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Democratic Hypocrisy and Electoral Regulation: A Critical Legal Analysis of Former Corruption Convicts in Electoral Politics

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ABSTRACT

The candidacy of former corruption convicts in legislative elections reflects a paradox within contemporary electoral democracy. This study examines how democratic hypocrisy operates through electoral and party systems to reproduce political corruption and shape governance outcomes. Guided by Critical Legal Studies, this research adopts a critical and integrative legal approach, incorporating social, economic, and human rights perspectives in interpreting political rights for former corruption convicts. Within a context of interlegality, the study highlights how overlapping normative frameworks—human rights law, electoral regulations and political practices—interact and are strategically navigated by political actors. The findings reveal that democratic hypocrisy is sustained by two interrelated dynamics: regulatory fluctuations that reopen political access for former corruption offenders and weak party institutionalization that encourages pragmatic, electorally driven candidate recruitment. These conditions facilitate clientelistic networks and reinforce patronage-based political relations, enabling oligarchic and state capture within electoral processes. This interlegal configuration allows competing norms to be selectively interpreted, legitimizing the re-entry of actors with corruption records into formal political arenas. Consequently, legislative outputs tend to reflect oligarchic interests rather than public accountability. This condition signals a trajectory of democratic backsliding, in which formal democratic procedures persist while substantive democratic values are weakened. This study argues that democratic hypocrisy is rooted in plural and overlapping normative frameworks that enable strategic legal navigation and the reproduction of political elites, ultimately undermining the quality of governance and the protection of fundamental rights.

KEYWORDS: Democratic Hypocrisy; Legislative Candidate; State Capture; Corruption; Interlegality; Human Rights

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Introduction

In various discourses on anti-corruption and human rights, the primary focus lies on the extent to which corruption is associated with human rights violations. This growing attention reflects the damaging impact of corruption on the non-fulfillment of citizens' fundamental rights, including civil and political rights as well as economic, social, and cultural rights.[1] This situation is clearly evident in Indonesia, as reported by the Corruption Perceptions Index, where the country records a score ranging from 34 to 38 (out of 100), indicating a relatively high level of corruption and its impact on weak governmental accountability.[2] This condition becomes even more concerning when examining data from Indonesia Corruption Watch (ICW), which recorded 791 corruption cases in 2023 involving 1,695 suspects, marking a significant increase compared to the previous year. The potential state losses reached IDR 28.4 trillion, accompanied by bribery and gratuities amounting to IDR 422 billion, illegal levies of IDR 10 billion, and money laundering of IDR 256 billion. In terms of enforcement, the Attorney General's Office handled 551 cases, the Police handled 192 cases, and the Corruption Eradication Commission handled 48 cases. These findings indicate that anti-corruption efforts, both in terms of enforcement and prevention, have not yet operated optimally.[3] Interestingly, although corruption is recognized as an immoral and wrongful act from a human rights perspective,[4] ICW and several studies have again noted that many legislative candidates are former corruption convicts spread across various electoral districts.[5] Therefore, this article argues that the persistence of corruption in the context of Indonesian democracy cannot be explained merely as a failure of individual ethics. Rather, it reflects a structural problem in institutional design and electoral practices that, in fact, enable the reproduction of problematic actors within the arena of power, thereby ultimately hindering the state's capacity to ensure the fair and substantive fulfillment of human rights.

The growing body of studies on the involvement of former corruption convicts in political contests in Indonesia shows a diverse spectrum of

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1 Anne Peters, "Corruption as a Violation of International Human Rights," *European Journal of International Law* 29, no. 4 (2018): 1251–87; Pricilia Ryana and Aisy Idzati, "Korupsi dalam Kajian Hukum dan Hak Asasi Manusia," *Lex Scientia Law Review* 2, no. 2 (2018): 177–88.

2 Transparency International, *Corruption Perceptions Index 2025* (Berlin, 2026), https://ti.or.id/wp-content/uploads/2026/02/CPI-2025-Report.pdf.

3 Diky Anandya and Kurnia Ramadhana, *Laporan Hasil Pemantauan Tren Korupsi Tahun 2023* (Jakarta Selatan: Indonesia Corruption Watch, 2024), 10–12.

4 James Thuo Gathii, "Defining the Relationship between Human Rights and Corruption," *University of Pennsylvania Journal of International Law* 31, no. 1 (2009): 126.

5 Emanuel Raja Damaitu, "Progress and Decline of Legal Thought: Ex-Corruptor as a Legislative Candidate (Analysis of General Election Commission Regulation (PKPU) No. 20/2018)," *Journal of Indonesian Legal Studies* 4, no. 1 (2019): 129–42; Valentina Mariama Sadeadema, "Pemilu dan Korupsi: Dilema Konstestasi Caleg Mantan Napi Korupsi Pada Pileg 2019," *Jurnal Transformative* 5, no. 2 (2019): 52–72; Perludem, "Perkumpulan Untuk Pemilu dan Demokrasi, Daftar Caleg Mantan Napi Korupsi (Berdasarkan Pengumuman KPU RI per 30 Januari 2019 dilengkapi dengan Informasi Lengkap Cakupan Wilayah Daerah Pemilihannya)," Perludem, Jakarta Timur, August 2, 2019, https://perludem.or.id; Indonesia Corruption Watch, *Temuan ICW Dalam Daftar Calon Tetap Calon Anggota Legislatif: 56 Mantan Terpidana Korupsi Mencalonkan Diri Pada Pemilu 2024 Mendatang* (Jakarta, 2023).

explanations. One study highlights that the seeds of corruption have been embedded since the regeneration process within political parties, which subsequently determines the quality of legislative candidate recruitment,[6] including the continued nomination of candidates with backgrounds as former corruption convicts.[7] Another perspective emphasizes the regulatory dimension, particularly the annulment by the Supreme Court of the policy issued by the General Election Commission that prohibited former convicts from running for office, on the grounds that it contradicted Article 240 paragraph (1) letter (g) of the Election Law, which ultimately reopened political space for these actors.[8] Within a broader historical-structural framework, this phenomenon is also understood as an extension of Indonesia's feudal legacy and socio-political structure in sustaining practices such as money politics, vote buying, and patron–client relationships.[9] In addition, some literature situates this issue within a wider institutional framework by highlighting the weak institutionalization of political parties, low standards of candidate selection, and the dominance of electoral-pragmatic orientations over integrity.[10] This condition reinforces patterns of clientelism and opens space for the reproduction of the same elites, including those with corruption records.[11] On

[6] Marcus Mietzner, "Dysfunction by Design: Political Finance and Corruption in Indonesia," *Critical Asian Studies* 47, no. 4 (2015): 587–610; Muhammad Mutawalli Mukhlis et al., "Ius Constituendum Regulates the Cadre-Based Recruitment of Candidates for Members of the House of Representatives Through Political Parties," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 7, no.1 (2024): 139–55; Hendi Yogi Prabowo and Kathie Cooper, "Re-Understanding Corruption in the Indonesian Public Sector through Three Behavioral Lenses," *Journal of Financial Crime* 23, no. 4 (2016): 1028–62.

[7] Nathanael Gratias Sumaktoyo and Burhanuddin Muhtadi, "Can Religion Save Corrupt Politicians? Evidence from Indonesia," *International Journal of Public Opinion Research* 34, no. 1 (2022): 1-12.

[8] Noer Sida, "Hak Mantan Narapidana Untuk Turut Serta Dalam Pemerintahan," *Justitia et Pax* 34, no. 2 (2019): 255–69; I. Gede Widhiana Suarda et al., "Debating Political Rights: The Revocation of Former Convict's Rights to Be Elected in Indonesian Elections," *Lentera Hukum* 12, no. 1 (2025): 1–41; Reno Maratur Munthe and R. Ismala Dewi, "The Political Rights of Former Corruption Convicted Prisoners to Run in 2019 Legislative Election and 2020 Regional Head General Election: An Overview of Human Rights Perspective," paper presented at 3rd International Conference on Law and Governance (ICLAVE 2019), *Proceedings of the 3rd International Conference on Law and Governance (ICLAVE 2019)*, 2020; Riski Febria Nurita et al., "Political Rights Of Former Corruptors In View Of The Constitution," *International Journal of Sustainable Law* 1, no. 2 (2024): 52–58; Ahmad Syarifudin and Dini Lionita Septiani, "Implications of Bawaslu's Interpretation of the Constitutional Court Decision on the Eligibility of Former Convicts as Regional Head Candidates in Local Elections," *As-Siyasi: Journal of Constitutional Law* 3, no. 2 (2023): 177–98.

[9] Dwight Y. King, "Corruption in Indonesia: A Curable Cancer?," *Journal of International Affairs* 53 no. 2 (2000): 603–24; Theodore M. Smith, "Corruption, Tradition, and Change in Indonesia," in *Political Corruption: A Handbook*, ed. Arnold J. Heidenheimer, Michael Johnston, and Victor T. LeVine (New York: Routledge, 2024), 18; Heinzpeter Znoj, "Deep Corruption in Indonesia: Discourses, Practices, Histories," in *Corruption and the Secret of Law: A Legal Anthropological Perspective*, ed. Monique Nuijten and Heinzpeter Znoj (Routledge, 2017), 22; Kanti Pertiwi and Susan Ainsworth, ""Democracy Is the Cure?": Evolving Constructions of Corruption in Indonesia 1994–2014,", *Journal of Business Ethics* 173, no. 3 (2021): 507–23; Mala Sondang Silitonga et al., "Democratizing Corruption: A Role Structure Analysis of Indonesia's "Big Bang" Decentralization," *Applied Network Science* 8, no. 1 (2023): 8; Vedi R. Hadiz, "Democracy and Money Politics," in *Routledge Handbook of Southeast Asian Politics*, ed. Richard Robison (London: Routledge, 2012), 12.

[10] Edward Aspinall, "Indonesia's 2014 Elections: Parliament and Patronage," *Journal of Democracy* 25, no. 4 (2014): 96–110; Burhanuddin Muhtadi, *Kuasa Uang: Politik Uang Dalam Pemilu Pasca-Orde Baru* (Kepustakaan Populer Gramedia (KPG), 2020).

[11] Fiona Robertson-Snape, "Corruption, Collusion and Nepotism in Indonesia," *Third World Quarterly* 20, no. 3 (1999): 589–602; Nils Ole Bubandt, *Democracy, Corruption and the Politics of Spirits in Contemporary Indonesia*, The Modern Anthropology of Southeast Asia (New York: Routledge, 2014); Leslie Palmier, "Indonesia: Corruption, Ethnicity and the 'Pax Americana'," *Asian Affairs* 37, no. 2 (2006): 147–60.

the other hand, studies on corruption in the legislative process indicate that bribery and political transactions do not only occur during elections; more critically, they continue into the law-making process, both at the national and regional levels, thereby producing regulations that are vulnerable to narrow and oligarchic interests.[12] These studies clearly demonstrate that the involvement of former corruption convicts in politics reflects a structural problem that continues to perpetuate corrupt practices.

The conditions identified in the mapping of studies above can be described as a democratic anomaly or, in John Keane's terms, democratic hypocrisy.[13] The lofty ideals of democracy must confront challenges that distort its very character. On the one hand, democracy is a means of building civilization;[14] on the other hand, particularly in Indonesia, it instead produces corrupt political practices.[15] In Burhanuddin Muhtadi's reading, Indonesian democracy appears consolidated on the surface—elections are held regularly and participation is relatively high—yet at the level of practice, the electoral logic is dominated by clientelism and money politics, where candidates' electability is determined more by their capacity to distribute resources than by their record of integrity.[16] In such a situation, moral labels such as "former corruption convict" do not automatically become an electoral disincentive, as long as candidates are able to build patronage networks and provide material incentives to voters. Nevertheless, some studies on corruption still tend to treat corruption, democracy, and human rights as separate analytical domains, so that the interconnections among them have not been fully elaborated. Furthermore, the existing literature remains relatively limited in explaining how electoral democratic mechanisms—through political recruitment, clientelism-based competition, and regulatory loopholes—enable the reproduction of actors with corruption records within power structures. In this context, attention to the implications for the systemic fulfillment of human rights also remains underdeveloped.

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[12] Derwin Tambunan, "The Intervention of Oligarchy in the Indonesian Legislative Process," *Asian Journal of Comparative Politics* 8, no. 2 (2023): 637–53; Asrinaldi, Mohammad Agus Yusoff, and Dan Zamzami Abdul Karim, "Oligarchy in the Jokowi Government and Its Influence on the Implementation of Legislative Function in Indonesia," *Asian Journal of Comparative Politics* 7, no. 2 (2022): 189–203; Herlambang Perdana Wiratraman, "The Collapse of Negara Hukum: How Indonesia's Rule of Law Has Been Shaped by Embedded Oligarch Politics?," *The Indonesian Journal of Socio-Legal Studies* 4, no. 2 (2025): 1–15.

[13] John Keane, "Hypocrisy and Democracy – The Gap between Ideals and Perceived Reality Is Widening," *WZB-Mitteilungen* (Berlin), June 2008. In this article, Keane explains that democratic hypocrisy refers to the gap between the normative promises of democracy and its actual political practices, where actors and institutions fail to uphold the values they profess, thereby generating public distrust in democratic systems.

[14] Christopher Hobson, "Democracy as Civilisation," *Global Society* 22, no. 1 (2008): 75–95.

[15] Silitonga et al., "Democratizing Corruption."

[16] See also Muhtadi's analysis of how clientelism operates as an "embedded norm" within Indonesia's electoral democracy, where patron–client relations and vote-buying practices are not merely incidental but institutionalized within party and candidate strategies. Within this framework, voter rationality tends to be pragmatic and instrumental, with the distribution of short-term benefits often outweighing ethical evaluations of candidates' track records. This condition helps explain why candidates with backgrounds as former corruption convicts continue to retain electoral viability, as the existing incentive structure fails to generate effective punitive mechanisms against corrupt behavior in the political arena. See: Muhtadi, *Kuasa Uang: Politik Uang Dalam Pemilu Pasca-Orde Baru*.

In response to this gap, this study departs from the question of how democratic practices in Indonesia, particularly through electoral mechanisms, in fact enable the return of actors with corruption records into structures of power. Within a configuration shaped by clientelism and regulatory loopholes, electoral mechanisms do not always function as instruments of public selection; rather, they have the potential to become a medium for the reproduction of power that is exclusive and transactional. Based on this problem, this study aims to re-examine the relationship between corruption, democracy, and human rights by positioning electoral mechanisms as the locus of analysis. Specifically, this research critiques the paradox of democracy as a normative ideal that, in practice, can operate in a contradictory manner within a state capture framework, and explores its implications for the capacity of law to ensure the substantive protection of rights. Ultimately, the contribution of this article is to offer a critical reading of Indonesian democracy, not merely as a system experiencing distortion, but as a structure that, under certain conditions, is capable of normalizing corrupt practices while simultaneously weakening the systemic protection of rights.

After this introductory section, the article is organized as follows. First, it outlines the methodological framework, explaining the use of a qualitative approach grounded in a critical legal perspective, along with the unit of analysis and analytical techniques employed . Second, it presents an empirical mapping of former corruption convicts in legislative candidacy, highlighting patterns of political party behavior and electoral strategies. Third, it examines the normative framework governing political rights, focusing on the extent to which the legal system enables or constrains such candidacies. Fourth, the discussion advances to a broader structural analysis by exploring the interaction between state capture and clientelistic practices as underlying mechanisms that sustain the persistence of corruption within democratic processes. Fifth, the article adopts a human rights-based approach to assess the implications of these dynamics for the protection and fulfillment of citizens' rights. Sixth, it critically analyzes the concept of democratic hypocrisy, demonstrating how formal democratic procedures may coexist with substantive distortions of power. Finally, the article concludes by outlining key implications for democracy, law, and human rights in Indonesia.

Methodology

This study is guided by critical legal studies, which views law not as a neutral system, but as a product of power relations that shape its formation, interpretation, and application.[17] Therefore, a qualitative research approach is employed to enable

[17] This critique further developed through the Critical Legal Studies (CLS) movement and socio-legal approaches, both of which emphasize the intrinsic relationship between law and power. See Duncan Kennedy, *Legal Education as Training for Hierarchy,* (New York: Pantheon Books, 1982), 40–61; Morton J. Horwitz, *Transformation of American Law, 1780-1860* (Cambridge: Harvard University Press, 1977); Mark Tushnet, "Following the Rules Laid Down: A Critique of Interpretivism and Neutral Principles", *Harvard Law Review* 96, no. 4 (1983): 781–827; and K. Klare, "Law-Making as Praxis," *Telos* 1979, no. 40 (1979): 123–35; This line of critique is also rooted in the tradition of legal realism, which rejects the notion of legal certainty and highlights the role of subjectivity in judicial practice. See Jerome Frank, *Law and the Modern*

in-depth and contextual analysis. The unit of analysis in this study includes legal norms on political rights, electoral policies, and legislative candidacy practices involving former corruption convicts. To capture this complexity, this study uses three categories of legal materials as presented in Table 1.

Table 1. Classification of Legal Materials.

Type of Legal Material	Source/Regulation	Analytical Function
Primary Legal Materials	Election laws, constitutional provisions, court decisions	Normative legal analysis (legal consistency and validity)
Secondary Legal Materials	ICW reports, academic literature, policy analysis	Contextual analysis
Tertiary Legal Materials	Legal concepts, dictionaries, theoretical frameworks	Conceptual clarification and interpretation

Source: Authors' compilation.

The analytical technique is conducted through three interrelated stages. First, normative analysis is used to assess the consistency and coherence of the legal framework governing political rights. Second, contextual analysis is employed to examine how these norms are implemented in practice, particularly in relation to the behavior of political parties and electoral dynamics. Third, critical analysis is carried out to reveal the underlying power relations, including patterns of state capture, clientelism, and democratic hypocrisy. Through this methodological framework, the study not only examines legal norms but also uncovers contradictions, structural biases, and their socio-political implications within the democratic system in Indonesia.

Mapping of Former Corruption Convicts in Legislative Candidacy

The nomination of legislative candidates with a history as former corruption convicts constitutes an important entry point for examining the paradox within contemporary electoral democracy. Rather than being an isolated case, such nominations reflect a broader pattern in the behavior of political parties and electoral strategies. To illustrate this tendency, the distribution of these candidates by political party is presented in Table 2 below.

Table 2. Political Parties Supporting Legislative Candidates with Former Corruption Convictions in 2024.

No	Supporting Political Parties	DPRD	DPR RI	Total
1	Golkar	3	6	9
2	Nasdem	2	5	7
3	PKB	2	4	6
4	Hanura	4	2	6
5	Demokrat	2	3	5
6	PDIP	1	4	5

Mind (New York: Brentano's, 1930); For a more comprehensive understanding of these critiques, see Roberto Mangabeira Unger, *Knowledge and Politics, Reissue* (New York: Free Press, 1976); and Roberto Mangabeira Unger, "The Critical Legal Studies Movement," *Har* 96, no. 3 (1983): 561–675.

7	Perindo	2	2	4
8	PPP	3	1	4
9	PKS	1	–	1
10	PBB	1	–	1
11	Buruh	1	–	1
Total		22	27	49

Source: Indonesia Corruption Watch, 2023.

The data in Table 2 show a significant distribution of legislative candidates with a history as former corruption convicts across various political parties, with a total of 49 individuals at the DPRD and DPR RI levels. In addition, Indonesia Corruption Watch (ICW) identified seven additional candidates specifically for the DPR RI, bringing the overall total to 56 individuals. These findings indicate that the presence of former corruption convicts in the nomination process is not merely an anomaly or a sporadic deviation, but has become an institutionalized component within party political recruitment mechanisms. In other words, the candidacy process is no longer fully based on ethical standards or public integrity, but increasingly reflects a strategic rationality oriented toward electoral victory. Further analysis of candidate placement patterns reinforces this argument. Of the 49 identified candidates, 27 were placed in positions one and two—positions that structurally have higher electoral prospects within Indonesia's open-list proportional system. Thus, approximately 55% of these candidates gained access to positions that systemically increase their likelihood of being elected. This placement cannot be understood as merely an administrative decision. Rather, it reflects a form of political preference that embodies the parties' rational calculation in maximizing vote acquisition. In this context, the status of being a former corruption convict is not treated as a political disincentive; instead, it is renegotiated as part of electoral capital, particularly when candidates possess patronage networks, financial resources, and strong support bases.

Furthermore, this pattern reveals a shift in logic within the candidate selection process from a normative basis toward an instrumental one. Integrity, accountability, and ethical track records, which should constitute prerequisites in a representative democratic system, are instead subordinated to considerations of electability and the effectiveness of vote mobilization. This argument is consistent with the findings of Burhanuddin Muhtadi, who shows that vote buying continues to be used because of its significant impact in helping candidates secure seats, despite the high level of leakage associated with the practice.[18] Thus, electoral calculations no longer rest on programmatic capacity or candidate integrity, but on the ability to convert resources into electoral support. Within a broader framework, Edward Aspinall demonstrates that electoral competition in Indonesia operates through a market logic, in which candidates utilize personal broker

[18] Burhanuddin Muhtadi, *Vote Buying in Indonesia: The Mechanics of Electoral Bribery* (Singapore: Springer Singapore, 2019).

networks, payments, and voter-targeting strategies to obtain votes.[19] This condition is reinforced by the analysis of Edward Aspinall and Ward Berenschot, which shows that the distribution of money and goods constitutes a key factor in political success, allowing wealthy politicians and actors backed by business networks to gain a competitive advantage in elections.[20] Marcus Mietzner further demonstrates that weak party financing design renders political parties vulnerable to oligarchic interest manipulation and encourages them to access state resources.[21] From the perspective of Vedi Hadiz and Richard Robison, this pattern can be understood as part of the reorganization of oligarchic power, in which control over public institutions becomes an instrument for wealth accumulation and political domination.[22] Therefore, as warned by Eve Warburton et al., such practices not only indicate weaknesses in candidate recruitment but also form part of democratic regression,[23] as electoral procedures continue to operate while the substantive values of democracy are increasingly hollowed out.

On the other hand, within this framework, political parties no longer function as institutions of cadre formation and political education. Rather, they can be categorized as pragmatic vehicles that accommodate actors with high electoral capacity, regardless of their normative background. As a result, the nomination mechanism not only reflects the institutional weaknesses of political parties but also reveals how substantive democratic standards are eroding from within. This is supported by several previous studies. For instance, M. Mukhlis et al. explicitly argue that parties adopt a pragmatic approach aimed at winning elections rather than ensuring candidate quality,[24] reflecting philosophical and sociological challenges in recruitment. Ingrid van Biezen and Thomas Poguntke reinforce this transformation, noting that parties have become organizational vehicles for those for whom politics is a profession rather than a vocation,[25] replacing traditional membership-based participation. However, evidence of democratic erosion is more nuanced. For example, Gideon Rahat et al. find that inclusiveness, competition, and representativeness in nominations cannot be maximized simultaneously, indicating structural trade-offs rather than a simple

[19] Edward Aspinall et al., "Vote Buying In Indonesia: Canditade Strategies, Market Logic and Effectiveness," *Journal of East Asian Studies* 17, no. 1 (2017): 1–27.

[20] Edward Aspinall and Ward Berenschot, *Democracy for Sale: Elections, Clientelism, and the State in Indonesia* (Ithaca: Cornell University Press, 2019).

[21] Marcus Mietzner, *Money, Power, and Ideology: Political Parties in Post-Authoritarian Indonesia* (Singapore: NUS Press, 2013).

[22] Vedi R. Hadiz and Richard Robison, "The Political Economy of Oligarchy and the Reorganization of Power in Indonesia," *Cornell University Press*, no. 96 (2013): 35.

[23] Eve Warburton, Edward Aspinall, and Post-doctoral research fellow at the Asia Research Institute, National University of Singapore, "Explaining Indonesia's Democratic Regression: Structure, Agency and Popular Opinion," *Contemporary Southeast Asia* 41, no. 2 (2018): 255–85.

[24] Mukhlis et al., "Ius Constituendum Regulates the Cadre-Based Recruitment of Candidates for Members of the House of Representatives Through Political Parties."

[25] Ingrid Van Biezen and Thomas Poguntke, "The Decline of Membership-Based Politics," *Party Politics* 20, no. 2 (2014): 205–16.

erosion.[26] Anika Gauja also documents declining party membership and failures in democratic performance, while noting that more inclusive selection mechanisms do not necessarily produce better outcomes.[27]

The implications of these conditions are structural. When candidates with corruption records are not only accommodated but also prioritized in strategic positions, the electoral process has the potential to reproduce the same patterns of power that previously generated corrupt practices. In line with B. Rundquist et al., who find that voters trade off information that a candidate is corrupt in exchange for other attributes they value in the candidate, suggesting electoral immunity for corrupt officials,[28] Caroline Paskarina also documents how corrupt incumbents in Indonesia's regional elections receive relatively significant votes through clientelistic networks that reframe corruption issues.[29] Regarding structural reproduction, Jana Kunicová and Susan Rose-Ackerman show that electoral rules themselves affect vulnerability to corruption, with proportional representation systems being more prone to corrupt rent-seeking.[30] M. Huda further notes that systematic, structured, and massive violations in regional elections can result in re-elections despite such violations. Thus, democracy functions as a medium for the reproduction of problematic actors and networks.[31] In this context, these findings can be read as an initial indication of what is conceptualized as democratic hypocrisy, namely a condition in which democratic procedures formally continue to operate in accordance with the principles of representation, participation, and accountability, yet substantively produce configurations of power that contradict those very principles.[32] Therefore, this contradiction does not only lie at the level of practice but also reflects a fundamental tension between democratic norms and the political realities produced by the interaction of electoral interests, institutional weaknesses, and the rationality of power.

Restrictions on Political Rights

The findings on the systematic pattern of nominating former corruption convicts cannot be fully understood without examining the normative framework governing political rights within Indonesia's legal system. If the previous section shows that political parties actively accommodate and even prioritize candidates with corruption records, the fundamental question is: to what extent does the legal

[26] Gideon Rahat, Reuven Y. Hazan, and Richard S. Katz, "Democracy and Political Parties: On the Uneasy Relationships between Participation, Competition and Representation," *Party Politics* 14, no. 6 (2008): 663–83.

[27] A. Gauja, "Democracy ithin Parties: Candidate Selection Methods and Their Political Consequences," *Parliamentary Affairs* 65, no. 2 (2012): 478–84.

[28] Barry S. Rundquist, Gerald S. Strom, and John G. Peters, "Corrupt Politicians and Their Electoral Support: Some Experimental Observations," *American Political Science Review* 71, no. 3 (1977): 954–63.

[29] Caroline Paskarina, "Surviving Election: Corruption and Transformation of Clientelism," *PCD Journal* 5, no. 2 (2017): 267.

[30] Jana Kunicová and Susan Rose-Ackerman, "Electoral Rules and Constitutional Structures as Constraints on Corruption," *British Journal of Political Science* 35, no. 4 (2005): 573–606.

[31] Miftakhul Huda, "Pola Pelanggaran Pemilukada dan Perluasan Keadilan Substantif," *Jurnal Konstitusi* 8, no. 2 (2016): 113-60.

[32] Keane, "Hypocrisy and Democracy – The Gap between Ideals and Perceived Reality Is Widening."

system provide space for such practices to occur? This phenomenon is not merely a deviation in practice, but rather a consequence of a permissive normative construction, weak party institutionalization, and weak law enforcement.[33] Therefore, an analysis of the limitation of political rights becomes crucial to determine whether this phenomenon is merely a deviation in practice or is instead rooted in a permissive normative construction.

The Indonesian context reflects a contentious and dynamic tension between normative frameworks and the enforcement of electoral law. This is exemplified by the annulment of the General Elections Commission (KPU) policy prohibiting former corruption convicts from contesting elections, which the Supreme Court found to be inconsistent with Article 240 (1) (g) of the General Election Law. In its decision, the Court held that the policy unjustifiably restricted the fundamental rights of individuals to vote and to be elected, as guaranteed under Article 28 of the 1945 Constitution and Article 43(1) of the Human Rights Law. These rights are further recognized as fundamental within international human rights instruments, particularly the *International Covenant on Civil and Political Rights (ICCPR)*, as well as under Article 73 of the Human Rights Law. Consequently, any restriction imposed through subordinate regulations or policy instruments must adhere to the principles of legality, necessity, and proportionality. In this regard, the KPU's policy was deemed disproportionate and inconsistent with the established standards governing permissible limitations on human rights under both the ICCPR and domestic law.[34]

Normatively, decisions of the Supreme Court carry significant authority in affirming that any restriction on political rights must be grounded in law. However, this position generates a fundamental dilemma in the enforcement of electoral regulations, as the Election Law itself does not impose explicit limitations on the political rights of individuals convicted of corruption. This raises a critical question: does restricting the political rights of former corruption convicts constitute a violation of human rights, or does the unconditional protection of such rights instead create broader vulnerabilities—particularly for voters and constituents exposed to a democratic system shaped by clientelistic practices? From a constitutional perspective, reference must be made to Article 28I(1) of the 1945 Constitution, which delineates a limited set of non-derogable rights, including the right to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and protection from retroactive prosecution. The explicit limitation of non-derogable rights implies that other rights, including the right to

[33] Hasto Kristiyanto, Satya Arinanto, and Hanief Saha Ghafur, "Institutionalization and Party Resilience in Indonesian Electoral Democracy," *Heliyon* 9, no. 12 (2023): e22919; Shelvi Rusdiana et al., "Political Rights of Ex-Corruptors Vis a Vis Electoral Integrity in Indonesia," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 14, no. 1 (2025): 234.

[34] Ade Adhari, Tunjung Herning Sitabuana, and Luisa Srihandayani, "Kebijakan Pembatasan Internet Di Indonesia: Perspektif Negara Hukum, Hak Asasi Manusia, Dan Kajian Perbandingan," *Jurnal Konstitusi* 18, no. 2 (2021): 262–93.

vote and to be elected, fall within the category of derogable rights. Consequently, these rights may be subject to restriction, provided that such limitations are justified, proportionate, and established in accordance with legal and constitutional principles.[35]

Although political rights may, in principle, be restricted to safeguard citizens from the adverse effects of a distorted or hypocritical democratic process,[36] any such limitations must remain consistent with established human rights principles.[37] First, restrictions must be prescribed by law, rather than imposed through subordinate regulations or administrative policies. Legislative restrictions carry greater legitimacy, as they are grounded in clear and certain legal norms and emerge from a formal political process that reflects constitutional values and public representation. In this regard, the Election Law does not impose an absolute prohibition on the political rights of former convicts. Instead, Article 240(1)(g) introduces a conditional limitation: individuals who have been convicted of offenses punishable by five years' imprisonment or more are permitted to run for legislative office only if they openly and honestly disclose their status as former convicts to the public. This provision reflects a normative compromise, balancing the protection of political rights with the need for transparency and accountability. It effectively shifts the evaluative responsibility to the electorate, enabling voters to exercise informed political judgment in determining whether a candidate merits a second opportunity and whether a former corruption offender can be trusted considering their past conduct. In this sense, the provision creates an important deliberative space within the democratic process. Additional restrictions may also be imposed under Article 90(1) of the National Criminal Code, whereby courts may limit certain rights for a specified period, depending on the severity of the sentence. Such judicially imposed restrictions derive their constitutional legitimacy, inter alia, from Constitutional Court Decision No. 56/PUU-XII/2019, which affirms the permissibility of proportionate limitations on political rights within a constitutional framework.[38]

Second, restrictions implemented through the disclosure or public declaration of candidates as former corruption convicts are intended to strengthen democratic accountability; however, their effectiveness ultimately depends on the level of citizens' education and political awareness within Indonesia's democratic

[35] Sania Nabila Ahmad, "Pembatasan Hak Bagi Mantan Terpidana Korupsi Menjadi Calon Kepala Daerah: Restrictions on the Rights of Former Corruption Convicts to Become Regional Head Candidates," *UMPurwokerto Law Review* 5, no. 1 (2025): 1–10.

[36] Zainal Arifin Mochtar, "Antinomi Dalam Peraturan Perundang-Undangan Di Indonesia," *Hasanuddin Law Review* 1, no. 3 (2015): 316; Wahyudi Djafar, "Menegaskan Kembali Komitmen Negara Hukum: Sebuah Catatan atas Kecenderungan Defisit Negara Hukum di Indonesia," *Jurnal Konstitusi* 7, no. 5 (2016): 151-74.

[37] Dian Ayu Widya Ningrum, Al Khanif Al Khanif, and Antikowati Antikowati, "Format Ideal Tindak Lanjut Putusan Mahkamah Konstitusi Untuk Mengefektifkan Asas Erga Omnes," *Jurnal Konstitusi* 19, no. 2 (2022): 314-58; Lukman Hakim and Nalom Kurniawan, "Membangun Paradigma Hukum HAM Indonesia Berbasis Kewajiban Asasi Manusia," *Jurnal Konstitusi* 18, no. 4 (2022): 869-97.

[38] Rahmanu Wijaya Maya, Oksiana Jatiningsih, and Harmanto Harmanto, "The Principle of Restricting Political Rights for Ex-Convicts of Corruption in the 2020 Regional Head Elections," *Proceedings of the International Joined Conference on Social Science (ICSS 2021)* (Dordrecht), 2021, 137–45.

process.[39] The quality of democracy is closely linked to the level of citizens' education and political awareness: the more informed and politically conscious the electorate, the more robust and substantive democratic outcomes will be. Conversely, low levels of civic awareness risk reducing democracy to a mere façade, marked by procedural formality but lacking genuine integrity. In this context, restrictions on political rights may be justified when they are necessary to protect the public interest and to ensure the proper functioning of a democratic society, as stipulated in Article 28J (2) of the 1945 Constitution. The requirement that candidates disclose their status as former corruption convicts can thus be understood as a mechanism for balancing individual rights with the broader public interest. Specifically, it serves to uphold the public's legitimate expectation of a democratic system grounded in transparency, accountability, and integrity.[40]

Third, such restrictions may also be grounded in the Siracusa Principles, which are consistent with Article 28J (2) of the 1945 Constitution and further elaborate the requirement of proportionality. In this context, the exercise of political rights may be conditioned upon the public disclosure of a candidate's criminal record as a former corruption convict, provided that the measure is applied in a non-discriminatory manner and serves a legitimate public interest.[41] In this regard, the General Elections Commission (KPU) must ensure the effective enforcement of electoral regulations through rigorous assessment and monitoring of candidates to verify compliance with disclosure requirements. Such oversight should extend to both in-person campaign activities and digital platforms. Furthermore, the KPU should incorporate a clear designation identifying candidates as former corruption convicts during the public candidate introduction phase, both in physical settings and on its official website, to promote transparency and enable informed electoral decision-making.

Of the three points outlined above, the policy restricting the political rights of former corruption convicts lacks strong legal validity, as it contradicts both the Election Law and relevant Constitutional Court rulings. This suggests that the core problem of a hypocritical democratic practice does not lie primarily in normative contestation, but rather in the ineffective enforcement of Article 240(1)(g) of the Election Law. In addition, this normative configuration reveals a deeper paradox: while the legal framework formally protects political rights as part of democratic guarantees, it simultaneously enables the re-entry of actors associated with corruption into the political arena. Several studies reinforce this analysis. Wangga et al. show that law enforcement through criminal policy still has significant shortcomings, including relatively lenient sanctions for corruption offenders and

[39] Riska Sarofah, "Pengaruh Pendidikan Politik Gen Z dan Millenial Terhadap Upaya Mewujudkan Pemilu Serentak Tahun 2024 Yang Berintegritas," *Jurnal Ilmu Politik dan Pemerintahan* 9, no. 1 (2023): 70–79.

[40] Anbar Jayadi, "What Constitutes as Limitation of (Human) Rights in Indonesian Legal Context?," *Hasanuddin Law Review* 3, no. 3 (2017): 290–306.

[41] Manotar Tampubolon, "Impoverishment of the Poor and Derogation of Human Rights During the Covid-19 Pandemic in Indonesia: Testing the Emergency Measure and Siracusa Principles in Large-Scale Social Restriction," *Journal of Human Rights and Social Work* 7, no. 1 (2022): 91–103.

a lack of judicial willingness to impose additional penalties such as temporary revocation of political rights.[42] This finding supports the thesis of an enforcement gap. Similarly, Janpatar Simamora and R. Manik conclude that, despite the existence of various anti-corruption regulations, enforcement mechanisms remain inconsistent and ineffective.[43] More broadly, Haryoko Bambang Widjayanto and Yoga Tri Hartanto demonstrate that selective and politically influenced law enforcement indicates that the principle of equality before the law has not been consistently upheld,[44] thereby reinforcing the paradox between formal legal protection and its erosion in practice. In this sense, the law does not merely regulate political participation but inadvertently facilitates the reproduction of power structures that undermine the substantive integrity of democracy.

To address this issue, several corrective measures should be undertaken. First, a rigorous assessment mechanism is urgently required as an initial screening process for candidates with prior corruption convictions. Second, the General Elections Commission (KPU) must ensure that candidates' track records and background information are transparently and effectively communicated to the public. Third, periodic monitoring should be conducted to guarantee that candidates consistently and honestly disclose their status as former corruption convicts. Finally, political education must be recognized as a state obligation, to be implemented by institutions such as the KPU and Bawaslu, to enhance public awareness of democratic processes and strengthen the electorate's capacity to evaluate the integrity of candidates.

State Capture and Clientelism Practices

This section advances the central argument that the persistence of corruption in Indonesia is not merely the result of individual misconduct, but rather the product of a structurally distorted democratic system characterized by the interaction between state capture and clientelistic practices.[45] Drawing on the concept of "democratic hypocrisy," as articulated by John Keane, this study conceptualizes democracy as operating within a paradox: while it formally promises representation, accountability, and equality, in practice it often reproduces elite domination and exclusionary power relations. Democratic procedures, in this

[42] Maria Silvya E. Wangga, Pujiyono Pujiyono, and Barda Nawawi Arief, "Revocation of Political Rights of The Perpetrators of Criminal Acts of Corruption," *Journal of Indonesian Legal Studies* 4, no. 2 (2019): 277–98.

[43] Janpatar Simamora and Risma Elfrida Esther Manik, "Legal Politics in Combating Corruption During Indonesia's Era of Regional Autonomy," *Journal of Indonesian Legal Studies* 10, no. 1 (2025): 135–64.

[44] Haryoko Bambang Widjayanto and Yoga Tri Hartanto, "The Rule of Law, the Constitution, and Democracy in Indonesian State Administration Practice," *International Journal of Law, Crime and Justice* 2, no. 4 (2025): 54-59.

[45] See: Richard Robison, *Indonesia: The Rise of Capital* (Australia: Allen & Unwin, 1986); Richard Robison and Vedi R. Hadiz, *Reorganising Power in Indonesia: The Politics of Oligarchy in an Age of Markets*, Routledgecurzon/City University of Hong Kong Southeast Asian Studies (London; New York: RoutledgeCurzon, 2004); Law No. 22 of 1999 on Regional Government; Law No. 32 of 2004 on Regional Government; Edward Aspinall and Ward Berenschot, *Democracy For Sale: Elections, Clientelism, and The State in Indonesia* (Ithaca: Cornell University Press, 2019); Burhanuddin Muhtadi, *Vote Buying in Indonesia: The Mechanics of Electoral Bribery* (Singapore: Springer Singapore, 2019); Law No. 19 of 2019 Amending Law No. 30 of 2002 on the Corruption Eradication Commission; Law No. 11 of 2020 on Job Creation; Law No. 3 of 2020 Amending Law No. 4 of 2009 on Mineral and Coal Mining.

sense, risk becoming performative instruments or mechanisms through which political actors construct legitimacy without substantively fulfilling the social contract with citizens.[46] In the Indonesian context, this paradox is particularly visible in electoral politics. Democratic competition frequently devolves into a contest among political actors who mobilize resources and influence through informal and often undemocratic means. Two interrelated factors contribute significantly to this condition. First, the inconsistency of electoral policies (particularly those governing the political rights of former corruption convicts) creates normative ambiguity and weakens the integrity of democratic standards.[47] Second, the failure of political parties to function as institutions of political education and cadre development has resulted in their transformation into vehicles of elite pragmatism.[48] Rather than cultivating qualified leadership, parties are increasingly co-opted by actors capable of delivering electoral success, thereby reinforcing oligarchic tendencies.

Within this environment, the openness of political access to individuals with prior corruption convictions may reinforce patterns of elitism and oligarchic representation. Such dynamics are not normatively neutral; they have profound implications for human rights. When political institutions are captured by elite interests, public policy risks being shaped not by the collective needs of citizens but by the strategic interests of dominant actors. This aligns with findings in existing scholarship, including studies demonstrating how oligarchic influence redirects policy agendas, particularly in areas such as investment and resource allocation toward private gain, a phenomenon widely conceptualized as state capture.[49] The concept of state capture has been extensively theorized in comparative political economy. Ivor Chipkin and Mark Swilling, for instance, define it as a process through which state institutions, policies, and resources are systematically redirected to serve interests that deviate from the formal objectives of the state.[50] This process requires not only control over institutional mechanisms but also the establishment of durable political relationships capable of sustaining such control. It is within this context that clientelism emerges as a foundational mechanism. Clientelism operates as both an entry point and a sustaining force of state capture. It is predicated on the exchange of material benefits for political loyalty, thereby transforming citizenship into a transactional relationship.

As argued by Muhammad Ramadhan and Jimmy Oley, clientelism persists due to two primary conditions: the failure to fulfill substantive citizenship rights and the distortion of formal political interactions. When access to civil, political,

[46] Keane, "Hypocrisy and Democracy – The Gap between Ideals and Perceived Reality Is Widening."
[47] Munthe and Dewi, "The Political Rights of Former Corruption Convicted Prisoners to Run in 2019 Legislative Election and 2020 Regional Head General Election."
[48] Mietzner, "Dysfunction by Design."
[49] Emirzal Emirzal et al., "The Correlation Between State Capture, Grand Corruption, Petty Corruption, and Investment in Indonesia," *Integritas: Jurnal Antikorupsi* 9, no. 2 (2023): 157-170.
[50] Ivor Chipkin and Mark Swilling, *Shadow State: The Politics of State Capture* (Johannesburg: Wits University Press, 2018).

and socio-economic rights is limited, citizens are incentivized to rely on patron-client relationships as alternative channels for securing basic needs.[51] This dynamic is often reinforced through practices such as vote-buying, targeted social assistance, and the strategic distribution of public resources during electoral periods. Such practices normalize what may be described as the "banalization" of democratic distortion, whereby transactional politics is perceived as legitimate or even necessary. Over time, this erodes the normative foundations of democracy and entrenches a cycle in which clientelism both sustains and is sustained by weak institutional accountability.[52]

Empirical observations further demonstrate how these dynamics manifest in governance practices, including bureaucratic corruption, weak oversight mechanisms, misuse of public resources, and a persistent culture of impunity.[53] As noted by Lily Sitorus, these patterns are particularly evident at the local level, where limited institutional capacity exacerbates vulnerabilities to corruption and elite capture.[54] The relationship between clientelism and state capture becomes even more pronounced in the context of incumbency. As argued by Anna Grzymala-Busse, political actors who gain initial access to power can consolidate and expand patronage networks through control over policies, licenses, and budgetary allocations. This consolidation enables incumbents to build self-reinforcing political machines that distribute economic rents in exchange for continued support, thereby entrenching their dominance.[55] For former corruption convicts seeking re-entry into the political arena, these structures provide both opportunity and continuity. Having previously navigated and, in some cases, controlled such systems, they may retain access to networks, resources, and institutional knowledge that facilitate the reconstruction of patronage relationships. In contexts where asset recovery mechanisms are weak, the persistence of illicitly acquired resources further enhances their capacity to reassert influence. Consequently, clientelism and state capture do not merely operate as abstract concepts but as practical tools for the reproduction of political power.

From a human rights perspective, these dynamics pose significant risks. Clientelism and state capture contribute to the systematic marginalization of citizens' rights by subordinating public policy to elite interests. Access to basic rights such as welfare, public services, and economic opportunities becomes contingent upon political loyalty rather than guaranteed as a matter of citizenship.

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[51] Muhammad Nur Ramadhan and Jimmy Daniel Berlianto Oley, "Klientelisme Sebagai Perilaku Koruptif Dan Demokrasi Banal," *Jurnal Antikorupsi Integritas* 5, no. 1 (2019): 173–74.

[52] Mugiyanto Mugiyanto, "Hubungan Oligarki Kekuasaan Dengan Politik Hukum Penguasa," *Jurnal Penegakan Hukum Indonesia* 3, no. 1 (2022): 25.

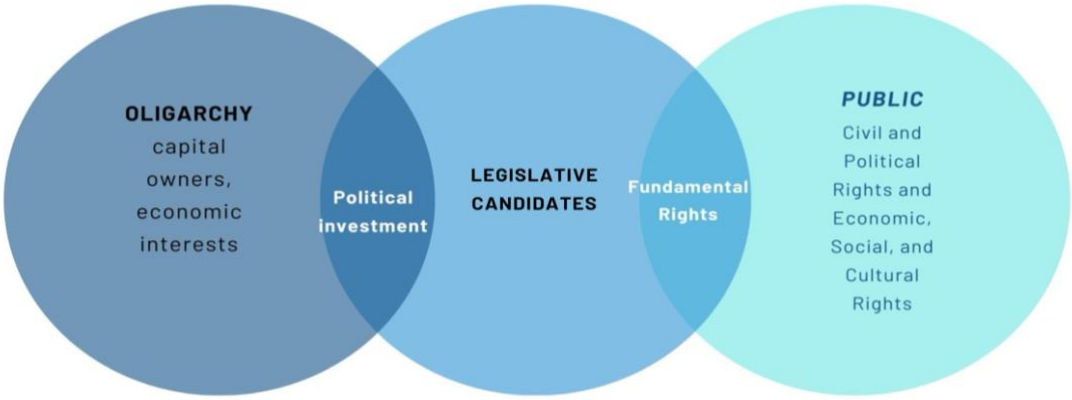
[53] Ramadhan and Oley, "Klientelisme Sebagai Perilaku Koruptif Dan Demokrasi Banal."

[54] Lily Evelina Sitorus, "State Capture: Is It a Crime? How the World Perceived It," *Indonesia Law Review* 1, no. 2 (2011): 56–57.

[55] Anna Grzymala-Busse, "Beyond Clientelism: Incumbent State Capture and State Formation," *Comparative Political Studies* 41, no. 4–5 (2008): 638-73.

In this sense, poverty and inequality are not incidental outcomes but are structurally reproduced as mechanisms of political control. This analysis resonates with Aqil Irham's characterization of democracy as "two-faced," operating simultaneously through formal institutional structures and informal power relations. On the one hand, a neo-institutionalist dimension emphasizes the reorganization of power through formal mechanisms, including legislation and policy-making processes. On the other hand, the relational dimension highlights the role of clientelism in shaping how power is exercised and maintained. The interaction between these dimensions determines the extent to which democracy functions as a vehicle for justice or as an instrument of domination.[56] This struggle begins in the legislative process in parliament. Indeed, the test of democracy is in the struggle over the political configuration of the law in parliament.[57] If the configuration is democratic, then politics can open up space for justice. Conversely, if the configuration consists of corrupt actors, then policy design is like a dowry for oligarchic groups. If the latter happens, then state capture has entered a darker scale of resurgence, which is the second face of power relations or clientelism that will deprive human rights.

Figure 1. Power Relations or Clientelism Reciprocity Diagram.



Source: Design by authors'

The diagram above illustrates the reciprocity between the interests of the oligarchs who make political investments with legislative candidates. Reciprocity constitutes a defining feature of patron–client relations between legislative candidates and the electorate. In the case of candidates who are former corruption convicts, this dynamic often evolves into a form of symbiotic exchange with oligarchic interests. Leveraging substantial political capital, these actors are able to reconstruct and expand their voter networks through the distribution of economic rents and the selective provision of basic goods and services. Such strategies are particularly effective among marginalized communities with limited access to fundamental rights. In practice, these benefits may take the form of social

[56] Muhammad Aqil Irham, *Demokrasi Muka Dua: Membaca Ulang Pilkada di Indonesia* (Jakarta: Kepustakaan Populer Gramedia, 2016).

[57] Solikhul Hadi, "Pengaruh Konfigurasi Politik Pemerintah Terhadap Produk Hukum," *Addin: Media Dialektika Ilmu Islam* 9, no. 2 (2015): 385.

assistance, financial support, or, more explicitly, vote-buying practices. While these exchanges may produce short-term material gains for citizens, they are typically confined to electoral cycles. Once elections conclude, what should be guaranteed as rights of citizenship are gradually withdrawn or subordinated to political interests. This pattern is strongly supported by the literature on clientelism and electoral politics. Susan C. Stokes et al. argue that clientelistic relations are fundamentally based on reciprocal exchanges in which material benefits are traded for political loyalty, often reinforced through monitoring mechanisms that ensure voter compliance.[58] In the Indonesian context, Edward Aspinall and Ward Berenschot demonstrate that electoral competition is heavily shaped by the distribution of resources, where candidates with greater financial capacity and access to patronage networks enjoy structural advantages in mobilizing voters.[59] Similarly, Burhanuddin Muhtadi finds that vote-buying practices are particularly effective among lower-income voters, indicating that economic vulnerability plays a crucial role in sustaining such exchanges.[60] From a broader structural perspective, Vedi R. Hadiz and Richard Robison explain that these practices are embedded within oligarchic power structures that enable the distribution of economic rents as a mechanism for maintaining political dominance.[61]

Upon securing office, political actors are positioned to consolidate their influence by shaping state policies and institutional arrangements. In this phase, policy agendas frequently shift toward the prioritization of investment and extractive industries, while regulatory frameworks are reconfigured to facilitate such interests. Over the past decade, these developments have increasingly aligned with oligarchic agendas. Legislative changes, including the revision of the Anti-Corruption Commission Law, have been widely interpreted as weakening institutional capacity to combat corruption. Similarly, the amendment of the Mineral and Coal Law and the enactment of the Job Creation Law illustrate how legal reforms can serve as instruments for consolidating elite economic interests. At the subnational level, these patterns are reinforced through practices such as the commodification of licenses in the plantation and mining sectors, often resulting in the marginalization and displacement of indigenous communities. This argument is consistent with several strands of the literature. For instance, J. Muslimin and Novita Akria Putri explicitly argue that revisions to the Corruption Eradication Commission (KPK) Law and the Omnibus Law have strengthened oligarchic influence while weakening anti-corruption institutions.[62] Derwin

[58] Susan C. Stokes et al., *Brokers, Voters, and Clientelism: The Puzzle of Distributive Politics* (Cambridge University Press, 2013).
[59] Aspinall and Berenschot, *Democracy for Sale* (Ithaca: Cornell University Press, 2019).
[60] Muhtadi, *Vote Buying in Indonesia* (Singapore: Springer Singapore, 2019).
[61] Vedi R. Hadiz and Richard Robison, "The Political Economy of Oligarchy and the Reorganization of Power in Indonesia."
[62] Jm Muslimin and Novita Akria Putri, "Politico-Legal Review of the Revised-Bill of the Corruption Eradication Commission and Omnibus Law," *Jurnal Media Hukum* 28, no. 2 (2021): 165–83.

Tambunan shows that oligarchic actors employ cartel-like strategies to capture the legislative process, with Law No. 7 of 2017 on General Elections serving as a concrete example.[63] In the context of extractive industries and policy distortion, Iqbal Damanik et al. document how "politician-capitalists"—individuals who combine economic and political power—distort policymaking in favor of business interests.[64] Meanwhile, Michael Pichler and Saskia Schäfer et al. provide evidence of regulatory strategies that facilitate the expansion of palm oil and agrofuels, resulting in processes of dispossession affecting rural communities.[65]

Ultimately, the Indonesian case demonstrates that democratic hypocrisy cannot be reduced to a problem of flawed legal norms alone, but must be understood as the outcome of deeply entrenched structural conditions that enable the convergence of state capture and clientelism. When these dynamics prevail, democratic institutions risk functioning as vehicles for the institutionalization of inequality and the systematic erosion of human rights. Addressing this challenge therefore requires not only legal reform, but also a fundamental transformation of political practices, strengthened institutional accountability, and the empowerment of citizens. Without such changes, democracy will remain procedurally intact yet substantively compromised, perpetuating a cycle in which power is reproduced at the expense of justice and human dignity.

Looking from a Human Rights-Based Approach

In the context of the rule of law, the human rights-based approach (HRBA) is a normative-constitutional framework that must be formulated in every government policy. HRBA is a constitutional obligation that protects various areas of life, such as the right of a nation to independence, the right to recognition and self-determination, guarantees of labour rights, the achievement of gender equality, the strengthening of inclusive democracy, the strengthening of the rights of marginalized or excluded people, guarantees of economic, social and cultural rights, and guarantees of civil and political rights. The HRBA is the spirit of the development process aimed at creating citizen welfare, which is particularly important in the context of poverty reduction and strengthening equal education. The HRBA emphasizes the democratic formulation of state policies, guarantees the fulfilment of human rights, prevents human rights violations and ensures government accountability in public services.[66] The HRBA approach is a shield against the introduction of corrupt practices into the policy formulation process.

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63 Tambunan, "The Intervention of Oligarchy in the Indonesian Legislative Process."

64 Iqbal Damanik et al., "Business-Politics Relations in Indonesia: The Oligarchisation of Democracy," *Bulletin of Indonesian Economic Studies* 61, no. 1 (2025): 39–60.

65 Melanie Pichler, "Legal Dispossession: State Strategies and Selectivities in the Expansion of Indonesian Palm Oil and Agrofuel Production," *Development and Change* 46, no. 3 (2015): 508–33; Saskia Schäfer, Mutmainna Syam, and Lian Gogali, "Living Together beyond Liberal Democracy: Examples of Local Decision-Making and Managing Resource Extractivism in Indonesia," *Frontiers in Political Science* 7 (2025): 1370828.

66 Varun Gauri and Siri Gloppen, "Human Rights-Based Approaches to Development: Concepts, Evidence, and Policy," *Polity* 44, no. 4 (2012): 485–86.

Corruption certainly has an impact on economic growth, inequality or disparities, fiscal burden, poverty burden, quality of public services and poor quality of development. Corruption is a major enemy of human rights because of its impact on limiting citizens' rights to access education services, health services, reduced access to clean water, exploitative work, inadequate wages, perverted justice and discriminatory treatment.[67] In this case, what is the relationship between corruption and human rights? Cardona et al. explain how corruption affects human rights abuses.[68] First, bribery and extortion are very dangerous practices in public services. The logic is "if there is money, basic rights will be fulfilled" or in more complex relationships, kickbacks. Public services become the buying and selling of citizens' basic rights. This creates a condition of inequality where those who have money are given priority over those who do not. In a complex bureaucracy, kickbacks become a kind of "currency for public needs". The greater the need for public services, the greater the kickback earned.[69] Some examples are bribery of a suspect to the police or prosecutor to reduce the threat of punishment, bribery of a defendant to a judge to regulate the content of the verdict, bribery of health services to get privileges in health services, and bribery of schools to pass school exams.

Second, bribery as a means of breaking the law. Mahdi Abdullah Syihab and Muhammad Hatta posit the argument that an individual who bribes may not necessarily intend to violate the law, but rather to expedite an administrative process or public service. This argument is predicated on a contradiction in terms. The act of bribery cannot be said to lack malicious intent, since the very essence of bribery is the intentional circumvention of the standard procedure by the briber.[70] Some examples include bribing election organizers to buy votes or to get someone passed as a legislative candidate, bribing a company to exploit labour, bribing a company to open a trafficking route, bribing the police to protect a company's illegal activities, and bribing an organization to embezzle drug distribution. Thirdly, corruption has the effect of reducing the need for public services and services that citizens need. It often involves unauthorized budget cuts, irrational price increases or the manipulation of financial reports. In a project, for example, corrupt practices between companies and government officials may take the form of unapproved cuts in construction costs, resulting in a reduction in the quality of a building or road being built. Another example is the unofficial deduction of education funds, which means that many poor students do not have access to proper educational support.

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[67] John C. Mubangizi and Prenisha Sewpersadh, "A Human Rights-Based Approach to Combating Public Procurement Corruption in Africa," *African Journal of Legal Studies* 10, no. 1 (2017): 66-90.

[68] Luz Angela Cardona, Horacio Ortiz, and Daniel Vázquez, "Corruption and Human Rights: Possible Relations," *Human Rights Quarterly* 40, no. 2 (2018): 320–21.

[69] Alexandra Addison Wrage, *Bribery and Extortion: Undermining Business, Governments, and Security* (New York: Bloomsbury Publishing USA, 2007).

[70] Mahdi Abdullah Syihab and Muhammad Hatta, "Punishment Weighting for Criminal Acts of Corruption in Indonesia," *SASI* 28, no. 2 (2022): 307-322.

Fourth, corruption in the form of state capture is a violation of human rights that is built into the policy formulation process from the outset. From the outset, state capture does not show its relationship to direct human rights violations. However, these violations only become apparent when the impact of the policy begins to damage the various sectors it regulates. Some examples are the granting of land concession licenses to companies that conflict with the rights of indigenous peoples, the granting of mining licenses that damage the environment, the granting of licenses to convert forest land into plantation land, the granting of licenses to a company to exploit the sea. Some of these examples relate to the relationship between the government and the private sector, which has been the main sponsor of the electoral process from the beginning. The impact of human rights violations only becomes apparent when there are agrarian conflicts with indigenous peoples or citizens living in the area where the license was granted. Finally, the interests of the oligarchy have created social conflicts in the community.

Of the four relationships mentioned above, what about legislative candidates who are former corruption convicts? In fact, Cardona's view does not fully cover the conditions in Indonesia today. Dasgupta and Beard add another form of corruption that has an impact on human rights abuses, namely elite capture corruption.[71] Elite capture refers to the power of an elite group of both individuals (as patrons) and certain political groups (both at the centre and local elites) who play a role in smuggling or, more crudely, manipulating political rights norms in the process of policy formulation in order to remain in power. The provision of legislative candidates who are former corruption convicts is a form of elite capture that undermines the democratic order. Those elected can use their power to undermine governance at the local level through specific business interests in government projects. They can also play a role in policy formulation or legislative processes that favour oligarchic interests, amputate the oversight of an institution, reduce certain conditions of a licensing scheme that have an impact on the environment, evict indigenous peoples from their lands, and amputate the authority of anti-corruption institutions. Human rights violations have occurred in two schemes, namely the policy formulation or legislative process as a violation *in abstracto*, and the impact of policy implementation as a violation *in concreto*.

Democracy and the Problem of Legal Hypocrisy

King Faisal Sulaiman said that the Job Creation Law was a legal product allegedly born out of a process of legislative corruption. The drafting team of the law carried out several illegal procedures and violations of formal procedures in enacting the Job Creation Law. As a result, the substantive content of the Job Creation Law has rolled out a red carpet for the facilitation of extractive business licensing, which has a huge impact on environmental degradation and the eviction of community

[71] Aniruddha Dasgupta and Victoria A. Beard, "Community Driven Development, Collective Action and Elite Capture in Indonesia," *Development and Change* 38, no. 2 (2007): 229-249.

lands. Some of the problems related to mining concessions are the centralisation of mining concessions, the undermining of agrarian reform and land redistribution by controlling the availability of land for economic interests and investments, the elimination of the obligation to carry out an Environmental Impact Assessment (AMDAL) and its replacement with the term "environmental permit".[72] How does this potentially lead to human rights abuses? Firstly, land distribution is controlled and managed by the government in order to open up a wide space for investment interests. Indigenous peoples who control and use the land and forests as their livelihoods are displaced by the granting of licences to companies. If indigenous people continue to live in the mining area, the threat of waste pollution of rivers and the destruction of forest ecosystems will be catastrophic for their lives. Second, environmental licensing reduces the importance of meaningful public participation in the potential impacts of environmental damage and how to prevent them. Communities are often uninformed about natural resource management and minimally involved in decision-making.[73]

In addition to the Job Creation Law, the revision of the Corruption Eradication Commission Law is also a product of legislative corruption. According to Umam, the revision of the Corruption Eradication Commission Law is the result of an affair between legislators and oligarchs who want to tame the Corruption Eradication Commission.[74] Corrupt, hypocritical democracy has given birth to a political power supported by the oligarchs' business cronies. They are united in creating two conditions, namely the weakening of the Anti-Corruption Commission and the strengthening of investment interests. This phenomenon is solidarity against anti-corruption law enforcement, which will damage the investment interests of capital owners and the political interests of legislators (corruptors fight back).[75] According to Rita Kalalinggi, the strengthening of oligarchy in recent years has marked the death of democracy.[76] The death knell of democracy began with the initial process of nominating members of the legislature, which is riddled with patronage. The policy of granting political rights to ex-convicts of corruption is a political disaster that undermines the sanctity of parliamentary institutions. Those who have been tainted by corrupt practices will easily form chronic relationships with oligarchs, creating a convergence that leads to state capture. From here, the hypocrisy of democracy has created a bridge between the world of oligarchy and the world of politics. Richard G. Wilkinson and

[72] King Faisal Sulaiman, "Legislative Corruption: Criticism of the Omnibus Law Policy in the Mineral and Mining Sector in Indonesia," *International Conference on Environment and Smart Society (ICEnSO 2023)* (Yogyakarta), 2023, 7–9.

[73] Dini Suryani et al., "Kemuduran Demokrasi Tata Kelola SDA: Penguatan Oligarki dan Pelemahan Partisipasi Civil Society," *Jurnal Penelitian Politik* 18, no. 2 (2021): 173-89.

[74] Ahmad Khoirul Umam, "Lemahnya Komitmen Antikorupsi Presiden diAntara Ekspektasi Pembangunan Ekonomi Dan Tekanan Oligarki," *Jurnal Antikorupsi Integritas* 5, no. 2 (2019): 1-17.

[75] Moh Fadhil, "Komisi Pemberantasan Korupsi, Politik Hukum Antikorupsi dan Delegitimasi Pemberantasan Korupsi," *Al-Ahkam* 15, no. 2 (2019): 7–36.

[76] Rita Kalalinggi, "Pelemahan Komisi Pemberantasan Korupsi (KPK): Salah Satu Matinya Demokrasi," *Journal of Government and Politics (JGOP)* 3, no. 2 (2021): 107-18.

Kate Pickett describe how the hypocrisy of democracy creates inequality. If policies reinforce the dominance of markets or prioritise capitalism, then of course the ideal of prosperity will be achieved. But what appears as prosperity is a paradox called social inequality. The distribution of assets and wealth will only revolve around the upper class, while poverty is structural. Inequality creates a social society that is violent and full of anarchy. What happens, for example, is an increase in crime that causes prisons to be full, mental damage due to drug addiction, poor health, poor education systems and access that produce generations of workers for industrial needs, high rates of early marriage and other social problems.[77] These are the fruits of a hypocritical democratic process that leads to inequality. As a result, the fulfilment of civil and political rights and economic, social and cultural rights is a mere utopia.

The implications of this discussion suggest that the problem at hand can no longer be understood merely as a weakness of norms or a deviation in democratic practice. What emerges instead is a deeper issue concerning the entanglement of law, power, and human rights within an imbalanced configuration. In such a situation, democracy does not collapse formally; rather, it gradually loses its corrective capacity. It continues to operate as a procedure, yet it is no longer capable of preventing the reproduction of problematic power structures. At this point, the protection of political rights reveals an ambivalent character. On the one hand, it constitutes a fundamental pillar of democratic systems. On the other hand, when not accompanied by adequate mechanisms of limitation and oversight, such protection may instead open pathways for actors with corrupt track records to re-enter the arena of power. The problem, therefore, does not lie in the existence of rights themselves, but in the way these rights are operationalized within an unequal political structure. When the law merely guarantees access without ensuring integrity, it ceases to function as a corrective instrument and instead becomes a medium for the reproduction of power.

Furthermore, the interaction between clientelistic practices and state capture does not only shape electoral processes but also redefines the meaning of citizenship. Rights that should be inherent and non-negotiable are, in practice, transformed into conditional and transactional arrangements. In this context, citizens are no longer positioned as rights-bearing subjects but as components within networks of support structured through exchanges of interest. Therefore, democracy loses its deliberative dimension and shifts into an arena of resource distribution controlled by groups. Over time, this condition not only deepens inequality but also generates forms of political dependency that undermine citizens' autonomy in making free and rational choices. This condition also clarifies how what appears as democratic hypocrisy is in fact rooted in a broader systemic rationality. Democracy no longer functions as a mechanism to constrain

[77] Richard G. Wilkinson and Kate Pickett, *The Spirit Level : Why Greater Equality Makes Societies Stronger* (New York: Bloomsbury Press, 2010).

power, but rather as a space in which power is negotiated, distributed, and sustained through often opaque means. In this configuration, law does not entirely lose its relevance; instead, it undergoes a functional shift—from a limiting instrument to a legitimizing one. For this reason, reform cannot be confined to procedural legal adjustments alone. What is required is a more fundamental effort to strengthen political accountability, improve institutional performance, and enhance citizens' capacity to critically engage with democratic processes. Without such transformation, democracy will remain trapped in a contradictory condition: procedurally alive, yet substantively fragile—promising equality while, in practice, reproducing inequality and the dominance of power.

Conclusion

The participation of former corruption convicts in legislative contests in Indonesia reveals a fundamental dialectical tension shaped by interlegality, where multiple and overlapping normatif orders—human rights, electoral law, and political practices—interact and are strategically navigated that sustain a hypocritical form of democracy. The findings demonstrate that the openness of political access for actors with corruption records, particularly within contexts of weak institutions and limited political literacy, reinforces the reproduction of patronage networks and oligarchic power. Under such conditions, democracy no longer functions as a mechanism for representing the public interest, but instead operates as an arena for the consolidation of power, thereby undermining the protection of human rights both directly, through exploitative policies, and indirectly, through the marginalization of citizens' interests.

This study argues that but in the unresolved tension arising from interlegality, where competing normative frameworks fail to produce substantive accountability of democratic practice. While the Election Law adopts a compromise approach by creating a deliberative space for voters to assess candidates' integrity, such mechanisms remain ineffective in contexts dominated by clientelism and unequal access to fundamental rights. Consequently, procedural guarantees of political rights fail to translate into substantive accountability. This study acknowledges its limitations, particularly regarding the availability of empirical data on voter behavior and the effectiveness of disclosure mechanisms across regions. Future research is therefore needed to further examine the interaction between clientelism, electoral behavior, and the quality of public policy. Ultimately, without structural transformation, democracy risks remaining procedurally intact yet substantively compromised.

Data Availability: No primary datasets were generated during this study. The analysis is based on publicly available legal materials, including legislation, constitutional court decisions, judicial precedents, and scholarly literature, all of which are cited within the article.

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