

Presidential Partisanship in Indonesian Elections: A Legal and Ethical Analysis

Achmad Zuhdi¹, Eman Suparman², Indra Perwira³, Nana Charles Nguindip⁴

¹ Universitas Padjadjaran, Bandung, Indonesia, Email: azuhdi93@gmail.com

² Universitas Padjadjaran, Bandung, Indonesia, Email: eman@unpad.ac.id

³ Universitas Padjadjaran, Bandung, Indonesia, Email: indra@unpad.ac.id

⁴ Université de Dschang, Cameroon: seniorlecturer84@gmail.com

Abstract

Presidential involvement in electoral contests in Indonesia has increasingly raised concerns regarding the neutrality and integrity of democratic processes. Instances such as the politicization of social assistance programs, the strategic appointment of acting governors, and the active participation of ministers in campaign activities have highlighted the pervasive use of state resources for partisan interests. This study examines the permissibility of presidential political partiality in electoral contests from legal and ethical perspectives. Employing a normative legal research method with a statute and analytical approach, the study analyzes primary legal sources, including the 1945 Constitution and relevant electoral regulations, as well as secondary scholarly materials. The findings reveal that presidential partisanship is legally and ethically unjustifiable. Legally, procedural mechanisms, such as the requirement for mandatory leave during campaign activities, fail to guarantee factual neutrality and enable covert partisanship. A systematic and teleological interpretation of Article 299 paragraph (1) of the Election Law demonstrates that the right to campaign applies exclusively to presidents running as candidates, not to incumbents who are not contesting. Ethically, presidential partiality violates principles of impartiality and moral legitimacy, undermining the president's role as a unifying symbol of national integrity. The study emphasizes the urgent need for regulatory reforms and ethical standards to reinforce fairness and uphold public trust in Indonesia's electoral process.

Keywords: *Electoral Neutrality; Ethical Leadership; Presidential Partisanship*

1. INTRODUCTION

The Indonesian presidency has undergone significant dynamics over the past seven decades, reflecting the nation's quest for an ideal system of governance. From the early days of independence to the reform era, various transformations have been implemented, including the merger of the roles of President and Prime Minister, the strengthening of the presidential system, and the limitation of presidential powers.¹ One of the primary concerns is the dominance of presidential power within the constitutional structure. Denny Indrayana characterizes the 1945 Constitution as an "executive-heavy" constitution, reflecting the president's dominance.² Bagir Manan further argues that this dominance is not

¹ Saldi Isra, *Sistem Pemerintahan Indonesia : Pergulatan Ketatanegaraan Menuju Sistem Pemerintahan Presidensial*, Cetakan ke 2 (Depok: Rajawali Pers, 2020), 21.

² Denny Indrayana, *Amandemen UUD 1945 Antara Mitos Dan Pembongkaran* (Bandung: PT. Mizan Pustaka, 2007), 152.

merely a historical fact but is inherently embedded within the constitutional framework established by the 1945 Constitution.³

In the post-reform era, limitations on presidential power were introduced to create a more democratic system of governance.⁴ These formal restrictions are embodied in several provisions of the 1945 Constitution of Indonesia, particularly Articles 10 to 14, which regulate the president's authority over the military, foreign affairs, clemency, and state honors.⁵ For instance, the president must obtain approval from the House of Representatives (DPR) to declare war, make peace, and ratify international treaties (Article 11); consider the DPR's opinion when appointing or receiving ambassadors (Article 13); and seek the Supreme Court's consideration before granting pardons or rehabilitation (Article 14). However, these constitutional regulations do not extend to informal powers, such as the president's influence in electoral competitions.⁶ In this context, presidents often leverage access to state resources, bureaucratic networks, and political influence to support specific political agendas. This regulatory gap became evident in cases like President Joko Widodo's endorsement of certain candidates, as well as similar practices under President Prabowo. While these actions were deemed not to violate formal regulations by the General Election Supervisory Agency (*Bawaslu*), they nonetheless highlight the potential for abuse of power through informal mechanisms that fall outside the scope of constitutional checks and balances.⁷

The president, in this context, holds both direct and indirect interests in electoral matters, including, **first**, the role of the president as a contestant for a second term; **second**, as the leader of a political party or coalition; **third**, as a neutral arbiter overseeing electoral competitions; and **fourth**, as a policymaker whose decisions can influence electoral dynamics. This multifaceted role places the president in a dilemma: whether to prioritize the electoral interests of their group or to ensure a fair and impartial electoral process. Therefore, there is a pressing need for clear regulations to govern the extent of presidential involvement in electoral competitions.

Previous studies have explored various dimensions of presidential power and democratic governance in Indonesia. Chrisdianto Eko Purnomo examined the formal limitations on presidential authority, particularly the functional relationship between the president and legislative and judicial institutions.⁸ Similarly, Mietzner and Honna analyzed elite opposition and popular resistance in the context of failed attempts to evade presidential term limits, emphasizing formal constitutional mechanisms.⁹ Meanwhile, Heyl and Llanos studied persistent executive dominance despite term limit violations across Latin America and Sub-Saharan Africa, highlighting systemic vulnerabilities.¹⁰ However, these studies primarily focus on formal structures and term

3 Bagir Manan, *Teori Dan Politik Konstitusi* (Yogyakarta: FH UII Press, 2004), 4.

4 Muhammad Mutawalli Mukhlis et al., 'Democratization or Extra-Constitutionalism: Ideas for Limiting the Term of Office for Chairmen of Political Parties in Indonesia', *Jambura Law Review* 6, no. 2 (24 July 2024): 367–402, doi:10.33756/jlr.v6i2.24116.

5 Padmo Wahjono, *Masalah Ketatanegaraan Indonesia Dewasa Ini* (Jakarta: Ghalia Indonesia, 1984), 10.

6 A. Reeve and A. Ware, *Electoral Systems: A Theoretical and Comparative Introduction* (London: Routledge, 2013), 331.

7 Author not mentioned, 'Bawaslu Putuskan Prabowo Tak Langgar Aturan Soal Video Ajak Dukung Luthfi', *Kompas*, 20 November 2024, <https://nasional.kompas.com/read/2024/11/20/16533621/bawaslu-putusan-prabowo-tak-langgar-aturan-soal-video-ajak-dukung-luthfi>.

8 Chrisdianto Eko Purnomo, 'Pengaruh Pembatasan Kekuasaan Presiden Terhadap Praktik Ketatanegaraan Indonesia', *Jurnal Konstitusi* 7, no. 2 (20 May 2016): 159, doi:10.31078/jk727.

9 Marcus Mietzner and Jun Honna, 'Elite Opposition and Popular Rejection: The Failure of Presidential Term Limit Evasion in Widodo's Indonesia', *South East Asia Research* 31, no. 2 (3 April 2023): 115–31, doi:10.1080/0967828X.2023.2236542.

10 Charlotte Heyl and Mariana Llanos, 'Contested, Violated but Persistent: Presidential Term Limits in Latin America and Sub-Saharan Africa', *Democratization* 29, no. 1 (2 January 2022): 1–17, doi:10.1080/13510347.2021.1

limits, without addressing the dynamics of informal power abuses—such as covert presidential partisanship—in electoral contests. This article offers a novel contribution by analyzing presidential partiality not only from a legal standpoint but also from an ethical perspective, specifically in the context of the 2024 Indonesian Presidential Election, where informal mechanisms of power manipulation emerged as critical threats to democratic integrity.

This study employs a normative research method using a statute approach and an analytical approach.¹¹ The sources of legal materials include primary legal materials, such as the 1945 Constitution and related regulations, as well as secondary legal materials, including journals, books, and scholarly articles. The analysis technique applied is content analysis, focusing on the systematic examination of legal texts and supporting literature.¹²

This article aims to analyze presidential partisanship in electoral contests in Indonesia from legal and ethical perspectives. The primary focus is to evaluate whether a president's partisanship either explicitly through campaigning or implicitly through policies that benefit specific parties aligns with the principles of honesty and fairness in elections as stipulated in Article 22E paragraph (1) of the 1945 Constitution.

2. ANALYSIS AND DISCUSSION

2.1 Avoidance of Presidential Term Limits

The establishment of presidential term limits has long been considered a key safeguard in democratic governance, designed to prevent the concentration of executive power and to ensure regular leadership turnover. Term limits are intended not merely as formal legal provisions but as essential mechanisms to uphold accountability and protect political equality. However, empirical observations across various political systems reveal that the presence of term limits does not automatically guarantee the intended democratic outcomes. Over time, a significant number of incumbent leaders have developed subtle strategies to circumvent these restrictions without openly violating constitutional rules. This phenomenon, commonly referred to as the avoidance of presidential term limits, has become an enduring challenge for contemporary democracies.

At its core, avoidance of term limits involves efforts by incumbents to remain in power or to continue influencing governance while maintaining a formal appearance of constitutional compliance. Unlike direct violations, which would invite immediate legal and political backlash, avoidance strategies are carefully crafted to exploit ambiguities in the legal system, manipulate institutional processes, or leverage informal political networks. As Landau explains, constitutional manipulations often proceed through superficially legal means, allowing leaders to entrench their position while preserving a façade of legality. This blurs the line between constitutional endurance and democratic erosion.¹³

Several world leaders have employed various strategies to bypass presidential term limits: (1) One common approach is amending the constitution to either abolish or extend the duration of term limits, (2) Another strategy involves drafting a new constitution and declaring that previous terms do not count, a tactic often referred to as the “*blank*

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11 Irwansyah Irwansyah, ‘Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel’, *Yogyakarta: Mirra Buana Media* 8 (2020): 184.

12 Klaus Krippendorff, *Content Analysis: An Introduction to Its Methodology* (Sage publications, 2018), 24.

13 David Landau, ‘Abusive Constitutionalism’, *U.C. Davis Law Review* 47 (2014 2013): 189.

slate theory” (3) Leaders may also leverage judicial mechanisms to reinterpret term limits, allowing them to remain in power, (4) Additionally, some appoint a successor who can be easily controlled, a method known as the “loyal agent approach.” (5) In more extreme cases, elections are postponed under the justification of emergencies or political instability, effectively enabling incumbents to extend.¹⁴

Table 1 Strategies Presidents Employ to Remain in Power

Presidential Strategies for Prolonging Political Power		
Evasion Strategy	Description and Examples	Frequency
Amendment	Amend the Constitution to eliminate terms limits or extend number of terms	40
Blank slate	Create entirely new constitution that resets term count	5
Court	Rely on legal theory or the courts to re-interpret term limits	6
Placeholder President	Allow and, but still maintain control	6
Delay Elections	Delay holding new elections when term is up	3
Total		60
Multiple Strategies	Any combination of the strategies listed above	9

Source: Article Mile Versteeg *The Law and Politics of Presidential Term Limit Evasion*, 2019

The 7th attempt of President Jokowi of the Republic of Indonesia efforts to extend his term in office involved several strategies, including the proposal of a constitutional amendment, postponement of elections, and even the possibility of running as vice president. While initially rejecting these ideas, he later displayed tolerance and even tacit support for measures advanced by his loyalists. These strategies included manipulating parliamentary support, expanding political coalitions, and potentially leveraging the Constitutional Court through personal ties with its chairperson. However, these efforts ultimately failed due to strong resistance from political elites, who capitalized on public disapproval of the proposals as a basis for maintaining their opposition.¹⁵ The convergence of elite and public rejection brought this campaign to an end, despite indications that President Joko Widodo himself lacked the full determination to enforce the plan. Instead, he opted to support Prabowo Subianto as his successor, alongside his son as a political partner.¹⁶

14 Versteeg et al., ‘The Law and Politics of Presidential Term Limit Evasion’, *Columbia Law Review*, no. 120 (n.d.): 1, doi:<https://ssrn.com/abstract=3359960>.

15 Mietzner and Honna, ‘Elite Opposition and Popular Rejection’, 117.

16 Edward Aspinall, ‘Oligarchic Populism: Prabowo Subianto’s Challenge to Indonesian Democracy’, *Indonesian* 99, no. 1 (2015): 1–28, doi:10.1353/ind.2015.0002.

One prominent strategy is the placeholder presidency, where a leader appoints a successor who effectively serves as a “loyal agent.” In this approach, although the presidency is officially transferred to the successor, the original leader maintains full control over policies and decision-making through a close relationship with their appointee. According to data presented in the table, this strategy has been employed six times (accounting for 15 % of all recorded strategies) but demonstrates a relatively low success rate of only 33 %. This low success rate indicates that such strategies often face strong resistance, both from political opposition and from the public, who reject manipulative tactics of this nature.

This strategy is typically employed when a leader is unable to directly bypass term limits due to significant legal barriers or intense political pressure. By appointing a loyal successor, the leader can retain influence over the government without directly violating constitutional boundaries. This approach often becomes the preferred option when efforts such as constitutional amendments or judicial reinterpretation face substantial resistance, or when the leader seeks to avoid harsher international condemnation.¹⁷

The Constitutional Court played a pivotal role in initiating this strategy through its landmark ruling in Decision No. 90/PUU-XXI/2023, which amended the minimum age requirement for presidential and vice-presidential candidates. The decision stipulated that candidates below the age of 40 could run for office if they had experience in publicly elected positions, this paved the way for President Joko Widodo’s son to run as a vice-presidential candidate alongside Prabowo Subianto.¹⁸ In this context, Joko Widodo effectively employed a multi-strategy approach to retain his influence, utilizing the placeholder presidency method. While still serving as the incumbent president, his son’s candidacy in the general election exemplifies his strategic maneuvering to sustain political power and influence beyond his term.

On the other hand, democratization in Indonesia faces two major challenges: political dynasties and the limitation of presidential power in electoral contests. Political dynasties, in this context, evolve from mere political families into entrenched dynasties when they can extend their power temporally. When the founder of the dynasty loses their position, it is seamlessly passed on to another family member.¹⁹ This challenge becomes particularly significant as these two issues intertwine, forming a unified obstacle to Indonesia’s democratic progress.

2.2 Presidential Involvement in Electoral Contests

Electoral, in a scientific sense, refers to all matters related to elections (electoral process), encompassing the formal and institutional processes through which individuals or specific groups are granted a mandate or power via democratic voting mechanisms. The term “electoral” originates from the Latin word *electio*, meaning “election,” and in a political context, it pertains to activities, systems, or mechanisms related to the election of representatives or leaders.²⁰ In this study, the researcher uses the 2024 Presidential Election as a case study, which has been indicated to involve numerous violations, as an

17 Peter Spáč, ‘Pork Barrel Politics and Electoral Returns at the Local Level’, *Public Choice* 188, no. 3–4 (September 2021): 481, doi:10.1007/s11127-020-00841-2.

18 Muhammad Rinaldy Bima and John Tumba Jacob, ‘The Age Threshold for Presidential Nominations in the Perspective of Dignified Justice Theory: Why Is There a Mahkamah Keluarga Issue?’, *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 3 (26 December 2023): 403–22, doi:10.29303/ius.v11i3.1301.

19 Jemma Purdey, Edward Aspinall, and Muhammad Uhaib As’ad, ‘Understanding Family Politics: Successes and Failures of Political Dynasties in Regional Indonesia’, *South East Asia Research* 24, no. 3 (September 2016): 420–35, doi:10.1177/0967828X16659571.

20 A. Reeve and A. Ware, *Electoral Systems: A Theoretical and Comparative Introduction*, 331.

approach to examine the phenomenon of presidential involvement in electoral contests. These deviations can be explained as follows:

2.2.1. Politicization of Acting Governor Appointments

In Indonesia, the phenomenon of avoidance of presidential term limits did not manifest through direct constitutional amendment to extend the tenure of the incumbent president. Instead, it evolved into more subtle political maneuvers aimed at preserving influence beyond formal office. During President Joko Widodo's second term, the discourse on extending his tenure whether through constitutional amendments, election postponements, or alternative placements such as a potential vice-presidential bid initially surfaced but faced strong public and elite resistance. Facing these obstacles, the strategy appeared to shift from overt constitutional change toward cultivating loyal political figures to secure policy continuity and maintain political leverage within the executive framework.

Another layer of avoidance was the strategic use of administrative appointments, particularly the placement of Acting Governors (*Pj Gubernur*) and other regional officials perceived to have political proximity to the president. These appointments, although technically within legal parameters, raised concerns regarding the neutrality of electoral administration, as they indirectly shaped the political landscape ahead of the 2024 elections. As Mainwaring notes, democratic backsliding often occurs when leaders exploit gray areas in the law to entrench influence without formally breaching democratic procedures.²¹

The legal provisions governing the appointment of Acting Governors are stipulated in Law No. 23 of 2014 on Regional Government and Law No. 10 of 2016 concerning Regional Elections. Article 201 paragraph (9) of the Regional Election Law requires that Acting Governors be appointed from among officials holding senior executive positions (*pimpinan tinggi madya*), while Acting Regents or Mayors must come from primary executive positions (*pimpinan tinggi pratama*). Meanwhile, Article 1 point 11 and Article 3 paragraph (1) of Law No. 23 of 2014 emphasize that regional governance must uphold the principles of democracy, participatory governance, transparency, and accountability. These provisions collectively aim to ensure that even temporary leadership transitions respect democratic legitimacy and bureaucratic neutrality.

The normative expectation, as emphasized in the Constitutional Court Decision No. 67/PUU-XIX/2021, is that the appointment of Acting Governors should uphold the spirit of democratic governance as mandated by Article 18(4) of the 1945 Constitution. Nevertheless, research by Tuanaya finds that the practical implementation of this mandate often leans towards pragmatic political interests rather than strict adherence to democratic ideals.²² The Constitutional Court acknowledged that while acting appointments are legally permissible to fill transitional vacancies, such appointments must not undermine the democratic expectations of regional autonomy.

Several cases illustrate how acting appointments have raised suspicions of political bias. Appointees with previous affiliations to the presidential office or military backgrounds, such as the appointment of Major General (Ret.) Achmad Marzuki in Aceh, demonstrate a pattern where loyalty and political reliability appear to outweigh

21 Scott Mainwaring and Aníbal Pérez-Liñán, 'Lessons from Latin America: Democratic Breakdown and Survival', *Journal of Democracy* 24, no. 2 (April 2013): 123–37, doi:10.1353/jod.2013.0037.no. 2 (April 2013)

22 Halimah Humayrah Tuanaya, 'Legal Standing Appointed State Civil Apparatus in Replacement the Head Region of Region Autonomy Post Constitutional Court Verdict No. 67/PUU-XIX/2021 April 20, 2021', *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 11, no. 2 (31 August 2022), doi:10.33331/rechtsvinding.v11i2.928.

meritocratic principles.²³ This trend suggests that the formal legal framework, although intact, is vulnerable to manipulation that favors incumbent interests in critical electoral moments.

Moreover, dissenting opinions within the Constitutional Court, particularly by Justice Saldi Isra, have highlighted that the oversight mechanisms for ensuring neutrality among Acting Governors remain inadequate. Saldi's dissent stresses that even if the appointments meet formalistic legal standards, their broader political effects can erode public trust in electoral processes. This tension between formal legality and substantive democracy requires greater scrutiny, especially in contexts where acting officials can significantly influence regional political dynamics ahead of major elections.

The politicization of Acting Governor appointments is also evident in their alignment with specific political interests. Investigative reports indicate that several appointed Acting Governors have close ties to President Jokowi or his inner circle of power. For instance, Bey Machmudin, formerly the Head of the Presidential Secretariat Bureau, was appointed as Acting Governor of West Java, while Heru Budi Hartono, the former Head of the Presidential Secretariat, was appointed as Acting Governor of Jakarta.²⁴ Additionally, there are allegations that some Acting Governors were strategically utilized to support specific candidates, namely Prabowo Subianto and Gibran Rakabuming, in the 2024 elections. These suspicions are further reinforced by concerns that Acting Governors who fail to align with the President's directives could be removed from their positions.

Although the Constitutional Court, in its ruling on the matter, found no violations of neutrality by Acting Governors, a dissenting opinion by Justice Saldi Isra offered a contrasting perspective. Saldi Isra argued that the Election Supervisory Agency (*Bawaslu*) had failed to effectively carry out its duties in investigating reported violations, leaving the substance of the alleged breaches unresolved. He further highlighted indications of partiality by Acting Governors and other regional officials, which pose a significant threat to the principles of honesty and fairness in electoral administration.

The absence of a transparent and comprehensive vetting mechanism in the appointment process for Acting Governors further reinforces criticisms that these practices deviate from the principles of good governance. An ideal vetting mechanism should include assessments of candidates' track records, competencies, integrity, and adherence to ethical values and human rights.²⁵ Such a mechanism is crucial to prevent the dominance of partisan political interests, safeguard human rights, and maintain institutional functionality. However, the appointment process for Acting Governors during Jokowi's administration has demonstrated a centralized political dominance that contradicts the spirit of bureaucratic reform and the principles of a democratic state. This phenomenon not only highlights the lack of public involvement in decision-making processes but also sets a negative precedent for Indonesia's democracy.

The appointment of Acting Regional Heads (*Pj Kepala Daerah*) during President Jokowi's administration has further strengthened arguments regarding the politicization of this strategic position. The documentary *Dirty Vote* highlights that the appointment of Acting Regional Heads is closely linked to allegations of their lack of neutrality, along with other officials, in the 2024 elections. Several appointed Acting Governors

23 Dimas Bagus Arya et al., *Dosa Demokrasi Jokowi* (Jakarta: Komisi untuk Orang Hilang dan Korban Tindak Kekerasan (KontraS), 2024).

24 Dimas Bagus Arya et al.

25 Gary E. Hollibaugh and Lawrence S. Rothenberg, 'The When and Why of Nominations: Determinants of Presidential Appointments', *American Politics Research* 45, no. 2 (March 2017): 280–303, doi:10.1177/1532673X16628266.

have backgrounds indicating personal or political connections with President Jokowi, raising suspicions that these appointments may be leveraged to serve specific political interests.²⁶

This tendency indicates a systematic effort to position individuals with close ties to the President or the ruling circle in strategic roles, which has the potential to compromise the neutrality of election administration.²⁷ These appointments not only violate the principle of meritocracy, which demands that public positions be filled based on competence and qualifications, but also risk undermining public trust in the integrity of the electoral process.²⁸ This underscores that the appointment of Acting Regional Heads has become a political tool used to maintain influence and power, contradicting the spirit of democracy and the principles of good governance.

2.2.2. Politicization of Social Assistance (Bansos)

As the 2024 Presidential Election approaches, there are strong indications that the Social Assistance (*Bansos*) program has been used as a political instrument to boost the electability of specific candidates, particularly Prabowo Subianto and Gibran Rakabuming Raka. President Joko Widodo (Jokowi) is alleged to have utilized *Bansos* as a tool to influence voter preferences, as reflected in directives to accelerate the disbursement of *Bansos* funds coinciding with the momentum of the 2024 Presidential Election.²⁹

The Social Assistance (*Bansos*) budget allocated ahead of the 2024 Presidential Election saw a significant increase. The budget even surpassed allocations made during the COVID-19 pandemic, with the government setting a social protection budget of IDR 496.8 trillion an increase of 13.1 % compared to the previous year's IDR 439.1 trillion.³⁰ This budget escalation has raised suspicions of political motives behind the distribution of *Bansos*.

Technically, the distribution of Social Assistance (*Bansos*) is conducted openly. For instance, President Jokowi has been seen personally handing out *Bansos* in front of the Presidential Palace to passing online motorcycle taxi drivers. On several occasions, the distribution of *Bansos* was accompanied by campaign paraphernalia for the Prabowo-Gibran pair, suggesting an effort to personify *Bansos* as a personal gift from the President.³¹

Such practices can be analyzed as a form of *pork barrel politics*. This term refers to the use of public funds by those in power to garner political support for themselves or their affiliate.³² In this context, public funds are allocated to finance programs that directly benefit constituents, with the objective of bolstering the political position of the incumbent or the candidates they endorse.

26 Kumparan News, 'Dirty Vote Ungkap Kejanggalaan Penunjukan PJ Gubernur', 2024, <https://kumparan.com/kumparannews/dirty-vote-ungkap-kejanggalaan-penunjukan-pj-gubernur-2293jxlREcf>.

27 Kumparan News, 'Ramai Kritik Penunjukan PJ: Tak Ada Aturan Teknis, Dinilai Tak Libatkan Publik', 2024, <https://kumparan.com/kumparannews/ramai-kritik-penunjukan-pj-tak-ada-aturan-teknis-dinilai-tak-libatkan-publik-1y3qEb1u8pl>.

28 Vitorio Mantalean, 'Jokowi Diminta Tak Biarkan Penunjukan Ratusan PJ Kepala Daerah Tanpa Aturan', 2022, <https://nasional.kompas.com/read/2022/10/12/05460081/jokowi-diminta-tak-biarkan-penunjukan-ratusan-pj-kepala-daerah-tanpa-aturan>.

29 Dimas Bagus Arya et al., *Dosa Demokrasi Jokowi*.

30 Jawahir Gustav Rizal, 'Data Dan Fakta: Anggaran Bansos Meningkat Jelang Pemilu 2024', 2024, <https://www.kompas.com/cekfakta/read/2024/02/01/181628182/data-dan-fakta-anggaran-bansos-meningkat-jelang-pemilu-2024>.

31 Sherlina Purnamasari, '8 Fakta Jokowi Bagi-Bagi Bansos Jelang Pemilu 2024', 2024, <https://www.idntimes.com/news/indonesia/sherlina-purnamasari/8-fakta-jokowi-bagi-bagikan-bansos-jelang-pemilu-2024>.

32 Thomas D. Lancaster, 'Electoral Structures and Pork Barrel Politics', *International Political Science Review* 7, no. 1 (January 1986): 67–81, doi:10.1177/019251218600700107.

2.2.3. Involvement of Ministers in Campaigns

The involvement of ministers from the *Kabinet Indonesia Maju* in the 2024 Presidential Election (Pilpres) campaigns serves as concrete evidence of abuse of power. Legally, ministers are permitted to participate in campaigns, provided they comply with the applicable regulations, as outlined in Article 31 (1) and (2) of Government Regulation No. 53 of 2023 and Article 281 (1) of Law No. 7 of 2017 on Elections. These provisions emphasize that ministers who campaign must take leave without state funding, refrain from using state facilities, and be officially registered as part of the campaign team. However, in practice, numerous violations occur, reflecting weak enforcement of these regulations.

The involvement of several ministers in supporting the Prabowo Subianto-Gibran Rakabuming Rakatiket indicates the politicization of public office for electoral purposes. Evidence of this lack of neutrality is apparent in public statements of support and campaign activities tied to government programs. For example, Raja Juli Antoni, the Deputy Minister of Agrarian Affairs and Spatial Planning, openly declared his support for the Prabowo-Gibran pair on social media while performing state duties, such as distributing land certificates to the public.³³ Such practices not only violate ethical norms for state officials but also suggest the misuse of state facilities and authority for specific political interests.

The noncompliance of cabinet ministers with campaign regulations constitutes not only a legal violation but also a breach of the principles of good governance. For instance, the public has never been clearly informed about the leave status of ministers actively involved in campaigning. Article 281 paragraph (1) of the Election Law explicitly requires state officials participating in campaigns to take leave without state remuneration. This lack of transparency reinforces the perception of tacit approval from President Joko Widodo for these violations by his ministers. It creates a public impression that the President endorses the use of state facilities to secure victory for a particular candidate pair.

This phenomenon reflects the misuse of public resources for electoral purposes, which not only violates the principles of fairness in democracy but also undermines public trust in the integrity of the election process. The absence of decisive action from the President to dismiss ministers who violate campaign regulations exacerbates the public perception that partisan politics has infiltrated the realm of governance. As the head of government, the President should play a central role in ensuring the neutrality of state apparatuses during the election process. This situation sets yet another negative precedent for the 2024 elections, which should ideally serve as a fair and honest democratic instrument.

2.2.4. Deployment of State Apparatus

Active involvement in supporting specific candidates in the 2024 Presidential Election is not limited to cabinet ministers but extends to Acting Regional Heads (Pj Kepala Daerah). The appointment of Acting Regional Heads by the Ministry of Home Affairs has been fraught with controversy from the outset, particularly concerning the lack of accountability and transparency in the selection process. Civil society groups have voiced concerns that these appointments are often influenced by significant conflicts of interest. Furthermore, several analysts have predicted a strong correlation

33 Aulia, M. Rodhi, 'Wamen ATR Dirujuk Netizen Usai Kampanyekan Prabowo-Gibran Saat Kunjungan Dinas', 2023, <https://www.medcom.id/pemilu/news-pemilu/Zkea636k-wamen-atr-dirujuk-netizen-usai-kampanyekan-prabowo-gibran-saat-kunjungan-dinas>.

between the appointment of Acting Regional Heads and efforts to secure victory for specific candidates in the 2024 Presidential Election.

These suspicions have gradually been substantiated by various incidents leading up to the voting day on February 14, 2024. One prominent example is the involvement of Acting Governor of Central Java, Nana Sudjana, who welcomed presidential candidate Prabowo Subianto and his campaign team at the Indonesian Solidarity Party's anniversary celebration in Semarang on December 9, 2023.³⁴ This prompted the Central Java Election Supervisory Agency (Bawaslu) to investigate allegations of partiality benefiting one of the election participants. However, the investigation, as documented in the Election Monitoring Report (LHP) No. 0134/LHP/PM.01.00/12/2023 dated December 28, 2023, concluded that there were no violations, despite widespread public criticism of the incident.

A similar case occurred in West Kalimantan, where an Acting Regional Head went viral on social media for a statement urging the public to vote for a presidential candidate supporting the development of the new capital city (IKN). While the Acting Head did not explicitly mention any names, the public understood that the candidates supporting IKN's continuation without reservation were Prabowo Subianto and Gibran Rakabuming Raka. Such statements, although implicit, indicate partiality and the potential misuse of government apparatus to influence voter preferences.³⁵

Another case that drew attention was the distribution of social assistance by Acting Governor of Jakarta, Heru Budi Hartono. The assistance, in the form of basic food packages, was distributed in goodie bags with colors matching the branding of the Prabowo-Gibran campaign. Despite the clear indication of covert campaigning, the Jakarta Election Supervisory Agency (*Bawaslu*) only issued a mild reprimand and urged the Acting Governor to maintain neutrality.³⁶

The deployment of government apparatus to support specific candidates reflects systematic abuse of power, both directly and indirectly. Such practices undermine the principles of free and fair elections and erode public trust in the integrity of democratic processes. By leveraging strategic positions and government programs to advance particular political agendas, Acting Regional Heads not only violate the principle of neutrality but also risk delegitimizing the election results. This phenomenon marks a critical issue in the 2024 elections, which should serve as a moment to strengthen democracy in Indonesia.

2.3 Presidential Partisanship in Electoral Contests: A Legal and Ethical Framework

Presidential partisanship in electoral contests is a topic that demands serious attention. As both the head of state and head of government, the president bears the primary responsibility for upholding the integrity of democracy. However, when the

34 Titis Anis Fauziyah and Khairina, 'Pengamat Politik Undip: Sikap Pj Gubernur Nana Sambut Prabowo Di Semarang Bertentangan Dengan Semangat Netralitas', accessed 11 April 2025, <https://regional.kompas.com/read/2023/12/28/125137078/pengamat-politik-undip-sikap-pj-gubernur-nana-sambut-prabowo-di-semarang>.

35 Yeremia, 'Usai Viral Ajak Masyarakat Jangan Pilih Capres Tak Pro IKN, Pj Gubernur Kalbar Minta Maaf : Saya Terlalu Bersemangat', *Supernews.Co.Id*, accessed 11 April 2025, <https://www.supernews.co.id/berita/701-usai-viral-ajak-masyarakat-jangan-pilih-capres-tak-pro-ikn-pj-gubernur-kalbar-minta-maaf-saya-terlalu-bersemangat.html>.

36 Tazkia Royyan Hikmatiar, 'Buntut Viral Goodie Bag Sembako dengan Warna Identik Prabowo-Gibran, Bawaslu Peringatkan Heru Budi Hartono untuk Netral - Jawa Pos', *Buntut Viral Goodie Bag Sembako dengan Warna Identik Prabowo-Gibran, Bawaslu Peringatkan Heru Budi Hartono untuk Netral - Jawa Pos*, accessed 11 April 2025, <https://www.jawapos.com/politik/014141965/buntut-viral-goodie-bag-semako-dengan-warna-identik-prabowo-gibran-bawaslu-peringatkan-heru-budi-hartono-untuk-netral>.

president exhibits partisanship, particularly in the context of elections, it sparks debates from both legal and ethical perspectives.

A photo of President Joko Widodo holding a sign reading “Article 299 of Law No. 7 of 2017 on Elections: The President & Vice President Have the Right to Campaign” has become both a symbol and a trigger for this discourse.³⁷ The photo can be interpreted as an attempt to highlight Article 299 paragraph (1) of the Election Law, which is often misunderstood to mean that an incumbent president has the right to campaign even if they are not running for office. However, the context of the article is more appropriately applicable to presidents’ seeking re-election.



Figure 1 Presidents Joko Widodo
Highlights the President’s Campaign Rights Article

Source: BPMI Setpres

Article 304, which permits state officials such as ministers and other high-ranking officials to participate in election campaigns provided they take a leave of absence without state remuneration, has drawn significant criticism regarding principles of institutional neutrality and conflict of interest.³⁸ While the requirement for leave is technically intended to separate official duties from political activities, ensuring de facto neutrality remains a significant challenge. State officials, with their influence and access to state apparatus, can continue to leverage their informal power and networks to covertly mobilize political support (covert partisanship).³⁹ This practice risks creating asymmetric competition, where candidates supported by state officials gain an unfair advantage in the electoral contest.⁴⁰

The only method to clarify the interpretation of Article 299 paragraph (1) of the Election Law is through the application of legal interpretation methods. This necessity arises because legal texts often possess inherent ambiguity, allowing for multiple

37 Author not mentioned, ‘Jokowi Jelaskan Presiden Boleh Kampanye Sambil Bawa Kertas Besar Berisi Pasal-Pasal UU Pemilu’, *Merdeka*, accessed 12 October 2024, <https://www.merdeka.com/politik/jokowi-jelaskan-presiden-boleh-kampanye-sambil-bawa-kertas-besar-berisi-pasal-pasal-uu-pemilu-80916-mvk.html?page=2>.

38 Rolando Ochoa, ‘Conflicts of Interest in the Public Sector’, in *Global Encyclopedia of Public Administration, Public Policy, and Governance*, ed. Ali Farazmand (Cham: Springer International Publishing, 2022), 2330–34, doi:10.1007/978-3-030-66252-3_890.

39 David M. Levitan, ‘The Neutrality of the Public Service’, *Public Administration Review* 2, no. 4 (1942): 317, doi:10.2307/972951.

40 Sulistyowati Sulistyowati et al., ‘Neutrality of Public Officials in Elections Based on The Perspective of General Principles of Good Governance’, *Law Development Journal* 6, no. 3 (11 October 2024): 344, doi:10.30659/ldj.6.3.344-357.

interpretations to emerge.⁴¹ In the context of Article 299 paragraph (1), the potential for misunderstanding the president's right to campaign is significant if interpreted solely on a textual basis. Legal interpretation aims to fill gaps in meaning (*lacuna legis*), bridge the complexities between legal text and its implementation in social reality, and ensure that the interpretation of a norm aligns with constitutional principles and the objectives of the regulation.⁴²

Article 299 paragraph (1) of the Election Law, which states that "The President and Vice President have the right to campaign," is not intended for incumbent presidents in general but specifically for presidents seeking re-election as candidates. This can be analyzed through systematic interpretation, where the article must be read within the broader context of the Election Law, particularly Article 281, which imposes strict limitations on the campaign activities of presidents or other state officials. By reading these provisions in an integrated manner, it becomes clear that Article 299 paragraph (1) regulates the right of the president to campaign in their capacity as a candidate, not as an incumbent president who is not running for office.

Through a teleological interpretation, it is evident that Article 299 paragraph (1) of the Election Law is designed to provide a legal framework ensuring that elections are conducted in accordance with the principles of direct, general, free, secret, honest, and fair elections, as mandated by Article 22E paragraph (1) of the 1945 Constitution.⁴³ The primary purpose of this article is to regulate the right of a sitting president who is seeking re-election as a candidate to campaign, but within specific limitations to uphold electoral fairness and healthy democracy. An interpretation that applies this article to an incumbent president who is not a candidate clearly contradicts the objectives of the Election Law.

The president, in this case, holds dual roles as head of government and head of state, making any act of partisanship significantly impactful and subject to evaluation from a constitutional perspective.⁴⁴ As head of state, the president serves as a symbol of national unity and a guardian of democratic integrity, which demands neutrality in all actions, particularly in the context of elections.⁴⁵ Presidential partisanship, whether explicit through campaigning or implicit through policies benefiting specific participants, can be seen as an act that potentially undermines the principles of honesty and fairness in elections as mandated by Article 22E paragraph (1) of the 1945 Constitution. Such partisanship risks creating an *institutional imbalance*, where the president, as a symbol of the state, forfeits moral legitimacy by prioritizing partisan interests over the broader public good.⁴⁶ Presidential partisanship also has the potential to violate the oath of office as stipulated in Article 9 of the 1945 Constitution, which emphasizes the president's commitment to performing duties to the best of their ability and with utmost fairness,

41 Muchamad Ali Safaat, Aan Eko Widiarto, and Fajar Laksono Suroso, 'Pola Penafsiran Konstitusi Dalam Putusan Mahkamah Konstitusi Periode 2003 - 2008 Dan 2009 - 2013', *Jurnal Konstitusi* 14, no. 2 (2 November 2017): 234, doi:10.31078/jk1421.

42 Marzena Kordela, 'Ratio Legis as a Binding Legal Value', in *Ratio Legis*, ed. Verena Klappstein and Maciej Dybowski (Cham: Springer International Publishing, 2018), 19–28, doi:10.1007/978-3-319-74271-7_2.

43 Meri Yarni et al., 'C', *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 15 December 2024, 379–92, doi:10.24090/volksgeist.v7i2.12106.

44 Novendri Mohamad Nggilu et al., 'Indonesia's Constitutional Identity: A Comparative Study of Islamic Constitutionalism', *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 2 (30 December 2024): 480–500, doi:10.18860/j-fsh.v16i2.29851.

45 Patrick J. Wolf, 'Neutral and Responsive Competence: The Bureau of the Budget, 1939-1948, Revisited', *Administration & Society* 31, no. 1 (March 1999): 142–67, doi:10.1177/009539999400935529.

46 Daniel Kreiss, 'The Fragmenting of the Civil Sphere: How Partisan Identity Shapes the Moral Evaluation of Candidates and Epistemology', in *Politics of Meaning/Meaning of Politics*, ed. Jason L. Mast and Jeffrey C. Alexander (Cham: Springer International Publishing, 2019), 223–41, doi:10.1007/978-3-319-95945-0_13.

while fully adhering to the Constitution. This oath is not merely a formal declaration but a moral covenant binding the president to exercise their authority for the benefit of the entire nation, rather than serving the interests of specific groups.⁴⁷

As head of state and leader of the government, the president bears inherent responsibilities not only in the legal domain but also in broader ethical dimensions. Franz Magnis-Suseno, in *Ethics in Politics*, emphasizes that ethics is the essence that distinguishes humans from animals. In this context, the president is expected to conduct themselves with fairness, honesty, and integrity, prioritizing the public interest over personal or group interests.⁴⁸ The ethical standards attached to the presidency are heightened by its symbolic role as a unifying figure for the nation and a guardian of democratic integrity. Therefore, the president is not only required to strictly adhere to the law but also to act beyond mere legal compliance by exhibiting selflessness and upholding justice in every action.

Magnis-Suseno emphasizes that law is a means to humanize power. Without law, power would merely serve those with greater force. Thus, political ethics demands that a president not only obey the law but also refrain from actions that exploit power for personal or group interests, as such actions can create perceptions of discrimination or injustice.⁴⁹ In the context of elections, presidential partisanship whether explicit or implicit undermines the principle of non-discrimination and reflects a failure of the president to position themselves above all factions (*above all factions*). This failure compromises the president's role as a unifying figure and the impartial guarantor of democracy.

Immanuel Kant, in *Metaphysics of Morals*, asserts that a leader's actions must always be guided by the *categorical imperative* a universal principle that can be accepted by every rational individual without contradiction. This ethical standard requires that a leader's decisions and actions be inherently justifiable as universal norms, ensuring fairness and respect for the autonomy of all individuals affected by their leadership.⁵⁰ In this context, a leader must act as if their actions could become a universal law applicable to everyone.⁵¹ This principle has profound implications in the context of leadership, including during elections, where a president displaying partisanship toward a particular candidate or political party violates the concept of universality. Such partisanship cannot be fairly accepted by all citizens, especially those with differing political preferences.⁵²

Presidential partisanship also threatens the principle of impartiality, which is central to the duties of a head of state. Within Kant's framework, a head of state must act as a guardian of *public reason*, where their policies and actions should reflect the public interest rather than the interests of a select group.⁵³ If a president demonstrates a particular political preference, it not only creates a perception of injustice but also risks

47 Nishidh Patel, 'Legal Significance of Oath of Office: Comparison between Indian and US Context', *SSRN Electronic Journal*, 2013, doi:10.2139/ssrn.2216740.

48 Franz Magnis-Suseno, *Etika Politik: Prinsip Moral Dasar Kenegaraan Modern* (Jakarta: Gramedia Pustaka Utama, 2017), 208.

49 Franz Magnis-Suseno, *Etika Politik: Prinsip Moral Dasar Kenegaraan Modern*.

50 Achmad Zuhdi and Ari Ade Kamula, 'Legitimasi Hukum Asing Sebagai Pertimbangan Putusan Oleh Mahkamah Konstitusi: Perbandingan Antara Indonesia Dan Afrika Selatan', *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang* 7, no. 2 (20 June 2024): 286, doi:10.33474/yur.v7i2.21634.

51 Carol W. Voeller, *The Metaphysics of the Moral Law: Kant's Deduction of Freedom*, 1st ed. (Routledge, 2020), 196, doi:10.4324/9781003023364.

52 Peter Wagner, 'Mind the Gap(s): Moral Philosophy, International Law and Interpretative Historical Sociology', *European Journal of Social Theory* 26, no. 4 (November 2023): 529, doi:10.1177/13684310231164258.

53 Robert J. Hartman, 'Circumstantial and Constitutive Moral Luck in Kant's Moral Philosophy', *European Journal of Philosophy*, 7 February 2023, 4, doi:10.1111/ejop.12844.

leading to moral hazard a tendency to misuse power due to the absence of effective control by universal ethical norms.

Presidential partisanship can create what Kant refers to as a *practical contradiction*, a situation where the president's actions as head of state responsible for protecting the rights and interests of all citizens contradict their partisan actions that harm certain segments of society.⁵⁴ Such actions not only undermine the integrity of the electoral process but also diminish the moral legitimacy of the president, who serves as a symbol of unity and a guardian of democratic values.

Presidential partisanship in the context of elections not only undermines legal norms governing the neutrality of state officials but also violates fundamental principles of ethical leadership. Legally, such partisanship can be deemed contrary to the principles of fairness and neutrality as mandated by Article 22E paragraph (1) of the 1945 Constitution, which emphasizes honest and fair elections. It can also be categorized as a breach of the presidential oath of office, which requires the president to perform their duties to the best of their ability and with utmost fairness. Presidential partisanship threatens the principles of impartiality and moral integrity, which are the essence of the responsibilities of a head of state.

3. CONCLUSION

This study concludes that presidential partisanship in electoral contests cannot be justified legally or ethically. Although regulations require a leave of absence for presidents involved in campaigning, these rules do not fully ensure neutrality. Legal gaps still allow covert partisanship, which weakens the fairness of elections. A careful interpretation of Article 299 paragraph (1) of the Election Law shows that the right to campaign should only apply to presidents running for re-election, not to those who are no longer candidates but still hold office. Ethically, a president should rise above political interests to protect the unity and democratic values of the country. Partisan behavior risks damaging public trust and the moral authority of the presidency.

The use of administrative strategies, such as the politicized appointment of Acting Governors, further shows how political interests can undermine democratic principles. Even if these practices comply with formal legal procedures, they often harm the spirit of democracy and weaken public confidence in fair elections.

Based on these findings, it is important to strengthen regulations that protect presidential neutrality during elections. Future laws should clearly limit the political activities of presidents who are not contesting elections. The process for appointing Acting Governors also needs reform to ensure it is based on merit and free from political interests. Further research is needed to explore how other democracies manage presidential neutrality, so Indonesia can build a stronger and more resilient democratic system.

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⁵⁴ Mark Timmons, 'Making Sense of Kant's Formula of Universal Law: On Kleingeld's Volitional Self-Contradiction Interpretation', *Philosophia* 51, no. 2 (April 2023): 466, doi:10.1007/s11406-023-00615-2.

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