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Legal Reformulation of Political Rights of Members of the Indonesian National Army to Ensure Democratic Justice and Enforcement of Human Rights

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Abstract: Political rights, including the right to vote, are fundamental components of human rights as enshrined in the 1945 Constitution of the Republic of Indonesia—specifically Article 27(1), Article 28D(1), and Article 28E(3)—and further reinforced by Article 43 of Law No. 39 of 1999 concerning Human Rights. These constitutional provisions are consistent with Article 21 of the Universal Declaration of Human Rights, which affirms that “Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.” In practice, however, statutory provisions such as Article 39 of Law No. 34 of 2004 on the Indonesian National Army and Article 200 of Law No. 7 of 2017 on Elections explicitly prohibit members of the Indonesian National Army from exercising their right to vote. This raises concerns regarding legal coherence and potential breaches of the principle of non-discrimination. This research examines the legal-political framework regulating the political rights of military personnel and proposes a legal reformulation grounded in the principles of human rights and equitable democratic participation. Employing a normative legal methodology, the study adopts statutory and conceptual approaches informed by the notion of non-discriminatory justice. The findings highlight inconsistencies between current legal norms and constitutional values, advocating for a phased legal reform which distinguishes between active and passive suffrage, supported by independent oversight to uphold military neutrality without infringing upon the constitutional rights of citizens.

Keyword: Political Rights, Indonesian National Army, Democracy and Human Rights Enforcement.

Abstrak: Hak politik, termasuk hak untuk memilih, merupakan komponen dasar hak asasi manusia sebagaimana tercantum dalam Undang-Undang Dasar Negara Republik Indonesia Tahun 1945—khususnya Pasal 27(1), Pasal 28D(1), dan Pasal 28E(3)—dan selanjutnya ditegaskan oleh Pasal 43 Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia. Ketentuan konstitusional ini konsisten dengan Pasal 21 Deklarasi Universal Hak Asasi Manusia, yang menegaskan bahwa “Setiap orang berhak untuk mengambil bagian dalam pemerintahan negaranya, secara langsung atau melalui wakil-wakil yang dipilih

dengan bebas.” Namun dalam praktiknya, ketentuan perundang-undangan seperti Pasal 39 Undang-Undang Nomor 34 Tahun 2004 tentang Tentara Nasional Indonesia dan Pasal 200 Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum secara tegas melarang anggota Tentara Nasional Indonesia untuk menggunakan hak pilihnya. Hal ini menimbulkan kekhawatiran mengenai koherensi hukum dan potensi pelanggaran prinsip nondiskriminasi. Penelitian ini mengkaji kerangka hukum-politik yang mengatur hak-hak politik personel militer dan mengusulkan reformulasi hukum yang didasarkan pada prinsip-prinsip hak asasi manusia dan partisipasi demokratis yang adil. Dengan menggunakan metodologi hukum normatif, penelitian ini mengadopsi pendekatan perundang-undangan dan konseptual yang diinformasikan oleh gagasan keadilan non-diskriminatif. Temuan-temuan tersebut menyoroti ketidakkonsistenan antara norma hukum saat ini dan nilai-nilai konstitusional, mengadvokasi reformasi hukum bertahap yang membedakan antara hak pilih aktif dan pasif, didukung oleh pengawasan independen untuk menegakkan netralitas militer tanpa melanggar hak-hak konstitusional warga negara.

Kata Kunci: Hak Politik, Tentara Nasional Indonesia, Demokrasi dan Penegakan Hak Asasi Manusia.

INTRODUCTION

As a nation that is committed to upholding the rule of law, Indonesia ensures the protection of human rights, including political rights, within a democratic system. The implementation of democratic principles assumes particular significance during elections, as these represent the people's participation in politics. Elections are widely regarded as a concrete reflection of people's sovereignty in a democratic nation, where citizens exercise their voting rights to shape the direction of an accountable and transparent government.

Nevertheless, Indonesia's transition towards democratic governance has been characterised by numerous fluctuations, influenced by alterations in the regime that have impacted the exercise of voting rights. From the Old Order to the Reform era, there has been a decline in the spirit of democracy, particularly during the Reform period. This raises concerns about a deviation from democratic values and human rights, particularly regarding regulations surrounding voting rights. A pivotal issue in the reform dynamics is the role of the Indonesian National Army in the political sphere.

Following the 1998 reform, the involvement of the Indonesian National Army in politics has been a contentious issue. The separation of the military from politics post-New Order was emphasised to uphold electoral fairness. Consequently, legislation was enacted to impose limitations on the political rights of military personnel in electoral processes. Nevertheless, this restriction has given rise to a debate among legal and political scholars. One perspective asserts that the restriction is necessary to ensure electoral neutrality, while the opposing viewpoint contends that the right to vote constitutes a fundamental human right that should not be subject to limitations.

The right to vote and be elected is considered a fundamental human right, as stated in the Indonesian Constitution and Human Rights Law. These legal provisions collectively underscore the state's obligation to ensure that all citizens, without discrimination, can exercise their political rights freely and fairly in accordance with democratic principles.

Nevertheless, there exist limitations on the franchise for members of the Indonesian National Army, with the objective being to forestall any potential misuse of authority. This has given rise to a debate about whether members of the military should have the right to participate in elections, as they are citizens and should be able to exercise their political rights. On the one hand, their engagement in the electoral process is conducive to inclusivity

and democratic progress. Conversely, it is imperative to ensure that their involvement is recognised as an individual right, as opposed to an institutional one, in order to uphold democratic principles and respect for human rights.

The right to vote is an individual right that should be respected by the state. The study underscores a conspicuous absence of legal alignment with human rights principles, particularly with regard to the prohibition of voting rights for the Indonesian National Army. In order to address this issue, it is essential that policies and regulations are amended to ensure fair and balanced political participation for members of the army. The regulation of voting rights can be comprehensive, limited, or eliminated, yet it is imperative that their neutrality is preserved.

In the event of the aforementioned rights being granted, it is vital that clear standards and limitations are implemented with a view to preserving institutional neutrality and democratic stability. It is imperative that strict regulations are implemented to ensure the integrity of elections and prevent undue influence by the military on the electoral process and the distribution of power. The balancing of these considerations is imperative for the maintenance of military neutrality and democratic integrity.

The question of whether to grant the Indonesian National Army the right to vote is not a simple one. On the one hand, there are issues of neutrality and potential abuse of power that must be addressed. It is imperative that a legal framework and restrictions are implemented to ensure that the exercise of voting rights does not conflict with democratic and human rights principles.

However, other countries, including the US, Argentina and Germany, have successfully implemented voting rights for their military personnel while maintaining neutrality. This suggests that it is not impossible for Indonesia to adopt a similar approach in a gradual and measured manner. In order to create a model of enfranchisement that balances individual freedoms and national interests, it is necessary to consider the practices of other countries and democratic principles.

METHOD

This research aims to analyse the politics of law in regulating the granting of political and electoral rights to members of the Indonesian National Army and to analyse the legal reformulation of granting political and electoral rights to members of the Indonesian National Army for the sake of upholding human rights and the advancement of equitable democracy. This research employs a normative legal research methodology, utilising both a statutory approach and an analytical approach to examine the legal framework governing the political and voting rights of members of the Indonesian National Army. The statutory approach involves a comprehensive review of relevant national legislation, and the analytical approach is used to interpret and critically assess these legal provisions in light of constitutional principles and international human rights standards. This study applies the theory of non-discriminatory justice to assess whether current legal restrictions on Indonesian National Army members' political rights align with principles of equality and democratic participation, offering a balanced view on the potential for legal reform in a rights-based democratic framework.

RESULT AND DISCUSSION

The Legal Politics In The Regulation Of Political Rights And Voting Rights For Indonesian National Army Members

The concept of civil-military relations has emerged as a contentious issue, even in countries that profess to be democratic. In Indonesia, civil-military relations have been a subject of extensive public discourse since the dissolution of the New Order regime.

The 1998 Reform Movement prompted internal reform of the Indonesian National Army in 1999, which was marked by the withdrawal of the military from the political sphere through the abolition of its dual function. These reforms precipitated substantial shifts in the nature of civil-military relations in Indonesia, enshrining the neutrality of the Indonesian National Army in the political sphere and establishing the military under civilian authority. In the New Order era, the military occupied a dominant role in politics, including legislative positions, the bureaucracy, state-owned enterprises, and local government.

The neutrality of the Indonesian National Army is indicative of its commitment to maintaining its identity as an army of the people, fighters, and professionals, as well as its strategic distance from the realm of practical politics. This position emerged as a consequence of the reforms that ensued following the dissolution of the Soeharto regime, a period that marked the termination of dual function by ABRI and the subsequent withdrawal of the military from the political sphere. This withdrawal was deemed necessary for the development of democracy, as well as to avoid military intervention in political affairs.

The 1998 reformation, through amendments to the 1945 Constitution and Law No. 34 of 2004 in conjunction with Law No. 3 of 2025, effectively removed the political role of the Indonesian National Army. The aforementioned amendments prohibited members of the Indonesian National Army from exercising their right to vote or joining political parties. This policy is associated with Huntington's civilian control theory, however, it creates tension with the guarantee of political rights in Article 28D Paragraph 3 of the 1945 Constitution. Jimly Asshiddiqie characterized the situation as a philosophical conflict between human rights and past trauma. The Constitutional Court's decision to allow the Indonesian National Army to vote was rejected by the government, indicating a reluctance to embrace change.

Legal politics involves the examination of the necessary modifications to existing legal frameworks to align with contemporary social realities. This approach entails the conceptualization of the *ius constituendum*, or the law intended for enactment, and the subsequent encouragement of its implementation as the *ius constitutum*, or the new positive law.

The legal framework governing the allocation of political and voting rights to members of the Indonesian National Army constitutes a state legal policy. This policy is designed to regulate the involvement of Indonesian National Army soldiers in political affairs, including the exercise of voting rights in general elections. This policy is indicative of the state's approach in reconciling the principle of military neutrality with the constitutional rights of its citizens, including those who are members of the Indonesian National Army.

According to Lawrence M. Friedman's legal system theory, the legal politics in question are the result of the interaction of three distinct subsystems: legal structure, legal substance, and legal culture. According to Sudikno Mertokusumo, the term "system" is defined as a set of components that function as a cohesive entity, engaging in dynamic interactions and cooperative efforts to accomplish a collective objective.

The legal structure encompasses the role of legislative and executive institutions in the design and establishment of policies, including the political rights of members of the Indonesian National Army. The Indonesian National Army, in this context, functions as an institution subject to the policy.

The substance of the law pertains to the content or norms of the applicable law, including laws and regulations. These restrictions on the political rights of the Indonesian National Army are outlined in the Election Law and the Indonesian National Army Law, which prohibit members of the Indonesian National Army from voting and being elected in active elections. Additionally, the constitutional mandate on the neutrality of the Indonesian National Army is a significant aspect of the legal framework.

The restriction of the Indonesian National Army's political rights has been the subject of criticism, with observers asserting that such restrictions are incongruent with the tenets of human rights as articulated by Komnas HAM in its 2023 Report and UN Principle 9 of the UN Declaration. According to Usman Hamid, the revocation of soldiers' political rights constituted a violation of the principle of non-discrimination. Meanwhile, military circles such as Wiranto underscored the Indonesian National Army's necessity to maintain neutrality.

The discourse surrounding the relative significance of military neutrality and the imperative of respecting human rights illuminates the intricate dynamics inherent in legal culture. This discourse is characterized by a tension between two imperatives: the maintenance of the Indonesian National Army's professional integrity and the adherence to the principles of non-discrimination and constitutional rights of citizens. Conversely, Satjipto Rahardjo underscores the significance of law as a means of conciliation rather than suppression.

The legal system is closely related to justice, as its primary objective is to establish a sense of justice within society. Consequently, the legal and judicial system must be designed based on the principles of justice, taking into account national interests and the values held by the community.

The right to vote is considered a fundamental right for all citizens, as stipulated in various international instruments that guarantee human rights, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR). Additionally, this right is constitutionally enshrined in Article 28D Paragraph (3) of the 1945 Constitution. Restrictions imposed on members of the Indonesian National Army should be subject to certain limitations, as they too are citizens who possess political rights. A comprehensive examination and interdisciplinary discourse are imperative to achieve a harmonious equilibrium between upholding military neutrality and ensuring human rights, while adhering to constitutional principles and democratic values.

The Legal Reform on Granting Political and Voting Rights to Indonesian National Army Members for Human Rights and Democratic Progress

The issue of granting political rights to the Indonesian National Army poses a dilemma between the principle of equal citizenship and the need to maintain military neutrality. Despite the regulatory framework outlined in Law No. 34/2004, aimed at averting a recurrence of military interventions reminiscent of the New Order era, these restrictions are in direct contravention with the principles of non-discrimination and human rights enshrined in the 1945 Constitution and international instruments. This discrepancy has incited deliberations concerning the principles of justice and the integrity of the legal system within a democratic framework.

The discourse surrounding the reinstatement of the political rights of the Indonesian National Army constitutes an inextricable component of the aspiration to establish a democratic state that is committed to safeguarding the constitutional rights of its citizens, while concomitantly imposing limitations on those rights to achieve social justice.

The theory of non-discriminatory justice in this study draws from the philosophies of Aristotle and John Rawls, particularly the concept of justice as fairness. This concept underscores the imperative of equal rights to fundamental freedoms and equal participation in the democratic process. According to Rawls, the legitimacy of injustice is contingent upon its potential benefit to disadvantaged groups, and he asserts that all citizens possess the right to participate in fair and free elections.

The ideal law is one that can provide tangible benefits to society and function as a catalyst for development. According to the theory proposed by Mochtar Kusumaatmadja, the prevailing influence of the development agenda can often result in the diminution of the legal system's role and the erosion of public trust. In the context of legal reform, the legal

development approach is often responsive to urgent legal needs and is regarded as culturally, religiously, and socially neutral, while disregarding other laws that are deemed non-neutral. The absence of explicit criteria for legal development, in conjunction with the substantial influence of political constellations, poses a risk of rendering the law susceptible to the interests of power, rather than serving as a guide to equitable and sustainable development.

In this context, revisiting the legal exclusion of Indonesian National Army members from political and voting rights is both timely and necessary. Such a reform would signify progress in aligning national law with democratic values and human rights principles, particularly the principles of non-discrimination and political participation. Granting these rights, within a framework that preserves military neutrality, would reinforce the law's role as a vehicle for justice, societal inclusion, and the strengthening of democratic institutions.

Legal reform is defined as a process of examining various formulations of legal provisions and legislation in force, and against which a number of changes are implemented in order to achieve efficiency, justice, and the opportunity to obtain justice according to applicable law. The law used as a means of reform can be in the form of legislation, jurisprudence, doctrine of treaties, custom, or unwritten law. In Indonesia, legislation holds the most significant position, while the role of jurisprudence is comparatively diminished. This is primarily due to the country's adherence to civil law rather than common law.

Currently, members of the Indonesian National Army are not entitled to vote, as stipulated in the relevant laws and regulations. However, the present moment necessitates a reevaluation and refinement of this condition through legal amendments that would facilitate the realization of their constitutional rights as citizens. The revision is imperative to ensure the principle of equality and to adapt to the evolution of democracy and human rights principles that guarantee universal political participation, without disregarding the principle of neutrality of military institutions.

Roscoe Pound's social engineering theory provides a valuable framework for comprehending and enhancing the function of law in achieving social justice in Indonesia. The application of social engineering principles to law can serve as a tool to create positive social change, protect the interests of society, and ensure the equitable distribution of justice.

The conferral of political and voting rights to members of the Indonesian National Army can be interpreted as a component of a deliberate strategy aimed at fostering respect for human rights and augmenting democratic participation. The revision of legal provisions to accommodate the constitutional rights of the Indonesian National Army as citizens constitutes a pivotal measure in ensuring the equitable distribution of justice. This revision also serves to fortify the legitimacy of the law as a conduit for inclusive and equitable social development.

The prospect of enfranchising members of the Indonesian National Army is contingent upon the establishment of stringent criteria, including the delineation of electoral processes from the chain of command, the proscription of electoral campaigning within the military, and the restriction of the right to vote exclusively to those who have relinquished their military service. This model can be linked to international practices that have proven effective in maintaining a balance between political participation and military neutrality.

The proposed enfranchisement model aligns with German practice, which permits military members to exercise the right to vote while prohibiting them from engaging in active politics within political parties. This demonstrates that reforms can be implemented without compromising military professionalism and without compromising human rights. In order to facilitate the implementation of this model, it is imperative to undertake a comprehensive legal reform through a participatory and incremental approach.

It has been posited that legal reformulation should occur in three stages. In accordance with Lawrence's assertions, the legal system is comprised of three components: substantive,

structural, and cultural. The substantive component pertains to the amendment of election laws and technical regulations, while the structural component involves the establishment of independent oversight institutions. Ultimately, however, the cultural component is the most significant, and it is achieved through the implementation of ethical educational initiatives on military neutrality.

This is evidenced by the Thai case, wherein the relaxation of the military's political rights without adequate control has been demonstrated to trigger instability. Therefore, the application of the principle of balancing of interests is imperative, including the proposed application of a sunset clause for periodic evaluation of its effectiveness and impact. Drawing from the Thai case, it can be posited that the relaxation of the military's political rights without adequate oversight can potentially precipitate instability. Consequently, the implementation of the principle of balancing of interest is imperative, encompassing the proposed application of the sunset clause for periodic evaluation of its effectiveness and impact.

As a nation that has ratified the International Covenant on Civil and Political Rights (ICCPR), Indonesia is bound by the terms of the instrument to impose temporary and proportionate limitations on the political rights of the military. Consequently, the revision of the Indonesian National Army Law must emphasize that restrictions on voting rights are applicable only during active service, with full rights being granted, as is the case in the previously mentioned countries.

CONCLUSION

The Indonesian National Army's regulation of political and voting rights constitutes a multifaceted issue, intricately interwoven with historical legacies, constitutional mandates, legal philosophies, and democratic values. Post-1998 reforms have depoliticized the military; however, the ongoing prohibition of soldiers from voting raises concerns about the balance between state security interests and individual human rights. The realm of legal politics must exhibit adaptability and responsiveness, aiming to reconcile historical traumas with democratic aspirations. Subsequent revisions must take into account national stability and the evolving understanding of justice, human rights, and citizen equality. It is essential to ensure that legal reforms reflect societal values and constitutional commitments.

It is imperative for Indonesia to reform its political and electoral rights for members of the Indonesian National Army in order to align with international constitutional and human rights standards. The effective leadership and adherence to democratic principles and human rights that are fundamental to any functioning society require strong legal guarantees. The proposed reforms may involve the restriction of voting rights to military personnel only, thereby ensuring military neutrality. The gradual and transparent execution of these changes, coupled with meticulous oversight, finds support in justice theories and the successful international examples of granting political rights to military personnel.

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