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Compulsory Voting and Democratic Legitimacy: A Normative Analysis of Constitutional Principles (Kewajiban Memilih dan Legitimasi Demokrasi: Telaah Normatif Prinsip-Prinsip Konstitusional)

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Abstract: The debate over compulsory voting has re-emerged amid rising abstentionism and declining voter participation in Indonesia's electoral democracy. The **research gap** addressed here is that prior studies on compulsory voting have proceeded in isolation: philosophical studies remain unresolved on whether democratic legitimacy justifies compulsory voting, comparative studies rarely engage constitutional doctrine, and Indonesian legal studies have not integrated the two. This study examines whether the right to vote may be reconstructed as a legally enforceable duty under Indonesian constitutional law, and assesses its implications for democratic legitimacy. Using normative legal research through statute, conceptual, and comparative approaches, this study analyzes Indonesia's constitutional framework, popular sovereignty doctrine, and the experiences of Australia, Belgium, Brazil, and Argentina. Results show the right to vote under the 1945 Constitution is an individual right rather than an enforceable duty, democratic legitimacy depends on the freedom and quality of voters' choices rather than sheer turnout, and non-coercive alternatives are more constitutionally defensible than sanction-based compulsion. The **novelty** lies in reconstructing five constitutional-normative principles political autonomy, substantive legitimacy, proportionality, non-discrimination, and subsidiarity of law to public trust that distinguish constitutional nudging from problematic compelling, a framework not yet articulated in prior Indonesian scholarship.

Keywords: Compulsory Voting, Democratic Legitimacy, Right To Vote, Constitution, Electoral Participation

Abstrak: Wacana kewajiban memilih (compulsory voting) kembali mengemuka seiring meningkatnya abstentisme dan melemahnya partisipasi pemilih dalam demokrasi elektoral Indonesia. **Research gap** penelitian ini adalah kajian normatif dan komparatif tentang kewajiban memilih yang selama ini berjalan terpisah: kajian filosofis belum tuntas menjawab apakah legitimasi demokrasi membenarkan compulsory voting, kajian komparatif jarang menyentuh doktrin konstitusional, dan kajian hukum Indonesia belum memadukan ketiganya.

*Penelitian ini bertujuan mengkaji apakah hak pilih dapat direkonstruksi menjadi kewajiban hukum tanpa berbenturan dengan hak asasi manusia, serta dampaknya terhadap legitimasi demokrasi. Dengan metode penelitian hukum normatif melalui pendekatan perundang-undangan, konseptual, dan perbandingan, penelitian ini menganalisis konstitusi Indonesia, doktrin kedaulatan rakyat, dan pengalaman Australia, Belgia, Brasil, dan Argentina. Hasil penelitian menunjukkan hak pilih dalam UUD NRI 1945 dikonstruksi sebagai hak individu, bukan kewajiban yang dapat dipaksakan; legitimasi demokrasi bergantung pada kebebasan dan kualitas pilihan, bukan semata kuantitas partisipasi; dan alternatif kebijakan nonkoersif lebih selaras dengan konstitusi. **Novelty** penelitian ini adalah rekonstruksi lima prinsip normatif konstitusional yakni otonomi politik, legitimasi substantif, proporsionalitas intervensi, non-diskriminasi, dan subsidiaritas hukum terhadap kepercayaan publik yang membedakan kebijakan nudging yang konstitusional dari kebijakan compelling yang bermasalah, kerangka yang belum dirumuskan secara eksplisit dalam kajian hukum tata negara Indonesia sebelumnya.*

Kata Kunci: *Kewajiban Memilih, Legitimasi Demokrasi, Hak Pilih, Konstitusi, Partisipasi Elektoral*

INTRODUCTION

In a representative democracy, elections occupy a central position as the mechanism through which power is invested with legitimacy. It is through elections that the abstract will of the people is translated into a concrete political mandate for those elected. Broad voter participation is therefore widely regarded as one of the key indicators of a democracy's vitality. Yet a contemporary paradox deserves attention: even as universal suffrage has become ever more firmly entrenched having been restricted, as recently as the early twentieth century, by qualifications of sex, property, or race the proportion of citizens who actually turn out to vote has tended to decline across a range of democracies, Indonesia among them.

Data from Indonesia's General Elections Commission put turnout in the 2024 general election at 81.78 percent, marginally above the 81.69 percent recorded in 2019 (Komisi Pemilihan Umum Republik Indonesia, 2024; Ramadhanti, 2024). On its face this figure looks stable, even slightly improved. Converted into absolute numbers, however, roughly 40 million eligible citizens simply did not cast a ballot. This phenomenon commonly known in Indonesia as *golput* (the "white group," those who abstain) is not merely a technical or administrative problem that can be solved by adding polling stations or cleaning up voter rolls. It touches something more fundamental: democratic legitimacy itself. To what extent can an election result still be regarded as an authentic reflection of the popular will when a significant share of citizens have chosen not to take part in the process at all?

It is this condition that has revived the debate over compulsory voting a policy requiring citizens to attend a polling station and/or cast a ballot, backed by the threat of sanctions for those who fail to do so. Countries such as Australia, Belgium, Brazil, and Argentina have adopted such systems on the argument that a duty to vote strengthens the mandate of elected governments, guards against domination by groups that are systematically more diligent about turning out, and promotes greater equality of political representation across social groups. Critics respond that coercion in a democratic setting however benign its aim sits in tension with the very essence of political freedom as one of the most fundamental of human rights, since the freedom to vote must logically include the freedom not to.

Out of this tension, the study formulates three interrelated legal questions. The first is a matter of normative construction: can the right to vote, as framed within the Indonesian Constitution, be reconstructed into a legally enforceable duty, or does the structure of the 1945

Constitution foreclose that possibility? The second is constitutional-methodological: what parameters are relevant to assessing the constitutionality of such a reconstruction, including how far a restriction on the right to vote may go without infringing upon the essence of the right itself? The third is theoretical: does a duty to vote necessarily strengthen democratic legitimacy, or might it in fact weaken it where the resulting participation is merely nominal?

This study is intended as a contribution to closing a gap in comprehensive normative scholarship on the relationship between compulsory voting and democratic legitimacy from the standpoint of Indonesian constitutional law. Unlike empirical or sociological studies, which tend to focus on observed behaviour, this study concentrates on normative analysis of constitutional text, constitutional theory, Constitutional Court jurisprudence, and cross-national comparative law, with a view to providing a clear argumentative foundation for future policy debate.

At the international level, scholarship on the relationship among compulsory voting, the right to vote, and democratic legitimacy has developed considerably over the past five years, though gaps remain. Volacu (2020) concluded that conventional democratic arguments are not strong enough to justify compulsory voting, while Elliott (2023) took the opposite position, constructing an argument for an institutional duty grounded in the moral role of constituents; both operate at the level of moral philosophy and stop short of positive constitutional analysis. Oprea, Martin, and Brennan (2024) showed empirically that compulsory voting can dampen political polarization, though their study is confined to established majoritarian democracies. A comparative study by Gonzalez-Ocantos et al. (2022) on Chile's transition found that moving to a compulsory system raised turnout but also increased the share of invalid votes, reinforcing the argument that the quality of the vote not merely its quantity is what determines democratic legitimacy.

At the national level, Fahmi (2021) examined shifts in Constitutional Court doctrine on restrictions of the right to vote without addressing the question of compulsory voting specifically. Ramadhanti (2024) took up the legal status of *golput* campaigning, while Cornelia, Anastasya, and Priliska (2024) reviewed gaps in the implementation of democratic principles within Indonesia's electoral system. Both national studies offer an important foundation, but neither fully integrates constitutional-normative analysis with cross-national comparative study. This research seeks to fill that gap by bringing Indonesian constitutional analysis, democratic-legitimacy theory, and cross-national comparison together into one coherent analytical structure.

METHODS

This study adopts a normative legal research design that is, research that treats legal norms, rather than social behaviour, as its central object of inquiry. Peter Mahmud Marzuki (2017) defines normative legal research as the effort to identify legal rules, legal principles, and legal doctrine in order to resolve a given legal problem. In other words, the study does not test how society behaves in relation to a rule; it asks instead whether a given legal idea here, the duty to vote is coherent with the higher-order system of norms above it.

Three approaches are applied simultaneously so that the analysis does not remain confined to a single vantage point. The statutory approach is used to examine, comprehensively, the legislation bearing on the issue at hand, including the 1945 Constitution of the Republic of Indonesia, Law Number 7 of 2017 on General Elections, and the international human-rights instruments Indonesia has ratified. The conceptual approach is used to build legal argument from foundational concepts popular sovereignty, the right to vote, democratic legitimacy, constitutional duty by drawing on legal doctrine and expert opinion, since certain issues addressed here (for instance, the boundary between a right and a duty) are not settled explicitly by any single norm. The comparative approach is used to compare the

regulation of compulsory voting in Australia, Belgium, Brazil, and Argentina four countries representing distinct models of compulsory-voting implementation in order to draw practical lessons about implementation and constitutional implications relevant to the Indonesian context.

Three categories of legal material are used. Primary legal materials comprise the Constitution, statutes, and court decisions, including relevant Constitutional Court rulings on the right to vote. Secondary legal materials comprise textbooks, journal articles, and academic papers addressing the theory of the right to vote, democratic legitimacy, and legal duty. Tertiary legal materials comprise legal dictionaries and encyclopaedias used to clarify technical terminology. The analysis proceeds on a prescriptive-normative basis: the study does not stop at describing the law as it stands (*law in books*) but goes on to assess its normative coherence and to formulate policy recommendations consistent with the constitutional principles identified.

RESULTS AND DISCUSSION

This section presents the findings of the normative analysis across eight interconnected sub-sections, built deductively from general constitutional principle toward concrete policy implications for Indonesia.

The Construction of the Right to Vote in the Indonesian Constitution

The right to vote is among the most fundamental constitutional rights in any representative democracy, for it is through this right that citizens participate in determining the direction of political power. Within the architecture of the Indonesian Constitution, the right to vote is not set out in a single article but is instead distributed across several provisions that, read together, form a coherent normative whole (Asshiddiqie, 2021). Article 1(2) of the 1945 Constitution establishes that sovereignty resides in the people and is exercised in accordance with the Constitution. This provision positions elections as the institutional mechanism through which that sovereignty is periodically realised. It is worth noting, however, that "the people" as the subject of sovereignty is a collective concept, whereas "the voter" as the subject of the right to vote is an individual one. It is precisely this tension between the collective and the individual dimension that lies at the heart of the debate over compulsory voting: can a collective interest in high turnout ever justify restricting an individual's freedom not to participate?

Article 22E of the 1945 Constitution sets out the principles of direct, general, free, secret, honest, and fair elections commonly abbreviated *Luber Jurdil*. The element of "freedom" within this formula ought to be read broadly: it encompasses not only freedom in choosing among the candidates on offer, but also a more fundamental freedom the freedom to decide whether to participate at all. Article 28D (3) guarantees equal opportunity in government using the verb "is entitled to." That choice of wording matters: normatively, "entitlement" is distinct from "obligation." A right is a legal power that its holder may exercise or forgo; a duty is a requirement that cannot be disregarded without legal consequence in the form of a sanction. Article 28E (3) guarantees freedom of expression, which itself encompasses a freedom not to express an opinion (freedom of silence). In the electoral context, this freedom can reasonably be read as including a right not to vote. Article 28J(2) does open the door to restricting rights by statute, but any such restriction is valid only insofar as it satisfies the principle of proportionality and does not touch the essence of the right being restricted a threshold that, as shown in Section E below, a coercive duty to vote is unlikely to clear (Asshiddiqie, 2014).

A textual-grammatical analysis of the 1945 Constitution reveals a consistent pattern. Wherever the Constitution intends to impose a duty, it does so explicitly, using the words "shall" or "is obliged to," as seen in Article 27(1) on the duty to uphold the law and the

government, and Article 30(1) on the duty to participate in national defence. By contrast, every provision touching the right to vote consistently uses the language of entitlement rather than obligation. This consistency is not accidental drafting but a deliberate normative choice, reinforced by the placement of the right to vote within Chapter XA on Human Rights, added through constitutional amendment. Comparison with other constitutions strengthens this reading: Belgium's constitution expressly declares voting to be "compulsory" (*verplicht*), and Bolivia's frames it as both "a right and a duty" (*derecho y deber*) at once. The absence of comparable language in the 1945 Constitution suggests that its framers did not intend to make voting an enforceable legal duty.

Constitutional Court jurisprudence reinforces this construction. Decision Number 011-017/PUU-I/2003 affirmed the right to vote as a fundamental political right that may not be arbitrarily curtailed. Decision Number 102/PUU-VII/2009 broadened access to the right to vote for citizens lacking standard identity documents, on the reasoning that administrative obstacles must not be allowed to negate the substance of a constitutional right. Decision Number 135/PUU-XIII/2015 held that any restriction on the right to vote must be minimal and grounded in individualised assessment rather than blanket generalisation about a category of persons. All three decisions follow the same pattern: the Constitutional Court has consistently built an expansive and protective doctrine around the right to vote, and has never construed it as a duty enforceable through sanction.

The logical consequence of this construction is that a right not to vote (a right of abstention) can likewise be understood as a legitimate constitutional right, even though it is nowhere stated explicitly. This right can be derived along three argumentative paths. The first runs from the freedom of expression (Article 28E (3)): abstaining from voting is itself a legitimate form of political expression, on a par with expressing an opinion through other means. The second runs from the principle of the rule of law (Article 1(3)): the maxim *nullum crimen, nulla poena sine lege* no offence and no punishment without a prior rule means that absence from a polling station, absent any norm expressly prohibiting it, is not a legal violation. The third runs from freedom of conscience (Article 28E (2)): compelling a person to vote against their convictions is itself a violation of the freedom of conscience that the same constitution guarantees.

Normative Examination of the Concept of a Duty to Vote

To understand why the right to vote resists conversion into a legal duty, it helps to begin from legal positivism. Kelsen (1967), in the *Pure Theory of Law*, drew a sharp distinction between rights (*Berechtigung*) and duties (*Verpflichtung*) as two distinct normative categories. In his theory of the hierarchy of norms (the *Stufenbau*), a legal duty can only validly arise where a higher-order norm the *Grundnorm*, or basic norm permits or requires it to arise. Because the 1945 Constitution consistently frames the right to vote as a right rather than a duty, it is highly doubtful, on this account, that Indonesia's *Grundnorm* actually delegates authority to convert that right into a duty through ordinary legislation. Hart (2012), in *The Concept of Law*, distinguishes primary rules (which directly impose obligations) from secondary rules (rules about how rules are made, changed, and applied), and observes that a legal duty presupposes organised social pressure enforced through sanction. A duty to vote backed by sanctions formally satisfies this criterion. Its validity, however, still depends on the prevailing rule of recognition the criterion identifying which norms count as valid law which in Indonesia places the Constitution at the apex of legal validity. A statute seeking to convert the right to vote into a duty would therefore risk failing that test of validity.

On the other side of the debate, scholars in the civic-republican tradition, such as Pettit (1997) and Hill (in Brennan & Hill, 2014), argue that voting is a moral duty grounded in reciprocity: citizens who benefit from a democratic system legal protection, public services,

political stability bear a corresponding obligation to help sustain that system through participation. The argument has moral force, but it carries three normative weaknesses once one tries to convert it into binding positive law. First, not every moral duty deserves codification into a legal duty enforceable by sanction; the boundary between *forum internum* (the realm of conscience and belief) and *forum externum* (the realm of conduct the state may regulate) must be preserved. Second, the reciprocity argument assumes that all citizens enjoy roughly equal benefit from the prevailing democratic system, whereas marginalised groups often experience that system as working against their interests, so the premise of "benefit received" does not hold uniformly. Third, the reciprocity principle offers no clear reason why physical presence at a polling station rather than some other civic obligation, such as paying taxes or obeying the law should be singled out as the one most deserving of legal compulsion.

International human-rights instruments reinforce this conclusion. Article 25 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Indonesia through Law Number 12 of 2005, guarantees the right to participate and to vote using the language of a "right," not a "duty." The UN Human Rights Committee, in General Comment No. 25 (1996), states that freedom in voting means the absence of pressure on voters from any quarter, including pressure arising from the threat of state sanction for failing to attend a polling station. Article 21(3) of the Universal Declaration of Human Rights states that the authentic will of the people can be present only where it rests on choices that are genuinely free, not choices produced under compulsion.

It should be emphasised that not all compulsory-voting models around the world are alike; they differ significantly in how far they intrude on individual freedom. The criminal-sanction model is the most repressive and the most constitutionally problematic, since it effectively criminalises a political choice. The administrative-sanction model, as applied in Brazil, is more moderate but still risks infringing citizens' access to public services where the sanction takes the form of withdrawing that access. The unenforced-duty model, close to Belgium's current condition, is theoretically more acceptable because it does not truly compel, but it risks eroding the rule of law, since a norm declared mandatory yet never enforced tends to undermine the law's own authority. The positive-incentive model for example, symbolic recognition for citizens who turn out is the most constitutionally acceptable, since it relies on persuasion rather than compulsion, though it still risks distorting voters' motivations through purely transactional calculation.

Democratic Legitimacy: A Theoretical Framework and Its Relationship to Participation

The concept of legitimacy has a long and varied intellectual history. Weber distinguished three types of legitimacy traditional, charismatic, and legal-rational and located modern democracy within the legal-rational type, in which legitimacy derives from compliance with established legal procedure rather than from any particular figure or tradition. Habermas (1996) introduced a theory of discursive legitimacy that emphasises the quality of deliberation rather than the mere satisfaction of formal procedure. On this account, physical presence at the ballot box unaccompanied by genuine understanding or critical reflection on the choice being made does not satisfy meaningful deliberation even if it is statistically recorded as "participation." Rousseau treated the general will (*volonté générale*) as the highest source of legitimacy, requiring the active participation of all citizens; yet this reading becomes self-defeating if invoked to justify compulsory voting, since forcing someone to participate contradicts the very notion of a "free will" that is central to Rousseau's own conception. Dahl (1989), in his conception of polyarchy, did not even include voter turnout among the criteria for a political system's legitimacy suggesting that legitimacy is determined far more by the quality of institutions and procedure than by the sheer quantity of participation.

Scharpf developed a typology distinguishing three dimensions of legitimacy: input legitimacy (the degree to which political decisions reflect the will of the people), output legitimacy (the degree to which political decisions produce real benefits for the people), and throughput legitimacy (the degree to which the decision-making process is transparent and fair). Advocates of compulsory voting generally argue from input legitimacy alone the more people participate, the more representative the outcome but this argument mistakenly equates the quantity of participation with the quality of representation. Empirical data from Chile show that the rise in turnout produced by compulsion was accompanied by a rise in the share of invalid votes, meaning that input quantity increased without any corresponding increase in the quality of representation of citizens' actual preferences (Gonzalez-Ocantos et al., 2022). From the standpoint of throughput legitimacy, what matters more fundamentally is transparency of process, freedom from intimidation, and inclusiveness for all segments of society dimensions that in Indonesia still face real obstacles, including the neutrality of state apparatus, vote-buying, and the accuracy of the permanent voter list.

Here lies the central paradox of compulsory voting: the attempt to boost legitimacy through quantitative participation can end up eroding substantive legitimacy where that participation is born of compulsion rather than political conviction. Rosema (2007) found that voluntary voters tend to be better informed than voters compelled to attend, who tend to cast their ballots more or less at random simply to satisfy an administrative obligation. Data from Australia show an informal (invalid) vote rate that has held fairly steady at 5–6 percent of the total, indicating that compulsory voting is indeed effective at forcing physical attendance, but is not and perhaps can never be effective at forcing a meaningful choice.

To properly understand *golput*, the phenomenon needs to be disaggregated into three distinct types with different underlying motivations. Ideological abstention is a conscious refusal expressing dissatisfaction with the choices on offer; far from signalling a failure of civic consciousness, this type is arguably a sign of its vitality. Structural abstention arises from administrative obstacles for instance, citizens who are not registered on the permanent voter list, or who face difficulty reaching a polling station; this type should be remedied through better electoral administration, not through sanctions against citizens who are, in effect, victims of the system's own shortcomings. Apathetic abstention stems from low political efficacy the sense that an individual vote will not change anything; the appropriate remedy here lies in making the political system more responsive to citizens' aspirations, not in compelling attendance. The roughly 40 million citizens who did not vote in the 2024 election likely represent some mixture of all three types in varying proportions, so a uniform policy response built around a single instrument of compulsion cannot adequately address them all.

Comparative Study: Constitutional Lessons from Countries That Apply Compulsory Voting

Australia, Belgium, Brazil, and Argentina are four of roughly twenty countries worldwide that formally apply compulsory voting, as recorded in the International IDEA (2024) database on countries that mandate voting across Europe, Latin America, and Asia-Pacific. That database identifies Belgium as the pioneer, having adopted the practice in 1892/1893, followed by Argentina in 1912, Australia in 1924, and Brazil in 1932 making these four among the longest-standing and most consistently applied compulsory-voting regimes among the world's democracies (International IDEA, 2024). Birch (2009), in the comparative study *Full Participation: A Comparative Study of Compulsory Voting*, likewise treats these four countries as central case studies, since each represents a distinct variant of implementation ranging from a duty to attend without any requirement to actually cast a valid vote (Australia), to enforcement that has weakened over time (Belgium), to administrative sanctions tied to

public services (Brazil), to formal recognition of the blank ballot as a valid category of vote (Argentina) making all four relevant objects of comparison for the Indonesian context.

This four-country comparison yields important lessons for Indonesia, since each represents a different model of implementation. Australia has applied compulsory voting since 1924, in a relatively moderate form: the duty imposed extends only to attending a polling place and collecting a ballot paper, not to casting a valid vote for a particular candidate, so a blank or informal ballot remains entirely possible (Australian Electoral Commission [AEC], 2023). The sanction for non-attendance is a relatively modest administrative fine, which may be waived where the voter provides an adequate reason for absence (AEC, 2023). Turnout in Australia has consistently exceeded 90 percent since the duty was introduced, while the rate of informal (invalid) voting in federal elections has generally sat at 4–6 percent over the past two decades (AEC, 2017, 2025) evidence that the right not to actually cast a meaningful vote continues to be exercised by a portion of voters even where physical attendance is compulsory. Even so, the foundation of Australia's success lies in a high level of public trust in electoral institutions and in a tradition of civic duty that has taken nearly a century to build (AEC, 2023) conditions not yet fully present in Indonesia.

Belgium, the pioneer of compulsory voting since 1893, displays a different pattern of enforcement from Australia's. Historically, turnout in Belgian federal elections has remained high and comparatively stable, ranging between 89 and 94 percent across the period from 1981 to 2014 (Kuźelewska, 2016). Yet the criminal sanction for repeated non-attendance still formally set out in Belgium's electoral code has in practice been enforced with declining frequency; since 2003, Belgian prosecutors are not recorded as having brought a single criminal case against a non-voter, so that the duty persists in law but has weakened considerably in practice (Kuźelewska, 2016). A more decisive shift came in 2024, when the Flemish Region became the first part of Belgium to formally abolish mandatory attendance for local and regional elections; political scientists have projected that turnout in the region could fall from roughly 90 percent to somewhere between 70 and 80 percent following this change (Hooghe & Stiers, 2025; VRT NWS, 2024). Belgium's experience both the gradual weakening of enforcement and the formal abolition in Flanders suggests that compulsory voting without consistent enforcement tends to degrade into voluntary voting, whether in fact or eventually in law. Were Indonesia to adopt a similar system, the lesson is that it would require substantial and sustained institutional investment in enforcement, not merely the enactment of a norm on paper.

Brazil, as the developing democracy most comparable to Indonesia, enforces compulsory voting through administrative sanctions restricting access to a passport, identity documents, loans from state-owned financial institutions, and a range of other public services for citizens who fail to attend without valid reason (International Foundation for Electoral Systems [IFES], 2022). Such sanctions are relatively effective at driving turnout but have been criticised for falling disproportionately on lower- and middle-income groups who depend most heavily on those services (IFES, 2022). Brazil's 1988 Constitution and its Electoral Code (*Código Eleitoral*, Law No. 4.737/1965) ground this duty in the principle of the secret ballot, which structurally means the state can only ensure a voter's presence at the polling station, not the content of their choice so blank or invalid ballots remain possible, in line with the Australian model.

Argentina, which has applied compulsory voting since the enactment of the Sáenz Peña Law (Law No. 8.871) on 10 February 1912, recognises the blank ballot (*voto en blanco*) as a valid category of vote under its National Electoral Code, as affirmed by Argentina's National Electoral Chamber in the *Malamud* precedent (2002), which characterised the blank ballot as a "*sufragio válido negativo*," or a valid vote that is negative in content (Chequeado, 2019). This recognition is an important constitutional compromise, demonstrating that the freedom to

"choose no one" is an inherent element of democracy that cannot be fully eliminated, however tightly a compulsory-voting system is designed.

From this four-country comparison, five normative-constitutional prerequisites can be distilled as conditions for compulsory voting to be sustained lawfully. The first is protection of substantive freedom of choice the duty imposed should extend only to attendance, not to casting a vote for a particular candidate. The second is proportionality of sanction sanctions should be administrative, modest, and non-discriminatory toward vulnerable groups. The third is the availability of a comprehensive and fair system of exemptions for citizens with valid reasons for non-attendance. The fourth is a strong foundation of public trust in the institutions administering elections. The fifth is an explicit constitutional basis, rather than mere regulation by ordinary statute. This study finds that, at present, not one of these five prerequisites is fully satisfied in the Indonesian context.

Constitutional Implications and Legal Policy for Indonesia

Two constitutional pathways would be available should Indonesia genuinely consider adopting a duty to vote in the future. The first is amendment of the 1945 Constitution through the mechanism set out in Article 37. This path is the most formally sound, since it directly alters the basic norm from which legal validity flows, but it faces the challenge of requiring broad national consensus, given the controversial nature of the issue and the likely resistance from civil society and human-rights advocates. The second is revision of Law Number 7 of 2017 on General Elections. This path is procedurally easier, since it does not require constitutional amendment but for that very reason, it is far more exposed to constitutional judicial review before the Constitutional Court.

Were the second path taken, the Constitutional Court would likely apply the doctrine of proportionality, which generally proceeds through four sequential tests. The first is the legitimate-aim test whether the policy's objective is constitutionally valid; this stage is likely to be cleared without difficulty, since increasing electoral participation can readily be shown to be a legitimate aim. The second is the suitability test whether the chosen policy is actually effective in achieving that aim; this stage, too, is likely to be cleared, given comparative evidence that compulsory voting does raise attendance figures, even if only at the level of physical presence. The third and most critical is the necessity test: here the Court would assess whether a less restrictive alternative exists that could achieve the same aim just as effectively. Because a range of less restrictive alternatives are available and potentially just as effective automatic voter registration, expanded access to polling stations, and strengthened voter education, among others a sanction-backed duty to vote is very likely to founder precisely at this stage. The fourth is proportionality in the narrow sense weighing whether the policy's benefits are commensurate with the cost to the right it restricts; at this stage, compelling a person to vote collides directly with the freedom of conscience and freedom of expression that lie at the untouchable core of the right to vote.

Given the substantial constitutional risk carried by a compulsion-based approach, a number of alternative policies would be both more constitutionally defensible and, arguably, more effective at fostering participation that is meaningful rather than merely physical. These include reforming automatic voter registration built on electronic population data to eliminate structural abstention; expanding voting mechanisms, such as early voting and remote voting for citizens outside their home constituency; substantively improving the quality of democracy by strengthening internal candidate-selection processes within political parties and sustaining voter education; designating election day a national holiday that employers are required to grant; and strengthening mechanisms of accountability for elected officials as a way of rebuilding public trust in the system of representation.

Ultimately, *golput* should be understood not as a citizen's failure to discharge an obligation, but as a sign that the social contract between citizens and the political system that represents them has come under strain. Rawls (1971) held that the duty to obey political institutions applies in full only where those institutions are themselves just. Where citizens perceive electoral institutions as insufficiently just or insufficiently responsive, their moral duty to participate in those institutions weakens correspondingly. On this logic, the appropriate policy response is to repair the fairness and quality of the institutions themselves, not to force citizens to participate in institutions they have not yet come to trust.

Political Equality and the Risk of Structural Discrimination

The political-equality argument, as advanced by Lijphart (1997), holds that under a system of voluntary voting, citizens with lower education and income are the most likely to be absent from elections, so that election outcomes come systematically to reflect the preferences of more established groups. The argument matters, but it carries two limitations: compelling participation does not automatically produce votes that genuinely represent the interests of vulnerable groups, and forcing marginalised groups to participate without addressing the underlying causes of their distrust is itself paternalistic in character.

The sanction mechanism itself risks being discriminatory in practice: a fine of identical nominal value is a far heavier burden on lower-income citizens, while a sanction built around withdrawal of access to public services as in Brazil falls hardest on the groups most dependent on those very services, potentially running afoul of the principle of equality before the law (Article 27(1)) and the prohibition on discrimination (Article 28I (2)) of the 1945 Constitution. Other vulnerable groups women under conservative social pressure, persons with disabilities, the elderly, internal migrant workers, and remote indigenous communities are similarly at risk of being disadvantaged by a compulsory-voting policy that fails to account for the structural obstacles they face in daily life.

Popular Sovereignty, Representation, and the Theory of Democratic Mandate

The principle of popular sovereignty (Article 1(2) of the 1945 Constitution) forms the philosophical foundation of this debate. Popular sovereignty is understood as the collective right of the nation to determine its own destiny, realised through a system of representation; but this collective right does not, in itself, require every individual to participate actively much as the right to assemble and associate is held collectively without ever being understood as a duty binding on every individual to actually join. Nor is there any settled consensus in comparative constitutional law on a minimum participation threshold for electoral legitimacy: the United Kingdom and the United States have never treated the legitimacy of an elected government as in doubt even where turnout fell below 60 percent, and the Venice Commission's Code of Good Practice in Electoral Matters (Venice Commission, 2002) does not include turnout among the criteria for a democratic election.

In modern theories of representation, an elected representative is understood to represent the entire constituency, including those who did not vote for them. Edmund Burke (1774) argued that a representative is not merely a courier conveying the wishes of those who elected him, but exercises independent judgment in the interest of the whole constituency. It follows that citizens who do not vote (non-voters) do not thereby forfeit their right to be represented; high abstention can instead be read as a genuine political signal an indication of aspirations not yet adequately absorbed by the prevailing system of representation.

Normative Synthesis: Reconstructing the Relationship between the Duty to Vote and Democratic Legitimacy

The whole of the analysis in Sections A through G can be reconstructed into a simple normative matrix mapping the relationship between the level of participation (high or low) and its character (voluntary or coerced). The first combination high, voluntary participation represents the ideal democratic condition, with the most robust legitimacy, because high turnout here springs from citizens' own political consciousness. The second combination low, voluntary participation still produces honest legitimacy despite its low quantity, since every vote cast genuinely reflects the free will of the person casting it. The third combination high, coerced participation, the condition produced by compulsory voting yields legitimacy that appears statistically high but is in fact substantively fragile, since some portion of that participation does not spring from free will at all. The fourth combination low, coerced participation represents a double failure: a policy that compels yet still fails to drive turnout effectively. This matrix underscores that the most desirable policy is not compulsory voting at all, but policy that gradually shifts a country from low-voluntary participation toward high-voluntary participation, through improving the quality of democracy itself rather than through compulsion.

From the analysis as a whole, this study reconstructs five constitutional-normative principles that can serve as a benchmark for evaluating any policy touching electoral participation. The first is the principle of political autonomy, which holds that every citizen has the right to decide for themselves whether, when, and how to exercise the right to vote, free from state compulsion. The second is the principle of substantive legitimacy, which measures the legitimacy of an election by the quality of the process and the freedom of the choices on offer, not merely by the quantity of recorded participation. The third is the principle of proportionality of intervention, which requires that any restriction on the constitutional right to vote take the form that impinges least upon that right. The fourth is the principle of non-discrimination in electoral mechanisms, ensuring that the burden of compliance with an electoral policy does not fall disproportionately on vulnerable groups relative to others. The fifth is the principle of the subsidiarity of law to public trust, which holds that a legal instrument will only be effective where it strengthens rather than substitutes for citizens' trust in existing democratic institutions.

These five principles are not intended as an absolute rejection of every policy intervention aimed at increasing electoral participation, but rather as an evaluative framework distinguishing constitutionally valid intervention from intervention that is not. Policies that operate by way of *nudging* voter-education campaigns, easier access to polling stations, or administrative reminders ahead of election day, for example remain consistent with all five principles, because they preserve an element of voluntariness in the citizen's final decision. By contrast, policies that operate by way of *compelling*, backed by the threat of legal sanction compulsory voting in its more repressive forms risk violating one, or even all, of these principles at once. This distinction between nudging and compelling is what ought to guide Indonesian electoral policymakers going forward.

The novel contribution (*novelty*) of this section lies in reconstructing the five constitutional-normative principles above into a single, coherent evaluative framework capable of distinguishing constitutionally sound electoral-participation policy (*nudging*) from constitutionally problematic policy (*compelling*). Unlike prior studies, which have tended to examine the legitimacy of compulsory voting in isolation whether from the standpoint of moral philosophy, human-rights doctrine, or purely empirical comparative study this research integrates all three perspectives into a single normative-constitutional framework not previously articulated explicitly in Indonesian constitutional-law scholarship.

CONCLUSION AND RECOMMENDATION

Conclusion

Drawing on a comprehensive normative examination of the constitutional construction of the right to vote, the theory of a duty to vote, theories of democratic legitimacy, a comparative study of four countries, and the constitutional implications for Indonesia, this study reaches several coherent, interrelated conclusions.

First, the right to vote under the 1945 Constitution is unambiguously constructed as an individual constitutional right, not as a legally enforceable duty. Textual, systemic, and jurisprudential analysis consistently shows that the 1945 Constitution places the right to vote within the family of human rights set out in Chapter XA, structurally distinguishing it from the duties of citizens; Constitutional Court jurisprudence reinforces this position and has never construed the right to vote as a duty enforceable through sanction.

Second, the right not to vote (the right of abstention) is a legitimate derivative constitutional right, arising from the convergence of freedom of expression, freedom of conscience, and the principle of the rule of law.

Third, a duty to vote constructed through ordinary legislation, without amending the 1945 Constitution, would be highly vulnerable to a finding of unconstitutionality, since it would face serious difficulty at the necessity-test stage before the Constitutional Court, given the availability of far less restrictive alternative policies that remain potentially just as effective.

Fourth, democratic legitimacy is not determined solely by high quantitative participation. Theoretical analysis drawing on Habermas, Scharpf, and Rawls, combined with empirical evidence from Chile and Australia, shows that participation produced by compulsion can distort the authentic representation of the people's preferences, producing legitimacy that appears strong but is in fact hollow.

Fifth, the comparative study of Australia, Belgium, Brazil, and Argentina shows that a constitutionally sustainable form of compulsory voting requires a clear separation between the duty to attend and the freedom of substantive choice, proportionate sanctions, a comprehensive system of exemptions, high public trust, and an explicit constitutional basis — conditions that, taken together, are not yet fully met in the Indonesian context.

Limitation

This study carries several limitations. First, as a work of normative legal research, it rests on analysis of constitutional text, doctrine, and jurisprudence, and does not extend to direct empirical data on how Indonesian citizens themselves perceive the idea of a duty to vote. Second, the comparative study is confined to four countries Australia, Belgium, Brazil, and Argentina so the normative-constitutional prerequisites formulated here would need further testing against countries with different legal traditions, for instance within Asia. Third, the analysis of how the Constitutional Court might rule is necessarily predictive, based on the generally applicable doctrine of proportionality rather than on an actual decision, since no constitutionality challenge to a duty-to-vote norm has yet arisen in Indonesia.

Recommendation

Building on these conclusions and limitations, the study offers recommendations at three levels. At the constitutional level, any future adoption of a duty to vote should proceed through a participatory, consensus-based amendment of the 1945 Constitution, accompanied by a guaranteed right to cast a blank ballot and by proportionate sanctions. At the legislative level, reform of the General Elections Law should focus on improving automatic voter-registration systems, expanding voting mechanisms such as early voting and postal voting, designating election day a national holiday, and strengthening voter education and the quality

of election-administration institutions. At the level of further research, future scholars are encouraged to undertake direct empirical study of the perceptions and typology of *golput* in Indonesia, to extend comparative study to Asian countries with different legal traditions, and to explore further the constitutional mechanisms most effective for building public trust in electoral institutions.

Author Contribution

The author bears sole responsibility for the entire research process, including conceptualisation, development of the theoretical framework, analysis of legal materials, manuscript preparation, and final approval of the published manuscript.

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