

COMPARISON OF THE REQUIREMENTS FOR CANDIDATE FOR PRESIDENT AND MEMBER OF HOUSE OF REPRESENTATIVE IN THE ELECTION LAW (BASED ON THE PERSPECTIVE OF PANCASILA)

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Abstrak: Perbandingan Persyaratan Calon Presiden Dan Anggota DPR Dalam UU Pemilu (Berdasarkan Perspektif Pancasila). Idealnya Presiden dan anggota DPR bebas dan bersih dari nepotisme, kolusi dan korupsi sesuai Undang-undang Nomor 28 Tahun 1999 tentang Penyelenggara Negara Yang Bersih Dan Bebas Dari Korupsi, Kolusi Dan Nepotisme. Namun UU No. 7 Tahun 2017 tentang Pemilihan Umum memberlakukan syarat yang berbeda diantara calon Presiden dan calon anggota DPR. Mantan koruptor dilarang mencalonkan diri sebagai Presiden, namun dapat mencalonkan diri sebagai anggota DPR dengan syarat mengumumkan statusnya sebagai terpidana korupsi. Penelitian yuridis normatif ini akan menganalisis tidak setaranya persyaratan calon Presiden dan calon anggota DPR sedangkan kedudukan kedua lembaga negara tersebut setara. Pendekatan konseptual digunakan untuk menganalisis persyaratan calon Presiden dan calon anggota DPR. Bahan Hukum Primer yang dikumpulkan melalui studi kepustakaan dalam penelitian ini meliputi peraturan perundang-undangan. Selanjutnya digunakan interpretasi ekstensif dan sistematis atau logis akan digunakan untuk menganalisis persyaratan calon Presiden dan calon anggota DPR dalam berbagai undang-undang dan nilai-nilai Pancasila

Kata Kunci: Persyaratan Calon, anti-korupsi, Pancasila

Abstract: Comparison Of The Requirements For Candidate For President And Member Of House Of Representative In The Election Law (Based On The Perspective Of Pancasila). Ideally, the President and House Of Representative are free from nepotism, collusion and corruption in accordance with Law No. 28 of 1999 concerning State Adinistrators Who Are Clean And Free From Corruption, Collusion And Nepotism. However, Law No. 7 of 2017 concerning General Election imposes different conditions between candidate for President and member of House Of Representative. Former corruptors are prohibited from running for President, but can run for the member of House Of Representative on condition that they announce their status as convicted of corruption. This normative juridical research will analyze the unequal requirements of candidate for President and members of House Of Representative, while the positions for the state institutions are equal. The conceptual approach is used to analyze the requirements of candidate for President and members of House Of Representative. Primary legal materials collected through library research include statutory regulations. Furthermore, extensive and systematic (logical) interpretations are used to analyze requirements of candidate for President and members of House Of Representative in various laws and values of Pancasila.

Key Word: Requirement, anti-corruption, Pancasila

INTRODUCTION

Vox populi vox dei is the idea of people's sovereignty (Ranuhandoko, 2008, p. 536). JJ Rousseau (cited in Busroh, 2009, p. 73) emphasized that what is meant by 'the people' is not the sum of individuals (*volonte de tous*) in the state, but rather a unit of individuals who have a will. That concept of 'social contract' in classical democracy then turned into a 'consent of the governed' in modern democracy based on Sabine's thinking (Sabine, 1961, p. 381).

The Indonesian Constitution mentions the word 'sovereignty' in its Preamble (as basic value) and Articles (as instruments) (Tricahyo, 2009, p. 3). In the Preamble of the Indonesian Constitution, Paragraph 2 states :

"And the moment of rejoicing has arrived in the struggle of the Indonesian independence movement to guide the people safely and well to the gate of the independence of the state of Indonesia which is independent, united, sovereign, just and prosperous."

Meanwhile, The Preamble of the Indonesian Constitution, Paragraph 4 states:

"... therefore the independence of Indonesia is formulated into a constitution of the Republic of Indonesia which is built into a sovereign state based on a belief in the One and Only God, just and civilized humanity, the unity of Indonesia, and democratic life led by wisdom of thoughts in deliberation amongst representatives of the people, and achieving social justice for all the people of Indonesia."

Furthermore, Article 1 Paragraph 2 of the Indonesian Constitution states:

"Sovereignty is in the hands of the people and is implemented according to this Constitution."

The people's sovereignty is often identified as democracy (Constitutional Court, 2011, p. 73). In terminology, the term 'democracy' comes from 2 (two) words in Greek, namely 'demos' (people) and 'kratein/kratos' (power) (Budiardjo, 1991, p. 50). Riyanto (2006, p. 1) states 'democracy' is interpreted as power (politics or government) from, by and for the people.

As the rule of the people, democracy is implemented as a rule-making by the people which is regulated to obey these rules. Kusnardi and Ibrahim (1983, p. 328) states the people are the owners and the highest power holders in a country. The people determine the goals of the state, also the manner and government that is carried out (Asshidiqie, 2006, p. 168). In a democratic country, the people are the ruler.

Currently, democracy is no longer carried out directly (direct democracy) by small groups that practice negotiation for the common good as in Ancient Greece (Cunningham, 2002, p. 109). Asshidiqie (2006, p. 328) states the country's territory, distribution of population, and the complexity of governance problems have caused modern democratic states to apply indirect democracy (representative

democracy). The implementation of indirect democracy means placing people's representatives in the executive, legislative and judiciary institutions in accordance with the distribution of power principle.

In Indonesia, the executive function is carried out by the President, the legislative function (legislature) by the House of Representatives or Dewan Perwakilan Rakyat (DPR) and the Regional Representative Council or Dewan Perwakilan Daerah (DPD), while the judiciary is functioned by the Supreme Court or Mahkamah Agung (MA) and the Constitutional Court or Mahkamah Konstitusi (MK).

The existence of a mutual monitoring system among state powers as a check and balance system shows that Indonesia does not purely carry out the separation of powers in the *Trias Politica* (Kusnardi and Ibrahim, 1988, pp. 141-142). Susmayanti (cited in Bakrie, M. 2013, pp. 56-57) states the division of power among the executive, legislative and judiciary is implemented as follows :

1. Although drafting laws is the task of the House of Representatives (DPR), the President can also propose draft laws.
2. The House of Representatives (DPR) oversees the use of the state finances by the government.
3. The House of Representatives (DPR) has the right not to approve a draft law submitted by the President.
4. The President ratifies the Laws.
5. The House of Representatives (DPR) has the right not to approve government regulations in lieu of laws.
6. The President has the prerogative to grant clemency and rehabilitation with

consideration of the Supreme Court (MA), while amnesty and abolition are subject to consideration of the House of Representatives (DPR).

In order to improve the quality of government administration, the executive, legislative and judiciary in carrying out the duties must refer to the general principles of good governance (Article 10 of Law No. 30 of 2014 concerning Government Administration). The President and the House of Representatives (DPR) must function as ideal state administrators, in accordance with Law No. 28 of 1999 concerning State Administrators who are Clean and Free from Corruption, Collusion and Nepotism. In relation to the spirit of anti-corruption, unfortunately Law No. 7 of 2017 concerning General Election imposes different requirements between candidates for President and member of House of Representatives (DPR) (hereinafter referred to as General Election Law).

Article 169 letters d and p of General Election Law states :

“Requirements to become candidates for President and/or Vice President are :
d. Never betrayed the state and never committed corruption and other serious crimes;
p. Have never been sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a crime punishable by imprisonment of 5 (five) years or more”.

Meanwhile, Article 240 paragraph (1) letter g of General Election Law states :

“Candidates for member of House of Representatives are Indonesian citizens and must meet the following requirements : Have never been sentenced to prison based on a court

decision that has obtained permanent legal force for committing a crime punishable by 5 (five) years imprisonment or more, unless openly and honestly informing the public that the person concerned is a former convict”.

Thus, former convicted corruptors are prohibited from running as candidates for President. On the other hand, former corruptors can apply for candidacy as members of the House of Representatives (DPR) on the condition that they openly and honestly state to the public that they are former convicted of corruption. The legal issue in this research is how do the comparison of anti-corruption requirements between candidates for President and member of House of Representatives (DPR) in the General Election Law based on the perspective of Pancasila?

METHODS

This normative juridical research will analyze legal issues in legal dogmatics, legal theory and legal philosophy (Marzuki, 2011, pp. 65, 72 and 77). These legal issues arise due to legal obscurity, namely the unequal anti-corruption requirements of candidates for President and member of House of Representatives (DPR), even though the two state institutions are equal.

At the level of legal theory, legal issues in this research contain legal concepts. This study uses a conceptual approach to analyze the anti-corruption requirements of candidates for President

and members of House of Representatives (DPR). The conceptual approach departs from the views and doctrines that develop in legal science, so the researchers will find ideas about legal notions, concepts and principles that are relevant to this study (Marzuki, 2011, p. 95). Primary legal materials in this study are collected through library research including statutory regulations.

Furthermore, extensive interpretation is used to make interpretations beyond the usual limits through grammatical interpretation (Rifai, 2011, pp. 70-71). Extensive interpretation (analogy) is a method of finding law, but it is also the creation of something new by expanding the meaning (Lemaire cited in Mertokusumo, 1996, p. 159). Systematic or logical interpretation will be used to analyze the anti-corruption requirements of candidates for President and member of the House of Representatives (DPR) in various laws in the statutory system (Constitutional Court, 2010, p. 72). So the entire legislation in Indonesia is a complete system (Ali, 2002, p. 169). Based on this extensive and systematic interpretation, the researcher builds a legal construction to analyze the formulation of legal issues in this study.

RESULTS AND DISCUSSION

In terms of its material, Pancasila is explored from the way of life which is the

soul and personality of the Indonesian nation itself. Pure origin and become the pride of the nation, not from others, even though it may be influenced from abroad. In terms of its position, Pancasila occupies the highest position, namely as the ideology and ultimate source of law. Pancasila is a measure in assessing our laws. The laws must reflect awareness and sense of justice in accordance with Pancasila as the Indonesian philosophy of life (Darmodiharjo and Sidharta, 1995, pp. 223-224).

The principles in all laws must be in accordance with the values in Pancasila :

1. belief in the One and Only God,
2. just and civilized humanity,
3. the unity of Indonesia,
4. democratic life led by wisdom of thoughts in deliberation amongst representatives of the people, and
5. achieving social justice for all the people of Indonesia.

The principles in Article 3 Law No. 28 of 1999 concerning State Administrators who are Clean and Free from Corruption, Collusion and Nepotism :

“General principles of state administration include the principle of : 1) Legal certainty; 2) Orderly State Administration; 3) Public interest; 4) Openness; 5) Proportionality; 6) Professionalism; and 7) Accountability”.

Furthermore, the principles in Law No. 30 of 2014 concerning Government Administration, Article 5:

“Implementation of Government Administration based on principle of : a) legality; b) protection of human rights; and c) Good Corporate Governance (GCG)”.

Meanwhile, Article 10 paragraph (1) and (2) Law No. 30 of 2014 concerning Government Administration :

- (1) GCG as meant in this Law covers the principles of : a) legal certainty; b) benefit; c) impartiality; d) accuracy; e) not abuse authority; f. openness; g) public interest; and h) good service.
- (2) Other general principles outside the GCG as referred to in paragraph (1) can be applied as long as they are used as the basis for the judge’s assessment as stated in the Court’s decision which has permanent legal force.

While the principles in General Election Law, Article 2 states : “Election are held based on the principles of direct, free, confidential, honest and fair”. Thus, Article 3 states : “In organizing an Election, the Election Administrator must carry out the Election based on the principles referred to in Article 2 and its implementation must comply with the principles : independent, honest, fair, legal certainty, orderly, open, proportional, professional, accountable, effective and efficient.”

Perspective Of The First Precepts Of Pancasila

Hadjon (1987, p. 72) states as a constitutional state of Pancasila, there must be a harmonious relationship between the government and the people, there will be no confrontation (mutual hostility).

Harapan (2014, p. 63) explains that the state based on law in Indonesia applies the intermediate flow (middle way) between *Rechtstaat* (civil law system) and the Rule of Law (common law system) by

placing Pancasila as the way of life, with indicators : a) Pancasila as the ultimate source of laws; b) The constitutional system which regulates the position, composition, rights and obligations of government; c) Democracy (people's sovereignty); d) Equality before the law; f) free judicial power; and f) Establishment of laws (Sayuti, 2011, p. 104).

Soetomo (1993, p. 127) declares a dignified state based on law in Indonesia can only be realized if the 5 (five) fundamental values in Pancasila become the core components. State based law in Indonesia is completed with dignity, people's rights, democracy and good governance must be accompanied by accountability to God Almighty according to their respective religions and beliefs, uphold human values, strengthen unity, use wisdom and deliberation in decision making, and fairness (Tim Penulis, 2013, p. 7). Physical nature, natural thinking and human nature in this world cannot live for a moment without God (Descartes, 2015, p. 72).

Brennkmeijer (2019, p. 101) mentioned moral leadership as an answer to corruption and fraud. Honesty and justice are universal values in all religions and beliefs. Meanwhile, corruption is both betrayal and violation of the value of honesty and justice in any religion. Anyone who is afraid of God, understands his

religion properly and reflects his belief in his actions, will not take the rights of others (by stealing or corruption) because he understands that all actions will be accounted before God according to his religion.

Thus, the requirements in the General Election Law that allow former corruptors to run for membership of the House of Representatives (DPR) are contradicting the religious values in the First Precepts of Pancasila.

Perspective Of The Second Precepts Of Pancasila

Based on Pancasila, Indonesia must lay the foundations and principles for state administration, operational framework for development and the realization of national goals on the values of justice and civilization. Philosophically, Indonesia must realize human values and dignity, also human rights and freedom. As the legal language of the nation, each precepts in Pancasila is not only terminology (words in text), but the spirit of kinship, protection, justice and truth that every Indonesian lives (Wangsa and Kristian, 2015, p. 91).

Corruption has become an extraordinary crime in many countries, because it violates laws, ethics, moral and human rights (Hatta, Muhammad & Zulfan (Editor) 2019, p. vi). Each country has ratified international treaties, such as *Rome*

Statute of International Criminal Court 1998, United Nations Convention Against Corruption 2003, and United Nations Convention on Transnational Organized Crime (Prahassacitta, 2016a and Prahassacitta, 2016b).

Indonesia has ratified the United Nations Convention Against Corruption 2003 through Law UU No. 7 of 2006, United Nations Convention Against Transnational Organized Crime through Law No. 5 of 2009, and Agreement For The Establishment Of The International Anti-Corruption Academy As An International Organization through Presidential Regulation No. 49 of 2013. Indonesia also participated as observers at the Working Group on Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997.

Corruption is not only detrimental to State finance, but also a violation of citizen's social and economic rights. Corruptors can be sentenced under Article 10 of the Indonesian Penal Code :

“The punishments are :

- a. Basic punishments : death penalty/capital punishment, imprisonment, criminal detention/light imprisonment, fine, closure punishment.
- b. Additional punishment : revocation/ deprivation of certain rights, confiscation of certain goods/forfeiture of specific property, announcement of the judge's decision/publication of judicial verdict.”

Article 10 of the Indonesian Penal Code has provided an opportunity to impose additional punishment in the form

of revocation of certain rights, in this case a political right to be elected. Deprivation of the right to be elected in legislative elections does not reduce the right of former corruptors to earn a decent living. Basically, the former corruptor still can make other livelihoods, as long as not a member of the House of Representatives (DPR).

In the International Covenant on Civil and Political Rights (ICCPR) which has been ratified by Indonesia into Law No. 12 of 2005 concerning Civil and Political Rights allows the revocation of political rights if the crimes threatens and interferes with state security, for the sake of public interest, morality, and respect the rights of others. This is also in line with Article 73 of Law No. 39 of 1999 concerning Human Rights that certain human rights can be limited by law which exists and regulates such revocation. So it is clear that deprivation of political rights is not against human rights (Sari, 2018, p. 19-20).

Permana (2019, p. 6) argues the sentences served by prisoners do not seem to deter him from repeating his crime. Recidivists occur due to external and internal factors. External factors due to the stigmatization or labeling from society and the impact of prisonization (behaviour, prison culture). Internal factors, due to psychological conditions that prevent recidivists to change for the better, negative self concept, economic background (difficulties in making money that force

him to fulfill their needs in instant ways). There is always the potential for corruption to be repeated, thus the requirements in the General Election Law that allow former corruptors to run for membership of the House of Representatives (DPR) are contradicting the value of humanity in the Second Precepts of Pancasila.

Perspective Of The Third Precepts Of Pancasila

In the context of Indonesian unity, justice covers all fields, ideology, politics, economy, social, culture, defense and security (Darmodiharjo and Sidharta, 1995, p. 166). Indonesia is a country based on the principle of kinship, mutual help and cooperation based on social justice (Kaelan, 2013, p. 275). Corruption as self-enrichment crime can create jealousy that threatens unity. Corruptors only focus on enriching themselves, ignoring tolerance, sympathy and empathy for others. Thus, the requirements in the General Election Law that allow former corruptors to run for membership of the House of Representatives (DPR) are contradicting the value of the unity in the Third Precepts of Pancasila.

Perspective Of The Fourth Precepts Of Pancasila

Based on the people's sovereignty, the people have the right to determine their

government through general election. Then the laws drafted by the government which are directly elected must be in the interests of the people (Hatta, 1976, p. 103).

Allowing former corruptors to nominate themselves as members of the House of Representatives (DPR), means closing opportunities for people who are capable, free and clean from nepotism, collusion and corruption to run for office. This hampers regeneration in political parties, because people become antipathy to politics and are reluctant to participate in general elections. This is very dangerous for democracy in Indonesia.

Nasrawin (2011, p. 212) states that members of House of Representatives (DPR) disqualified on being convicted of offences of corruption should be ineligible for any future House of Representatives (DPR) candidate because voting in election is more done on a party line rather than for individuals which ensures a safe return to House of Representatives (DPR) with black record of ethical misbehaviour. Such disqualification should also be extended over any House of Representatives (DPR) candidate who is found guilty of corrupt practice in the course of an election by considering his election void.

Thus, the requirements in the General Election Law that allow former corruptors to run for membership of the House of Representatives (DPR) are

contradicting the value of democracy in the Fourth Precepts of Pancasila.

Perspective Of The Fifth Precepts Of Pancasila

Social justice for all Indonesian people refers to human morality in social relations. Good and bad values have an impact on accountability. If it does not fulfill the standards, it can be blamed and get punishment as consequences basen on the law (Poedjawijatna, 1962, p. 204).

Thomas Aquinas (cited in Darmodiharjo and Sidharta, 1995, pp. 154-155) distinguishes justice into 2 (two) categories :

1. General justice (*justitia generalis*) or legal justice : justice according to the will of the law must be fulfilled for the public interest. This type of justice is in line with Notohamidjojo, (1975, p. 86)
2. Special justice (*justitia specialis*) can be divided into :
 - a. Distributive justice (*justitia distributiva*) : justice proportionally applied in the public law. For example, to become a member of House of Representatives (DPR) must meet the special qualifications, such as having the ability to represent the people, clean and free from corruption, collusion and nepotism.
 - b. Commutative justice (*justitia commutativa*) : justice by equating achievement and counter-achievement. Based on this type of justice, a corruptor is definitely not anti-corruption, a serial killer must be inhuman.
 - c. Vindictive justice (*justitia vindicativa*) : justice in imposing punishment or compensation in a criminal act. The judge should impose additional punishment in the form of revocation of political rights for corruptors to close their opportunity to run as members of House of

Representatives (DPR) and repeat the corruption.

Meanwhile, justice according to Oeripan Notohamidjojo (Fortman and Notohamidjojo (translator), 1973, p. 12) :

1. Creative justice (*iustitia creativa*) : justice that gives everyone the freedom to create something according to their creativity.
2. Protective justice (*iustitia protectiva*) : justice that provides the protection that everyone needs.

Based on this type of protective justice (*iustitia protectiva*), the General Election Law which opens up opportunities for former corruptors to be elected as member of the House of Representatives (DPR), does not provide a deterrent effect for the perpetrators, nor is it a good lesson for preventive actions against corruption (Hamdi, 2018, p. 247).

Pope (2006, p. 63) confirms that laws contributing to an administrative and social environment in which corrupt acts are less likely to take place. That is why the laws must be drafted by clean legislative. The consequences of unethical practices and corruption do not only destroy personal virtue and social values, but as well retard development, weaken social institutions, pervert justice, and thus are responsible for the current economic recession and unpurposeful leader as the country continue to journey without the will (Sunday, 2017, p. 11)

Thus, the requirements in the General Election Law that allow former corruptors to run for membership of the

House of Representatives (DPR) are contradicting the value of social justice in the Fifth Precepts of Pancasila.

CONCLUSION

The different requirements between candidates for President and members of the House of Representatives (DPR) which contradicts the spirit of anti-corruption is against the values of Pancasila. Former corruption convicts should not only be prohibited from running as candidates for President, but also as members of House of Representatives (DPR). There is a risk that the former corruption convicts will repeat the crime (corruption) by abusing his position. The status of former corruption convicts who are elected as members of the House of Representatives (DPR), will raise people's doubts about the quality of the Laws they drafted. It also shows the failure of the regeneration process and political education in Indonesia.

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International Agreement

- Agreement For The Establishment Of The International Anti-Corruption Academy As An International Organization
- Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997.
- International Covenant on Civil and Political Rights (ICCPR)
- United Nations Convention Against Corruption 2003
- United Nations Convention Against Transnational Organized Crime

Law and Refulations

- Law No. 28 of 1999 concerning State Administrators who are Clean and Free from Corruption, Collusion and Nepotism.
- Law No. 39 of 1999 concerning Human Rights
- Law No. 12 of 2005 concerning Civil and Political Rights
- Law No. 7 of 2006 concerning Ratification of United Nations Convention Against Corruption 2003
- Law No. 5 of 2009 concerning Ratification of United Nations Convention