

Constitutional Limitations on Voting Rights under Articles 28D and 28J of Indonesia's 1945 Constitution

Mayzura Kamila Sukma¹ Mochammad Rizky Maulana¹

¹Faculty of Law, Universitas Negeri Semarang, Semarang, Indonesia

¹Faculty of Law, Universitas Negeri Semarang, Semarang, Indonesia

✉ Corresponding email: mayzuraks18@gmail.com

Abstract

This article examines constitutional limitations on voting rights under Articles 28D and 28J of the 1945 Constitution of the Republic of Indonesia within the framework of constitutional democracy and the rule of law. Although Article 28D guarantees equal political participation, Article 28J paragraph (2) simultaneously authorizes statutory limitations on constitutional rights, creating an unresolved constitutional tension between the protection of political rights and the State's regulatory authority. Existing scholarship generally discusses limitations on human rights or electoral regulations separately, yet has not sufficiently developed a constitutional framework for assessing restrictions on voting rights through the interaction of Articles 28D and 28J. Using normative legal research with statutory, conceptual, and case approaches, this study analyzes constitutional provisions, electoral legislation, Constitutional Court decisions, and relevant legal doctrines. This article offers a theoretical contribution by constructing a constitutional framework based on proportionality, democratic necessity, non-discrimination, and the preservation of the essential content of rights to evaluate the legitimacy of voting rights restrictions. The findings demonstrate that restrictions on voting rights in Indonesia

frequently prioritize administrative order and political stability over substantive constitutional protection. The study concludes that limitations on voting rights are constitutionally legitimate only when they satisfy a strict proportionality standard and remain consistent with democratic constitutionalism and the protection of fundamental political rights.

Keywords voting rights; constitutional rights; constitutional limitations

A. Introduction

Voting rights constitute one of the most fundamental constitutional rights within a democratic state because they are directly connected to the principle of popular sovereignty as stipulated in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. In a constitutional democracy, the right to vote and to be elected is not merely perceived as an instrument of political participation, but also as a manifestation of state recognition toward the principle of equality before the law and government. Jimly Asshiddiqie argues that political rights, particularly electoral rights, form an integral component of constitutional democracy in which the people serve as the ultimate source of governmental legitimacy¹. Consequently, voting rights cannot be separated from the broader framework of human rights protection guaranteed under the Constitution, particularly Article 28D paragraph (3) of the 1945 Constitution, which guarantees equal opportunities for every citizen in government affairs. This constitutional guarantee demonstrates the obligation of the state to ensure equal political access for all citizens without unlawful discrimination.

Nevertheless, within Indonesian constitutional practice, voting rights are not absolute rights. Article 28J paragraph (2) of the 1945 Constitution authorizes the state to impose limitations upon human rights, including political rights, provided that such restrictions are established by law and intended to ensure the recognition and respect of the rights and freedoms of others, morality, religious values, security, and public order within a democratic society. The concept of limiting rights becomes highly significant because it reflects the tension between two competing interests: the protection of individual liberties and the protection of collective public interests. Miriam Budiardjo emphasizes

¹ Jimly Asshiddiqie, *Introduction to Constitutional Law Studies (Pengantar Ilmu Hukum Tata Negara)* (Rajawali Pers, 2016).

that modern democracy not only requires political freedom but also demands legal regulation capable of preserving social stability and public order². Within this context, the state possesses the authority to restrict certain rights; however, such restrictions must not be exercised arbitrarily because doing so would undermine the principles of constitutionalism and the rule of law.

The issue of restricting voting rights becomes increasingly relevant when the state imposes various administrative and substantive requirements in the implementation of general elections and regional elections. Such restrictions include age limitations for voters, revocation of political rights through criminal judgments, limitations imposed upon members of the Indonesian National Armed Forces and National Police, as well as regulations concerning former corruption convicts seeking public office. Saldi Isra contends that limitations on political rights must be subjected to strict scrutiny because the rights to vote and to be elected constitute constitutional rights forming the foundation of democratic legitimacy³. In several constitutional adjudications, the Constitutional Court of Indonesia has also emphasized that restrictions upon voting rights are constitutionally permissible only if they satisfy the principles of proportionality, rationality, and constitutional justice. Accordingly, debates regarding voting rights limitations are not merely legal-formal questions, but also concern the moral and democratic legitimacy of state policies.

The complexity of limiting voting rights intensified following the constitutional amendments that introduced Chapter XA concerning Human Rights into the 1945 Constitution. Such constitutional reform strengthened the protection of citizens' rights while simultaneously expanding the authority of constitutional judicial review by the Constitutional Court over legislation deemed to excessively limit constitutional rights. Ni'matul Huda explains that the amendments to the 1945 Constitution transformed Indonesia's constitutional paradigm from parliamentary supremacy toward constitutional supremacy⁴. Consequently, every limitation upon citizens rights must conform to the principle of constitutional supremacy and may be constitutionally reviewed before the Constitutional Court. In practice, numerous

² Miriam Budiardjo, *Dasar-Dasar Ilmu Politik* (Gramedia Pustaka Utama, 2008).

³ Saldi Isra, *Pemilu Dan Pemulihan Kedaulatan Rakyat* (Themis Publishing, 2017).

⁴ Ni'matul Huda, *Hukum Tata Negara Indonesia* (Rajawali Pers, 2019).

electoral regulations have been challenged on constitutional grounds for allegedly imposing disproportionate restrictions upon voting rights, including candidacy requirements for former convicts, administrative population requirements, and restrictions affecting certain categories of voters.

From a theoretical perspective, limitations upon human rights in democratic states must satisfy the principles of legality, necessity, and proportionality. The United Nations through the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights further emphasizes that restrictions upon rights are permissible only when genuinely necessary within a democratic society and when they are non-discriminatory in nature. Within the Indonesian constitutional framework, however, concerns emerge because Article 28J of the 1945 Constitution is frequently interpreted broadly by legislators to justify restrictions upon constitutional rights. Mohammad Mahfud MD argues that a democratic rule-of-law state must position limitations upon rights as exceptions rather than as primary instruments of governmental power ⁵. Therefore, clear constitutional parameters are required to ensure that restrictions upon voting rights do not evolve into political mechanisms capable of diminishing the quality of democracy itself.

Scholarly discussions concerning limitations upon voting rights have been widely conducted by previous researchers and academics. Khairul Fahmi, in his study concerning the shifting paradigm of voting rights restrictions within electoral and regional election regulations, explains that legislators increasingly adopt restrictive approaches toward electoral rights in pursuit of what is perceived as electoral integrity and quality ⁶. His research demonstrates a regulatory shift from protecting constitutional rights toward imposing morality- and administration-based restrictions. Furthermore, Sipghotulloh Mujaddidi, in his analysis of the constitutionality of human rights limitations within Constitutional Court decisions, concludes that the Court consistently employs the proportionality principle in determining the legitimacy of

⁵ Mohammad Mahfud MD, *Konstitusi dan Hukum Dalam Kontroversi Isu* (Rajawali Pers, 2012).

⁶ Khairul Fahmi, "Pergeseran Pembatasan Hak Pilih Dalam Regulasi Pemilu Dan Pilkada," *Jurnal Konstitusi* 14, no. 4 (February 9, 2018): 757, doi:10.31078/jk1443.

rights restrictions⁷. This study emphasizes that restrictions upon rights must not be excessive and must possess strong rational justification.

Additional research by Rian Adhivira Prabowo critiques the ambiguity surrounding constitutional limitations on human rights regulation within Indonesia's constitutional framework⁸. His study highlights the absence of clear boundaries concerning rights restrictions under Article 28J of the 1945 Constitution, thereby creating opportunities for broad state interpretation. Similarly, Wari Martha Kambu argues that the right to vote forms part of the constitutional rights guaranteed under Article 28D paragraph (3) of the 1945 Constitution and therefore cannot be reduced without clear constitutional justification⁹. These studies contribute significantly to understanding the relationship between constitutional rights and their limitations. Nevertheless, most existing scholarship discusses human rights limitations in general terms and has not comprehensively examined the constitutional relationship between Articles 28D and 28J of the 1945 Constitution specifically in relation to voting rights.

Moreover, previous studies predominantly focus upon Constitutional Court decisions or electoral regulations without constructing a comprehensive conceptual framework concerning the constitutional boundaries of voting rights limitations. In fact, the principal issue lies not merely in the legality of restrictions but also in interpreting the balance between the protection of constitutional rights and the authority of the state to limit those rights. Within this regard, a more systematic constitutional analysis is required to examine the normative relationship between Article 28D paragraph (3), which guarantees political rights, and Article 28J paragraph (2), which provides the constitutional basis for restricting rights. Such analysis is essential to determine the extent to which the state may limit voting rights without violating the principles of constitutional democracy and the rule of law.

This article offers scholarly novelty by constructing a constitutional analysis concerning limitations upon voting rights based on the

⁷ Sipghotulloh Mujaddidi, "Konstitusionalitas Pembatasan Hak Asasi Manusia Dalam Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 18, no. 3 (February 15, 2022): 539, doi:10.31078/jk1833.

⁸ Rian Adhivira Prabowo, "Several Notes on the Limitation of Human Rights Regulation in the Constitution," *Indonesian State Law Review* 2, no. 2 (2020): 148–60.

⁹ Wari Martha Kambu, "Tinjauan Yuridis Tentang Hak Asasi Manusia Berdasarkan Pasal 28d Ayat 3 Undang-Undang Dasar 1945," *LEX ET SOCIETATIS* 9, no. 1 (January 12, 2021), doi:10.35796/les.v9i1.32170.

normative relationship between Articles 28D and 28J of the 1945 Constitution through the proportionality principle and constitutional balancing approach. This study not only examines the legality of voting rights restrictions but also evaluates the constitutional legitimacy of such limitations within a democratic state. Accordingly, this article seeks to formulate constitutional parameters that may be utilized in assessing whether a restriction upon voting rights remains within the framework of constitutional democracy or instead constitutes an abuse of constitutional power. Another novelty of this research lies in its integrative analysis combining human rights theory, rule-of-law principles, and the judicial review practices of the Constitutional Court in evaluating restrictions upon political rights.

This study aims to analyze the position of voting rights as constitutional rights under Article 28D of the 1945 Constitution, examine the legitimacy of restrictions upon voting rights under Article 28J of the 1945 Constitution, and evaluate constitutional parameters governing such restrictions within Indonesia's democratic system. In addition, this study seeks to identify how the Constitutional Court interprets limitations upon political rights in judicial review cases concerning electoral and regional election legislation. Accordingly, the research questions addressed in this article are as follows: first, how are voting rights positioned as constitutional rights under the 1945 Constitution; second, how should the constitutionality of voting rights limitations under Article 28J of the 1945 Constitution be understood; and third, what constitutional parameters are required to ensure that limitations upon voting rights remain compatible with democratic rule-of-law principles.

This article employs normative legal research utilizing statutory, conceptual, and case approaches. The statutory approach is conducted through an examination of constitutional provisions, electoral legislation, regional election legislation, and other regulations relating to citizens' political rights. The conceptual approach is used to analyze theories concerning human rights, constitutional democracy, the rule of law, and the limitation of rights within democratic societies. Meanwhile, the case approach is undertaken through the examination of Constitutional Court decisions concerning restrictions upon voting rights and the right to be elected. The legal materials employed consist of primary legal materials in the form of legislation and judicial decisions, as well as secondary legal materials comprising scholarly books, journal articles, and other relevant academic works. All legal materials are analyzed qualitatively through legal interpretation and

constitutional reasoning in order to formulate systematic constitutional arguments regarding the permissible limits of voting rights restrictions in Indonesia.

B. Voting Rights as Constitutional Rights under Article 28D of the 1945 Constitution

I. Voting Rights as Constitutional Rights under Article 28D of the 1945 Constitution

Voting rights constitute one of the most fundamental constitutional rights within a democratic state because they are directly connected to the implementation of the principle of popular sovereignty as affirmed in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia¹⁰, which provides:

“Kedaulatan berada di tangan rakyat dan dilaksanakan menurut Undang-Undang Dasar.”

In a constitutional democracy, the rights to vote and to be elected are not merely procedural mechanisms within electoral processes, but also represent the State’s recognition of citizens as the ultimate holders of political legitimacy¹¹. Consequently, voting rights are inseparable from the concept of constitutional democracy, which places public participation as the foundation of governmental legitimacy¹².

The constitutional guarantee of political rights is expressly regulated under Article 28D paragraph (3) of the 1945 Constitution, which states:

“Setiap warga negara berhak memperoleh kesempatan yang sama dalam pemerintahan.”

This provision demonstrates that the rights to vote and to be elected form part of constitutional rights that must be protected within a democratic rule of law system. From a human rights perspective, political rights are closely related to the principles of equality before the law and equal political participation, which position all citizens equally within governmental processes. Accordingly, the State is not only obligated to establish electoral mechanisms but must also ensure that

¹⁰ Indonesia, “Undang-Undang Dasar Negara Republik Indonesia Tahun 1945” (1945).

¹¹ Janedjri M. Gaffar, *Demokrasi Dan Pemilu Di Indonesia* (Konstitusi Press, 2013).

¹² Asshiddiqie, *Introduction to Constitutional Law Studies (Pengantar Ilmu Hukum Tata Negara)*.

every citizen is able to exercise voting rights effectively and without discrimination.

Constitutional Recognition of Political Rights

According to Jimly Asshiddiqie, citizens political rights constitute an integral component of constitutional citizenship that determines the quality of democracy in a modern constitutional state¹³. The right to vote serves as the primary instrument through which the people exercise their sovereignty through electoral processes. Therefore, restrictions upon voting rights essentially amount to restrictions upon the exercise of popular sovereignty itself¹⁴. In this regard, limitations upon political rights must be interpreted restrictively in order to prevent the degradation of constitutional democracy.

Voting rights are also intrinsically connected to the principle of equality before the law as stipulated in Article 27 paragraph (1) of the 1945 Constitution, which provides:

"Segala warga negara bersamaan kedudukannya di dalam hukum dan pemerintahan dan wajib menjunjung hukum dan pemerintahan itu dengan tidak ada kecualinya."

The relationship between Article 27 paragraph (1) and Article 28D paragraph (3) reflects that the Indonesian Constitution positions political participation as part of the non-discrimination principle within a democratic rule of law framework. Consequently, the State may not impose restrictions upon voting rights on discriminatory or irrational grounds.

In Indonesian constitutional practice, restrictions upon voting rights are imposed through various legal mechanisms, including administrative population requirements, restrictions upon members of the Indonesian National Armed Forces and the Indonesian National Police, as well as limitations upon former convicts seeking candidacy in election. Normatively, such restrictions are often justified on the basis of preserving democratic integrity and public order. Nevertheless, constitutional problems arise when such restrictions diminish the essential substance of citizens' constitutional rights.

Khairul Fahmi argues that Indonesian electoral regulations demonstrate an increasing tendency toward restricting citizens political rights through administrative approaches and political morality standards. According to him, lawmakers tend to emphasize procedural

¹³ Ibid.

¹⁴ Isra, *Pemilu Dan Pemulihan Kedaulatan Rakyat*.

order rather than the protection of substantive constitutional rights. As a consequence, voting rights within Indonesian legislative practice are frequently positioned merely as objects of administrative regulation rather than inherent constitutional rights attached to the principle of popular sovereignty.

In Constitutional Court Decision Number 011-017/PUU-I/2003, the Constitutional Court affirmed that the rights to vote and to be elected are constitutional rights guaranteed by the 1945 Constitution. The Court further emphasized that restrictions upon political rights may only be imposed where there exists a clear constitutional basis and where such restrictions are proportionate. This decision became a significant milestone in the development of constitutional rights protection in Indonesia because it recognized political rights as fundamental rights deserving strong constitutional safeguards.

Equality Before the Law and Political Participation

Voting rights are not only protected under national constitutions but are also recognized as universal human rights. Article 25 of the International Covenant on Civil and Political Rights (ICCPR) affirms that every citizen shall have the right and opportunity, without unreasonable restrictions or discrimination, to vote and to be elected in genuine and periodic elections¹⁵. Indonesia ratified the ICCPR through Law Number 12 of 2005; therefore, the principles governing political rights protection under the Covenant are legally binding within the national legal system.

Mukthie Fadjar asserts that the post-amendment human rights provisions within the 1945 Constitution strongly reflect developments in international human rights law¹⁶. Accordingly, restrictions upon voting rights in Indonesia must not only be tested against the national constitution but also against international human rights principles. In this context, the State may not arbitrarily invoke morality, security, or public order as grounds for limiting citizens' political rights.

Constitutional issues also emerge when administrative deficiencies result in citizens losing access to voting rights. In Constitutional Court Decision Number 102/PUU-VII/2009, the Court permitted the use of

¹⁵ Indonesia, "Undang-Undang Nomor 12 Tahun 2005 Tentang Pengesahan International Covenant on Civil and Political Rights (Kovenan Internasional Tentang Hak-Hak Sipil Dan Politik)" (2005).

¹⁶ A. Mukthie Fadjar, *Hak Asasi Manusia Dalam UUD 1945* (Setara Press, 2013).

national identity cards as the basis for exercising voting rights for citizens who were not registered in the permanent voter list¹⁷. The decision demonstrated that the Court prioritized the substance of constitutional rights over rigid electoral administrative formalities.

II. Restrictions upon Voting Rights under Article 28J of the 1945 Constitution

Article 28J paragraph (2) of the 1945 Constitution provides:

“Dalam menjalankan hak dan kebebasannya, setiap orang wajib tunduk kepada pembatasan yang ditetapkan dengan undang-undang dengan maksud semata-mata untuk menjamin pengakuan serta penghormatan atas hak dan kebebasan orang lain dan untuk memenuhi tuntutan yang adil sesuai dengan pertimbangan moral, nilai agama, keamanan, dan ketertiban umum dalam suatu masyarakat demokratis.”

This provision constitutes a limitation clause that grants constitutional legitimacy for the State to restrict human rights, including political rights¹⁸. Nevertheless, within a democratic constitutional state, such a limitation clause cannot be interpreted as conferring absolute authority upon the State to curtail constitutional rights. Constitutionalism theory requires that restrictions upon rights be treated as exceptional measures subject to restrictive interpretation. Therefore, any limitation upon voting rights must satisfy the principles of constitutional necessity and constitutional proportionality.

The existence of Article 28J has frequently been invoked as normative justification for restricting citizens' political rights. The principal issue within Indonesian constitutional practice lies in the broad interpretative scope of the terms “morality,” “religious values,” “security,” and “public order.” These concepts possess abstract characteristics that potentially allow the State to impose excessive restrictions upon political rights.

Limitation Clause and Constitutional Democracy

Muhamad Dzadit Taqwa argues that Article 28J demonstrates a tendency toward overconstitutionalization because it is frequently utilized to justify rights limitations without the application of a strict

¹⁷ Constitutional Court of the Republic of Indonesia, Decision Number 102/PUU-VII/2009 (2009).

¹⁸ Pan Mohamad Faiz, “Constitutional Questions on Human Rights Limitation in Indonesia,” *Indonesia Law Review* 6, no. 2 (2016): 131–51.

proportionality test¹⁹. Consequently, the State becomes more capable of intervening in citizens' constitutional rights under the pretext of preserving political and social stability. In such circumstances, the limitation clause risks transforming into a constitutional tool of restriction in the absence of clear constitutional parameters.

Mohammad Mahfud MD emphasizes that a democratic rule of law must regard restrictions upon rights as exceptions rather than as primary instruments of governmental power²⁰. Therefore, restrictions upon voting rights may only be justified where genuinely necessary to protect broader democratic interests. Accordingly, the formal legality of a restriction does not automatically render such restriction constitutionally legitimate.

Within modern constitutional law doctrine, the proportionality principle constitutes the principal mechanism for reviewing the legitimacy of restrictions upon human rights²¹. The principle comprises several elements, namely legitimate aim, necessity, and proportionality *stricto sensu*. Hence, restrictions upon voting rights may only be justified where they pursue constitutionally legitimate objectives, are necessary within a democratic society, and do not extinguish the essential substance of the right itself.

Sipghotulloh Mujaddidi explains that the Constitutional Court has gradually adopted proportionality principles in reviewing human rights restrictions. Nevertheless, the implementation of such principles remains inconsistent and often depends upon the characteristics of individual cases. In certain decisions, the Court applies proportionality tests rigorously, whereas in other cases it defers extensively to legislative authority through the doctrine of open legal policy.

This inconsistency can be observed in various judicial reviews concerning electoral regulations, including restrictions upon the political rights of former convicts. In Constitutional Court Decision Number 4/PUU-VII/2009, the Court held that former convicts retain constitutional rights to run for office provided that they openly disclose their status to the public²². The decision reflected the Court's attempt

¹⁹ Muhamad Dzadit Taqwa, "Penelusuran Ide Proportionality Dalam Pasal 28J(2) UUD NRI Tahun 1945," *Jurnal Konstitusi* 22, no. 3 (September 19, 2025): 483–507, doi:10.31078/jk2234.

²⁰ Mahfud MD, *Konstitusi Dan Hukum Dalam Kontroversi Isu*.

²¹ Mujaddidi, "Konstitusionalitas Pembatasan Hak Asasi Manusia Dalam Putusan Mahkamah Konstitusi."

²² Constitutional Court of the Republic of Indonesia, Decision Number 4/PUU-VII/2009 (2009).

to balance democratic integrity with the protection of citizens' constitutional rights.

The Four-Step Proportionality Test in Reviewing Restrictions on Voting Rights

Within contemporary constitutional democracies, proportionality has emerged as the dominant framework for reviewing limitations upon constitutional rights. Rather than treating rights restrictions as matters solely within legislative discretion, proportionality analysis requires courts to assess whether governmental interference with constitutional rights can be substantively justified. In constitutional adjudication, the proportionality principle functions as a structured mechanism to reconcile the protection of individual rights with legitimate public interests. Consequently, restrictions upon voting rights under Article 28J paragraph (2) of the 1945 Constitution should not be assessed merely on the basis of formal legality, but must also satisfy substantive constitutional standards through a rigorous proportionality review²³.

According to Robert Alexy, proportionality consists of a structured balancing methodology that enables constitutional courts to determine whether limitations imposed upon fundamental rights remain compatible with constitutional justice. Similarly, Kai Möller argues that proportionality has become the most influential doctrinal tool in modern constitutional rights adjudication because it requires the State to provide adequate justification whenever constitutional rights are restricted. Accordingly, the constitutionality of voting rights restrictions in Indonesia should be examined through four interconnected stages: legitimate aim, suitability, necessity, and proportionality *stricto sensu*.

The first stage concerns the existence of a legitimate constitutional aim. Any restriction upon voting rights must pursue objectives recognized by the Constitution and democratic governance. Article 28J paragraph (2) of the 1945 Constitution expressly refers to the protection of the rights of others, morality, religious values, security, and public order in a democratic society. Nevertheless, not every governmental objective automatically constitutes a legitimate constitutional aim. Restrictions motivated primarily by political expediency, electoral competition, or governmental convenience cannot justify limitations upon constitutional rights. Therefore, the State bears the burden of

²³ Alec Stone Sweet and Jud Mathews, "Proportionality, Judicial Review, and Global Constitutionalism" (Springer, 2009), 171–214, doi:10.1007/978-1-4020-8500-0_9.

demonstrating that a particular restriction genuinely serves constitutionally legitimate purposes and is directed toward the protection of democratic order rather than the consolidation of political power.

The second stage requires an assessment of suitability. At this stage, the reviewing authority must determine whether the restriction imposed is rationally capable of achieving its stated objective. A limitation upon voting rights cannot be constitutionally justified if the measure adopted bears no logical relationship to the intended constitutional goal. In electoral regulation, for example, restrictions imposed upon candidates or voters must demonstrate a clear connection with the promotion of electoral integrity, public trust, or democratic accountability. Where no such connection exists, the restriction fails the suitability requirement and becomes constitutionally suspect. This stage prevents arbitrary governmental action by requiring a demonstrable relationship between means and ends²⁴.

The third stage is necessity, which constitutes one of the most important elements of proportionality review. Under this requirement, the State must demonstrate that no alternative measure capable of achieving the same objective exists that would impose a lesser burden upon constitutional rights. The necessity test reflects the principle that restrictions upon rights must remain exceptional and should be employed only when less restrictive alternatives are unavailable. In the context of voting rights, this principle becomes particularly significant because political participation forms the foundation of democratic legitimacy. Accordingly, where electoral objectives can be achieved through disclosure requirements, administrative accommodations, or less restrictive regulatory mechanisms, the State cannot justify broader exclusions from political participation. Constitutional Court Decision Number 4/PUU-VII/2009 concerning former convicts reflects this reasoning by emphasizing disclosure and transparency rather than permanent exclusion from political participation.

The final stage is proportionality *stricto sensu*, often described as the balancing stage. At this level, courts must evaluate whether the benefits derived from a restriction outweigh the harm inflicted upon constitutional rights. Even where a measure pursues a legitimate

²⁴ Mattias Kumm, "The Idea of Socratic Contestation and the Right to Justification: The Point of Rights-Based Proportionality Review," *Law & Ethics of Human Rights* 4, no. 2 (September 30, 2010): 142–75, doi:10.2202/1938-2545.1047.

objective, is suitable, and is necessary, it may nevertheless be unconstitutional if the burden imposed upon constitutional rights is excessive. Alec Stone Sweet and Jud Mathews explain that proportionality balancing requires decision-makers to evaluate whether governmental measures preserve an appropriate equilibrium between constitutional rights and competing public interests²⁵. In relation to voting rights, the balancing stage is particularly important because electoral participation represents a core component of popular sovereignty. Excessive restrictions risk undermining democratic legitimacy itself by excluding citizens from political processes.

Applied to the Indonesian constitutional framework, the four-step proportionality test provides a more rigorous method for interpreting the relationship between Articles 28D and 28J of the 1945 Constitution. Article 28D guarantees equal political participation, whereas Article 28J authorizes constitutional limitations upon rights. These provisions should therefore be understood not as competing constitutional norms but as complementary principles requiring constitutional balancing. Through the application of legitimate aim, suitability, necessity, and proportionality *stricto sensu*, constitutional review can ensure that restrictions upon voting rights remain compatible with democratic constitutionalism, constitutional justice, and the preservation of the essential substance of political rights. Consequently, proportionality review should function as the primary constitutional parameter for assessing the legitimacy of legislative restrictions upon voting rights in Indonesia.

C. Constitutional Reconstruction of Voting Rights Restrictions

The relationship between Article 28D paragraph (3) and Article 28J paragraph (2) of the 1945 Constitution demonstrates an interaction between constitutional guarantees and constitutional limitations. On one hand, the Constitution guarantees citizens' political rights as manifestations of popular sovereignty. On the other hand, the Constitution also grants the State authority to impose restrictions upon those rights. The principal constitutional issue therefore concerns determining the permissible constitutional boundaries of such restrictions without undermining the essence of democracy itself.

²⁵ Alec Stone Sweet and Jud Mathews, "Proportionality Balancing and Global Constitutionalism," *Columbia Journal of Transnational Law* 47 (2008): 149.

Indonesian electoral regulations demonstrate an increasing tendency toward restrictive paradigms concerning citizens' political rights²⁶. The State frequently invokes democratic integrity and public order as justifications for restricting voting rights. Nevertheless, such approaches risk creating democratic exclusion against certain groups within society.

Feri Amsari argues that procedural democracy excessively focused on political stability may neglect substantive protection of citizens' rights²⁷. In this context, restrictions upon voting rights are no longer treated as exceptional limitations but instead become normalized components of political regulation. Such conditions pose serious threats to constitutional democracy because they narrow public participation within democratic governance.

Pancasila-Based Constitutional Framework for Limiting Voting Rights

The constitutional regulation of voting rights in Indonesia cannot be understood solely through the framework of liberal constitutionalism and international human rights law. While constitutional democracy requires the protection of political participation as a fundamental right, the Indonesian constitutional order is simultaneously grounded in Pancasila as the philosophical foundation of the State. Consequently, the interpretation of voting rights and their constitutional limitations must reflect not only the protection of individual autonomy but also the collective values embedded within Pancasila. In this respect, constitutional limitations on voting rights should be assessed within the broader framework of Pancasila constitutionalism, which seeks to harmonize individual rights, democratic participation, and social responsibility²⁸.

The Fourth Principle of Pancasila, namely "Democracy Guided by the Inner Wisdom in Deliberation among Representatives," provides a distinctive constitutional foundation for democratic participation in Indonesia. Unlike purely individualistic conceptions of democracy, Pancasila democracy emphasizes deliberation, representation,

²⁶ Taqwa, "Penelusuran Ide Proportionality Dalam Pasal 28J(2) UUD NRI Tahun 1945."

²⁷ Feri Amsari, "Simultaneous Elections and the Future of Indonesian Democracy," *Jurnal Yudisial* 12, no. 1 (2019): 20.

²⁸ Arena Barakallah, "Synergy of National Identity and Universal Norms," *Indonesian Journal of Pancasila and Global Constitutionalism* 4, no. 1 (March 30, 2026): 41–59, doi:10.15294/ijpgc.v4i1.37772.

consensus-building, and the pursuit of the common good. Consequently, voting rights cannot be viewed as absolute entitlements detached from social obligations but must be exercised consistently with the constitutional values underlying democratic life²⁹.

This constitutional philosophy is reflected in the relationship between Article 28D paragraph (3) and Article 28J paragraph (2) of the 1945 Constitution. Article 28D guarantees equal opportunities for citizens to participate in government, whereas Article 28J recognizes that the exercise of constitutional rights may be subject to limitations prescribed by law for the protection of legitimate constitutional interests. From a Pancasila perspective, Article 28J should not be interpreted merely as a constitutional authorization for restricting rights. Rather, it functions as a mechanism for maintaining equilibrium between individual freedom and collective constitutional welfare. Such an interpretation is consistent with the Indonesian constitutional tradition, which regards rights and obligations as mutually reinforcing components of democratic citizenship.

Furthermore, Pancasila constitutionalism offers an important safeguard against excessive state intervention and excessive individualism. It prevents arbitrary restrictions on political participation under the guise of public order while simultaneously ensuring that constitutional rights are exercised in a manner consistent with democratic responsibility and social justice. In this regard, Pancasila serves as a constitutional bridge between universal human rights principles and Indonesia's constitutional identity. The protection of voting rights therefore requires a constitutional balancing process that respects human dignity, democratic participation, and collective constitutional welfare.

Accordingly, the constitutional legitimacy of voting rights restrictions in Indonesia should be assessed not only through legality and proportionality but also through conformity with the normative values of Pancasila democracy. Any legislative restriction upon political participation must therefore demonstrate consistency with democratic deliberation, social justice, constitutional morality, and respect for human dignity. Through this approach, voting rights remain protected as fundamental constitutional rights while allowing limited restrictions

²⁹ Atma Suganda and Ghida Labibanuha Suganda, "Principles of Indonesian Constitutional Law in Pancasila Democracy," *International Journal of Religion* 5, no. 11 (August 22, 2024): 7337–42, doi:10.61707/p5zdqz26.

necessary to preserve the democratic constitutional order envisioned by the 1945 Constitution and Pancasila.

Constitutional Balancing Approach

Based on the analysis of Articles 28D and 28J of the 1945 Constitution, restrictions upon voting rights should be grounded upon the principle of constitutional balancing. Under this approach, restrictions upon political rights must satisfy four primary parameters: legitimate constitutional aim, democratic necessity, non-discrimination, and preservation of the essence of rights. Consequently, restrictions upon voting rights should not merely be understood as issues of formal legality but also as matters of constitutional justice.

Within this framework, the Constitutional Court occupies a strategic position as the guardian of the Constitution to ensure that Article 28J is not utilized as justification for excessive political restrictions. The Court must consistently develop proportionality doctrine so that constitutional review genuinely functions as an instrument for protecting citizens' constitutional rights. Without clear constitutional parameters, the limitation clause contained in Article 28J risks transforming into an instrument of constitutional abuse.

D. Conclusion

Voting rights constitute fundamental constitutional rights that reflect the implementation of popular sovereignty within Indonesia's democratic constitutional system. The analysis of Article 28D paragraph (3) of the 1945 Constitution demonstrates that the Constitution explicitly guarantees equal political participation for every citizen in governmental affairs. Article 28J paragraph (2) authorizes statutory limitations upon constitutional rights. This study finds that the principal constitutional issue does not merely concern the legality of restrictions upon voting rights, but rather the constitutional boundaries of such restrictions within a democratic rule of law framework. In practice, various limitations upon voting rights in Indonesia frequently prioritize administrative order, political morality, and state stability over the substantive protection of constitutional rights. Consequently, Article 28J has the potential to become an instrument of excessive constitutional restriction when interpreted broadly without clear constitutional parameters and proportionality standards.

This research further concludes that restrictions upon voting rights should only be considered constitutionally legitimate where they fulfill the principles of legitimate constitutional aim, democratic necessity, proportionality, non-discrimination, and preservation of the essential substance of rights. Accordingly, the Constitutional Court must strengthen the application of proportionality review in assessing electoral regulations and political rights restrictions to prevent the misuse of limitation clauses by legislative or executive authorities. Future electoral law reforms should therefore place greater emphasis upon substantive constitutional justice and the protection of citizens' political participation rather than merely focusing upon procedural and administrative compliance. Through such an approach, Indonesia's constitutional democracy may maintain a balanced relationship between the protection of human rights and the legitimate interests of constitutional order within a democratic society.

E. References

- Amsari, Feri. "Simultaneous Elections and the Future of Indonesian Democracy." *Jurnal Yudisial* 12, no. 1 (2019): 20.
- Arena Barakallah. "Synergy of National Identity and Universal Norms." *Indonesian Journal of Pancasila and Global Constitutionalism* 4, no. 1 (March 30, 2026): 41–59. doi:10.15294/ijpgc.v4i1.37772.
- Asshiddiqie, Jimly. *Introduction to Constitutional Law Studies (Pengantar Ilmu Hukum Tata Negara)*. Rajawali Pers, 2016.
- Budiardjo, Miriam. *Dasar-Dasar Ilmu Politik*. Gramedia Pustaka Utama, 2008.
- Constitutional Court of the Republic of Indonesia. Decision Number 4/PUU-VII/2009 (2009).
- . Decision Number 102/PUU-VII/2009 (2009).
- Fadjar, A. Mukthie. *Hak Asasi Manusia Dalam UUD 1945*. Setara Press, 2013.
- Fahmi, Khairul. "Pergeseran Pembatasan Hak Pilih Dalam Regulasi Pemilu Dan Pilkada." *Jurnal Konstitusi* 14, no. 4 (February 9, 2018): 757. doi:10.31078/jk1443.

- Faiz, Pan Mohamad. "Constitutional Questions on Human Rights Limitation in Indonesia." *Indonesia Law Review* 6, no. 2 (2016): 131–51.
- Gaffar, Janedjri M. *Demokrasi Dan Pemilu Di Indonesia*. Konstitusi Press, 2013.
- Huda, Ni'matul. *Hukum Tata Negara Indonesia*. Rajawali Pers, 2019.
- Indonesia. Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (1945).
- . Undang-Undang Nomor 12 Tahun 2005 tentang Pengesahan International Covenant on Civil and Political Rights (Kovenan Internasional tentang Hak-Hak Sipil dan Politik) (2005).
- Isra, Saldi. *Pemilu Dan Pemulihan Kedaulatan Rakyat*. Themis Publishing, 2017.
- Kambu, Wari Martha. "Tinjauan Yuridis Tentang Hak Asasi Manusia Berdasarkan Pasal 28d Ayat 3 Undang-Undang Dasar 1945." *LEX ET SOCIETATIS* 9, no. 1 (January 12, 2021). doi:10.35796/les.v9i1.32170.
- Kumm, Mattias. "The Idea of Socratic Contestation and the Right to Justification: The Point of Rights-Based Proportionality Review." *Law & Ethics of Human Rights* 4, no. 2 (September 30, 2010): 142–75. doi:10.2202/1938-2545.1047.
- Mahfud MD, Mohammad. *Konstitusi Dan Hukum Dalam Kontroversi Isu*. Rajawali Pers, 2012.
- Mujaddidi, Sipghotulloh. "Konstitusionalitas Pembatasan Hak Asasi Manusia Dalam Putusan Mahkamah Konstitusi." *Jurnal Konstitusi* 18, no. 3 (February 15, 2022): 539. doi:10.31078/jk1833.
- Prabowo, Rian Adhivira. "Several Notes on the Limitation of Human Rights Regulation in the Constitution." *Indonesian State Law Review* 2, no. 2 (2020): 148–60.
- Stone Sweet, Alec, and Jud Mathews. "Proportionality Balancing and Global Constitutionalism." *Columbia Journal of Transnational Law* 47 (2008): 149.
- Suganda, Atma, and Ghida Labibanuha Suganda. "Principles of Indonesian Constitutional Law in Pancasila Democracy." *International Journal of Religion* 5, no. 11 (August 22, 2024): 7337–42. doi:10.61707/p5zdqz26.

Sweet, Alec Stone, and Jud Mathews. "Proportionality, Judicial Review, and Global Constitutionalism," 171–214. Springer, 2009. doi:10.1007/978-1-4020-8500-0_9.

Taqwa, Muhamad Dzadit. "Penelusuran Ide Proportionality Dalam Pasal 28J(2) UUD NRI Tahun 1945." *Jurnal Konstitusi* 22, no. 3 (September 19, 2025): 483–507. doi:10.31078/jk2234.

Acknowledgment

None.

Funding Information

None.

Conflicting Interest Statement

None.

Publishing Ethical and Originality Statement

All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.

Generative AI Statement

Authors must acknowledge the use of AI in their work to ensure transparency and maintain trust with their audience. As generative AI becomes an integral tool for content creation, it is crucial to disclose its involvement in the process. This helps clarify the role AI played in generating ideas, drafting text, or enhancing creativity. Acknowledging AI usage also supports ethical standards, ensuring that authorship remains clear and that credit is properly attributed. Such transparency fosters responsible AI integration and upholds the integrity of both the creative process and the final work.