

ELECTORAL IMMUNITY AND VOTE BUYING: REASSESSING ELECTION LAW ENFORCEMENT THROUGH THE PERSPECTIVE OF MASLAHAH MURSALAH

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Abstract

Election law enforcement in Indonesia still faces a serious gap between the ideals of legal norms and the realities of practice on the ground. This gap is caused not only by a procedural and positivistic law enforcement paradigm, but also by the lack of synchronization between Law Number 7 of 2017 concerning General Elections and the technical provisions in the General Elections Commission Regulation (PKPU), as well as the weak implementation of election criminal norms in practice. Furthermore, the practice of money politics, dawn raids, and other transactional violations continues to recur and tends to end without effective criminal sanctions, thus perpetuating a culture of impunity and undermining electoral justice. This study aims to critically analyze the normative, structural, and philosophical factors that cause weak election law enforcement, as well as to reconstruct an election law enforcement model oriented towards substantive justice through the principle of masalah mursalah. The research method used was normative juridical with a qualitative-philosophical approach through a review of primary legal materials, particularly Law Number 7 of 2017, as well as secondary legal materials and Islamic legal doctrine. The research findings indicated that the application of Articles 280 and 523 of the Election Law remains trapped in formalistic proof, thus failing to assess the socio-political impact of election violations. The principle of masalah mursalah has proven philosophically and normatively relevant for interpreting and enforcing election law teleologically, emphasizing the protection of public interest and the prevention of democratic damage. Reconstructing election law enforcement based on masalah mursalah has the potential to close the gap in impunity, strengthen legal legitimacy, and contribute to sustainable national stability.

Keywords: *Election Law Enforcement; Money Politics; Masalah Mursalah; Impunity; Substantive Justice.*

Abstrak

Penegakan hukum pemilu di Indonesia masih menghadapi kesenjangan serius antara idealitas norma hukum dan realitas praktik di lapangan. Kesenjangan tersebut tidak hanya disebabkan oleh paradigma penegakan hukum yang prosedural dan positivistik, tetapi juga oleh ketidaksinkronan antara Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum dan pengaturan teknis dalam Peraturan Komisi Pemilihan Umum (PKPU), serta lemahnya implementasi norma pidana pemilu dalam praktik. Selain itu, praktik politik uang, serangan fajar, dan pelanggaran transaksional lainnya terus berulang dan cenderung berakhir tanpa sanksi pidana yang efektif, sehingga melanggengkan budaya imunitas dan merusak keadilan elektoral. Penelitian ini bertujuan menganalisis secara kritis faktor normatif, struktural, dan filosofis yang menyebabkan lemahnya penegakan hukum pemilu, serta merekonstruksi model penegakan hukum pemilu yang berorientasi pada keadilan substantif melalui prinsip masalah mursalah. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan kualitatif-filosofis melalui telaah terhadap bahan hukum primer, khususnya Undang-Undang Nomor 7 Tahun 2017, serta bahan hukum sekunder dan doktrin hukum Islam. Hasil penelitian menunjukkan bahwa penerapan Pasal 280 dan Pasal 523 Undang-

Undang Pemilu masih terjebak pada pembuktian formalistik, sehingga gagal menilai dampak sosial-politik pelanggaran pemilu. Prinsip masalah mursalah terbukti relevan secara filosofis dan normatif untuk menafsirkan dan menegakkan hukum pemilu secara teleologis, dengan menekankan perlindungan kemaslahatan publik dan pencegahan kerusakan demokrasi. Rekonstruksi penegakan hukum pemilu berbasis masalah mursalah berpotensi menutup celah imunitas, memperkuat legitimasi hukum, dan berkontribusi pada stabilitas nasional yang berkelanjutan.

Kata Kunci: *Penegakan Hukum Pemilu; Politik Uang; Masalah Mursalah; Imunitas; Keadilan Substantif.*

A. INTRODUCTION

To the current day, the enforcement of election laws in Indonesia continues to face a serious problem: immunity for those who commit election violations, particularly in the practice of money politics.¹ Although electoral laws expressly prohibit and sanction vote buying, their enforcement remains largely formalistic and procedural, often failing to achieve substantive electoral justice. The dominance of a positivist legal approach has reduced electoral law to an administrative mechanism rather than treating it as an instrument for safeguarding the public interest and preserving the integrity of democracy.²

This situation is worsened by government interference, the weak independence of election oversight bodies, and disparities in the application of legal sanctions, which often allow political actors to evade legal consequences. As a result, the practice of political bribery continues to recur without any deterrent effect, fostering a culture of impunity that undermines the principle of electoral justice, erodes public trust, and threatens the legitimacy of democracy. Within the framework of masalah mursalah, electoral immunity is viewed as mafsadah (social harm) because it negates the benefits of electoral law as an instrument of justice and protection of the public interest. In a system lacking effective oversight and checks and balances,

¹ Transparency International Indonesia, "Tumpulnya Hukum Pidana Pemilu," 6 Maret, 2025, <https://ti.or.id/tumpulnya-hukum-pidana-pemilu/>.

² Lomba Sultan Sukmana, Rifky Adji, Kurniati Kurniati, "PARADIGMA KEADILAN DALAM PENEKAKAN HUKUM," *Jurnal Ilmiah Falsafah* 8, no. 2 (2022): 17–32, <https://doi.org/https://doi.org/10.37567/jif.v8i2.1589>.

officials have greater opportunities to abuse their authority with minimal oversight.³

In practice, vote buying remains widespread and is often difficult to prosecute effectively. During the 2019 and 2024 General Elections, many vote-buying cases handled by the Election Supervisory Body (Bawaslu) failed to result in criminal sanctions due to insufficient formal evidence or because the cases were dismissed at the preliminary stage. For example, in the 2019 General Election, Hariro Harahap, Regent of North Padang Lawas, was investigated for allegedly distributing cash filled envelopes to support his wife's legislative candidacy, yet the case did not result in effective legal enforcement.⁴ Similarly, the Election Supervisory Body (Bawaslu) of West Halmahera Regency discontinued its investigation into an alleged vote-buying case in the 2024 West Halmahera Regent Election due to insufficient evidence.⁵ Bawaslu recorded 533 cases of election-related criminal violations; 114 of them or about 20% reached the trial stage in district courts. "Of the 114 cases, 26 involved political bribery."⁶ This situation showed that election violations such as vote-buying, abuse of power, and vote manipulation constitute extraordinary crimes.⁷ This situation has led to a decline in public trust in election management bodies and in the effectiveness of the law as a means of upholding justice. This reality highlights a gap between

³ Siti Fatimah et al., *Restricting Public Officials' Authority to Combat Corruption: The Role of Term Limits and Political Sanctions in Indonesia*, vol. 10, 2025.

⁴ Nicky Aulia Widadio, "Kasus Politik Uang Masih Warnai Masa Tenang Pemilu Bawaslu Menemukan 25 Kasus Politik Uang Selama Masa Tenang Pemilu 2019," 16 April, 2019, <https://www.aa.com.tr/id/nasional/kasus-politik-uang-masih-warnai-masa-tenang-pemilu/1453807>.

⁵ Mimi Kartika, "Bawaslu: Bukti Pembelian Suara Dalam Pemilu Halmahera Barat Tidak Cukup," 24 Januari, 2025, https://en.mkri.id/news/details/2025-01-24/Bawaslu%3A_Evidence_of_Vote-Buying_in_West_Halmahera_Election_Insufficient.

⁶ Andrian Habibi, "Ratna Dewi Jelaskan Pidana Politik Uang Kepada Anggota Adkasi," 23 Juni, 2019, <https://www.bawaslu.go.id/id/berita/ratna-dewi-jelaskan-pidana-politik-uang-kepada-anggota-adkasi>.

⁷ St Rinaldi, Haniah, Lukman Ismail, and Muhammad Afdal, "Money Politics and Dynasty Politics (Study of Critical Analysis of Threats to Indonesian Democracy)," *Journal Of Etika Demokrasi* 9, no. 3 (2024): 403–13, <https://doi.org/10.26618/jed.v>.

the legal ideal of ensuring justice and the practice of law enforcement, which does not prioritize the public good.⁸

This study aimed to critically analyze the current paradigm of electoral law enforcement, particularly in relation to the emergence of immunity for perpetrators of electoral violations, especially the practice of money politics. This study seeks to identify the normative, structural, and philosophical factors that cause election law enforcement to tend toward formalism and have thus failed to substantively realize electoral justice and national stability. Through a normative-philosophical approach, this study explores the fundamental values of Islamic law, particularly the principle of *Maslahah Mursalah*, as an alternative framework for evaluating and critiquing electoral law enforcement practices that fail to provide a deterrent effect and instead perpetuate a culture of immunity. The primary objective of this study is to develop a model for reconstructing the enforcement of election law that transcends the boundaries of legal positivism by integrating values of the public interest into the national positive legal system.⁹ This study also sought to explain the relevance of the *Maslahah Mursalah* principle in the context of modern democracy, particularly in maintaining a balance between the protection of citizens' political rights and the public interest, while preventing the abuse of power through the practice of political corruption. Thus, this study is expected to make a theoretical contribution to the development of an electoral law framework that is responsive, oriented toward substantive justice, and sensitive to the sociopolitical impacts of electoral violations.¹⁰ From a practical standpoint, the findings of this study are expected to serve as a normative reference for policymakers, law enforcement officials, and

⁸ Rinaldi, Haniah, Ismail, and Afdal.

⁹ Uswatun Hasanah and Asmuni Muhammad, "THE POSITION OF MASHALIH AL-MURSALAH AS LEGAL EVIDENCE Kedudukan Mashalih Al-Mursalah Sebagai Dalil Hukum," *JURNAL AL AHWAL AS SYAKHSIYAH* 12, no. 02 (2025): 21–28.

¹⁰ Moh Najib, Uu Nurul Huda, and Enceng Arif Faizal, "Reconstructing the Indonesian Legal System through the Lens of Mas. Lah. Ah Mursalah," *Jurnal Kajian Hukum Islam* 19, no. 1 (2025): 117–32, <https://doi.org/https://doi.org/10.24090/mnh.v19i1.7861>.

election management bodies in formulating law enforcement policies that not only meet procedural requirements but also effectively combat political corruption with integrity. This study employs a normative legal approach using a qualitative-philosophical analysis method, through an examination of primary and secondary legal sources as well as an analysis of the concepts, principles, and values of *Maslahah Mursalah* relevant to Indonesia's electoral law enforcement system. Therefore, this study is oriented toward the establishment of an electoral legal system that is just, promotes the public good, and is capable of maintaining national stability in a sustainable manner.¹¹

The main academic issue in this study lies in the growing phenomenon of impunity in the enforcement of election law in Indonesia, particularly regarding perpetrators of money politics, which highlights the weakness of the election law enforcement paradigm that remains focused on procedural and positivistic approaches. This paradigm has caused election law to lose its functional role as an instrument for enforcing substantive justice, thereby failing to provide a deterrent effect, threatening the integrity of democracy, and potentially disrupting national stability.

This study is based on the assumption that the *de facto* immunity enjoyed by perpetrators of electoral offenses, particularly vote buying, is a direct consequence of Indonesia's predominantly positivist and formalistic approach to electoral law enforcement. Such an approach reduces electoral law to a procedural and administrative mechanism, limiting its ability to achieve substantive justice and protect the public interest. As a result, electoral violations are often left unpunished, fail to produce a deterrent effect, and perpetuate a culture of impunity that undermines democratic integrity. This study argues that the principle of *Maslahah Mursalah* provides a normative and philosophical foundation for reforming electoral law enforcement by

¹¹ Saktiani Nurul Hidayat Ridwan Arifin, "Organizing Democracy through General Elections in Indonesia: The Challenge of Law Enforcement and State Stability," *Jurnal Sosial Politik* 5, no. 2 (2019): 333-44.

shifting its focus from procedural compliance to the protection of public welfare, substantive justice, and democratic integrity. It further hypothesizes that integrating *Maslahah Mursalah* into Indonesia's electoral legal framework can reduce impunity for vote buying, strengthen public confidence in the justice system, and contribute to sustainable democratic governance.

B. FINDING AND DISCUSSION

1. Vote Buying Impunity as a Product of the Formalistic Paradigm of Electoral Law Enforcement and Its Impact on Democratic Stability

Electoral law enforcement is ideally intended to serve a dual function: ensuring substantive justice for electoral participants and voters while safeguarding the legitimacy and stability of the democratic system. In Indonesia, however, a significant gap persists between these normative objectives and their implementation in practice. This gap stems from the tension between the legal ideals of fairness, efficiency, and procedural integrity and the institutional constraints, political interests, and entrenched normalization of electoral misconduct. Consequently, electoral law enforcement has often failed to function as an effective mechanism for correcting democratic distortions and has instead remained confined within a predominantly formalistic paradigm.¹² As a result, electoral justice becomes contingent upon political power rather than the rule of law, creating opportunities for impunity in electoral offenses such as vote buying. This formalistic paradigm weakens the corrective function of electoral law enforcement against transactional political practices that undermine the integrity of the popular vote. Rather than serving as a mechanism to uphold electoral justice and democratic integrity, law enforcement may instead foster impunity through rigid procedural requirements, narrow statutory interpretation, and disproportionate or ineffective enforcement.

¹² Jamie Bergin Milos Resimic, "The Relationship between Electoral Integrity and Corruption," 2024.

One of the clearest manifestations of this gap was the persistent recurrence of vote buying and other transactional electoral practices in every election cycle. Vote buying undermines the integrity of political competition and erodes the principle of equal opportunity, while weak evidentiary standards, limited witness cooperation, and entrenched political culture make effective prosecution difficult and diminish the deterrent effect of legal sanctions.¹³ This phenomenon demonstrates that electoral law has increasingly lost its moral authority and its function as an instrument of social reform. Vote buying reinforces patronage relationships between candidates and voters, diminishing citizens' political rationality and electoral autonomy. Consequently, the ideal of electoral justice is reduced to procedural compliance rather than serving as a meaningful guarantee of substantive democratic integrity.

The gap was further exacerbated by the fragmented roles of electoral law enforcement institutions. The General Election Commission (KPU), the Election Supervisory Body (Bawaslu), the Police, the Public Prosecutor's Office, and the Integrated Law Enforcement Center (Gakkumdu) exercise distinct and sometimes overlapping authorities, resulting in weak institutional coordination and discontinuity in the enforcement process.¹⁴ The Integrated Law Enforcement Center (*Gakkumdu*) is intended to coordinate administrative and criminal enforcement in electoral cases. In practice, however, it faces persistent challenges, including weak inter-agency coordination, inconsistent compliance with decisions, and procedural discrepancies that delay case resolution and produce inconsistent sanctions. These shortcomings create opportunities for political actors to exploit legal processes for short-term

¹³ Muhamad Prastio, Inggrit Dwi Yani, and Najwa Alma Mutie, "The Implications of Money Politics on the Neutrality of General Election Votes as an Embodiment of Democracy in Indonesia," *Jurnal Hukum In Concreto* 3, no. 2 (2024): 116–30, <https://doi.org/https://doi.org/10.35960/inconcreto.v3i2.1483>.

¹⁴ Ridho Harapan Bunda and Pipit Rahayu, "Independensi Netralitas Aparatur, Dan Efektivitas Hukum Dalam Pemilu Serentak Di Indonesia," *Jurnal Iblam Law Review* 5, no. 2 (2025): 96–107, <https://doi.org/https://doi.org/10.52249/ilr.v5i2.618>.

electoral gain, thereby weakening the stabilizing function of electoral law enforcement and undermining public confidence in the electoral justice system.¹⁵ This situation demonstrates that the primary weakness lies not only in the substance of electoral law but also in institutional governance and inter-agency coordination. Inconsistent decision-making reflects the absence of uniform operational standards and effective legal leadership, thereby reducing the consistency and credibility of electoral law enforcement.¹⁶ Without strengthening institutional coordination, electoral law enforcement will remain trapped in a reactive and bureaucratic model that is unlikely to deliver substantive justice or effectively deter electoral misconduct.

The normative distinction between administrative and criminal electoral violations also raises concerns regarding substantive justice, as similar forms of misconduct may receive different legal treatment despite producing comparable harm to electoral integrity.¹⁷ administrative violations that seriously undermine the principle of fair competition receive only minor administrative sanctions, while criminal electoral cases are frequently dismissed at the investigation stage due to procedural deficiencies or insufficient evidence. This disparity weakens substantive justice and reduces the effectiveness of electoral law enforcement.¹⁸ The uncertainty surrounding legal consequences for electoral offenders fosters a perception of impunity and erodes public confidence in both the electoral process and the institutions responsible for its oversight. Accordingly, an excessive focus on procedural

¹⁵ Muhammad Nasir, "PERAN SENTRA PENEGAKAN HUKUM TERPADU (GAKKUMDU) DALAM PENANGANAN PELANGGARAN PEMILU TAHUN 2024 (Studi Penelitian Sentra Gakkumdu Bawaslu Kota Lhokseumawe)," *Jurnal Ilmiah Mahasiswa Fakultas Hukum* 8, no. 2 (2025): 271–91, [https://doi.org/Yoga Harlis Irawan, Muhammad Nasir, Budi Bahreisy | DOI: https://doi.org/10.29103/jimfh.vi2.21172](https://doi.org/Yoga%20Harlis%20Irawan,%20Muhammad%20Nasir,%20Budi%20Bahreisy%20|%20DOI:%20https://doi.org/10.29103/jimfh.vi2.21172).

¹⁶ Nasir.

¹⁷ Amara Alifia and Yasmin Dewi, "PIDANA DAN ADMINISTRASI DALAM PEMILU PRESIDEN DAN PEMILU LEGISLATIF DI JAWA TENGAH," *Jurnal Studi Politik Dan Pemerintahan* 14, no. 2 (2024): 803–13.

¹⁸ Lestariningsih H.M. Dimyati Huda, Agus Edi Winarto, "Problematika Penegakan Hukum Tindak Pidana Pemilu Pada Pemilu Tahun 2019 Di Kabupaten Kediri," *Jurnal Riset Dan Konseptual* 7, no. 7 (2022): 434–42, <https://doi.org/http://dx.doi.org/10.28926/briliant.v7i2.1012>.

compliance, without ensuring substantively just outcomes, represents a fundamental weakness that requires comprehensive legal reform.¹⁹ For example, although Article 286 of Law No. 7 of 2017 on General Elections prohibits vote buying, its enforcement frequently results only in administrative sanctions imposed by the Election Supervisory Body (Bawaslu), rather than criminal prosecution as intended by the statutory framework.²⁰ This inconsistency reflects the lack of proportionality in the application of sanctions, particularly in distinguishing between administrative and criminal electoral violations.

The Juridical and political impact of this gap is not merely reflected in the number of electoral violations, but also in voters' perceptions of injustice. When rules are not enforced consistently, the legitimacy of electoral contests is weakened and the risk of post-election conflict increases.²¹ The resulting loss of public trust undermines political stability, as disadvantaged actors may turn to non-institutional or extra legal channels to resolve disputes, rather than relying on formal democratic mechanisms.²² In other words, the failure to ensure fair electoral law enforcement has direct consequences for the fragility of national stability, which fundamentally depends on the legitimacy of electoral outcomes.

Bridging the gap between normative ideals and empirical realities requires a dual approach involving structural reform and political culture transformation. Structural reform includes strengthening the capacity of *Gakkumdu* through improved coordination mechanisms, standardized operating procedures (SOPs), witness protection systems, and evidence

¹⁹ Devi Siti and Sihatul Afiah, "REKONTRUKSI UPAYA HUKUM BAGI TERPIDANA DALAM UNDANG-UNDANG PEMILU DI INDONESIA," *Jurnal Kajian Hukum Dan Keadilan* 1, no. 17 (2023): 46–52, <https://doi.org/https://doi.org/10.08221/lexlaguens.v1i1.10>.

²⁰ Siti and Afiah.

²¹ AliImron Rifky Alif Dharmawan, Katon Galih Setyawan, Agung Stiawan, "Pengaruh Dinamika Politik Terhadap Kepercayaan Publik Pada Pemilu Di Indonesia (Studi Kasus Pemilu 2024 Pada Pemilih Pemula Di Wilayah Kecamatan Jambangan Kota Surabaya)," *Jurnal Dialektika Pendidikan IPS* 5, no. 1 (2025): 52–68.

²² Rifky Alif Dharmawan, Katon Galih Setyawan, Agung Stiawan.

management, as well as revising regulations to reduce administrative loopholes that are prone to abuse. It also necessitates stronger accountability mechanisms to ensure that sanctions are applied consistently and effectively.²³ A transformation of political culture requires voter education, campaigns against vote buying and political corruption, and incentives for ethical political behavior. These efforts demand synergy among the state, civil society, the media, political parties, and law enforcement agencies.²⁴ Such a framework would make law enforcement not only reactive but also preventive, while reinforcing justice and public welfare as the fundamental foundations of sustainable democracy.

Ultimately, the perspectives of justice and stability should be understood as complementary rather than opposing goals. Substantive electoral justice provides the legitimacy foundation for elected winners and helps close potential channels of post-election conflict, whereas stability built without justice tends to be fragile and temporary. Electoral law enforcement oriented toward substantive justice thus serves as the primary basis for the legitimacy of electoral outcomes and functions to prevent political conflict after elections. Conversely, stability built upon legal inequality will only produce a temporary order that easily collapses when confronted with political dynamics. Therefore, the reconstruction of the electoral law enforcement system must integrate strict procedural standards with a strong orientation toward public welfare (*masalah*), positioning law not merely as a technical instrument of punishment, but as a form of legal and political governance that strengthens public trust, prevents political disintegration, and ensures the quality and sustainability of democracy in Indonesia.

²³ Dzikry Gaosul Ashfiya, "Desain Ulang Konsep Penegakan Hukum Pemilu Di Indonesia Dalam Kerangka Pemilu Demokratis Dan Berkeadilan," *Jurnal Kajian Konstitusi* 01, no. 01 (2021): 26–50, <https://doi.org/https://doi.org/10.19184/jkk.v1i1.23792>.

²⁴ Abdulloh Hasyim, Sharla Shafa, and Salsabila Azkia, "Pendidikan Politik Bagi Pemilih Pemula Dalam Pemilihan Umum 2024" 2, no. 2023 (2024): 187–200, <https://doi.org/10.30762/vjhtn.v2i2.281>.

2. *Maslahah Mursalah* as a Philosophical and Normative Paradigm in the Reconstruction of Electoral Law Enforcement in Indonesia

The principle of *maslahah mursalah* in Islamic legal theory occupies an important position as a philosophical foundation for legal development oriented toward public interest (*maslahah 'ammah*). It emphasizes that legal rulings should aim to realize benefit and prevent harm in situations where no explicit textual evidence provides a specific ruling, thereby allowing flexibility in addressing evolving social realities.²⁵ In the context of modern legal systems, including electoral law in Indonesia, this principle can be understood as an effort to balance normative legal ideals with the dynamic socio-political needs of society. It highlights the importance of ensuring that legal frameworks remain responsive and adaptive to changing political realities while still upholding core principles of justice and order.²⁶ *Maslahah mursalah* emphasizes that law should not merely serve to enforce textual provisions, but also to realize public benefit and prevent social harm (*jalb al-maṣāliḥ wa dar' al-mafāsīd*). It positions legal reasoning as a tool for achieving social welfare and maintaining balance within society.²⁷ Therefore, this principle serves as a meeting point between the normative values of Islamic law and the rational demands of positive legal systems, both of which require continuous adjustment to evolving social and political dynamics. From this perspective, *maslahah mursalah* can function as a conceptual foundation for understanding the direction of electoral law reconstruction so that it aligns with the goals of substantive justice and public welfare.

²⁵ Moh Usman, "MASLAHAH MURSALAH SEBAGAI METODE ISTINBATH HUKUM PERSPEKTIF AL-THUFI DAN AL-QARADHAWI" 8, no. 1 (2020): 82-98, <https://doi.org/10.30868/am.v8i1.708>.

²⁶ Muhammad Chairul Huda Muhammad Tajuddin Ulya, "PENGAWASAN PARTISIPATIF PEMILIHAN UMUM: KAJIAN PERSPEKTIF TUJUAN HUKUM DAN MASLAHAH MURSALAH," *Jurnal Pendidikan, Komunikasi Dan Pemikiran Hukum Islam* 14, no. 1 (2022): 108-28, <https://doi.org/https://doi.org/10.30739/darussalam.v14i1.1641>.

²⁷ Farid Afif Syahputra Rinaldi Zainal Azwar, "Consistency of the Indonesian Ulama Council in Using Istiṣlāḥ as a Method for Legal Istinbath," *Jurnal Hukum Islam* 9, no. 1 (2024): 1-24, <https://doi.org/DOI: https://dx.doi.org/10.29240/jhi.v9i1.7680>.

In the context of electoral law enforcement, the *masalah mursalah* paradigm provides a normative framework that electoral law should not be limited to technical compliance, but must ensure the achievement of democracy's ethical objectives, namely justice, legitimacy, and socio-political stability.²⁸ Many practices in the field reveal a tension between legal legality and legal morality, where violations that are not explicitly accommodated within statutory provisions may still result in substantive injustice. This situation highlights the need for a more responsive legal approach to social and political realities, ensuring that electoral law enforcement does not become trapped in mere normative formalism.²⁹ From the perspective of *masalah mursalah*, an evaluation of the actions and policies of election administrators can focus on the extent to which they generate public benefit and prevent social harm in the democratic process.

Philosophically, *masalah mursalah* is consistent with the spirit of Pancasila and the Indonesian Constitution, both of which position social justice and public welfare as fundamental objectives of the state. This alignment reinforces the idea that legal development, including electoral law enforcement, should prioritize collective benefit, justice, and societal well-being as its guiding principles.³⁰ In this sense, the application of *masalah* is not merely an integration of religious values into positive law, but rather a synthesis between Islamic moral reasoning and modern legal rationality. By adopting *masalah mursalah* as a philosophical paradigm, the electoral legal system can be directed toward achieving.³¹

²⁸ Muhammad Tajuddin Ulya, "PENGAWASAN PARTISIPATIF PEMILIHAN UMUM: KAJIAN PERSPEKTIF TUJUAN HUKUM DAN MASLAHAH MURSALAH."

²⁹ M. Khusnul Khuluq, "Keadilan Substansial Dan Tantangannya Dalam Sistem Hukum Positif," 24 Juli, 2025, <https://marinews.mahkamahagung.go.id/artikel/keadilan-substansial-dan-tantangannya-dalam-sistem-hukum-0qQ>.

³⁰ Widya Rahmat and Luci Afiani Oktavia, "Urgensi Administrasi Publik Dalam Islam : Tinjauan Masalah Mursalah," *Jurnal Hadrat Madaniyah* 11, no. 1 (2024): 62–68.

³¹ Agustri, "A Maqā ṣ Id Al-Sharī ' Ah Perspective on the Implementation of General Elections in Indonesia," *Journal of Islamic Law and Social Practice* 1, no. 2 (2025): 195–213.

Normatively, *masalah mursalah* can serve as a foundation for reconstructing electoral laws and enforcement institutions, as the current electoral framework remains reactive and fragmented between administrative and criminal provisions.³² Under the *masalah* paradigm, electoral regulations can be formulated more integratively, prioritizing substantive justice over mere procedural compliance.³³ For example, electoral violation mechanisms should consider their social and political impact on public justice rather than relying solely on formal evidentiary requirements. This approach emphasizes that electoral law enforcement must prioritize the public interest over short-term political interests.

The *masalah mursalah* paradigm also calls for institutional reconstruction to make electoral law enforcement more responsive to substantive justice. Institutions such as the Election Supervisory Body, the Integrated Law Enforcement Center, and the General Elections Commission should operate within a collaborative system grounded in integrity and public morality.³⁴ The *masalah* paradigm holds that legal institutions should not rely solely on formal authority but also fulfill an ethical duty to uphold justice for the public good. Accordingly, interinstitutional collaboration should strengthen legal legitimacy and public trust in the democratic process rather than preserve the status quo.

The principle of *masalah mursalah* also provides a relevant benchmark for legal policy in addressing the challenges of globalization, transactional politics, and electoral disinformation.³⁵ In contexts where the law often lags behind technological and political developments, the *masalah*

³² Ashfiya, "Desain Ulang Konsep Penegakan Hukum Pemilu Di Indonesia Dalam Kerangka Pemilu Demokratis Dan Berkeadilan."

³³ Najib, Huda, and Faizal, "Reconstructing the Indonesian Legal System through the Lens of *Mas, Lah, Ah Mursalah*."

³⁴ Rebiyyah Salasah, "Demi Pemilu Berintegritas, KPU-Bawaslu Dituntut Jaga Transparansi," 11 November, 2022, <https://www.kompas.id/artikel/demi-pemilu-berintegritas-penyelenggara-pemilu-dituntut-jaga-transparansi>.

³⁵ Hamzah K, "URGensi MASLAHAH DALAM PEMBARUAN HUKUM ISLAM DI ERA GLOBAL," n.d.

principle provides an ethical framework for evaluating legal policies based on public benefit and social justice. It enables electoral law to remain adaptive while preserving its moral foundation. Thus, *masalah mursalah* serves not only as a philosophical basis but also as a normative methodology that promotes ethical legal innovation

The *masalah mursalah* approach requires a shift in legal evaluation from procedural compliance to outcomes that promote the public interest. It complements rule based (deontological) reasoning with a teleological perspective, viewing legal norms not merely as technical rules but as instruments for achieving public goods, including electoral legitimacy, equitable political representation and social stability.³⁶ Accordingly, legislators and policymakers should adopt purposive and context-sensitive legal norms that respond to the real impact of electoral practices on the public interest.³⁷

In practice, this normative transformation affects three dimensions of electoral regulation: (1) the substance of legal norms, (2) enforcement procedures, and (3) legal remedies. First, legal norms should incorporate evaluative criteria, such as social impact, public interest, and proportionality, so that violations are assessed not only by procedural non-compliance but also by their effect on public trust, political participation, and electoral integrity. Second, enforcement procedures should balance speed, fairness and deliberation by combining timely dispute resolution with evidence-based assessments of social and political consequences. Third, legal remedies should extend beyond administrative or criminal sanctions to include restorative

³⁶ Najib, Huda, and Faizal, "Reconstructing the Indonesian Legal System through the Lens of *Mas, Lah, Ah Mursalah*."

³⁷ Alfina Fadhila et al., "Rekonstruksi Konsep *Maslahah* Dalam Perspektif Filsafat Hukum Islam Kontemporer," *Jurnal Media Akademik* 3, no. 5 (2025): 2–14, <https://doi.org/https://doi.org/10.62281/v3i5.1898>.

measures, such as vote correction, result verification, and reputational restoration, aimed at safeguarding the public interest.³⁸

Ultimately, *masalah mursalah* as a philosophical and normative paradigm redefines electoral law enforcement as a means of advancing public welfare, justice, and social order. Rather than replacing positive law, it enriches it with an ethical dimension that strengthens substantive justice. Through this paradigm, electoral law enforcement in Indonesia can serve not only to uphold democratic procedures but also to foster national cohesion, legal legitimacy, and public trust in democratic institutions.

3. A *Maslahah Mursalah* Based Model of Electoral Law Enforcement as an Instrument for Strengthening National Stability

Electoral law enforcement plays a strategic role in safeguarding political legitimacy and national stability.³⁹ However, Indonesia's electoral experience shows that law enforcement has often remained procedural, falling short of achieving substantive justice and the public interest. This has contributed to electoral disputes, social conflict, and declining public trust in electoral institutions.⁴⁰ Accordingly, a new model of electoral law enforcement is needed one that goes beyond formal legality by integrating the principle of *masalah mursalah* as its moral and philosophical foundation, thereby enabling law enforcement to serve as an effective instrument for strengthening national stability.

The principle of *masalah mursalah* in Islamic law provides a normative framework requiring that every legal policy promote the public interest and prevent social harm (*jalb al-mashalih wa dar'u al-mafasid*). In the

³⁸ Dian Rosita, "Restorative Justice Policy in Law Enforcement Against Perpetrators of Spreading Hoaxes Related to Elections on Social Media," *Journal of Sociology and Law* 1, no. 2 (2024): 234–43, <https://doi.org/https://doi.org/10.62951/ijsl.v1i2.104>.

³⁹ Arlyn Annabel et al., "Peran Hukum Kenegaraan Dalam Menjaga Stabilitas Politik Di Indonesia," *Journal of Accounting Law Communication and Technology* 2, no. 1 (2025): 272–80, <https://doi.org/https://doi.org/10.57235/jalakotek.v2i1.4551>.

⁴⁰ Wandu Subroto and Martanti Endah Lestari, "Dinamika Penegakan Hukum Di Indonesia: Antara Keadilan Substantif Dan Formalitas Prosedural," *Jurnal Pengabdian Masyarakat* 5, no. 1 (2024): 77–86.

context of electoral law, this principle requires legal action to protect citizens' political rights, ensure electoral justice, and preserve social order.⁴¹ *Maslahah mursalah* rejects a rigid legal approach that prioritizes statutory text while disregarding its social consequences. Accordingly, electoral law enforcement should not merely apply legal provisions but also ensure that every legal decision promotes the public good and avoids political tensions that may undermine national stability.

A *maslahah mursalah*-based model of electoral law enforcement emphasizes the integration of substantive justice with socio-political stability. In this model, law is viewed not merely as a mechanism of control but also as an instrument of reconciliation and social cohesion.⁴² For example, in resolving electoral disputes, the *maslahah* principle supports decisions that are not only legally valid but also capable of preventing social conflict and strengthening public confidence in justice. This approach is consistent with the objectives of *maqāṣid al-sharī'ah*, which seek to uphold justice, protect citizens' rights, and promote social order and peace.⁴³

From a normative perspective, *maslahah mursalah* serves as an epistemological framework for developing laws oriented toward promoting the public good (*jalb al-maṣāliḥ*) and preventing harm (*dar' al-mafāsid*).⁴⁴ In the *uṣūl al-fiqh* tradition, this concept emerged from the recognition that not all social issues can be resolved directly through scriptural texts. Accordingly, legal reasoning (*ijtihād*) is required to preserve the objectives of Islamic law

⁴¹ Ismail Lili Suriyanti, Suganda, Atma, "Political Transformation of Electoral Lawmaking: Towards Fair and Transparent Elections," *Journal of Social and Humanities* 3, no. 3 (2024): 583–90, <https://doi.org/https://doi.org/10.59888/ajosh.v3i3.464>.

⁴² Syah Awaluddin, "Keadilan Restoratif: Konsep Dan Pengaturannya Dalam Sistem Hukum Indonesia," *Jurnal Ilmu Pertahanan, Politik Dan Hukum Indonesia* 1, no. 1 (2024): 24–42.

⁴³ Hanif Fudin Azhar, "MUATAN HAK ASASI MANUSIA DAN MORAL HUKUM PUTUSAN HAKIM DALAM PERSPEKTIF MAQASID AL-SYARI'AH Kajian Putusan Nomor 7P / HUM / 2020 LEGAL MORALITY AND HUMAN RIGHTS CONTENT OF THE JUDGE ' S DECISION IN THE MAQASID AL-SYARI' AH PERSPECTIVE," *Jurnal Komisi Yudisial* 14, no. 2 (2021): 247–69, <https://doi.org/10.29123/jy.v14i2.457>.

⁴⁴ Neneng Uswatun Khasanah, "Al-Mashalih Al-Mursalah (Sebagai Jawaban Problematika Kontemporer)," n.d.

(*maqāṣid al-sharī‘ah*).⁴⁵ Al-Ghazālī argued that *maslahah mursalah* may serve as a legal basis insofar as it protects the five essential objectives of Islamic law: religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-‘aql*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*).⁴⁶ In the context of modern elections, these five objectives can be translated into the protection of citizens’ political rights, the integrity of democratic processes, public rationality, social order, and fairness in the distribution of political power.

Applying the principle of *maslahah mursalah* to electoral law enforcement means treating substantive justice as the *ghāyah* (ultimate objective) of the legal process. In this sense, *maslahah* functions not only as a moral principle but also as a normative paradigm that guides both legislation and law enforcement beyond a purely *ẓāhir* (textual) approach.⁴⁷ Accordingly, when electoral law emphasizes procedural certainty without considering its socio-political impact on justice, it departs from its original *maqṣad*: to promote the public good (*taḥqīq al-maṣlaḥah li al-nās*).

Institutionally, a *maslahah*-based model of electoral law enforcement requires reformulating coordination among key electoral institutions, including the Election Supervisory Body (*Bawaslu*), the Integrated Law Enforcement Center (*Gakkumdu*), the General Elections Commission (*KPU*), and the Constitutional Court. Rather than operating through a sectoral or purely administrative framework, these institutions should collaborate to advance substantive justice and the public interest. The principle of *ta‘āwun* (cooperation for the common good) can serve as an ethical foundation for this institutional synergy, requiring each body to prevent legal manipulation that undermines public welfare. From an institutional perspective, the *maslahah*

⁴⁵ Zubair Rahman Saende and Abdul Syatar, “IJTIHAD ULAMA DALAM MERUMUSKAN METODE MEMAHAMI MAQĀSĪD AL-SYARĪ‘AH,” *Jurnal Syariah Dan Keadilan Indonesia* 3, no. 1 (2023): 73–94.

⁴⁶ Syarif Hidayatullah, “Maslahah Mursalah Menurut Al-Ghazali,” *Jurnal Hukum Dan Ekonomi Syariah* 4, no. 1 (2018): 115–36.

⁴⁷ Muhammad Tajuddin Ulya, “PENGAWASAN PARTISIPATIF PEMILIHAN UMUM: KAJIAN PERSPEKTIF TUJUAN HUKUM DAN MASLAHAH MURSALAH.”

paradigm also envisions the electoral law enforcement system as a form of *ḥisbah siyāsiyyah* a public oversight mechanism that ensures political authority is exercised in accordance with justice and the public good. Within this framework, institutions such as *Bawaslu* and the Constitutional Court represent the modern expression of *al-amr bi al-ma'rūf wa al-nahy 'an al-munkar* (enjoining good and forbidding wrong) in the political sphere by safeguarding electoral processes against injustice, manipulation, and the erosion of public legitimacy.

From a regulatory perspective, this model advocates an electoral legal framework oriented toward *maslahah* by strengthening preventive and restorative mechanisms. Law enforcement should not rely solely on punitive measures but also incorporate educational and preventive strategies. For example, enhancing legal and political education for electoral participants and voters can foster greater awareness of democratic values and legal responsibility. This restorative approach reflects the principles of *maslahah mursalah*, which prioritize the restoration of social harmony and public integration rather than punishment alone.

This approach is also consistent with the concept of *al-siyāsah al-shar'īyyah*, which holds that state policies should be directed toward realizing the public interest, even when such measures are not explicitly prescribed by legal texts.⁴⁸ In this regard, reconstructing electoral regulations based on *maslahah mursalah* is not merely a normative reform but also an expression of the Sharī'ah principle that the law should remain flexible (*murūnah*) in responding to social change while preserving justice. Within this framework, justice is understood not only in a positivist legal sense but also as the realization of *'adl* (justice) and *istiqāmah* (moral integrity) as envisioned by Islamic law. Implementing this model can strengthen national stability by enhancing public trust in the legal system and state institutions. When citizens

⁴⁸ Ahmad Syakur, "INTERVENSI PEMERINTAH DALAM PENETAPAN TINGKAT UPAH PERSPEKTIF IJTIHAD AL-MAQĀSIDĪ," *Jurnal Istihmar* 1, no. 2 (2017): 83–96.

perceive electoral law to be enforced fairly, humanely, and in the public interest, their confidence in democratic institutions and the rule of law is reinforced. Such stability is organic emerging from public acceptance and voluntary compliance rather than imposed through state authority. This distinguishes justice-based stability from merely superficial or coercive stability.

C. CONCLUSION

Electoral law enforcement in Indonesia continues to face significant challenges in addressing substantive violations, particularly vote buying. Although Law No. 7 of 2017 on General Elections explicitly prohibits vote buying and provides criminal sanctions for both perpetrators and recipients, enforcement has often been ineffective due to rigid evidentiary requirements, political influence, and the limited willingness of enforcement authorities to consider the broader social consequences of such violations. As a result, despite widespread public awareness that vote buying undermines democracy and violates the law, the practice persists and is increasingly regarded as a normal feature of electoral competition.

Finding showed *masalah mursalah* provides a philosophical and normative basis for interpreting and enforcing electoral law. It requires that legal enforcement be directed toward protecting the public interest and preventing social harm, including the erosion of electoral justice, democratic integrity, and political legitimacy. Accordingly, the enforcement of Articles 280 and 523 of the Election Law should extend beyond a literal reading to a teleological interpretation that evaluates how vote buying restricts voters' freedom of choice, distorts electoral fairness, and threatens socio-political stability.

Based on this approach, electoral law enforcement should be supported by a more humane and constitutionally grounded regulatory framework. Key recommendations include strengthening the drafting of electoral laws to

explicitly prioritize substantive electoral justice, enhancing the authority of *Bawaslu* to address vote buying in ways that advance the public interest, and applying sanctions that are both proportionate and sufficiently effective to deter future violations. By treating justice and *masalah* as the *ghāyah* (ultimate objective) of electoral law, enforcement functions not only as a punitive mechanism but also as a corrective instrument that strengthens public trust and promotes national stability.

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