



## CHALLENGES TO DEMOCRATIC INTEGRITY: LEGAL IMPLICATIONS OF ALLOWING EX-CORRUPTION CONVICTS IN INDONESIAN ELECTIONS

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### ABSTRACT

*Indonesia, as a country that protects the political rights of ex-corruption convicts, not only faces intense public scrutiny but also potential negative legal implications. This study aims to examine the legal implications of permitting ex-corruption convicts to participate in Indonesian elections by juxtaposing political rights with the broader consequences for political integrity and public trust. This study employs a normative legal research method supported by a statutory approach. Analysis of this study found that contrary to the shallow understanding of equality of opportunity, allowing ex-corruption convicts can actually damage the efforts to ensure wider political participation, as it can stifle the efforts of political regeneration by giving another chance to persons who have been proven in the court of law to lack integrity.*

## A. INTRODUCTION

Globally, elections serve as a cornerstone in democratic governance architecture, conveying the concept that the government's authority is rooted

in the desires of the people.<sup>1</sup> This process ensures the periodic renewal of political mandate, fostering a dynamic and responsive political landscape.<sup>2</sup> Through elections, citizens exercise their fundamental right to choose representatives, thereby imbuing the elected bodies with legitimacy and accountability.<sup>3</sup> Although it can be argued that an election is a fairly blunt instrument of accountability in a democracy, an election remains important for checks and balances between powers, while the people can evaluate their performance through votes.<sup>4</sup> This mechanism also acts as a check on power, discouraging autocratic tendencies and promoting political pluralism.<sup>5</sup> The conduct of free, fair, and transparent elections reinforces the rule of law and upholds the values of equality and justice, as fundamentally detailed in democratic charters and constitutions. Moreover, elections stimulate civic engagement and political participation, which is crucial for nurturing a democratic culture.<sup>6</sup> Thus, elections are not merely a procedural formality but a vital instrument for the expression of the democratic will, the protection of individual rights, and the advancement of societal welfare.

Elections ensure that a wide array of candidates, including those from marginalized communities, can participate in governance, promoting a healthy political regeneration as an important aspect of democracy. Additionally, elections create a system of accountability where officials are responsible for implementing effective strategies to meet many goals, which is relevant to realizing Indonesia's ambitions. By allowing citizens to elect leaders with integrity, Indonesia improves its political regeneration and electoral integrity, as it can prioritize candidates with a good track record and has no indication of involvement in activities deemed dangerous or harmful to the common public interest.

Indonesia's decision to allow ex-corruption convicts to participate in elections presents a complex scenario, as it inherently goes against the fundamental principles of democratic elections, mainly integrity. On one hand,

<sup>1</sup> Georgy Egorov and Konstantin Sonin, "Elections in Non-Democracies," *Economic Journal* 131, no. 636 (2021): 1683.

<sup>2</sup> Martin Westlake, "Chronicle of an Election Foretold: The Longer-Term Trends Leading to the Spitzenkandidatenn Procedure and the Election of Jean-Claude Juncker as European Commission President," *LEQS – LSE 'Europe in Question' Discussion Paper Series 102* (European Institute, LSE, 2016), 1–57.

<sup>3</sup> Abdullahi Yahuza Zainawa, "Political Parties, Electoral Process, and Democracy in Nigeria," *Zamfara Journal of Politics and Development* 2, no. 1 (2021): 1.

<sup>4</sup> Pippa Norris and Alessandro Nai, *Election Watchdogs: Transparency, Accountability and Integrity*, 1st ed. (New York: Oxford University Press, 2017).

<sup>5</sup> Rollin F Tusalem, "Democracies, Autocracies, and Political Stability," *International Social Science Review* 90, no. 1 (2015): 1.

<sup>6</sup> Joel Westheimer, "Civic Education and the Rise of Populist Nationalism," *Peabody Journal of Education* 94, no. 1 (2019): 4; Ina Helianny et al., "The Role of Corruption Education in Combating Corruption Crimes in the Future," *Jurnal Pembaharuan Hukum* 10, no. 2 (2023): 257.

this policy upholds the ideals of democracy and redemption. Allowing ex-convicts to run for office aligns with democratic values of inclusivity and equal opportunity, acknowledging that individuals can reform and contribute positively to society.<sup>7</sup> The root of this approach can be traced back to the core goal of reducing and promoting social justice. It allows for a broader representation in governance, potentially integrating diverse experiences and perspectives, which is crucial for addressing the multifaceted challenges of a diverse country like Indonesia. On the other hand, the main argument against permitting ex-corruption convicts to run for office again is that it could undermine public trust and the political system's integrity.<sup>8</sup>

Corruption, a significant hurdle in achieving many goals of a country, particularly those related to justice and strong institutions, may not be effectively combated if individuals with a history of such offenses are allowed to govern. This could hinder progress in vital areas such as equitable resource distribution, transparency, and accountability. More importantly, it can also limit the chances of other people who are interested in bringing about the much-needed change in society, with a better track record and no corruption history. In this light, Indonesia's stance on ex-corruption convicts in elections represents a delicate balance between the ideals of democratic inclusivity and the need for ethical governance.

The participation of ex-corruption convicts in Indonesian elections raises significant legal implications, necessitating a reevaluation of existing laws and regulations to ensure alignment with democratic principles and anti-corruption efforts. Current Indonesian legislation, such as the Election Law and the Anti-Corruption Law, must be scrutinized to address this issue effectively. These laws, while ensuring democratic participation, also emphasize the importance of integrity and public trust in government officials. Allowing ex-corruption convicts to run for office could potentially conflict with the objectives of these laws, particularly in maintaining a corruption-free government. This situation underscores the need for legal reforms that strike a balance between the right to participate in democratic processes and the imperative to uphold ethical standards in public office. Amendments to the existing legal framework may be required to establish clear criteria and restrictions for the political participation of individuals with a history of corruption, ensuring that the electoral process remains transparent, fair, and conducive to achieving democratic goals. This legal mediation is crucial for maintaining public

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<sup>7</sup> Hadityo Anugrah Allahi and Fathur Rahman, "Kandidasi Calon Anggota Legislatif Koruptor: Refleksi Atas Pemilu 2019 Di Malang," *JIIP: Jurnal Ilmiah Ilmu Pemerintahan* 5, no. 1 (2020): 46.

<sup>8</sup> Aghoffar, Novita Sari, and Effendi Hasan, "Integritas Partai Politik Dalam Pencalonan Mantan Narapidana Korupsi Pada Pemilu Tahun 2019 Di Aceh," *Jurnal Ilmiah Mahasiswa Fakultas Ilmu ...* 6, no. 2 (2021): 1.

confidence in the political system and ensuring that elected officials can effectively advance national interests and public welfare.

Studies across various nations have consistently indicated strong public disapproval of corruption and distrust towards individuals convicted of such offenses.<sup>9</sup> In Indonesia, this sentiment is notably strong, as identified by a study. However, it also reveals that, despite significant public disdain for political corruption and skepticism towards corruption, the association of corruption with the concept of integrity is not always common.<sup>10</sup> On the other hand, another study analyzes the propriety of disallowing ex-corruption convicts to run for office, indicating that the political rights of ex-convicts shouldn't be stripped for their past crimes.<sup>11</sup> While it recognizes the potential risks to the integrity of democratic institutions and public trust, it also stresses the importance of redemption and transparency, arguing that ex-corruption convicts can run for another office term in an election as long as they admit to their previous crimes. This body of work collectively underscores the gravity of public opinion against ex-corruption convicts in politics and raises critical ethical concerns regarding their participation in democratic processes, particularly in countries like Indonesia, where the fight against corruption is a central political issue.

While extensive, the literature has not yet adequately addressed the political sphere and its legal implications. For the purpose of this research, normative analysis will only focus on Law No. 7 of 2017 on Election (Election Law). There have been efforts to deny ex-corruption convicts from running in an election, mainly through Article 4 of General Election Commission Regulation Number 20 of 2018 concerning Nomination of Members of the People's Representative Council, Provincial Regional People's Representative Council, and Regency/City Regional People's Representative Council, which was denied legal power by The Constitutional Court decision No. 87/PUU-XX/2022 and 12/PUU-XXI/2023, which allow former convicts, including those convicted of corruption cases, who committed criminal acts with a threat of less than five years in prison to become legislative candidates for the DPR/DPRD and DPD. However, this research is built upon the understanding that the problems regarding this issue are rooted deep within the Election Law. The main novelty of this research lies in its focus on this aspect and its broader implications for the political sphere and democracy.

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<sup>9</sup> Monica Violeta Achim, "Cultural Dimension of Corruption: A Cross-Country Survey," *International Advances in Economic Research* 22, no. 3 (2016): 333.

<sup>10</sup> Sabrina O Sihombing, "Youth Perceptions toward Corruption and Integrity: Indonesian Context," *Kasetsart Journal of Social Sciences* 39, no. 2 (2018): 299.

<sup>11</sup> Jumriani Nawawi, Irfan Amir, and Muljan Muljan, "Problematika Gagasan Larangan Mantan Napi Korupsi Menjadi Calon Anggota Legislatif," *Al-Adalah: Jurnal Hukum Dan Politik Islam* 3, no. 2 (2019): 141.

## B. RESEARCH METHODS

This research employed the normative legal research method by extensively analyzing the norms within the existing positive laws,<sup>12</sup> while putting a legal problem as the main focus of the research.<sup>13</sup> A normative method was employed to identify problems regarding the Indonesian election system. The analysis was supported by a statutory approach, mainly using secondary data in the form of primary law sources within the Indonesian legal system. Secondary data was gathered using the literature review data gathering technique and then analyzed using the qualitative descriptive data analysis technique.<sup>14</sup> Secondary data used in this research are the 1945 Constitution (*Undang-Undang Dasar 1945*), Law No. 31 of 1999 on Eradication of Corruption, and Law No. 7 of 2017 on Election. The analysis comprised the identification of legal facts through the research diagnosis process to find its implications within the existing legal norms, all of which can be referenced for future legal developments through the perspective generated.

## C. RESULT AND DISCUSSION

### 1. The Ex-Corruption Convicts in a Democratic Public's Eyes

If there is one thing that citizens of many countries around the world can agree on regarding the process of running the government, it is the disdain and deep hatred against corruption, which has damaged public trust and slowed down developments in many sectors. Corruption is the result of failure in checks and balances within the government.<sup>15</sup> Although this is often caused by the unstable concentration of power, which is essentially against the principle of good governance, it can also happen to the failure in human resource management, where the integrity of a certain government body is compromised. It can also be the result of a bad legal culture, particularly in the realm of state administrations.<sup>16</sup> From this perspective, corruption is closely linked with the political sphere, where it can happen under a thorough plan, making it a structured and an organized crime. It's also closely linked

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<sup>12</sup> Hari Sutra Disemadi, "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies," *Journal of Judicial Review* 24, no. 2 (2022): 289.

<sup>13</sup> Asmak Ul Hosnah, Dwi Seno Wijarnako, and Hotma P. Sibuea, *Karakteristik Ilmu Hukum Dan Metode Penelitian Hukum Normatif*, 1st ed. (Depok: Rajawali Pers, 2021).

<sup>14</sup> Muhaimin, *Metode Penelitian Hukum*, 1st ed. (Mataram: Mataram University Press, 2020).

<sup>15</sup> Peter Neyroud, "Policing 'Landscapes' for the Rule of Law and Public Protection: The State of Evidence on Organisational Policies, Structures, and Human Resources," *Cambridge Journal of Evidence-Based Policing* 6, no. 3 (2022): 140.

<sup>16</sup> Yuliana Yuliana and Mujiono Hafidh Prasetyo, "Criminal Accountability Of State Officials Committing Political Corruption In Indonesia," *Arena Hukum* 15, no. 1 (2022): 160.

with inequality, as it promotes illicit political contributions, which in the end only benefits the elites and eventually widens the wealth gap.<sup>17</sup>

To define corruption, it's important first to analyze what constitutes power within the government. Within the context of government administration, power is the authority to make decisions regarding public affairs and is constantly affected by the efforts to acquire, maintain, increase, or even dissipate through budgeting.<sup>18</sup> Power extends beyond court decisions, administrative titles, budget allocations, and legal authorities, as these elements alone are insufficient for an administration. This means that while power can consist of all of these elements, it eventually depends on the role of career bureaucracy as the central focus of regulatory information, design, and implementation. Hence, the punishments of such crimes must be normatively designed to specifically target accountability from state officials, who play a role in corruption within a bureaucracy.<sup>19</sup> The definition of corruption commonly agreed upon within the academic world is the act of abusing the power of a public office for private benefits.<sup>20</sup> Therefore, in the context of power, the epicenter of the problem within the phenomenon of corruption is the will of the bureaucracy, where power is centered.

Democracy, a system mostly cherished for power distribution within the government, is considered the staple of good governance.<sup>21</sup> Democracy is often regarded as the best, most fair, and most legitimate form of government by many theorists within the academic world.<sup>22</sup> However, like other systems around the world, democracy can also fall victim to corruption. This conceptually undermines not just government integrity and public trust but also democracy as a concept itself, which has been found to reduce corruption significantly.<sup>23</sup> Corruption essentially defeats the purpose of democracy, which is the distribution of power to reduce abuse of power. The study even shows that democracy allows the government to perform better in the fight against

<sup>17</sup> Jong-sung You, *Democracy, Inequality and Corruption: Korea, Taiwan and the Philippines Compared*, 1st ed. (Cambridge: Cambridge University Press, 2015).

<sup>18</sup> Robert F. Durant, "Whither Power in Public Administration? Attainment, Dissipation, and Loss," *Public Administration Review* 75, no. 2 (2015): 206.

<sup>19</sup> Riskyanti Juniver Siburian and Denny Wijaya, "Korupsi Dan Birokrasi: Non-Conviction Based Asset Forfeiture Sebagai Upaya Penanggulangan Yang Lebih Berdayaguna," *Jurnal Penegakan Hukum Dan Keadilan* 3, no. 1 (2022): 1.

<sup>20</sup> Xizi Liu, "A Literature Review on the Definition of Corruption and Factors Affecting the Risk of Corruption," *Open Journal of Social Sciences* 04, no. 06 (2016): 171.

<sup>21</sup> Helga Malmin Binningsbø, "Power Sharing, Peace and Democracy: Any Obvious Relationships?," *International Area Studies Review* 16, no. 1 (2013): 89.

<sup>22</sup> Alvin I. Goldman, "What Is Democracy (and What Is Its Raison D'Être)?," *Journal of the American Philosophical Association* 1, no. 2 (2015): 233.

<sup>23</sup> Ivar Kolstad and Arne Wiig, "Does Democracy Reduce Corruption?," *Democratization* 23, no. 7 (2016): 1198.

corruption, particularly in developing countries where corruption is the most prevalent.<sup>24</sup>

Corruption, undeniably, is overwhelmingly disdained by the public, especially when social and economic inequalities, along with other public issues, continue to rise.<sup>25</sup> In a republic, corruption takes root when the commitment to communal values is overshadowed by an overemphasis on personal interests or, conversely, when individuals become excessively devoted to public affairs.<sup>26</sup> Corruption is the true embodiment of betrayal of public trust and perversion of integrity in the discharge of public duties and justice.<sup>27</sup> The justified, deep-rooted disdain stems from a collective understanding that corruption distorts fair competition, perpetuates an uneven playing field, and allows only the privileged few to thrive. Consequently, public sentiment becomes a boiling pot of resentment. The public has no tolerance for corruption's pervasive grip on Indonesian society, fueling calls for accountability, transparency, and systemic reforms to eradicate this insidious problem.

Corruption is universally despised and condemned in any society, but it holds an even more significant place of abhorrence among citizens of a democratic country. Democratic nations are founded on the principles of equality, justice, and transparency; when corruption seeps into the core of these values, it undermines the very essence of democracy. Corruption can even be tried in defense of the state, as is usually the case in autocracies, which, unfortunately, is also not uncommon in democratic countries.<sup>28</sup> Citizens in a democratic country often have high expectations and demand accountability from their leaders, as they have the right to elect and remove those who hold public office. Therefore, any act of corruption, be it bribery, embezzlement, or nepotism, is seen as a foul breach of the democratic contract between citizens and the representatives they voted for.<sup>29</sup>

<sup>24</sup> Azwar and Achmat Subekan, "Does Democracy Reduce Corruption in Indonesia?," *Jurnal Ilmu Sosial Dan Ilmu Politik* 25, no. 3 (2022): 195.

<sup>25</sup> Qiyang Liu et al., "Egalitarianism and Public Perception of Social Inequities: A Case Study of Beijing Congestion Charge," *Transport Policy* 74 (2019): 47.

<sup>26</sup> Sofia Näsström, *The Spirit of Democracy: Corruption, Disintegration, Renewal*, 1st ed. (Oxford: Oxford University Press, 2021).

<sup>27</sup> Jorge Alberto Alatorre Flores, "It Takes More than Transparency: An Assessment of Selected Variables That Ought to Make a Dent on Corruption. A Review on the Cases of Mexico and the United States," (PhD diss., Purdue University, 2022); Suyono, "Reconstruction of Criminal Sanctions on Corruption Based on Dignity Justice Theory (Case Study on Corruption Court Decision)," *Jurnal Pembaharuan Hukum* 5, no. 3 (2018): 427.

<sup>28</sup> Staffan Andersson and Frank Anechiarico, *Corruption and Corruption Control: Democracy in the Balance*, 1st ed. (New York: Routledge, 2019).

<sup>29</sup> Italo Pardo, "Corrupt, Abusive, and Legal: Italian Breaches of the Democratic Contract," *Current Anthropology* 59, no. S18 (2018): S60.

In Indonesia, the crime of corruption inherently goes against the 1945 Constitution, which governs the fundamental legal norms in Indonesia, stemming from Pancasila as the nation's ideology. The 1945 Constitution governs, through Article 23 paragraph (1), that The State Budget as the basis of the management of state funds shall be determined annually by law and shall be implemented in an open and accountable manner in order to attain the prosperity of the people best.<sup>30</sup> The nature of corruption, as highlighted previously, makes it a direct breach of this constitutional norm, mainly because it implies a breach in accountability, causing state financial loss and damaging public interests.

Normatively, the main legal framework for corruption in Indonesia is governed by its own legislation, namely Law No. 31 of 1999 on Eradication of Corruption (Corruption Law). The legislation does not govern what corruption is; instead, it governs many acts considered corrupt and causes state financial loss. These elements are found in Article 2 and 3, which govern the unlawful acts of enriching oneself or others or the abuse of authority that can cause state financial or economic loss. This is in line with what was noted previously, detailing that corruption can stem from many kinds of power, with the will of bureaucracy being its center. Strengthening the influence of public interest, the Corruption Law even mentions the role of the general public in reporting instances of corruption acts committed by state officials through Article 41 and 42, which can contribute to even stronger public perceptions of corruption. Although the Corruption Law later received amendments through Law No. 20 of 2001, the foundational normative structure that essentially defines corruption as a crime hasn't changed.

In the context of democracy, this framework is also fitting because of the nature of democratic societies, consisting of a vibrant civil society, free media, and an independent judiciary, all of which play a crucial role in uncovering corrupt practices, exposing wrongdoings, and holding those responsible accountable. These checks and balances outside of the government's administrative bodies intensify the public's scrutiny of corruption, making it more difficult to conceal and increasing the odds of corrupt individuals being exposed and brought to justice. Therefore, elections, as an integral part of democracy, must be free of all elements of corruption to maintain election integrity and prevent social unrest caused by public opinions and disdain.

Naturally, allowing ex-corruption convicts to run for an election can be considered a direct insult to public trust and the perversion of the election system, which is a rather sacred element of democracy itself. In turn, this can

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<sup>30</sup> Ifrani, "Grey Area Antara Tindak Pidana Korupsi Dengan Tindak Pidana Perbankan," *Jurnal Konstitusi* 8, no. 6 (2016): 993.



create ever stronger disdain from the public perspective and generate public distrust of the government, risking social unrest and political instability, which can significantly slow the progress of many developments within Indonesian society. Most importantly, it's a disregard against constitutional values held dear by Indonesians and set firmly by the 1945 Constitution.

## **2. Political Rights of Ex-Corruption Convicts Through the Lens of the 1945 Constitution**

Despite the strong perception against corruption, Indonesia allows ex-corruption convicts to run in an election. By allowing ex-corruption convicts to run again, Indonesia sends a message that integrity is not a necessary quality for public leaders, which could further erode public trust in the government.<sup>31</sup> This is not a common practice around the world, as a lot of countries, not just the democratic ones, do not allow ex-corruption convicts to run in an election, as it directly insults public trust and creates higher chances of damaging public interests when recidivism is taken into account.<sup>32</sup> It's essential to look for the justification of this decision before diving into whether or not it's fully justified for a democracy like Indonesia.

Political parties in support of ex-corruption convicts may argue that ex-corruption convicts still possess key human rights as explained within the 1945 Constitution, namely through Article 28I paragraph (2), which governs that every person shall have the right to be free from discriminative treatment based upon any grounds whatsoever and shall have the right to protection from such discriminative treatment. This right guarantees the protection of every person from discrimination, including ex-corruption convicts, from discriminations that stem from their criminal record.

However, a counterargument can be made using Article 28J paragraph (2), which allows for the restriction of rights and freedoms when necessary to uphold public order, morality, or the rights and freedoms of others. This suggests that while ex-corruption convicts may claim the right to be free from discrimination, such rights are not absolute. Given that corruption severely undermines public trust and societal values, limiting the political participation of those convicted of corruption may be justified to protect the integrity of public office and ensure a moral, secure, and orderly society.

More importantly, the 1945 Constitution also emphasizes the importance of maintaining democracy in Indonesia, which is embedded deeply within the nation's spirit, Pancasila. This is sternly declared in the preamble of the 1945 Constitution, where the constitution explicitly recognizes the importance of "*democratic life led by the wisdom of thoughts in deliberation*

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<sup>31</sup> Aghoffar, Sari, and Hasan, "Integritas Partai Politik,"

<sup>32</sup> Febri Handayani, "The Pernicious Consequences Of Political Corruption In Indonesia," *Prophetic Law Review* 1, no. 1 (2019): 1.

*amongst representatives of the people.*” This fundamental part of the 1945 Constitution also implies the importance of representatives, highlighting the role of the political sphere in Indonesia’s idealized democratic society.

Therefore, it’s completely justified to tie this fundamental aspect to the key values of a democratic society in general. History has taught that corruption has always been a threat to democracy throughout the development of democracy. This was the main indication during the early post-communist era of Eastern European countries, where corruption was closely related to many illicit activities.<sup>33</sup> Integrity remains the biggest void in such a scenario, particularly among the political elites. Therefore, democracy itself should not and cannot be sustainably fostered in an environment where corruption and corruption-related acts are desensitized, which can intrinsically be connected to the current situation in Indonesia.

Allowing ex-corruption convicts to run in elections would add insult to injury, as it would suggest that there are no consequences for betraying the public trust and engaging in corrupt practices. Furthermore, by not giving room to other people who are perhaps more qualified and have more integrity to run for office, Indonesia can end up being trapped without political regeneration and unable to solve old problems. To fulfill their purposes in a democratic society, such as representing the interests, perspectives, and values of different groups of citizens, providing a platform for political participation, and offering policy alternatives, political parties need to have a good cycle of regeneration in their recruitment processes.<sup>34</sup>

### **3. Election Law’s Normative Issues on Allowing Ex-Corruption Convicts to Run in Elections**

In exploring the complex dynamics surrounding the participation of ex-corruption convicts in elections, it’s important to dive into the critical legal issues associated with such regulation. Evidently, the intersection of corruption, democratic processes, and the rule of law has become a subject of heightened concern and debate within political and legal spheres. While societies strive to maintain the integrity and fairness of electoral systems, the question of whether ex-convicts of corruption should be granted the opportunity to run for public office brings forth important legal viewpoints to be thoroughly analyzed. By examining relevant norms within the existing positive laws, this issue can be properly addressed.

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<sup>33</sup> Ina Kubbe, “Europe’s ‘Democratic Culture’ in the Fight against Corruption,” *Crime, Law and Social Change* 70, no. 2 (2018): 217.

<sup>34</sup> Ridho Pakina, “Recruitment and Regeneration Political Party: The Influence on Election of Regional Heads,” in *Proceedings of the International Conference on Law, Economics and Health (ICLEH 2020)* (Atlantis Press, 2020), 544.

Indonesia governs the issues regarding the election through Law No. 7 of 2017 on Election (Election Law). This law was passed as the manifestation of a democratic constitutional system with integrity to ensure consistency and legal certainty as well as effective and efficient general elections.<sup>35</sup> It was also passed to legally facilitate the management and execution of proceedings regarding the election, which is a mandate of the 1945 Constitution.<sup>36</sup> Article 1 number 1 of the Election Law defines the election as “a means of popular sovereignty to elect members of the People’s Representative Council, members of the Regional Representative Council, the President and Vice President, and to elect members of the Regional People’s Representative Council, which are carried out directly, publicly, freely, secretly, honestly and fairly in the Unitary Republic of Indonesia. Indonesia is based on Pancasila and the 1945 Constitution of the Republic of Indonesia.”

Elections, in general, must be facilitated in a way that upholds electoral integrity, which is conceptualized from the development within the literature as the effort to conduct free and fair elections without the existence of electoral fraud, misconduct, and manipulation.<sup>37</sup> Integrity is also an important concept within the Election Law. Article 4 letter b states that provisions regarding election implementation aim to “realize elections that are fair and have integrity.” Integrity is important in the political system of a democratic society, particularly as an important element of regime legitimacy, which lies in the hands of the majority of its citizens.<sup>38</sup> One of the biggest negative definitions in the realm of political science regarding the conceptualization of electoral integrity is corruption. This is based on the common understanding that the support for the elections is based on trust in government.<sup>39</sup> As corruption erodes public trust in government, elections can be deemed unimportant, which can lead to a rising number of abstentions.<sup>40</sup>

Indonesia, despite being a democratic country, allows ex-corruption convicts to run in elections on the basis of making sure that everyone has

<sup>35</sup> A. H. Rahadian, Resista Vikaliana, and Munir Saputra, “Substansi Perubahan Sistem Pemilu Dan Implikasinya Berdasarkan Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum Serta RKPD Tahun 2018 Sesuai Permendagri Nomor 32 Tahun 2017 (Pendampingan Bimbingan Teknis Nasional Anggota DPRD Kota Sungai Penuh),” *Jurnal Komunitas: Jurnal Pengabdian Kepada Masyarakat* 1, no. 2 (2019): 32.

<sup>36</sup> Resista Vikaliana and I Nyoman Purnaya, “Optimalisasi Distribusi Surat Suara Pemilu Pada Pemilihan Umum Serentak 2019,” *Transparansi: Jurnal Ilmiah Ilmu Administrasi* 2, no. 2 (2019): 140.

<sup>37</sup> Carolien van Ham, “Getting Elections Right? Measuring Electoral Integrity,” *Democratization* 22, no. 4 (2015): 714.

<sup>38</sup> Jonathan Rose and Paul M. Heywood, “Political Science Approaches to Integrity and Corruption,” *Human Affairs* 23, no. 2 (2013): 148.

<sup>39</sup> Rose and Heywood, “Political Science Approaches,”

<sup>40</sup> Benjamin J. Roberts et al., “The Unconvinced Vote: The Nature and Determinants of Voting Intentions and the Changing Character of South African Electoral Politics,” *Politikon* 46, no. 4 (2019): 481.

equal rights within the political sphere.<sup>41</sup> While this isn't exactly a contradiction of democratic values, it is a contradiction of the perception that democratic countries are better at fighting corruption and have a stronger public disdain against corruption. Indonesia's Election Law has no norms prohibiting ex-corruption convicts from running in an election. Analyzing the norms regarding the relevant provisions and comparing them with other provisions that are normatively against allowing ex-corruption convicts to run can be helpful (Table 1).

**Table 1:** Provisions regarding the criminal history of election prospects

<b>Requirements for DPR, provincial DPRD, and district/city DPRD prospects</b>	<b>Requirements for President and Vice President Prospects</b>
<p><i>Article 240 paragraph (1) letter g:</i> has never been sentenced to prison based on a court decision that has obtained permanent legal force for committing a criminal offense that is punishable by imprisonment for 5 (five) years or more, unless openly and honestly stating to the public that the person concerned is a former convict.</p> <ul style="list-style-type: none"> <li>- (Administrative requirement) Article 240 paragraph (2) letter c: stamped statement letter for candidates for members of the DPR, provincial DPRD, and district/city DPRD who have never been sentenced to a prison sentence of 5 (five) years or more or a statement letter from a correctional institution for candidates who have previously been sentenced to a crime.</li> </ul>	<p><i>Article 169 letter p:</i> has never been sentenced to prison based on a court decision that has permanent legal force for committing a criminal offense that is punishable by imprisonment for 5 (five) years or more.</p> <ul style="list-style-type: none"> <li>- (Administrative requirement) Article 227 letter k: a certificate from the district court stating that each prospective candidate has never been sentenced to prison based on a court decision that has permanent legal force for committing a criminal offense punishable by imprisonment of 5 (five) years or more.</li> </ul>

To date, there is no justification regarding the difference in provisions regarding the criminal history of election prospects between legislative and presidential candidates. This difference signifies that one is more important than the other, even though both are equal parts of Indonesia's governmental bureaucracy system. Based on Indonesia's *trias politica*, governmental power consists of the executive, legislative, and judiciary powers<sup>42</sup>. Not only that but none of the provisions regarding the requirements for prospects in the election mention integrity, despite the fact that integrity is consistently mentioned throughout the election law, particularly in provisions regarding election officials (Table 2).

While this can look insignificant, there's really no reason not to mention it, especially when it's consistently mentioned in the provisions regarding

<sup>41</sup> Maria Virginia Usfunan, "Restrictions on the Voting Rights of Former Corruptor Constitutions," *Khairun Law Journal* 7, no. 1 (2023): 50.

<sup>42</sup> Anita Indah Widiastuti, "Multi-Party in Presidential System in Indonesia: What Does Democracy Mean?," *The Indonesian Journal of International Clinical Legal Education* 2, no. 4 (2020): 517.

election officials, all of which have smaller roles and smaller impacts than what the legislative and presidential prospects will have in public interests, if they ended up being elected. This problem can also impact other provisions, particularly that which was made to provide equal opportunities, such as Article 5, which states that “persons with disabilities who meet the requirements have the same opportunities as voters, as candidates for members of the DPR, as candidates for members of the DPD, as candidates for President/Vice President, as candidates for members of the DPRD, and as Election Organizers.” This essentially creates another layer of barrier for disabled persons to get into the political sphere and, most importantly, limits the level of participation that the broader communities of disabled persons can get.<sup>43</sup>

**Table 2:** Provisions regarding the criminal history of election prospects

Article	Requirements
Article 21 paragraph (1) letter d	Requirements to become a candidate for member of the KPU, Provincial KPU, or Regency/City KPU: d: integrity, strong personality, traits of honesty and fairness.
Article 72 paragraph (1) letter d	Requirements to become a member of PPK, PPS, KPPS, PPLN, and KPPSLN: d. integrity, strong personality, and traits of honesty and fairness.
Article 117 paragraph (1) letter d	Requirements to become a candidate for member of Bawaslu, Provincial Bawaslu, Regency/City Bawaslu, Subdistrict Panwaslu, and Subdistrict/Village Panwaslu, as well as TPS Supervisor: d. integrity, strong personality, and traits of honesty and fairness.

#### D. CONCLUSION

The analysis found that there are multiple links connecting the public disdain for corruption and the system of democracy, which can negatively impact the election. This in itself can be considered a significant barrier that could prevent other people from getting into the Indonesian political sphere, including persons with disability, whose political rights are protected constitutionally and specifically acknowledged within the Election Law. Most importantly, allowing ex-corruption convicts to run in an election can also be considered a direct perversion of democracy and electoral integrity, a value that is held dear by the Indonesian constitution along with the Indonesian society. The limitation of this research is the lack of normative constructions to revise the Election Law, which requires a more holistic approach to social justice and the manifestation of constitutional principles, as already highlighted in this research. Therefore, the findings of this study can be utilized to expand the potential of legal development to restrict the political rights of ex-corruption convicts in the name of democracy and election integrity.

<sup>43</sup> Paul Chaney, “An Institutionally Ableist State? Exploring Civil Society Perspectives on the Implementation of the Convention on the Rights of Persons with Disabilities in India,” *Journal of Civil Society* 16, no. 4 (2020): 372.

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