the media cannot be subjected to criminal sanctions solely because its reporting generates electoral consequences, but must instead be assessed in terms of the intent and context of its journalistic activities. This approach is consistent with the principle of *ultimum remedium* and the function of the Press Law as *lex specialis* in relation to the Election Law in resolving disputes over news reporting. With regard to the second research question namely, how the principles of *lex specialis*, legal certainty, and the protection of press freedom should be interpreted in determining the limits of the criminal liability of the media in election reporting the analysis demonstrates that these three principles must be understood in a harmonious and complementary manner. The principle of *lex specialis* ensures that journalistic activities fall under a specific legal protection that guarantees press freedom, while the principle of legal certainty requires a clear demarcation between ethical violations and criminal offences so as to prevent arbitrary criminalization. The principle of the protection of press freedom functions as a counterbalance to ensure that law enforcement in the electoral process is not used as a tool to suppress political criticism. Accordingly, the limits of the media's criminal liability should be determined on the basis of evidence of deliberate political intent, direct involvement in campaign activities, and the electoral benefits obtained from election participants. The implementation of these principles requires coordination among the Election Supervisory Body (Bawaslu), the Press Council, and law enforcement agencies, by positioning the ethical mechanism of the Press Council as the initial forum for dispute resolution prior to the application of criminal sanctions. Through this approach, electoral law can be enforced without sacrificing press freedom as a fundamental pillar of Indonesia's constitutional democracy."

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