



Legal Framework for Resolving Election Violations in Indonesia: Towards Electoral Justice

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Abstract

Dealing with electoral violations in Indonesia faces persistent challenges, including strict time limits for case resolution, limited effectiveness of sanctions, and weak coordination among law enforcement agencies. Social and political dynamics further complicate evidence gathering, undermining the integrity of the electoral process. Electoral justice is therefore vital, both as a guarantee of legal certainty and a safeguard for voting rights, institutional integrity, and democratic legitimacy. This research applies a normative juridical method combined with qualitative analysis of statutory regulations, scholarly works, and legal records. The results indicate that the main obstacles to enforcement involve regulatory time constraints, ineffective sanctions, and institutional coordination gaps, compounded by socio-political factors. Nevertheless, electoral justice remains essential to



uphold the rule of law and ensure free, fair, and genuine elections. Strengthening regulations, enhancing law enforcement capacity, and raising public legal awareness are necessary steps to secure credible elections and maintain democratic legitimacy.

Keywords

Legal System of Rules; Election Violation Handling; Electoral Justice.

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Introduction

In a country that embraces democracy, openness to criticism and protection of human rights are always recurring tests. The transfer of power from a handful of people to the masses without being balanced by rational dialogue will only give rise to a multitude of unfocused opinions.¹

General elections are fundamental to Indonesia's statehood, as they are a means of exercising the sovereignty of the people. General elections are one of the essential foundations for the realization of democratic values in a country. General elections are the most democratic means of forming a government based on representation and expression of democratic struggle for people to determine who will govern them.² General elections, as a means of implementing the principle based on popular sovereignty, are held to facilitate the peaceful and orderly replacement of government. By way of general elections, the legitimacy of the government is obtained. This fulfills the right to vote, which is universally guaranteed and crucial to implementing the principle of popular sovereignty.

Democracy generally places people in a critical position in the constitutional system, but in its implementation, there are differences between one country and another due to various variants of democracy. Democracy, in simple terms, is a system of government characterized by the role of the people.³

Every citizen has a voice in the exercise of power and participates actively. Democracy is said to be the spirit, and the institutionalization of the principles of freedom and equality, with all their derivatives, leads to political agreement through the sovereignty of a majority incorporated into

¹ Mohammad Syaiful Aris, *Hukum Pemilu: Filosofi Dan Prinsip Pemilihan Umum Dalam UUD NRI 1945* (Setara Press Kelompok Intrans Publishing, 2021).

² Refly Harun, "Pemilu Konstitusional: Desain Penyelesaian Sengketa Pemilu Kini Dan Ke Depan," *Jakarta: Rajawali Pers*, 2016.

³ Subandi Al Marsudi, "Pancasila Dan UUD'45 Dalam Paradigma Reformasi," 2001.

a legal framework. Institutionalizing the principles of freedom and equality, with all their derivatives, leads to political agreement through the sovereignty of a majority incorporated into a legal framework.⁴ Law has a significant role in implementing state administration after the amendment of the 1945 Constitution of the Republic of Indonesia, which declares Indonesia as a nation grounded in legal principles, with ultimate authority vested in the people (democracy). The basis of the rule of law should be built according to the principles of democracy or people's sovereignty (*demokratische rechtsstaat*). Law should not be enforced authoritatively based on the will of those in power (*Machtsstaat*).⁵ The concept of a democratic state founded on the rule of law is reflected in the conduct of general elections that uphold the principles of justice and legal certainty. The reality of fair and certain law enforcement through the organization of general elections is supported by implementing fair and certain law enforcement, namely the management of electoral criminal offenses and the settlement of election-related disputes, as well as disputes in the State Administrative Court.

Normatively, the power of the Supreme Court and lower courts in criminal election violations and other legal offenses during general elections as stipulated based on Law No. 7 of 2017 on General Elections is divided into three categories, namely reviewing and resolving, (1) Election process disputes, which are handled by the Election Supervisory Agency (Bawaslu) and the Administrative Court as the court of first and final instance (Law No. 7 of 2017 on Elections, Article 471 paragraph 6), (2) Organized, systematic, and large scale administrative violations, which are handled by the Supreme Court (Law No. 7 of 2017 on Elections, Article 463 paragraph 5), (3) Resolution of election crimes, which are handled by

⁴ Hendra Nurtjahjo, "Filsafat Demokrasi," 2006.

⁵ Supandi, *Keadilan Hukum Untuk Demokrasi Yang Beradab* (Mahkamah Agung Republik Indonesia, Urusan Lingkungan Peradilan Tata Usaha Negara, 2019), <https://www.mahkamahagung.go.id/>.

the District Court as the court of first and The High Court as the court of appeal and final court (Law No. 7/2017 on Elections, Article 482).

The restoration of the basic rights of the electorate is part of the enforcement of fair election laws to protect political rights and guarantee the public's right to file complaints. The Election Supervisory Agency, as part of the election administration, is empowered to enforce election laws and has two leading roles: First, to provide prevention in the event of election process disputes and violations; Second, to ensure the settlement of election process disputes and administrative and criminal election violations.⁶

Indonesia represents a democracy grounded in legal supremacy, where the implementation of general elections serves as a specific benchmark for measuring the quality of democracy. General elections serve as an instrument to protect and actualize the sovereignty of the people, which constitutes the highest principle in a democratic state.⁷ The results of the general election produce leaders who will be responsible for exercising the state's power in accordance with the people's mandate. To produce trustworthy leaders, the general election process must be democratic and have integrity. Democratic elections provide equality for every citizen in voting and guarantee voters the right to vote and be elected. Elections with integrity are conducted transparently and uphold the norms of truthfulness and fairness.⁸

Enforcing election laws is fundamental to ensuring the norms of transparency and justice are protected during the electoral process. For

⁶ Irvan Mawardi and Muhammad Jufri, *Keadilan Pemilu Potret Penegakan Hukum Pemilu Dan Pilkada* (Pustaka Ilmu, 2019).

⁷ Ramlan Surbakti et al., *Membangun Sistem Kepartaian Pluralisme Moderat: Menyederhanakan Jumlah Partai Politik* (Kemitraan bagi Pembaruan Tata Pemerintahan, 2011).

⁸ Taufiq Yuli Purnama, Sigit Sapto Nugroho, and Sarbini, "Elections Integrity: Realizing Ultimate Concern and Electoral Justice," *Journal of Transcendental Law* 5, no. 2 (2023): 107–22, <https://doi.org/10.23917/jtl.v5i2.2386>.

election organizers, ensuring the norms of transparency and justice in elections involves procedural aspects and management of election-related criminal offenses, ensuring their resolution is conducted according to the law. The maximum role of election organizers is highly expected to attain the principle of due process of law, which is based on procedures and basic protection for all parties involved in the elections.⁹

Enforcement of election laws is part of electoral justice, which is used to maintain the democratic legitimacy and the reliability of the electoral process.¹⁰ Elections run well and democracy flourishes when, in reality, the meaning of electoral justice is used as the basic motivation for conducting elections. Implementing electoral justice is conducted honestly and with integrity, so that democratic and integrity-based elections can be carried out and provide confidence to the public regarding the quality of the election process.¹¹

According to the ODIHR (Office for Democratic Institutions and Human Rights) publication entitled Election Observation Handbook, there are references to the principles of democratic elections that are important for all election stakeholders to refer to as principles of democratic elections. There are at least eight principles of democratic elections.¹²

First, Periodic Elections, namely, holding elections at regular intervals and determined by law. Second, Genuine Elections, namely, democratic elections held in a conducive socio-political environment.

⁹ Bachtiar, *Politik Hukum Konstitusi: Pertanggungjawaban Konstitusional Presiden* (Suluh Media, 2019).

¹⁰ Fritz Edward Siregar, *Dimensi Hukum Pelanggaran Administrasi Pemilu* (Konstitusi Press, 2020).

¹¹ Wilma Silalahi, "Integritas Dan Profesionalitas Penyelenggara Pemilu Demi Terwujudnya Pemilu Yang Demokratis," *Jurnal Bawaslu Provinsi Kepulauan Riau* 4, no. 1 (2022): 71–83, <https://doi.org/10.55108/jbk.v4i1.94>.

¹² Ramlan Surbakti, *Transformasi Bawaslu Dan Partisipasi Masyarakat Dalam Pengawasan Pemilu, Kemitraan Bagi Pembaruan Tata Pemerintahan Indonesia*, 2015.

Third, Free Elections, namely the implementation of democratic elections, should be capable of guaranteeing and protecting the rights of freedom and the political rights of citizens. Fourth, Fair Elections, namely the implementation of democratic elections, could guarantee fair competition and equality. Fifth, Universal Suffrage is the ability to secure the right to vote and be elected by all eligible citizens according to the law. Sixth, equal suffrage, which means that every citizen has one vote. Seventh, Voting by Secret Ballot, namely that election organizers must be able to maintain the confidentiality of each voter's choice. Eighth, Honest Counting and Reporting of Results, namely that election organizers must carry out their duties professionally, impartially, efficiently, and accurately.

Earlier research has emphasized the role of Bawaslu in election supervision and mechanisms for handling administrative and ethical violations.¹³ However, studies that specifically discuss the management of electoral violations by prioritizing the rule of law as a system of rules are still limited. Several studies emphasize the normative aspects of regulations or a partial analysis of the role of institutions, without looking at the integration between components of the legal system. In fact, understanding law as a system of rules is essential for assessing the extent to which law's substance, structure, and culture function effectively in realizing electoral justice.

Therefore, the author would like to analyze the implementation of law as a system of rules in handling election crime violations, examine the working mechanisms and coordination between law enforcement agencies to realize electoral justice, and identify various obstacles encountered in enforcing election law while offering relevant and effective solutions to strengthen the system for handling election crimes in Indonesia.

¹³ Sri Sugeng Pujiatmoko, "Penanganan Pelanggaran Pemilu Dalam Teori Dan Praktik," *Tuban (ID): Karya Literasi Indonesia*, 2020.

Method

This research adopts a normative legal method and qualitative analysis, as Soekanto, Soerjono, and Mamudji described.¹⁴ This approach analyzes election-related laws and regulations, especially in handling election crime infractions. Election law enforcement is positioned to make things accountable, improve legal compliance, prevent infractions, boost transparency, and ensure the election legal system is honest and effective.

The research data were collected through documentation studies covering laws and regulations, books, articles, and relevant literature. The analysis was conducted using qualitative legal methods, a review of legal substance, and the application of constitutional law theory, particularly the principles of popular sovereignty and community participation, to support the realization of electoral justice based on civilized human values.

Result and Discussion

A. Legal system for Handling Election Crime Infraction

Generally, norms are rules, guidelines, and legal standards. Therefore, norms are rules and guidelines for behaving well and politely towards every person in society. Norms serve as a benchmark that guides individuals to behave appropriately in social interactions.¹⁵ The word "norm" comes from Latin, which in Arabic is called *kaidah*, while in Indonesian it is generally referred to as a rule or provision.

Legal theories generally explain that the law should be stable without being static or rigid. At first, such propositions may seem inconsistent, but in reality, they are not, as certainty and predictability, which demand

¹⁴ Soerjono Soekanto, "Penelitian Hukum Normatif: Suatu Tinjauan Singkat," 2007.

¹⁵ Maria Farida Indrati, "Ilmu Perundang-Undangan: Jenis, Fungsi Dan Materi Muata," 2007.

stability, are indispensable elements of law.¹⁶ In contrast, the law requires flexibility and dynamism to keep pace with the ongoing changes in social life.¹⁷

Legal norms exist to enforce and establish social life; laws exist to guide society; laws are enforced when people commit acts that violate the law. Laws have a binding force because they are established by authorities or developed from practices that evolve within society. The law focuses on the aspect of humans as social beings and the physical aspect of humans. In terms of the content of norms, it establishes rights alongside obligations and reflects the morals that underlie all activities.¹⁸ In relation to enforcing democracy, efforts to protect the integrity of elections are significant. Therefore, legislators must regulate certain fraudulent practices or election crime infractions. Concerning election regulations, the law outlines the electoral process and prevents conduct that may obstruct the realization of free and fair elections. Electoral crimes constitute criminal acts in the form of election violations and/or offenses against the provisions of electoral law stipulated in the law on general elections.¹⁹ Topo Santoso defines Election Crimes as all offenses connected to the conduct of elections as stipulated in the Election Law and the Election Crimes Law.²⁰

According to the legal framework in the Election Law and Perbawaslu, alleged election crimes that occur during the election can be identified in two ways: findings and reports. Findings result from active monitoring by election supervisors, so alleged election crimes are

¹⁶ Munir Fuady, "Teori-Teori Besar (Grand Theory) Dalam Hukum," *Jakarta: Kencana*, 2013, 1–2.

¹⁷ Jeremy Zefanya Yaka Arvante, Aditya Yuli Sulistyawan, and Yayan Puji Riyanto, "The Role of Legal Theory in the Era of Digital Globalization: A Perspective of Law Theory as a Tool of Social Engineering," *Jurnal Pembangunan Hukum Indonesia* 7, no. 2 (2025): 307–24.

¹⁸ Fuady, "Teori-Teori Besar (Grand Theory) Dalam Hukum," Jakarta Kencana, 2013.

¹⁹ Badan Pengawas Pemilihan Umum Republik Indonesia, *Peraturan Badan Pengawas Pemilihan Umum Republik Indonesia Nomor 7 Tahun 2022 Tentang Penanganan Temuan Dan Laporan Pelanggaran Pemilihan Umum* (Jakarta: Bawaslu RI, 2022), <https://www.bawaslu.go.id>.

²⁰ Topo Santoso, *Tindak Pidana Pemilu*, Cet. 1 (Jakarta: Sinar Grafika, 2006).

determined directly by election supervisors while conducting supervision.²¹ Election supervisors receive reports from eligible Indonesian voters, election monitors, or election participants. Election supervisors who find alleged violations or election crimes during their monitoring activities then determine the results of their monitoring to be findings. Not all monitoring results must be determined to be findings, as this depends on whether the requirements for being considered a finding are met. If the supervisor believes there is a suspected violation or election crime with strong evidence, the supervision results will be designated as findings and then registered.²² Alleged election crime infractions originate from reports submitted to election supervisors. Once received, these reports are reviewed by supervisors to determine whether they meet formal and material requirements or have been handled by election supervisors.²³

The preliminary review serves to determine the fulfillment of reporting requirements and the type of election crime infraction, referring to Law No. 7 of 2017 on General Elections, which categorizes election crime infractions in several articles, including;

1. Article 488, Providing false information when filling out data from the voter list; Article 490, Village Heads who take actions that benefit or harm election participants;
2. Article 491, Any person who disrupts, obstructs, or disrupts the course of an election campaign;
3. Article 492, Persons who conduct election campaigns outside the schedule set by the General Elections Commission (KPU;

²¹ Ramlan Surbakti et al., *Keadilan Pemilu* (Jakarta: Raja Grafindo Persada, 2022).

²² Maksimus Lefteuw et al., "Nomor 2 Agustus, 2022: H. 74-85," *Pattimura Legal Journal* 1, no. 2 (2022): 74–85, <https://doi.org/0.15294/ulj.v6i2.41627>.

²³ Angelo Emanuel Flavio Seac, *Penguatan Bawaslu Dalam Penegakan Hukum Pidana Pemilu* (Fianosa Publishing, 2022).

4. Article 493, Election campaign organizers who violate campaign restrictions;
5. Article 496, Article 497, Providing false information in election campaign funding reports;
6. Article 510, Causing others to lose their right to vote;
7. Article 514, Determining the number of ballots printed to exceed the specified number;
8. Article 516, Casting one's vote more than once.
9. Article 516, Casting one's vote more than once

In handling violations, two crucial issues become problems in resolving election crime infraction and become notes in the context of the effectiveness of regulatory legislation, namely: first, the issue of the grace period for handling election crime infractions, including the handling of cases of election campaign violations that violate campaign restrictions, covering the time required to resolve alleged election crime infractions, namely from the reporting process to the trial process in court. Alleged administrative violations, election crime infractions, and code of ethics violations must be reported to the Election Supervisory Agency within seven days after the alleged electoral infraction, as stipulated in Article 8(3).²⁴

Second, the effectiveness of cumulative criminal sanctions. In practice, there is the potential for the accumulation of criminal sanctions,

²⁴ Badan Pengawas Pemilihan Umum Republik Indonesia, *Peraturan Badan Pengawas Pemilihan Umum Republik Indonesia Nomor 7 Tahun 2022 Tentang Penanganan Temuan Dan Laporan Pelanggaran Pemilihan Umum*.

particularly for alleged election crimes committed by state officials who also happen to be election participants and are registered as campaigners.²⁵

The Head of the Integrated Law Enforcement Task Force (Gakkumdu) of the Indonesian National Police, Brigadier General (Pol) Djuhandhani Rahardjo Puro, said on Wednesday (10/1/2024) that in 2024, a total of 17 alleged electoral offense cases were handled by the Gakkumdu Task Force, ten of which took place on the campaign stage and seven in the registration stage. Of the 17 cases, 10 are still under investigation, two have been discontinued, and five have been transferred to and decided by the court. Four cases were found guilty at the district court level, and one case was acquitted at the high court level on the grounds that the case had expired.

According to Djuhandani, all of these election criminal cases were handled by the district or city-level Bawaslu and the provincial-level Bawaslu. “As of today, the Indonesian Bawaslu has not forwarded any criminal cases to the Criminal Investigation Unit,” said Djuhandhani. Of the 75 reports or findings, 17 cases proceeded to the investigation stage, with the majority involving forgery (7 cases), money politics (5 cases), and two instances of campaigning by prohibited parties. Other cases involved campaigning in places of worship or educational institutions, using prohibited parties as campaign teams, and the destruction of campaign materials.²⁶ Separately, Puadi, Coordinator of the Violations Handling, Data and Information Division of Bawaslu RI, stated in a written statement that, as of January 8, 2024, the Election Supervisory Agency (Bawaslu)

²⁵ Uzma Jafar, Mohd Juzaidin Ab Aziz, and Zarina Shukur, “Blockchain for Electronic Voting System—Review and Open Research Challenges,” *Sensors* 21, no. 17 (2021), <https://doi.org/10.3390/s21175874>.

²⁶ Norbertus Arya Dwiangga Martiar, “17 Tindak Pidana Pemilu Diproses, Kebanyakan Pemalsuan Dan Politik Uang,” *Kompas*, January 2024, <https://www.kompas.id/baca/polhuk/2024/01/10/17-tindak-pidana-pemilu-diproses-kebanyakan-pemalsuan-dan-politik-uang>.

recorded that 1.302 alleged violations, derived from 703 reports and 329 findings, were processed.

Based on the above statement, it can be concluded that there are several major obstacles in the enforcement of election crime laws in Indonesia. First, the limited time available for resolving election crimes also occurs at the investigation stage at Gakumdu and the trial stage at the court. Article 479 of the Election Law states that investigators conducting investigations who find sufficient preliminary evidence of alleged election crimes must report the outcomes of their investigations, along with case files, to investigators within 24 hours. This is not sufficient time to conduct an initial examination, clarification, discovery of evidence, witnesses in order to complete investigation.²⁷ The social conditions of the community in a political atmosphere greatly influence the difficulties and obstacles in obtaining initial information and discovering evidence.

The District Court shall examine, try, and decide on criminal election cases no later than seven (7) days after the transfer of case files and may do so without the presence of the defendant. The district court's decision may be appealed, with the appeal filed no later than three (3) days after the decision is read out. The High Court must examine and decide on election crime appeals within seven days of receipt. Its decisions are final, binding, and not subject to further legal action. (Article 482, Law 7/2017). Given the strict and short time limits for the resolution of cases, if the investigation and prosecution process exceeds the specified time limit, the case will be dismissed.

According to Eddy O.S. Hiariej, a person who commits a criminal offense is subject to several provisions of the law.²⁸ In casu a quo, election

²⁷ Mawardi and Jufri, *Keadilan Pemilu Potret Penegakan Hukum Pemilu Dan Pilkada*.

²⁸ Eddy O S Hiariej, *Pemilukada Kini Dan Masa Datang: Perspektif Hukum Pidana* (Jakarta: Konstitusi Press, 2012).

crimes often occur in conjunction with election-related crimes regulated in the Criminal Code (KUHP).

The second issue is cumulative criminal sanctions. In practice, there is the potential for the accumulation of criminal sanctions for election crimes, particularly for alleged election crimes committed by state officials who also happen to be election participants. In the campaign, they are registered as campaigners, so according to Law No. 7 of 2017 on General Elections, the handling is regulated in 2 (two) articles, namely:

1. People who conduct election campaigns outside the schedule determined by the KPU;

Article 492: *“Any person who deliberately conducts an election campaign outside the schedule determined by the General Election Commission (KPU), the Provincial KPU, and the Regency/City KPU for each election participant as referred to in Article 275 paragraph (2), shall be punished with imprisonment of up to 1 (one) year and a maximum fine of Rp.12,000,000 (twelve million rupiah).”*

2. Conducting an election campaign that violates campaign restrictions;

Article 521: *“Any campaign organizer, participant, and/or team who intentionally violates the prohibition on conducting election campaigns as referred to in Article 280(1)(a) through (j) shall be punished with imprisonment for a maximum of 2 (two) years and a fine of up to Rp. 24,000,000. (twenty-four million rupiah)”*.

Article 523 paragraph (1): *“Any organizer, participant, and/or election campaign team who deliberately promises or gives money or other material as a reward to election campaign participants directly or indirectly as referred to in Article 280 paragraph (1) letter j shall be punished with imprisonment of up to 2 (two) years and a maximum fine of Rp. 24,000,000 (twenty-four million rupiah)”*.

The concept of punishment, where a person commits several acts simultaneously or consecutively, is called *samenloop*, which in Dutch is called *samenloop van strafbaar feit* or *consursus*. *Consensus* has three forms: concurrence of regulations (*conkursus idealis*), concurrence of acts (*conkursus relis*), and concurrence of continuing acts.²⁹

There are three fundamental issues of justice: equality, liberty, and democracy. The basic concept of equality is that every distribution must be justified by showing how the government has respected these two fundamental principles of equal concern for fate and full respect for responsibility. The concept of liberty is that justice requires a theory of liberty. Individuals possess the right to ethical autonomy, derived from the principle of personal responsibility. This encompasses rights such as freedom of expression, which stem from their broader right to self-governance, itself grounded in personal responsibility, democracy, and equal voting. Democracy necessitates the protection of these individual rights, ensuring justice, liberty, and the rule of law. Justice, understood as mutual benefit, emphasizes balance and equilibrium.³⁰

To overcome these obstacles, several solutions can be offered. First, revise regulations related to case handling time limits to make them more realistic without sacrificing the principles of speed and simplicity.³¹ Second, optimize the application of fines as an alternative to imprisonment to reduce overcrowding in correctional institutions.³²

Third, strengthen inter-agency coordination through integrated training and the development of joint technical guidelines at the Gakkumdu Center. Fourth, improving public legal literacy through

²⁹ P A F Lumintang, *Dasar-Dasar Hukum Pidana Indonesia* (Bandung: Citra Aditya Bakti, 2011).

³⁰ Brian Barry, *Justice as Impartiality* (Oxford: Clarendon Press, 1995).

³¹ Muhammad Zhafran Shobirin et al., "A Comparison of Presidential Threshold Systems in Presidential and Vice-Presidential Elections in Indonesia and Brazil," *Journal of Indonesian Constitutional Law* 1, no. 1 (2024): 1–14, <https://doi.org/10.71239/jicl.v1i1.7>.

³² Barda Nawawi, *Teori-Teori Dan Kebijakan Pidana* (Bandung: Alumni, 2005).

political education and socialization, so that public participation in monitoring and reporting violations increases. With these measures, it is hoped that the election law enforcement system can be more effective, fair, and credible so that election justice can truly be realized.³³

B. Electoral Justice in Handling Election Crime Infraction

The presence of democratic, fair, and dignified elections constitutes an essential and unavoidable prerequisite for a democratic state based on the rule of law.³⁴ Elections are regarded as the most explicit expression of popular sovereignty and the most concrete manifestation of citizen participation in the governance process.³⁵ They function as a mechanism linking the political infrastructure with the political superstructure, thereby facilitating the establishment of a government of the people, by the people, and for the people.³⁶ This conception is rooted in the theoretical framework advanced by Powell, namely:

*“...elections seem to be the critical democratic instruments. The claim is to establish connections that compel or greatly encourage policymakers to pay attention to citizens. There is a widespread consensus that the presence of competitive elections. More than any other feature, it identifies a contemporary nation-state as a democratic political system”.*³⁷

³³ Anna Triningsih and Puslitka--Mahkamah Konstitusi Republik Indonesia, “Membangun Sistem Peradilan Pidana Berbasis Gotong Royong Pada Sentra Gakkumdu Dalam Penyelesaian Tindak Pidana Pemilu,” in *Prosiding Konferensi Nasional Hukum Tata Negara (Diskusi Peer-Review)*, 2022.

³⁴ Dr Harjono and M C L SH, “Konstitusi Sebagai Rumah Bangsa,” *Sekjen Dan Kepanitraan Mahkamah Konstitusi, Jakarta Pusat*, 2008.

³⁵ Afrida Adethyani Lubis, “Pemilihan Umum Dan Partisipasi Politik Masyarakat,” *Jurnal Sakato Ekasakti Law Review* 1, no. 3 (2022): 149–56, <https://doi.org/10.31933/8xz2mv40>.

³⁶ Ronald H Chilcote, “Teori Perbandingan Politik: Penelusuran Paradigma,” 2003.

³⁷ G Bingham Powell and G Bingham Powell Jr, *Elections as Instruments of Democracy: Majoritarian and Proportional Visions* (Yale University Press, 2000).

All democratic countries in the world use elections as a mechanism for peaceful and orderly power transitions, because elections are considered the most effective pillar of democracy for resolving power transition issues. Through elections, the power transition process is guaranteed to be safer and more effective because it reduces the level of chaos. Leadership circulation will be more competitive and open.³⁸ Many countries claim to be democracies, but in practice, elections are merely ceremonial or even just a celebration of democracy. Former Secretary-General of the United Nations (UN) Kofi A. Annan said³⁹, *“Elections are the indispensable root of democracy. They are now almost universal. Since 2000, all countries have held national elections. But to be credible, we need to see high standards before, during, and after votes are cast. Opposition organizations must be free to organize and campaign without fear. There must be a level playing field among candidates. On polling day, voters must feel safe and trust the secrecy and integrity of the ballot. When the votes have been counted, the result must be accepted no matter how disappointed the defeated candidates feel.”*

Furthermore, Annan said:

“To governments, elected ... socials, and citizens around the world, the Commission presents a strategy to increase the likelihood that incumbent politicians and governments will deepen and improve the integrity of national elections. In doing so, we hope that our Report will help to widen understanding of the requirements for strong, democratic and cohesive societies”.

³⁸ SULASTRI SULASTRI, “REKONSTRUKSI REGULASI DEWAN KEHORMATAN PENYELENGGARA PEMILU DI INDONESIA BERBASIS KEADILAN BERMARTABAT” (Universitas Islam Sultan Agung Semarang, 2025).

³⁹ Kofi A Annan, International Institute for Democracy, and Electoral Assistance (International IDEA), *Foundation and International Institute for Democracy and Electoral Assistance (International IDEA)* (New York: United Nations, 2012).

Democracy idealizes individualism and individual autonomy, which, with the mastery and application of advanced science and technology, has a detrimental effect on the environment, which is continuously depleted to satisfy short-term human economic desires and needs⁴⁰ In the concept of supreme power, namely the sovereignty of God (theocracy), the sovereignty of the people (democracy), the sovereignty of the king (monarchy), and the sovereignty of law (nomocracy).⁴¹

If elections are conducted honestly and fairly, then democracy in a country is considered to be good. Well-conducted elections will certainly be a starting point towards a fair, prosperous, and civilized state.⁴² Elections that are democratic, honest, and fair are the means for realizing good governance. Elections are used as a parameter to assess whether a country is democratic or not.⁴³

At this point, the existence of election organizers becomes vital for the realization of democratic governance. Democratic elections require election administrators who act fairly, without legal exceptions, without violence, and without intimidation of candidates to introduce their views or voters to discuss them.⁴⁴ Democratic elections require a clear legal framework and procedures for resolution that are free, fair, and timely in the context of enforcing election laws against various forms of election violations,

⁴⁰ Jimly Asshiddiqie, "Gagasan Kedaulatan Rakyat Dalam Konstitusi Dan Pelaksanaannya Di Indonesia: Pergeseran Keseimbangan Antara Individualisme Dan Kolektivisme Dalam Kebijakan Demokrasi Politik Dan Demokrasi Ekonomi Selama Tiga Masa Demokrasi, 1945-1980-An," (*No Title*), 1994.

⁴¹ Howard P Kainz, "The Vicissitudes of Theocracy in Israel," in *Democracy and the "Kingdom of God"* (Dordrecht: Springer Netherlands, 1993), 27–35.

⁴² Georg Sorensen, "Demokrasi Dan Demokratisasi: Proses, Prospek Dalam Sebuah Dunia Yang Sedang Berubah," 2003.

⁴³ Shakaib Aleem Arshad et al., "The Role of Electoral Laws in Promoting Good Governance and Ensuring True Democracy," *The Critical Review of Social Sciences Studies* 3, no. 1 (2025): 3727–43, <https://doi.org/10.59075/1c284450>.

⁴⁴ Sigit Pamungkas, *Perihal Pemilu* (Yogyakarta: Fakultas Ilmu Sosial dan Ilmu Politik, Universitas Gadjah Mada, 2009).

including administrative violations, criminal violations, and ethical violations by election administrators.⁴⁵

Enforcement of election laws is the most important process in every election. An indicator of democratic elections is how the law enforcement process is carried out in a free and fair manner, so that elections can be considered aspirational and democratic if impartial, independent organizers conduct them and election laws are enforced.⁴⁶

One of the fundamental prerequisites for the realization of democratic governance within a state governed by the rule of law is the conduct of free elections. Elections serve as a primary mechanism that must be present in the processes of state administration and government formation. They are regarded as the most explicit embodiment of sovereignty vested in the people and the most concrete manifestation of public participation in the exercise of state authority.⁴⁷ Discussing election law and justice with all its dynamics cannot be separated from the concept of election justice, which is the main spirit underlying all stages of the election process.⁴⁸ Electoral justice is an instrument used to ensure the legitimacy of democracy and the credibility of the electoral process. Elections are considered democratic when their implementation embodies the spirit of electoral justice as the main principle in the conduct of elections.⁴⁹ Electoral justice constitutes a means and mechanism established by the state, or even by local, regional, or

⁴⁵ Nicholas Aylott and Niklas Bolin, "A New Right: The Swedish Parliamentary Election of September 2022," *West European Politics* 46, no. 5 (2023): 1049–62, <https://doi.org/10.1080/01402382.2022.2156199>.

⁴⁶ Usep Ranawijaya, *Hukum Tata Negara Indonesia: Dasar-Dasarnya* (Jakarta: Ghalia Indonesia, 1984).

⁴⁷ Adethyani Lubis, "Pemilihan Umum Dan Partisipasi Politik Masyarakat."

⁴⁸ Arga Mahawira Pradipta, "The Position of Election Law in Ensuring Regional Political Justice and Stability," *Journal of Law and Humanity Studies* 2, no. 1 (2025): 15–22, <https://doi.org/10.59613/vfzg8f05>.

⁴⁹ Devina Tanzil and Fakultas Hukum Universitas Katolik Indonesia Atma Jaya, "Peninjauan Electoral Justice Sebagai Upaya Dalam Mewujudkan Pemilu 2024 Yang Berkeadilan," *Jurnal Bawaslu Provinsi Kepulauan Riau* 3, no. 2 (2021): 38–57.

international entities, to guarantee that every action, procedure, and decision on the electoral process complies with the applicable legal frameworks.⁵⁰

Electoral justice is an instrument that guarantees the legitimacy of democracy and the credibility of the electoral process. Suppose there is a public perception that the electoral justice system is not working optimally and is weak in law enforcement and in resolving electoral disputes. In that case, it will not only damage the credibility of the elections but also cause voters to question their role in the electoral process, which may lead them to reject the election results.⁵¹ Effective and timely electoral justice is a key element in creating the legitimacy and credibility of elections. At this point the democratic value of an election will be answered

The meaning of social justice contained in Pancasila, electoral justice should be interpreted as follows:⁵²

“...electoral justice is not only about creating fair and legally certain rules, but also about using it as a tool to protect the people's voice. Electoral justice is not only about the availability of dispute resolution mechanisms in various forms, but also about ensuring that all citizens are guaranteed their rights against the possibility of fraud. Electoral justice also extends to the level of how electoral institutions are staffed by non-partisan individuals who are able to work with integrity. Electoral justice also reaches the most complex point, where the people, as the foundation of democracy, have sufficient understanding of its existence as a determinant of the transition of power through fair elections”. The implementation of electoral justice

⁵⁰ Sylvanus Chukwudi Ugoh, “The Independent National Electoral Commission and the Quest for Electoral Integrity: A Study of the 2019 Kogi State Governorship Election” (NILDS-Department of Studies, 2022).

⁵¹ Arshad et al., “The Role of Electoral Laws in Promoting Good Governance and Ensuring True Democracy.”

⁵² Muhamad Sadi Is, “Penguatan Fungsi Bawaslu Dalam Penegakan Hukum Pelanggaran Administrasi Sebagai Penataan Pemilu Serentak,” *Konferensi Nasional Asosiasi Pengajar Hukum Tata Negara Dan Hukum Administrasi Negara* 2, no. 1 (2024): 263–94, <https://doi.org/10.55292/fx24k697>.

is an inherent part of Bawaslu's existence. The implementation of electoral supervision and law enforcement functions by Bawaslu represents a concrete effort to guarantee the realization of electoral justice within the electoral process.⁵³ This aligns with Bawaslu's tagline, "Together with the People, Oversee Elections; Together with Bawaslu, Uphold Electoral Justice." Article 1 paragraph (2) of the General Election Supervisory Agency Regulation Number 31 of 2018 on the Integrated Law Enforcement Center stipulates that the Integrated Law Enforcement Center (Gakkumdu) is a hub for law enforcement activities related to election crimes, comprising elements of Bawaslu, Provincial and/or Regency/City Bawaslu, the Indonesian National Police, Regional and/or Resort Police, as well as the Attorney General's Office, High Prosecutor's Office, and/or District Prosecutor's Office. Institutionally, Gakkumdu is an entity attached to the secretariat of Bawaslu RI, Provincial Bawaslu, and Regency/City Bawaslu, as regulated in Article 486 paragraph (8) of Law Number 7 of 2017 on General Elections. The establishment of Gakkumdu serves to harmonize perceptions and approaches in handling election crimes among the institutions that comprise it as further outlined in Article 486 paragraph (1) of Law Number 7 of 2017 on General Elections.⁵⁴

The presence of Bawaslu is not only to prevent, identify, and rectify election irregularities, but also to impose sanctions on perpetrators who cause election irregularities, such as fear, intimidation, bribery, fraud, and fraudulent practices that will affect the purity of the election results.⁵⁵

⁵³ Siregar, *Dimensi Hukum Pelanggaran Administrasi Pemilu*.

⁵⁴ Soekanto, "Penelitian Hukum Normatif: Suatu Tinjauan Singkat."

⁵⁵ A KOESWORO, "Strategi Bawaslu Dalam Mencegah Praktik Politik Uang Pada Pemilu Di Kota Bengkulu Provinsi Bengkulu," 2024, [http://eprints.ipdn.ac.id/19852/%0Ahttp://eprints.ipdn.ac.id/19852/1/RINGKASAN SKRIPSI.pdf](http://eprints.ipdn.ac.id/19852/%0Ahttp://eprints.ipdn.ac.id/19852/1/RINGKASAN%20SKRIPSI.pdf).

In addition, efforts to address crime must be conducted carefully, thoroughly, economically, selectively, and within strict limits to ensure that the application of the law does not function solely as a tool of retribution, but also provides guidance to the defendant through an integrated and systematic approach within the framework of crime prevention. Broadly, criminal law serves as a means to regulate society in order to establish and preserve public order, thereby requiring legal guidance that can direct and accommodate societal needs in accordance with the evolving legal consciousness driven by modernization and development across various sectors.

Legal certainty is a crucial prerequisite that not only strengthens national unity but also supports the advancement of national development. Consequently, criminal law functions not merely as an instrument of enforcement but also as a medium for fostering public legal awareness. In the electoral context, a key element that must be established is public trust prior to the election, as the absence of free public participation, adequate access to information, and respect for voting rights would undermine the significance of the electoral process. Candidates must be guaranteed equal opportunities to compete fairly, while also being engaged in the process and upholding the election results. Ultimately, elections must be organized effectively and efficiently in accordance with the principles of direct, public, free, confidential, honest, and fair elections as mandated in Article 2 of Law Number 7 of 2017 on Elections.⁵⁶ Challenges in addressing election-related criminal offenses can be grouped into three main aspects, namely legal norms, the rule of law, and community culture.⁵⁷ In this case, the electoral justice system is a key instrument of the rule of law and an

⁵⁶ Republik Indonesia, *Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum* (Jakarta: Lembaran Negara Republik Indonesia, 2017).

⁵⁷ Hanafi, "Juridical Analysis of Handling Violations of General Election Crimes at the Election Supervisory Board for the 2019 Analisis Yuridis Penanganan Pelanggaran Tindak Pidana Pemilihan Umum Badan Pengawas Pemilihan Umum Tahun 2019," *Voice Justisia* 7, no. 1 (2023): 1–20.

absolute guarantee for the upholding of democratic principles through the implementation of free, fair, and genuine elections. This system aims to prevent and identify violations, provide means for dispute resolution, and impose sanctions on violators.⁵⁸ The design of an appropriate electoral justice system is fundamental to ensuring the legitimacy and credibility of election results. It must therefore be based on the values and norms that apply in society, the national legal framework, and international legal instruments.⁵⁹ Based on the above, the electoral justice system must be implemented effectively, independently, impartially, transparently, accessibly, inclusively, and guarantee equality and the right of every party to obtain an effective legal remedy. The challenge that arises in this context is the increasingly diverse forms of election infraction due to changes in campaign patterns, socio-political dynamics, and developments in information technology. In response to these challenges, the electoral law system in Indonesia has undergone reforms through the strengthening of the authority of Bawaslu, which is not only tasked with monitoring and reporting violations, but also has the authority to assess and decide whether an alleged election crime can be processed to the investigation and prosecution stage, together with the Police and the Attorney General's Office in the tripartite forum of the Integrated Law Enforcement Center (Sentra Gakkumdu) as regulated in Bawaslu Regulation Number 3 of 2023.

Conclusion

The handling of election crimes still faces significant obstacles, including limited time for resolving cases, sanctions that are not yet fully effective, and coordination between law enforcement agencies that needs to be

⁵⁸ Silalahi, "Integritas Dan Profesionalitas Penyelenggara Pemilu Demi Terwujudnya Pemilu Yang Demokratis."

⁵⁹ Tanzil and Jaya, "Peninjauan Electoral Justice Sebagai Upaya Dalam Mewujudkan Pemilu 2024 Yang Berkeadilan."

strengthened. Social factors and political dynamics also often complicate the process of gathering information and evidence. In this context, electoral justice is a key pillar for assessing the quality of democracy and the implementation of the principle of the rule of law, not only as a guarantee of legal certainty, but also as an instrument for protecting the people's right to vote, ensuring the integrity of election organizers, and guaranteeing the legitimacy of election results.

To realize substantive electoral justice, it is necessary to revise regulations on the time limit for resolving cases, optimize fines, and strengthen coordination between institutions through technical guidelines and integrated training. In addition, legal literacy and political education of the public need to be improved in order to encourage public participation in election monitoring. Bawaslu has a strategic role in effective supervision and law enforcement, which is ultimately expected to increase accountability, transparency, and public trust. Honest, fair, and credible elections will be the foundation for the birth of a democratic government and quality leaders, while also supporting the realization of a welfare state based on justice and civility.

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