

Electoral Law in the National Criminal Code and the Principles of Constitutional Democracy: An Analysis of the Limits of State Intervention in Indonesia

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Abstract: The development of electoral law in Indonesia has undergone a fundamental transformation following the enactment of Law Number 1 of 2023 on the National Criminal Code (KUHP Nasional), particularly through the codification of electoral offenses into the general criminal law system. This shift signifies an expansion of state intervention into the sphere of electoral democracy, which is inherently connected to citizens' political rights and the principle of popular sovereignty. This study aims to analyze the rationality of the criminalization of electoral law under the National Criminal Code and to assess the normative limits of state intervention from the perspective of constitutional democracy. The research employs a normative legal method using statutory, conceptual, and constitutional approaches, combined with an analysis of criminalization doctrine, the principle of ultimum remedium, and theories of constitutional democracy. The findings indicate that the criminalization of electoral offenses in the National Criminal Code is not fully grounded in a strict criminalization rationale and carries a significant risk of overcriminalization. Furthermore, the shift of electoral law from a *lex specialis* regime toward a rigid general criminal law framework has reduced the flexibility of electoral law enforcement and may generate restrictive effects on citizens' political freedoms. This study argues that state intervention through criminal law in the electoral domain must be proportionally limited and positioned as an ultimum remedium in order to safeguard electoral integrity without undermining the core principles of constitutional democracy.

Keywords: electoral law, National Criminal Code, criminalization, constitutional democracy, state intervention

1. Introduction

General elections constitute a fundamental instrument within Indonesia's constitutional democratic system for realizing popular sovereignty, as mandated by Article 1 paragraph (2) and Article 22E of the 1945 Constitution of the Republic of Indonesia.¹ Through elections, the political will of citizens is lawfully and civilly articulated to establish a legitimate and accountable government. In this context, the state plays a strategic role not only as the organizer of elections, but also as a

¹ Siagian, A., Fajar, H. F., & Alify, R. F. (2022). Konstitusionalitas Penundaan Pelaksanaan Pemilihan Umum Tahun 2024. *Jurnal Legislatif*. <http://journal.unhas.ac.id/index.php/jhl/article/view/21026>

regulator and guarantor of elections that are direct, general, free, secret, honest, and fair.²

Along with the increasing complexity of electoral administration and the growing variety of electoral violations, the state has increasingly relied on criminal law as a primary instrument to safeguard electoral integrity. This tendency is reflected in the expanding criminalization of various acts throughout the electoral process, including vote-buying,³ vote manipulation, voter intimidation, and even administrative violations that are drawn into the criminal sphere. The use of criminal sanctions is intended as a repressive measure to create a deterrent effect and to preserve the quality of democracy.⁴

Nevertheless, the application of criminal law within the sphere of electoral politics raises significant conceptual and constitutional concerns. Criminal law is inherently a coercive instrument of the state and should function as an ultimum remedium, to be applied cautiously, proportionately, and in a limited manner.⁵ When criminal law is extensively employed in the electoral context, there emerges a risk of excessive state intervention in citizens' political freedoms, including freedom of expression, freedom of association, and the constitutional rights to vote and to be elected.⁶

These issues have become increasingly salient following the enactment of the National Criminal Code through Law Number 1 of 2023. This codification of national

² Mersikdiansyah, F. (2023). *Desain penyelenggaraan pemilihan umum di Indonesia (Telaah Ketentuan Pasal 523 Undang Undang No. 7 Tahun 2017 tentang pemilihan umum pada penyelenggaraan pemilihan presiden tahun 2019 perspektif demokrasi konstitusional)* [PhD Thesis, Universitas Islam Negeri Maulana Malik Ibrahim]

³ Zefanya, K. (2024). Penanganan Tindak Hukum Pidana Pemilu. *Blantika: Multidisciplinary Journal*, 2(11), 386–394

⁴ Rizaldy, B. T. (2024). Implikasi Hukum Pidana Terhadap Pelanggaran Etika Pemilu Legislatif di Indonesia. *Jurnal Pemuliaan Hukum*, 6(2), 103–114

⁵ Isnawati, M. (2018). Tinjauan Tentang Hukum Pidana Pemilu dan Formulasi Pertanggungjawaban Dalam Tindak Pidana. *Perspektif Hukum*, 294–314

⁶ Huda, H. D., Winarto, A. E., & Lestariningsih, L. (2022). Problematika Penegakan Hukum Tindak Pidana Pemilu pada Pemilu Tahun 2019 di Kabupaten Kediri. *BRILIANT: Jurnal Riset Dan Konseptual*, 7(2), 434–442.

criminal law introduces a major paradigm shift in the state's approach to defining and regulating criminal offenses, including those related to elections. The integration and reinforcement of electoral criminal norms within the National Criminal Code potentially alter the character of electoral law, which had previously functioned as a *lex specialis* with a contextual and adaptive nature, toward a more general, systemic, and rigid criminal law regime.⁷

From the perspective of constitutional democracy, this development generates tension between two fundamental interests: the protection of electoral integrity on the one hand, and the protection of citizens' political rights on the other. While the state has a constitutional obligation to ensure elections with integrity, such authority is not without limits.⁸ Any restriction on political rights must comply with the principles of legality, necessity, and proportionality in a democratic society. In the absence of clear normative parameters, criminalization within electoral law may instead erode the substantive foundations of democracy itself.⁹

Furthermore, the expansion of state intervention through electoral criminal law opens space for the politicization of law and the abuse of enforcement authority. Law enforcement agencies may become dominant actors within the electoral process, potentially undermining principles of fairness, equality of political competition, and public trust in democracy.¹⁰ This condition demonstrates that issues of electoral law are not merely technical or juridical in nature, but also implicate constitutional dimensions, human rights protections, and theories concerning the limitation of state power.¹¹

⁷ Malau, P. (2023). Tinjauan Kitab Undang-Undang Hukum Pidana (KUHP) Baru 2023. *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam*, 5(1), 837–844

⁸ Safitria, A. N., Afifah, Z., Nandani, D. M., Rahmaleni, W., Salsabilla, A. T. W., & Hadji, K. (2024). Implementasi Konstitusi Terhadap Perlindungan Hak Asasi Manusia dalam Prespektif Hukum Tata Negara. *ALADALAH: Jurnal Politik, Sosial, Hukum Dan Humaniora*, 2(3), 233–247

⁹ Cerdas, F. A., & Afandi, H. (2019). Jaminan perlindungan hak pilih dan kewajiban negara melindungi hak pilih warga negara dalam konstitusi (kajian kritis pemilu serentak 2019). *Sasi*, 25(1), 72–83

¹⁰ Zefanya, K. (2024). Penanganan Tindak Hukum Pidana Pemilu. *Blantika: Multidisciplinary Journal*, 2(11), 386–394

¹¹ Fajriyah, I. A., Riskiyeh, L., & Mufid, K. (2025). Politik Hukum di Era Prabowo: Antara Demokrasi dan Sentralisasi Kekuasaan. *Causa: Jurnal Hukum Dan Kewarganegaraan*, 13(9), 61–70.

Accordingly, an in-depth and systematic study of the limits of state intervention in electoral law is required, particularly in the context of the application and integration of criminal law under the National Criminal Code.¹² Such a study is essential to ensure that electoral criminalization policies remain aligned with the framework of constitutional democracy and do not evolve into repressive instruments that threaten citizens' political freedoms.¹³

Existing studies on electoral crimes in Indonesia have generally focused on technical aspects of law enforcement, the effectiveness of criminal sanctions, and the roles of electoral management bodies and law enforcement institutions. Other research situates electoral law primarily within the domains of administrative and constitutional law, while criminal law is treated separately as an autonomous repressive instrument. This condition has resulted in the absence of a comprehensive and integrative analysis of the position of electoral law within the national criminal law system following the enactment of Law Number 1 of 2023 on the National Criminal Code.

Moreover, existing scholarship has rarely subjected electoral criminalization to critical examination using modern criminalization theories, such as the principle of *ultimum remedium*, the prohibition of overcriminalization, and proportionality tests, particularly within the context of electoral political space. Furthermore, prior research has paid limited attention to linking electoral law with the principles of constitutional democracy, especially in formulating the normative boundaries of legitimate state intervention in citizens' political rights. Consequently, a significant research gap remains regarding how electoral law within the National Criminal

¹² Adinda, D., Salam, A., Ramadhan, A., Narendra, A., Anasti, M., & Yanto, J. (2024). Politik Hukum Dalam Pembaharuan Hukum Pidana di Indonesia. *Wathan: Jurnal Ilmu Sosial Dan Humaniora*, 1(1), 12–25.

¹³ Abas, M., Hidayat, A., Nopianti, W., & Al Naupal, R. H. (2025). Kesadaran Hukum Masyarakat Pada Tindak Pidana Politik Uang Dalam Penyelenggaraan Pemilu Dan Pilkada Tahun 2024 Di Karawang. *Pro Patria: Jurnal Pendidikan, Kewarganegaraan, Hukum, Sosial, Dan Politik*, 8(1), 1–15.

Code should be designed and implemented to protect electoral integrity without undermining democratic substance and constitutional guarantees of political rights.

2. Method

This study employs a normative legal research method with an analytical and prescriptive character, aimed at examining in depth the regulation of electoral law within the national criminal law system and assessing its conformity with the principles of constitutional democracy. The normative approach is chosen because the primary focus of this research lies in the analysis of legal norms, principles, and doctrines governing criminalization in the electoral context, particularly following the enactment of Law Number 1 of 2023 on the National Criminal Code. In this study, law is not understood merely as a set of written rules, but as a normative system that must be aligned with constitutional values and the protection of citizens' political rights.¹⁴

To achieve a comprehensive and systematic analysis, this research integrates several approaches, namely the statutory approach, conceptual approach, constitutional approach, and comparative law approach. The statutory approach is used to critically examine electoral law provisions within the National Criminal Code, the Election Law, and other relevant legislation, in order to assess the consistency and harmonization of electoral criminal regulation within the framework of national criminal law codification. The conceptual approach is employed to analyze key legal concepts and doctrines such as criminalization, *ultimum remedium*, overcriminalization, constitutional democracy, citizens' political rights, and the principle of proportionality, which serve as the theoretical foundation for evaluating the legitimacy of state intervention through criminal law.

The constitutional approach focuses on assessing the conformity of electoral criminal norms with the provisions and principles of the 1945 Constitution of the

¹⁴ Barus, Z. (2013). Analisis filosofis tentang peta konseptual penelitian hukum normatif dan penelitian hukum sosiologis. *Jurnal Dinamika Hukum*, 13(2), 307–318.

Republic of Indonesia, particularly those relating to popular sovereignty, limitations on human rights, and the constitutional guarantees of the rights to vote and to be elected. Meanwhile, the comparative law approach is applied selectively by examining the regulation of electoral offenses in several established democracies, with the aim of providing comparative insights for formulating proportionate and democratic limits on state intervention in the Indonesian context.

The legal materials used in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 2023 on the National Criminal Code, the Election Law, and relevant decisions of the Constitutional Court concerning elections and limitations on political rights. Secondary legal materials encompass textbooks on criminal law and constitutional law, national and international academic journals, prior research findings, and scholarly publications addressing electoral law, constitutional democracy, and criminalization theory. Tertiary legal materials are used to support the understanding of legal terms and concepts, including legal dictionaries, legal encyclopedias, and statutory indexes.

The collection of legal materials is conducted through a systematic and thematic literature review, involving the examination of legislation, court decisions, and academic literature relevant to the research focus. All collected legal materials are then analyzed qualitatively using normative legal reasoning with a deductive approach. The analytical techniques include systematic interpretation to examine the interrelationship among legal norms, teleological interpretation to identify the objectives underlying the formulation of electoral criminal provisions, and constitutional interpretation to assess their compatibility with the principles of constitutional democracy. Through this analytical process, the study seeks not only to explain the existing normative framework but also to formulate prescriptive recommendations regarding the ideal limits of state intervention in electoral law,

ensuring the protection of electoral integrity without undermining citizens' political rights and the substantive foundations of democracy.

3. Analysis or Discussion

A. Criminalization of Electoral Law in the National Criminal Code: Rationality and Systemic Implications

Criminalization in electoral law fundamentally represents a state policy choice (criminal policy) aimed at protecting electoral integrity as a core public legal interest within a democratic system. Elections are not merely understood as administrative procedures for selecting political leaders and representatives, but as constitutional mechanisms for realizing popular sovereignty. Accordingly, acts that undermine freedom of choice, procedural fairness, and equality of political competition may be regarded as serious threats to the democratic order itself. Within this framework, the state possesses normative legitimacy to employ criminal law as a last-resort mechanism to safeguard the fundamental values of elections.

Nevertheless, modern criminal law theory emphasizes that criminalization cannot be justified solely on the grounds that certain conduct is deemed immoral or undesirable. According to criminalization theories developed by Feinberg and further critically examined by Husak, an act may only be legitimately criminalized if it meets specific criteria, including the existence of tangible harm to protected legal interests, the necessity of state intervention, and the inadequacy of non-criminal legal instruments. Criminal law must therefore function as an *ultimum remedium*, rather than as a primary regulatory tool in governing social and political life.

In the context of electoral law, the rationality of criminalization must be subjected to rigorous scrutiny. Not all electoral violations pose an equal degree of threat to democratic integrity. Administrative violations, procedural errors, or ethical misconduct by election officials, for instance, do not

automatically reach the threshold of harm that justifies criminal sanctions. When such acts are broadly criminalized, criminal law risks shifting from its protective function toward becoming a repressive instrument of political behavioral control. This phenomenon corresponds to what criminal law theory identifies as overcriminalization, namely the excessive expansion of criminal liability without sufficient normative justification.

The enactment of Law Number 1 of 2023 on the National Criminal Code reinforces this tendency through the codification of national criminal law. Codification is intended to create a structured, uniform, and legally certain criminal law system. However, within the domain of electoral law, this codification generates significant systemic implications. Electoral law, which previously functioned as a *lex specialis* characterized by contextuality, temporality, and close linkage to electoral political dynamics, risks losing its flexibility when absorbed into a general and rigid criminal law regime.

From the perspective of legal system theory, this shift raises challenges of inter-regime harmonization. Electoral law operates according to a regulatory logic distinct from that of general criminal law. Its primary orientation is not solely punitive, but also corrective and restorative—aimed at rectifying electoral processes, restoring electoral justice, and maintaining public trust in electoral outcomes. When electoral criminal norms are codified without adequate differentiation, there is a risk that these corrective and restorative objectives will be overshadowed by the repressive logic inherent in criminal law.

Moreover, from the standpoint of criminal policy theory, the criminalization of electoral offenses under the National Criminal Code may shift the focus of law enforcement from protecting democratic processes to prosecuting individual offenders. Criminal law enforcement typically centers on establishing individual culpability and imposing punishment, whereas

electoral violations are often structural, collective, and systemic in nature. As a result, criminal law approaches may prove ineffective in addressing the root causes of electoral misconduct, potentially producing illusory deterrent effects while simultaneously opening space for the politicization of law enforcement.

Accordingly, from a theoretical standpoint, criminalization within electoral law must be strictly limited and selectively applied. Criminal sanctions should be reserved for conduct that directly and seriously undermines electoral integrity, such as systematic vote manipulation, political violence, or organized vote-buying practices. Beyond such cases, administrative sanctions and ethical enforcement mechanisms should function as the primary instruments of electoral law enforcement. Absent clear limitations, the codification of electoral offenses within the National Criminal Code risks obscuring the *ultimum remedium* principle and weakening the democratic character of electoral law itself.

B. State Intervention through Electoral Criminalization and the Protection of Citizens' Political Rights

State intervention in the administration of elections is an inherent feature of a democratic rule-of-law system. The state cannot adopt a position of passive neutrality, as it bears a constitutional obligation to ensure that elections are conducted in a free, fair, and honest manner. Within this framework, the use of criminal law as an instrument of state intervention is intended to protect the democratic process from actions that undermine freedom of choice, the fairness of political competition, and the legitimacy of electoral outcomes. Nevertheless, state intervention through electoral criminalization must always be assessed in light of the principles of limitation of state power and the protection of citizens' political rights as constitutional rights.

In democratic rule-of-law theory, the authority of the state to restrict human rights, including political rights, is not absolute. Such restrictions are only justifiable when they are prescribed by law, pursue a legitimate aim, and are proportionate in a democratic society. The rights to vote and to be elected, freedom of expression, and freedom of association constitute essential elements of electoral democracy guaranteed by the constitution. Accordingly, any criminalization policy within electoral law must be evaluated not only in terms of its enforcement effectiveness, but also in terms of its impact on citizens' political freedoms.

Electoral criminal sanctions as a form of state intervention have direct consequences for the space of political freedom. In practice, electoral criminal provisions often intersect with expressive and participatory political activities, such as campaigning, mobilizing support, and criticizing electoral management bodies. When the boundaries between administrative violations, ethical misconduct, and criminal offenses are not clearly delineated, criminal law may be used to penalize political behavior that is, in essence, a legitimate exercise of democratic freedom. This phenomenon is known in legal theory as the chilling effect, whereby the threat of criminal sanctions discourages citizens from exercising their political rights freely due to fear of legal consequences.

From a human rights theory perspective, restrictions on political rights through electoral criminalization must satisfy the principles of necessity and proportionality. This means that criminal law may only be employed when no less restrictive and equally effective instruments are available to achieve the objective of protecting electoral integrity. In this context, the dominance of punitive approaches may instead reflect the state's failure to develop robust and credible administrative and ethical enforcement mechanisms. Excessive reliance on criminal law signals a tendency by the state to control political

processes through coercive means, rather than by strengthening legal awareness and political ethics among electoral actors.

Furthermore, state intervention through electoral criminal law raises structural concerns regarding the potential politicization of law enforcement. Law enforcement authorities, vested with broad discretion in interpreting and enforcing electoral criminal provisions, may become dominant actors within political contestation, either directly or indirectly. In democratic systems that are not yet fully consolidated, this condition opens space for the use of criminal law as a tool to weaken political opponents, suppress criticism, or indirectly influence electoral outcomes. Such risks are exacerbated when electoral criminal norms are formulated in elastic terms that afford wide discretionary powers to enforcement authorities.

Accordingly, from a theoretical standpoint, state intervention in electoral law must be situated within a framework that balances the protection of electoral integrity with the protection of citizens' political rights. While the state has both the right and the obligation to sanction conduct that seriously undermines democracy, such authority must be strictly limited to prevent it from evolving into a repressive instrument. Electoral criminalization that is not controlled by principles of power limitation and rights protection ultimately risks weakening the very democracy it seeks to defend.

C. Constitutional Democracy Test and the Reconstruction of the Ideal Limits of State Intervention in Electoral Law

In a democratic rule-of-law state, the legitimacy of employing criminal law is not determined solely by its formal existence in statutory legislation, but also by its conformity with the principles of constitutional democracy. Constitutional democracy subjects state power to constitutional constraints, including in the use of criminal law instruments that affect citizens' political rights. Accordingly, criminalization in electoral law must be assessed not

merely in terms of enforcement effectiveness, but in terms of its capacity to maintain a balance between protecting electoral integrity and safeguarding citizens' constitutional rights.

The first relevant test in this context is the principle of the rule of law and due process of law. From the perspective of constitutional democracy, criminal law norms are legitimate only if they are formulated clearly, are not open to multiple interpretations, and provide adequate procedural guarantees for individuals subject to legal processes. Electoral criminal provisions that are elastic or vague risk creating excessive discretion for law enforcement authorities and undermining legal certainty. Such uncertainty poses a serious problem in the electoral context, where political processes require temporal and outcome certainty, and where any form of legal intervention must be conducted swiftly, fairly, and with constitutional accountability.

In addition, testing electoral criminalization through the lens of constitutional democracy requires the application of the proportionality test. This test comprises three main stages: the pursuit of a legitimate aim, necessity, and proportionality *stricto sensu*. While the protection of electoral integrity constitutes a legitimate aim, the use of criminal law must be examined to determine whether it is genuinely necessary and whether it cannot be replaced by less restrictive legal instruments, such as administrative sanctions or ethical enforcement mechanisms. If electoral integrity can be effectively protected through non-criminal measures, the imposition of criminal sanctions becomes disproportionate and inconsistent with the principle of limiting state power.

Within this framework, criminal law should be positioned as an *ultimum remedium*, rather than as the primary instrument for controlling political processes. Broad and non-selective electoral criminalization risks disrupting democratic balance by shifting the focus from safeguarding electoral

processes to repressive enforcement against political actors. From the standpoint of constitutional democracy, such an approach is not only normatively problematic but also counterproductive to the long-term objective of democratic consolidation.

Based on these tests, a reconstruction of the ideal limits of state intervention in electoral law is required. This reconstruction rests on the principle that not all electoral violations warrant criminal sanctions. Criminal law should be strictly confined to conduct that directly, seriously, and systematically undermines electoral integrity, such as organized vote manipulation, political violence, or large-scale vote-buying practices. Conversely, administrative and ethical violations should remain the primary domain of electoral law enforcement, supported by mechanisms that are swift, effective, and credible.

Furthermore, reconstructing the limits of state intervention necessitates harmonization between the National Criminal Code and electoral legislation. The codification of criminal law must not erode the special character of electoral law, which is inherently contextual and dynamic. Instead, electoral criminal norms within the National Criminal Code should be interpreted and applied restrictively, with due regard to the principles of constitutional democracy and the protection of citizens' political rights. Through this approach, state intervention via criminal law can continue to function as a last safeguard of democracy, without transforming into a repressive instrument that threatens political freedom and electoral legitimacy.

4. Conclusion

- A. Based on the analysis and discussion, this study concludes that the criminalization of electoral law within the National Criminal Code (KUHP Nasional) represents an expansion of state intervention into the sphere of electoral democracy, carrying serious constitutional implications. The

codification of electoral offenses into the general criminal law system is intended to strengthen the protection of electoral integrity as a public legal interest. However, at the normative level, this process has not been consistently accompanied by a rigorous criminalization rationale. Several formulations of electoral offenses in the National Criminal Code exhibit a tendency toward overcriminalization, as reflected in the extension of criminal sanctions to conduct that could more appropriately be addressed through administrative or ethical mechanisms.

- B. This tendency risks shifting criminal law from its function as an ultimum remedium into a primary regulatory instrument. Furthermore, this study finds that the shift in the electoral law regime from a contextual *lex specialis* framework to the general and rigid structure of the Criminal Code has significant implications for the flexibility of electoral law enforcement. The distinctive nature of elections as a dynamic, participatory, and time-bound political process is not fully compatible with the logic of general criminal law, which emphasizes formal legality and procedural certainty. As a result, there is a tangible risk of disharmony between the objective of protecting democracy and the practice of criminal law enforcement, which may instead generate a chilling effect on the political freedoms of citizens and electoral participants.
- C. From the perspective of constitutional democracy, this study emphasizes that state intervention through criminal law in the electoral domain must be subject to strict normative constraints, particularly the principles of substantive legality, proportionality, protection of political rights, and guarantees of due process of law. The state cannot justify every form of criminalization in the name of electoral order without adequate constitutional scrutiny of its impact on popular sovereignty. Therefore, electoral law provisions within the National Criminal Code should ideally be positioned as a last-resort mechanism to address serious threats to democratic integrity,

rather than as an instrument of political control that risks negating the essence of free, fair, and democratic elections.

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