



Constitutionality of Conditions of the Resignation of Public Officials in Indonesia's Election System: A Legal Normative Analysis

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Abstract

In every general election, a set of arrangements must be formed as game rules that must be obeyed by organizers, contestants, voters, and supervisors. One of the rules of the game in the nomination stage is the determination of conditions for resignation for several public positions in which there are still differences between the conditions specified in the national general election and the regional head election. In fact, in practice, there have been fundamental changes to the basic concept of holding elections at this time, namely the existence of simultaneity and no longer recognizing the separation of the electoral regime between the national general election regime and regional head elections. Therefore, this paper aims to describe the design of the constitutionality of limiting human rights, in case the right to be elected, in general elections, which will then be linked to the national general election implementation system, which is held simultaneously. This research is normative legal research and uses the theory of a democratic rule of law and limitations on human rights as a tool for analysis. The result of this paper is that the right to nominate oneself in general elections is a basic right in the civil and political fields and has been guaranteed in the 1945 Constitution, the fulfillment of which can be limited in line with the provisions of Article 28J paragraph (2) of the 1945 Constitution. In addition, restrictions on the right to run for general elections, either by setting conditions for resigning or applying for permission for public office with different arrangements, is no longer relevant to be defended. Therefore, legislators must review and harmonize the application of the conditions for withdrawing in general elections for public officials.

Keywords

right to be candidate, conditions for resigning, simultaneous general election.

Introduction

In social life, especially when viewed from a sociological perspective, the need for a 'leader/ruler' is a condition sine qua non for social organization, starting from the smallest relationship to the largest (state). The phenomenon of the need for a social organization then encourages the emergence of several concepts of thought born from the social and political sciences that depart from the thoughts of famous philosophers such as Plato and Aristotle (Rapar, 2002). The thoughts of the ancient Greek philosophers were then developed by several other thinkers in later times (ancient Rome to the Renaissance) and gave birth to the concept of thought that underlies the establishment of a state, one of which (and being the largest) is what is known as the concept of an agreement (contract) social theory put forward by Thomas Hobbes, John Locke and J.J. Rousseau (Busroh, 2009). The theory of the social contract states that fulfilling the rights of each human being (individual) cannot be achieved by each person individually, but must be done together. This logic then becomes the basis for the formulation of a social agreement which contains what are the common goals, the limits of individual rights, who is responsible for achieving these goals, and who are the subjects who carry out the agreement that has been made with the limits. The agreement is embodied in the form of a constitution as the supreme law of a country which is the foundation for the formation of laws and policies in a country (Nurdin & Turdiev, 2021).

In a rule of law country, it is actually the law that governs, not people. Based on the pure theory of law which firmly holds the view that in essence, the state is the personification of the national legal system, so that legal order is no different from state order (Kelsen, 1995). Law is a unitary order of legal norms that is hierarchical and culminates in the constitution. That is, in a constitutional state requires constitutional supremacy. Apart from being a consequence of the application of the rule of law concept, constitutional supremacy is also a manifestation of the implementation of democracy because the constitution is the highest form of social agreement (Asshiddiqie, 2005). The formality of the concept of constitutional supremacy as a form of legal sovereignty in Indonesia in an expressive-verb manner can be seen in the formulation of the Explanation of the 1945 Constitution before the amendment which stated that "Indonesia is a state based on law (*rechtsstaat*) and not based on mere power (*machsstaat*)". The emphasis that was to be conveyed in the a quo Elucidation of the 1945 Constitution was then accommodated and "strengthened" in the body of the 1945 Constitution as a result of the amendment, namely in the provisions of Article 1 paragraph (3) of the 1945 Constitution which states that "Indonesia is a State of Law." Therefore, theoretically it can be concluded that Indonesia adheres to 2 (two) concepts of sovereignty at once, namely embracing people's sovereignty and legal sovereignty

Hidayat, (2017). Therefore, all policies and products formed by the state must aim at the welfare of society and create a just and prosperous Indonesian society. And in the context of realizing human rights enforcement through a democratic process, a general election procedure was formed to elect people's representatives and other public officials (Asshiddiqie, 2007).

One of the parameters to produce an orderly and democratic general election is the establishment of various rules of the game in all stages of its implementation. These various rules of the game are *conditio sine qua non* in a competition, especially in general election contests which are laden with the involvement of individual members of society in the political process which is the implementation of the embodiment of people's sovereignty. Just like the rules of the game in a football match, various forms of regulation will have new legal consequences in the form of rights and obligations of each party, both the organizers (implementing committee, official team and referees) and the participants themselves (Mulyadi et al., 2018). The existence of rules in the form of limitations on the rights and obligations of each party that arises is so that the match can run well and be carried out fairly. It is conceivable if a match without rules there will be many difficulties in that match. In addition, the rules of the game also have a function to protect players in order to limit or at least reduce aggressiveness between players with the principle that is always upheld is that competing is not the same as fighting. In war, the main goal is to destroy the enemy, whereas in a fight, even if there is an effort to defeat the enemy, it must still be in the corridor of fairness. The scope of this rule certainly covers all processes and activities from upstream to downstream (selection of winners). Likewise in general election contestation, various kinds of rules have been established starting from the preparation and implementation stages. This preparatory stage starts from program and budget planning to the stage of updating voter data and voter lists. The implementation stage starts from the nomination, voting and counting of votes, the recapitulation of vote counting results, to the determination and announcement of the elected candidate pairs and the resolution of general election disputes.

This paper is in the context of analyzing one of the rules of the game in the early stages of holding general elections, namely regarding the conditions or obligation to resign in several groups of public positions. The presence of this rule is considered very thin with the existence of each individual's right to nominate in general elections (rights to be candidate), so that a view emerges that considers that the a quo provision creates discrimination, because the regulation provides a categorization of groups of public officials who must resign. himself and a group of public officials who do not have to resign. In relation to guaranteeing the protection of citizens' political rights, our constitution has guaranteed the protection of citizens' rights in the political field as contained in the provisions of Article 27 paragraph (1), Article 28, Article 28D paragraph (3), and Article 28E paragraph (3) The 1945 Constitution. The provisions in the constitution regarding the political rights of citizens are then emphasized in Article 43 of Law No. 39 of 1999 concerning Human Rights which states, "Every citizen has the right to be elected and vote in general elections based on equal rights through voting that

directly, publicly, freely, confidentially, honestly and fairly in accordance with the provisions of the laws and regulations." Guarantees for the right to vote (rights to vote) and the right to be nominated or elected (rights to be candidate) are then limited in fulfillment by provisions regarding the conditions that must step down for several public officials who will take part in general election contests, both national and local elections.

Therefore, the study was principally related to the wedge between the concept of a democratic country and the concept of rule of law (nomocracy) within the scope of limiting the right to be elected (rights to be candidate) in general elections. This paper aims to describe the design of the constitutionality of limiting human rights, in casu the right to be elected, in general elections which will then be linked to the national general election implementation system which is held simultaneously. So that it can be determined whether the existence of conditions or obligations to resign for public officials who will contest in the general election event is still needed or not. The thesis in this paper is one of the consequences of changing the system for organizing general elections which will be carried out simultaneously resulting in improving the rules of the game in its implementation, namely regarding the conditions for resigning for public officials whose arrangements are still distinguished between public office clusters in general election contestation and public office clumps. in the regional head election contestation. Therefore, to answer this main issue, this paper raises two issues to be answered: the first is regarding the constitutionality of limiting the right to vote in the constitution, and the second is regarding the implementation of conditions for resignation for public officials in the contestation of national general elections simultaneously.

Research Method

This research is a legal-normative analysis in which the method of collecting legal materials uses library research or document study (Waluyo, 2002; Sunggono, 2015). The legal materials used are secondary legal materials which include, among other things, the 1945 Constitution, Constitutional Court Decisions, laws and other statutory regulations. In addition, other legal materials are also needed, such as legal journals, legal magazines, and scientific works (Diantha, 2016).

Results And Discussion

Constitutionality of Limitation of Right to be Candidate

According to Harjono, there are 2 (two) important aspects needed in a general election to reflect democratic values, namely the right to nominate themselves (the rights to be candidate) and the right to propose a candidate (No. 33/PUU-VIII/2010). These two aspects must reflect democratic values and must be implemented in positive law (*iusconstitutum*) so that their enforcement is legally binding. In addition, at a pragmatic level, democracy is synonymous with involving as many people (the people) as possible to participate in the political process, especially in making political decisions, including regarding filling public positions through general elections (Syarifuddin, 2021). Such a view then develops and

becomes unregulated because it seems as if it is used as a parameter in assessing all state activities in this republic, in terms of whether every act or state process, especially political processes, already reflects democratic values? This kind of view later gave birth to procedural democratic practices that put more emphasis on a quantitative approach, where the majority of votes determine the direction of policies and political decisions. Such a practice will actually distance the value of democracy itself from the spirit of the common will of all the people and has the potential to produce leaders who do not have the qualifications and capabilities to hold a public office. That's why democracy needs a rule of the game which is the result of syncretization between two big concepts, namely democracy and nomocracy within the framework of constitutional law.

In this context, the design of the constitution has emphasized the choice of democracy as a way of benefiting the nation and state as stipulated in Article 1 paragraph (2) of the 1945 Constitution. In this regard, Joseph Schumpeter has established the main criteria in qualifying a country with the choice of a democratic political system, namely the holding of elections free and regular public. General elections are held, not just to regulate the circulation of power and leadership, but rather to the substance of democracy itself, namely the involvement of the people as the holders of power in every government policy-making process. That is, democracy is more a system of transforming the voices of choice into the form of a mandate from the people to manage the administration of government rather than just a leadership transition process in a country. Furthermore, Article 1 paragraph (3) of the 1945 Constitution also stipulates that Indonesia is a legal state (nomocracy) which conceptually requires a set of legal principles that must be respected and obeyed in every administration of state government (rule of law). In the context of Indonesia's rule of law state, law is not intended only to guarantee the interests of a few people in power, but rather to guarantee justice for the people of Indonesia. Therefore, Indonesian law must be law that makes the people happy and can accommodate the characteristics of this nation's cultural roots, such as diversity, kinship, and deliberation. With this understanding, the understanding and application of democracy in Indonesia is not the same as the understanding and application of democracy in other countries, including Western countries where democracy itself was born and established. The character of democracy in Indonesia is more regulated and limited by a set of legal rules that culminate in the constitution as stipulated in Article 1 paragraph (2) of the 1945 Constitution which states, "Sovereignty rests with the people and is carried out according to the 1945 Constitution".

Therefore, the right of individuals to nominate themselves in general elections as one of the constitutional rights in the field of politics has been guaranteed in the 1945 Constitution. This right has been regulated in Article 28D paragraph (3) of the 1945 Constitution which states, "Every citizen has the right to have the opportunity in government." The right to equal opportunity in government in the article a quo later in its application is interpreted or includes the right to obtain equal opportunity to nominate himself in government ranks, in casu through general election contestation.

The definition of government ranks in question is not only limited to the executive realm, but also includes the legislative and even the judiciary. The emphasis of the a quo article is on equal opportunity for every citizen. Opportunity in the context of the a quo article is not related to the existence of opportunities, but rather guarantees of access to government ranks. Thus, it becomes clear that the right to be elected in general elections has a regulatory basis in the constitution, namely in Article 28D paragraph (3) of the 1945 Constitution.

Furthermore, the individual right to nominate himself in general elections, even though it is categorized as a basic right (Murthy & Smith, 2009; Smith, 2022) which has been guaranteed fulfillment in the constitution, can be limited in its validity as long as the limitation is stipulated by law for the sole purpose of -with the aim of guaranteeing recognition and respect for the rights and freedoms of others and for fulfilling just demands in accordance with considerations of morality, religious values, security and public order in a democratic society as stipulated in Article 28J paragraph (2) of the 1945 Constitution. However, in setting limits on a right it must also remain within the framework of a democratic rule of law. That is, these restrictions may not be made in such a way that their existence actually limits or even eliminates the basic rights of citizens that are guaranteed in the constitution, in casu the right to be elected in general elections. This was also confirmed in the jurisprudence of the Constitutional Court in its Decision No. 011-017/PUU-I/2003, dated 24 February 2004, which in its legal considerations, among other things, stated (No. 011-017/PUU-I/2003). Indeed, Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia contains provisions that it is possible to limit the rights and freedoms of a person by law, but the limitation of these rights must be based on strong, reasonable and proportional reasons and not too much. Such restrictions can only be made for the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and for fulfilling just demands in accordance with considerations of morality, religious values, security and public order in a democratic society. In addition, the issue of limiting the right to vote (both active and passive) in general elections is usually based only on considerations of incompetence, for example age and mental condition, as well as impossibility, for example because the right to vote has been revoked by a court decision that has permanent legal force and generally individual and not collective."

Thus, it becomes clear that the constitutional framework related to fulfilling the right of every citizen to be elected in general elections can be limited as long as it is based on strong, reasonable and proportional and not excessive reasons, which administratively can be done either by resignation or with the instrument for granting permission from the supervisor concerned. On the basis of guidelines as well as regulatory limitations within the constitutional framework, the legislators technically elaborate it by setting conditions for resignation/permission for someone who is currently occupying certain positions, such as State Civil Apparatus, Member of the Indonesian National Armed Forces or Indonesian National Police, employee State Owned Enterprises, Legislative Members, and so

on. Arrangements for these requirements are divided into two categories, namely (i) in terms of legislative general elections (to elect members of the DPR, DPRD and DPD) as well as the general election of the President and Vice President as stipulated in Law No. 7 of 2017 concerning General Elections (hereinafter called UU 7/2017); and (ii) in the case of regional head elections as stipulated in Law No. 6 of 2020 concerning Stipulation of Government Regulations in Lieu of Law No. 2 of 2020 concerning the Third Amendment to Law No. 1 of 2015 concerning Stipulation of Government Regulations in lieu of Laws No. 1 of 2014 concerning the Election of Governors, Regents and Mayors to Become Laws to become Laws (hereinafter referred to as Law 6/2020) (Article 18 paragraph (4) of the 1945 Constitution).

The legal politics forming the laws in the two laws then also experienced several dynamics of change through testing the constitutionality of the norms of the articles related to the withdrawal/permit requirements for several groups of positions in the Constitutional Court. In this context, the Constitutional Court (MK) as one of the state institutions holding judicial power as stipulated in Article 24 of the 1945 Constitution, has 4 (four) powers and 1 (one) obligation (Article 24C of the 1945 Constitution in conjunction with Article 10 of the Constitutional Court Law). Therefore, based on all the powers mandated by the constitution, it is hoped that the Constitutional Court will be able to guard constitutional values as the living law as well as oversee the ongoing process of democratization in Indonesia. The presence of the Constitutional Court in Indonesia's constitutional structure is a major advance, not only for the development of law, but also for the development of democracy in Indonesia. The presence of the Constitutional Court with all its powers and obligations is considered to have overturned the doctrine of parliamentary supremacy and replaced it with the teachings of constitutional supremacy (Mahfud, 2009; Faqih, 2016; Djanim, 2015). It is through its decisions, especially in terms of reviewing laws, that the MK also determines the political direction of legislation in Indonesia, in casu UU 7/2017 and UU 6/2020.

Therefore, in the following, we will first describe the dynamics of the regulation in order to obtain a comprehensive picture and then assess whether the regulation is in accordance with the constitutional measure as described above.

Legal Framework for Restricting the Right to be Candidate

The formulation of arrangements for the right to nominate himself in general elections, one of which is actualized in the form of determining the conditions for candidates to participate in general elections, is divided into two categories, namely (i) the general election (regime) category and (ii) the general election (regime) category) election of regional heads (Usman, 2017).

Arrangements regarding restrictions on the right to run for election in general elections, including the necessity to withdraw from office beforehand for every citizen who is currently holding a public office and will contest the general election, are regulated in Law 7/2017 rigidly in Chapter II concerning Participants. and Requirements to Take part in the election, which are divided into three parts,

namely (i) Requirements for Candidates for President and Candidates for Vice President; (ii) Election contestants for DPR, Provincial DPRD and Regency/Municipal DPRD (legislative); and (iii) Election Contestants for DPD Members.

First, with regard to the requirements for presidential and vice-presidential candidates relating to restrictions on the right to be elected in general elections for someone who is holding a certain public position, it has been regulated in Article 170 paragraph (1) of Law 7/2017 which basically stipulates that everyone who currently holding a position as a state official and being nominated by a political party or coalition of political parties must resign first, which excludes the President, Vice President, Leaders and members of the MPR, Leaders and members of the DPR, Leaders and members of the DPD, Governors, Deputy Governors, Regents , Deputy Regent Mayor and Deputy Mayor. Furthermore, the norm of the Explanation of Article 170 paragraph (1) letter g of Law 7/2017 further determines which categories of state officials must resign based on the norms of Article 170 paragraph (1) of Law 7/2017 a quo.

The mechanism for submitting the resignation of a state official referred to is submitted no later than when the person in question is registered by a political party or coalition of political parties at the KPU which is stated in a letter of resignation submitted to the KPU as a required document for a candidate for President or Vice President. Apart from that, the provisions of Article 171 paragraph (1) of Law 7/2017 also stipulates several positions, namely Governor, Deputy Governor, Regent, Deputy Regent, Mayor and Deputy Mayor who will be nominated by a political party or coalition of political parties must first obtain permission. formerly the President as head of government. The letter requesting permission from the President is also included as one of the requirements documents for a candidate for President or Vice President which must be submitted to the KPU.

Furthermore, with regard to the conditions for resigning as stipulated in the provisions of Article 170 paragraph (1) junctis Elucidation of Article 170 paragraph (1) of Law 7/2017, the Constitutional Court through Decision No. 68/PUU-XX/2022, dated 31 October 2022 has made changes to the norms a quo, especially regarding the conditions that must resign for ministers who are nominated by political parties or political party bodies as candidates for President or Vice President. In its ruling, the Constitutional Court decided that a person currently serving as Minister or Ministerial level does not have to resign first when nominated as a candidate for President or Vice President, but only needs to obtain approval and leave permission from the President (No. 68/PUU-XX/2022). That is, the Constitutional Court includes the position of Minister or equivalent as a family of positions that do not have to resign (exceptions) in Article 170 paragraph (1) of Law 7/2017 with the condition that the official must obtain approval and leave from the President.

Second, with regard to the requirements for legislative candidates relating to restrictions on the right to be elected in general elections for someone who is holding a certain public position, this has also been regulated in a separate manner in Article 240 letter k Law 7/2017 which basically determines regional heads, deputy heads regions, State Civil

Apparatus, members of the Indonesian National Armed Forces, members of the Indonesian National Police, Directors, Commissioners, Supervisory Board and employees of state-owned enterprises and/or regionally-owned enterprises, or other bodies whose budgets come from state finances must resign at the time when participating in the legislative election contestation. The resignation mechanism is stated in the resignation statement submitted as one of the administrative requirements for prospective legislative members.

Third, related to the requirements for DPD member candidates relating to restrictions on the right to be elected in general elections for someone who is currently occupying a certain public position, it has been regulated in Article 182 letter k Law 7/2017 which basically determines for someone who will take part in an election contest. general DPD member and currently holding positions as regional head, deputy regional head, village head and village apparatus, Village Consultative Body, state civil apparatus, members of the Indonesian National Armed Forces, members of the Indonesian National Police, directors, commissioners, supervisory board and employees of the state-owned enterprises and/or regional-owned enterprises and/or village-owned enterprises, or other entities whose budget is sourced from state finances, must first resign which is stated in a letter of resignation and cannot be withdrawn submitted to the KPU as one of one document required for DPD member candidates. Thus, it is clear that in limiting the right to be elected in general elections in this category, especially in the General Election of the President and Vice President, there are several groups of positions that do not have to resign, must resign and only with the approval and leave of the President (Table 1).

Table 1. Positions with No Need to resign to contest in election

No.	Job Type		
	Resign	Not Resigned	President's Permit
1.	Chairman, deputy chairman, junior chairman, and chief justice at the Supreme Court;	President and vice president;	Minister or Minister-level official;
2.	Chairperson, vice chairman, and judges in all judicial bodies, except ad hoc judges;	Leaders and members of the MPR;	District head.
3.	Chairman, vice chairman, and members of the Constitutional Court;	Leaders and members of the DPR;	
4.	Chairman, deputy chairman, and members of the Audit Board of the Republic of Indonesia;	DPD leaders and members;	
5.	Chairman, deputy chairman, and members of the Judicial Commission;	Minister or Minister-level official;	
6.	Chairman and deputy chairman of the Corruption Eradication Commission;	District head.	
7.	Head of representative of the Republic of Indonesia abroad who has the position of Ambassador Extraordinary and Plenipotentiary; and		
8.	Other state officials determined by law.		

Furthermore, in the election contestation for members of the legislature, several groups of positions have been rigidly determined which must resign first (Table 2).

Table 2. Positions with obligations to resign to contest in election

No.	Types of Positions That Must Resign
1.	Regional heads and deputy regional heads;
2.	State Civil Apparatus;
3.	Members of the Indonesian National Armed Forces and the Indonesian National Police;
4.	Directors, Commissioners, Board of Trustees and employees in state-owned enterprises and/or regionally-owned enterprises;
5.	Directors, Commissioners, Supervisory Board and employees in other bodies whose budgets come from state finances.

Meanwhile, in the election contest for DPD members, only a few positions were determined that had to resign, as can be seen in Table 3. This means that outside of the rigidly defined position, there is no need to resign or obtain permission from the President.

Table 3. Types of Positions That Must Resign

No.	Types of Positions That Must Resign
1.	Regional heads and deputy regional heads;
2.	Village head and village apparatus;
3.	Village Consultative Body;
4.	State Civil Apparatus;
5.	Members of the Indonesian National Armed Forces and the Indonesian National Police;
6.	Directors, Commissioners, Board of Trustees and employees of state-owned enterprises and/or regional-owned enterprises and/or village-owned enterprises;
7.	Directors, Commissioners, Supervisory Board and employees in other bodies whose budgets come from state finances.

Arrangements regarding restrictions on the right to nominate themselves in regional head elections which include the election of Governor and Deputy Governor, Regent and Deputy Regent as well as Mayor and Deputy Mayor relating to the conditions of having to resign or obtain permission for certain positions have been determined in Chapter III concerning Requirements for Candidates , especially in the norms of Article 7 paragraph (2) letter p, letter s, letter t, and letter u of Law 6/2020 which basically determines that someone who is currently serving as (i) Regional Head; (ii) DPR, DPD and DPRD members; (iii) TNI/Polri and ASN members; (iv) BUMN/BUMD officials must make a statement of resignation from the position since they are appointed as regional head candidate pairs in the regional head election contestation.

The formulation regarding the requirements for these candidates has also submitted requests for constitutional review to the Constitutional Court several

times, and the decisions of the Constitutional Court were then used as landmark decisions thereby changing the provisions of the norms in the articles as last amended by Law 6/2020. The Constitutional Court (MK) Decision NumNo. ber 22/PUU-XVIII/2020 re-tested the provisions of Article 7 paragraph (2) letter s of Law 10/2016 against the 1945 Constitution which was also proposed by several members of the legislature who essentially asked the Constitutional Court to cancel the conditions for resigning for members of the legislature when they were about to take part in the election contest. regional head general. In contrast to case No. 60/PUU-XIV/2017 which compares the positions of legislators with those of incumbent regional heads, the arguments of the Petitioners in this petition are more focused on comparing the positions of legislators with the positions of Ministers or Minister-level officials.

In its deliberations, the Constitutional Court stated that the main problem why legislators are obliged to resign is not merely a collegial collective issue, but rather concerns the responsibility and mandate that society has given to those concerned. Furthermore, in relation to the position of Minister or equivalent, the Court is of the opinion that even though they are in the same family of political positions, the Minister is elected and appointed by the President, while members of the legislature obtain a direct mandate from the people through general elections. This cannot be equated, because members of the legislature must be responsible to the voters (constituents) as well as the responsibilities of the legislative body as elected officials which cannot be interrupted because they want to occupy another position (regional head).

Based on all of the foregoing, in the limitation of the right to be elected in general elections in the category of regional head elections, it has been determined that several positions must be resigned since being appointed as regional head candidate pairs in the regional head election contestation and who only apply for leave. can be seen in Table 4.

Table 4. Positions with need to resign in running for regional elections

No.	Job Type	
	Resign	Cuti
1.	Regional heads who wish to nominate themselves outside their area;	The incumbent regional head.
2.	DPR, DPD and DPRD members;	
3.	TNI/Polri and ASN members;	
4.	Officials at BUMN or BUMD.	

The Principle of Fairness in the Implementation of National Concurrent Elections

In practice, the implementation of general elections in Indonesia has so far been divided into two regimes based on the grouping of norms in the 1945

Constitution, namely First, the norms regulated in Chapter VIIB concerning General Elections, namely in Article 22E of the 1945 Constitution which regulates the election of members of the People's Representative Council, members Regional Representative Council, Members of the Regional People's Representative Council and the President and Vice President. This group then underlies the emergence of a (national) general election regime. Second, the norms regulated in Chapter VI regarding Regional Government, namely Article 18 paragraph (4) of the 1945 Constitution stipulates that Governors, Regents and Mayors are democratically elected. Because the arrangements in this group are outside/separate from the arrangements in the first group, to distinguish this, elections in this group are referred to as regional head election regimes (No. 97/PUU-XI/2013). This separation of regimes then causes a separation in the legal framework governing national general elections and regional head elections as described in the previous section.

However, the Constitutional Court through legal considerations in the Constitutional Court Decision No. 55/PUU-XVII/2019, February 26 2020, using the interpretation of the original intent in tracing back the treatise on amendments to the 1945 Constitution, especially related to the design of holding general elections, it turns out that the amenders of the 1945 Constitution did not distinguish between regimes election. In the debate during the amendment to the 1945 Constitution, there were many views on determining the form of simultaneous general elections, one of which was the idea of holding simultaneous general elections with five boxes (No. 55/PUU-XVII/2019). Therefore, the Constitutional Court as the sole interpreter of the constitution then emphasized that there was no longer any difference or separation of electoral regimes in the 1945 Constitution. Such establishment of the Constitutional Court was then reaffirmed in Decision No. 85/PUU-XX/2022, September 29, 2022 which in his legal considerations reaffirmed that the interpretation of the 1945 Constitution no longer distinguished between national general elections and regional head elections (Kusnardi& Ibrahim, 1998).

By no longer adhering to the separation of electoral regimes in the 1945 Constitution, legislators should also make changes to the legal framework for general elections, which are currently still separated between national elections and regional head elections. The opportunity to review and harmonize the legal framework for holding general elections is also related to the design of holding national elections which are held simultaneously. With the simultaneous general election model that carries out all levels of elections, both nationally to elect the President and Vice President as well as Members of the Legislature (DPR, DPD and DPRD), as well as regional head elections, at one time (2024 onwards) then the question arises: Is the application of restrictions on the right to be voted in general elections, using either a withdrawal mechanism or permits and leave, whose arrangements still vary from one form of election to another, still relevant to be maintained. With a fundamental change in the foundation of holding general elections in Indonesia, namely related to simultaneity and no longer separating electoral regimes, it is no longer relevant to differentiate between the conditions

for the resignation of public officials, whether appointed or elected because the implementation is carried out in one the same period of time (simultaneously). So that at the same time, a vacancy is opened for all political positions that require qualified candidates from various elements and potential of Indonesia's human resources. Precisely with differences in treatment in limiting a person's right to be elected in general elections, it will even lead to discriminatory treatment and precisely this condition is contrary to the 1945 Constitution.

As previously explained, in the principle of a democratic state based on law, what must be emphasized is that even if it is justified that there are restrictions on citizens who wish to nominate themselves in general elections, these restrictions may not contain provisions that are discriminatory in nature, impede or even illegally eliminate the rights of citizens. to obtain equal opportunity in government or such restrictions will in fact create legal uncertainty in its implementation. All forms of game rules that are applied in general election contests must be able to guarantee the creation of a contest that upholds fair play by placing each contestant in an equal position and having equal access and opportunities to occupy positions in government. Therefore, in determining the requirements for candidacy in general election contestations, especially regarding the conditions for resignation or permission for public officials, the emphasis must be placed on the existence of logical reasons and within the limits of reasonable reasoning that can be justified other than the reason that a power or authority possessed by public officials has the potential to be abused to benefit those concerned in winning the general election contestation. For example, it is necessary to distinguish in advance which groups of positions are included in public positions that are elected through elected, appointed, or selected so that rational and clear reasons can be explained for the need for these positions to be limited, in the context of fulfilling the right to be elected in general elections. Based on the category of public office, the form of the restriction will then be determined, whether through resignation or simply by requesting permission from the superior concerned proportionally. In such a context, the use of the principle of proportionality in Rawls's justice simply provides the rationale that one of the things that allows us to accept a wrong theory is the absence of a better theory. Analogically, injustice can be tolerated only when greater injustice is avoided (Rawls, 2004).

Conclusion

Guarantees for the protection of the right to run for election (rights to be candidate) in general elections which are basic rights in the civil and political fields have been regulated in the 1945 Constitution and various laws and regulations, both in the field of human rights, as well as in the field of general elections which in fulfillment can be limited. Limitations on such rights are in line with the provisions of Article 28J paragraph (2) of the 1945 Constitution. Restrictions on the right to run for election, either by stipulating conditions for resigning or applying for permits for public positions whose arrangements are different, are no longer relevant to be maintained

given the holding of general elections which are held simultaneously without any differences in electoral regimes. Therefore, legislators must review and harmonize the application of the conditions for withdrawing in general elections for public officials.

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Legal Verdict

- Decision No. 68/PUU-XX/2022, October 31, 2022;
Decision No. 33/PUU-XIII/2015, July 8, 2015;
Decision No. 45/PUU-VIII/2010, dated 1 May 2012;
Decision No. 12/PUU-XI/2013, April 9, 2013;
Decision No. 57/PUU-XI/2013, dated 23 January 2014;
Decision No. 41/PUU-XII/2014, dated 8 July 2015;
Decision No. 60/PUU-XIV/2017, dated 17 July 2017;
Decision No. 17/PUU-VIII/2008, dated 4 August 2008;
Decision No. 22/PUU-XVIII/2020, November 25 2020;
Decision No. 55/PUU-XVII/2019, dated 26 February 2020;
Decision No. 85/PUU-XX/2022, September 29, 2022.