



Limiting the age for candidates of public officials viewed by human rights and moral perspective

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Abstract: Elections are a key requirement of a democratic state. Democracies uphold human rights. There are human rights that can be restricted and Elections are a key requirement of a democratic state. Democracies uphold human rights. There are human rights that can be restricted and those that cannot. The right to be elected and to vote in public office is a human right that can be restricted by the state, but the restriction must be based on reasons that are in line with morality. This research aims to understand whether restrictions on the right to be elected and to vote based on age are in line with the law and morals or vice versa. This research is normative legal research that focuses on the problem of legal norms at the level of positive law, legal theories, and principles. The approaches used are legislation, literature review, conceptual approaches. The result is that all forms of restrictions on the community to participate in state life are restrictions on human rights. Restrictions on human rights are a violation of moral values. The conclusion is that a democratic state should not limit a person's right to vote and elect. The state should leave it entirely up to the people, whether they want to vote for that person or not. The Constitutional Court should not create new norms, the Constitutional Court should only have the authority to declare a certain legal norm contrary to the 1945 Constitution or not.

Keywords: Democracy; Human Rights; Morality

1. Introduction

Politics in Indonesia has experienced many dynamics, especially after the 1998 reform. One of them is related to the requirements to become public officials such as the President and Vice President. One of the requirements that must be met by candidates for public officials is age. In the first Election Law in 2003, the requirement to become a candidate for president and vice president was at least 35 years old. It was only in 2017 that the age requirement was changed to 40 years old. If you look at other countries, there are at least 32 countries that apply a minimum age requirement of 35 years old to become presidential and vice presidential candidates. These 32 countries include the United States. On October 16, 2023, the Constitutional Court (hereinafter referred to as MK) issued Constitutional Court Decision Number 90/PUU/XXI/2023 regarding the age limit of presidential or vice-presidential candidates. The Constitutional Court examined Article 169 letter (q) of Law Number 7 Year 2017 on General Elections. In its decision, the Constitutional Court stated that Article 169 letter (q) of Law Number 7/2017 on General Elections is contrary to the 1945 Constitution of the Republic of Indonesia as long as it is not interpreted as forty years old or has held positions elected through general elections including district/city head elections. The Constitutional Court's decision was pronounced during a political moment, so the public saw the Constitutional Court's decision with various interpretations. Some say that the Constitutional Court's decision was issued to pass one of the candidates. Some argue that the Constitutional Court's decision violates ethics because the chairman of the Constitutional Court Anwar Usman is the uncle of one of the vice presidential candidates. Some respond positively to the decision. Those who agree with the decision see it as opening the door for young people who have the competence to run for president or vice president (Permadi, 2024).

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In legal science, there are broadly two schools of thought regarding law, namely the school of positivism and the school of naturalism or natural law. According to the positivist school, the law is law. Law must be distinguished and separated from non-legal values such as morals or ethics. On the other hand, according to naturalism, law and moral values cannot be separated, because law is a representation of moral values. According to naturalism, moral values are the touchstone of law. If a law does not represent moral values, then it is not a law. This view of naturalism is then criticized by the positivist school regarding to what extent and in what way to measure moral values, to what extent the law is said to be in accordance with moral values, how to measure it.

From the explanation above, the question arises whether the Constitutional Court's decision is in accordance with moral values or not. In brief, this question can be answered that neither the legal norms in the Election Law nor the legal norms formulated in the Constitutional Court Decision are based on the theory of natural law because both limit the rights of citizens to participate in the state while these restrictions violate moral values, especially moral values related to justice. If it is said that the Constitutional Court's decision is contrary to moral values, then which moral values and how to measure that the Constitutional Court's decision violates morals, if the way to measure moral values is the public vote, isn't it also that many or even more people agree and are happy with the decision. Therefore, it is important to conduct this research to understand whether the Constitutional Court's decision is in accordance with the value of morality or not. This is important to study from the perspective of natural law theory or moral values because law and morals in the Indonesian context cannot be separated so that the legal rules in Indonesia must not conflict with moral values especially the moral values that guide the life of the Indonesian people, namely the values of Pancasila. So it is very important to examine this Constitutional Court Decision and the Law on Elections from a moral or natural law perspective.

As academics, we must disseminate knowledge, one way is by writing and disseminating the results of these writings. With this dissemination, the wider community, especially in Indonesia, can read and understand this paper. Because this study is about legal and moral issues, the main target readers are people who are involved in the world of law, both people who are still at the level of law students and already at the level of legal practice. This paper is intended to contribute to a broader understanding of law and morals, especially in Indonesia, for people who are still studying law or who are already practicing law such as lawyers, police, prosecutors, and so on. With this research, it is hoped that the understanding of the Indonesian people, especially those who are involved in the legal world, of law and moral values will become more comprehensive, not only seeing a problem from a legal perspective or only seeing it from a moral perspective. Because the two cannot be separated. Law is the physical form of morality while morality is its soul. So that with this comprehensive understanding, in the future people who have the authority to take or decide legal issues can decide based on law and moral values, so that the results of the decision not only have legitimacy in terms of law but also get legitimacy in terms of morals. Before this research was conducted, there had been several studies that had the same object. Among them are the following; (1) Tinjauan Yuridis Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Tentang Persyaratan Batas Usia Pencalonan Presiden Dan Wakil Presiden written by Rio Subandri (Subandri, 2024). (2) Kewenangan Mahkamah Konstitusi Terhadap Putusan Perkara Nomor 90/Puu-Xxi/2023 written by Moch. Ichsan and Anang Dony Irawan (Ichsan., 2024). (3) Masalah Batas Usia Calon Presiden Dan Calon Wakil Presiden: Studi Open Legal Policy Dalam Putusan Mk No. 90/Puu-Xxi/2023 written by Hanif Hardianto, Sri Wahyu Krida Sakti, Meliza (Hanif Hardianto, Sri Wahyu Krida Sakti, 2024). The difference between this research and the previous ones is that this research focuses more on its moral value, because the author is more inclined to the naturalist opinion which believes that law and morals cannot be separated, while the three articles above focus more on formal law whether the Constitutional Court is authorized or not to examine and decide on the issue of age restrictions for presidential and vice presidential candidates. The ex-

pected contribution of this research is that in the future Indonesian people will not only see a problem from a single perspective, namely only seeing from a legal perspective or only seeing from a moral perspective, especially people who are involved in the legal world. More specifically for people who practice law. With this research, it is hoped that people who practice law in deciding problems are not only based on the law but also moral values so that their decisions not only gain legitimacy from a legal perspective but also gain legitimacy from a moral perspective.

2. Materials and Methods

This research is normative research that focuses on examining norms at the level of dogmatics, theories, and principles. The approach used in this research is a statutory approach, which means that this research collects various legal regulations that are relevant to the object of study. In addition to the statutory approach, it also uses a conceptual approach, which means analyzing the notions based on credible sources. In addition, it also uses a literature review approach, namely collecting various references both books, journals, and information media that support this research (Peter Mahmud, 2016). Because this research uses three data sources, namely laws and court decisions that have permanent legal force, conceptual approaches, and literature approaches, the processing process is that the laws and court decisions that have permanent legal force are reviewed. In laws and court decisions that have permanent legal force, there must be legal concepts that must be understood by reading various literature such as legal dictionaries and opinions of experts. Because in this study the laws and court decisions with permanent legal force are the object of research on whether the legal norms in the laws and court decisions with permanent legal force are following moral values or not, then the benchmarks are various literary materials that discuss moral values, especially books on legal philosophy.

Reliable sources in this research are books and articles that discuss legal philosophy. The reason is that only books and articles on legal philosophy discuss the relationship between law and moral values. The question of whether a legal norm is following or contrary to moral values is a discussion of the level of legal philosophy, so reliable sources in this study are books and articles on legal philosophy. The data that is the material in this research is studied using the prescriptive-qualitative method. It is said prescriptive because this research does not only describe or describe a problem but further examines and provides input and solutions to existing problems. It is said to be qualitative because this research does not only present data figures but furthermore, the data is analyzed and then comes to a conclusion.

3. Results and Discussion

3.1. *The relation of morality with law*

According to Sadjipto Rahardjo, the order of a society is due to three rules: ideal, law, and custom. Ideal rules are rules that are in the realm of human ideas. The rule of habit is a rule that lives in a certain society that is obeyed and maintained by the local community. The rule of law is a rule formed by a representative institution of the community so that the rule is formed by a state institution which is then agreed upon by the community through its representatives. In the context of legal philosophy, how it should be (ought to) is called morality, while the actual rule is the law (is) (Sadjipto Rahardjo, 2014).

In Franz Magnis Suseno's view, morality and ethics can be distinguished but cannot be separated. Morals are a set of values of how humans should live, while ethics is a branch of philosophy whose function is to think about why humans should use certain moral values as a guide to their lives. Morals can come from various sources, such as religion, law, culture and so on. Ethics, on the other hand, is an analytical knife as to why a person chooses that moral code as a guideline. So ethics is a thought process (Frans Magnis Suseno, 2016).

One of the debates that has been debated until now is the validity of the law. Whether the validity of the law depends on values outside the law called morals, or not (Faturachman et al., 2022). The view that says that the validity of the law depends on moral values is called natural law (Arifan, 2024). This means that there are values that become the benchmark for legal validity outside the law itself. So if the rule of law is not in accordance with moral values then the law has no validity so it does not need to be obeyed. There is a view that says that the validity of the law does not depend on values outside the law or moral values. This view is called the positivist school (Rahmatullah, 2022).

In the positivist view, as long as the rule of law is accepted and adhered to by society then it is sufficient to say that the law is valid. This did not cause problems in the past, as it was a simple and non-complex society. The scope was not wide. The population was also not large, so it was logical that the validity of the law was purely dependent on society. However, in modern and complex societies, this causes problems because the area is large, the number of people is large and the issues regulated are also very diverse. It is possible that one country may consist of various groups of people so that one group is different from another in terms of acceptance of a rule (Nur Aviva, 2023). It is possible that in one society a rule is accepted and considered as law, but in another society, the rule is not in line with the culture and life of the community, so the rule is not accepted and is not considered as law.

To overcome this, the figure of the positive law school, H. L. A Hart, provides a solution, namely with "secondary rules". Secondary Rule is a law that regulates how society accepts rules as law, so that when a rule meets the criteria of secondary rules then the rule is called law. However, secondary rules must also be based on community acceptance. This means that the community regulates the secondary rules. In the positivist view, there are two laws, primary rules and secondary rules. Primary rules are the core rules, while secondary rules are rules that regulate the procedures for how the primary rules are considered as law (Rusydi, 2021). In the perspective of the natural law school, the law to be called law must be in accordance with moral values (Sebastian, 2023). In the Indonesian context, it needs to be seen whether Indonesia is a positivist or naturalist school.

In the author's view, Indonesia has a naturalist paradigm because in Indonesia there is a value that becomes the benchmark for the validity of a law, namely the value of Pancasila and the constitution. If there is a law that contradicts Pancasila, then the law will not be obeyed by the people of Indonesia (Daullah et al., 2022). In Indonesia, when there is a debate about whether a law has validity or not, the reference argument is always Pancasila. This means that both those who argue that a rule does not have validity or those who argue that the rule has validity have the same reference, namely Pancasila. This difference is only a difference in interpretation of the Pancasila and the rule. This means that both parties refer to values that exist outside the law, namely Pancasila. Practically, it can be seen with the existence of the Constitutional Court. The Constitutional Court has the authority to assess and adjudicate whether a rule is contrary to the constitution or not. Meanwhile, the constitution contains the value of Pancasila, so that Pancasila becomes the benchmark of a constitution (Triwijaya et al., 2020). When a rule is decided against the constitution, it automatically contradicts Pancasila because the constitution contains the value of Pancasila. Rules that are decided against the constitution do not have binding legal force. This indicates that Indonesia follows the natural law view (Savero et al., 2024).

3.2. The relation of morality with human rights

Human Rights are rights that are inherent in humans and originate from humans themselves (Mutiarra & Maulana, 2020). In the Universal Declaration of Human Rights ratified by Law Number 11 of 2005, there are Human Rights that can be limited and cannot be limited. One of the rights that cannot be limited is the right to life and the right

to belief. When talking about rights that can be limited by the state, it must look at the context of where and when (Dasyah & Desiandri, 2023).

One of the rights that may be restricted is the right to elect and be elected to public office in a public office such as president or vice president (Kambu, 2021). Without an electoral process, a country cannot claim to be a democracy. Because in a democracy, the people participate in making a policy and one of the instruments of this participation is by electing their representatives in general elections. In general elections, all citizens have the same rights and there should be no discrimination.

Morals are values that guide human behavior and become a measure of right or wrong and good or bad behavior. Morals come from rationality and from God for religious people. In Indonesia, the moral value that becomes the benchmark is Pancasila. Pancasila contains the value of justice and respect for human rights. When there is discrimination in elections, it violates the moral values of justice and human rights in Pancasila. One form of discrimination is that to be a candidate for president or vice president, one must be forty years old. This violates moral values because there is no moral reason for the restriction.

In principle, the more restrictions there are, the more likely it is that human rights are restricted, while the essence of human rights is how humans can enjoy their rights without disturbing the rights of others (Retno Kusniati, 2011). The state may limit human rights if it is considered that the fulfillment of rights interferes with the rights of others. In the context of general elections, when the state does not limit certain people to be able to run for president and vice president, no one else's rights are interfered with. In fact, by not imposing such restrictions, the state gives more space to the people to enjoy their human rights. When there is a rule that limits human rights, the rule must be eliminated because it is contrary to moral values.

3.3. The relation of law and politics

When talking about the relationship between law and politics, it is like two sides of a coin, that must be distinguished but cannot be separated (Merdi Hajiji, 2013). Politics is defined as the power to regulate the state in achieving state goals (Viera Valencia & Garcia Giraldo, 2019). In the definition of politics, there are various main elements; power, planning, and execution. When power is not limited or not regulated by law, the power will act arbitrarily. When talking about power, in the context of a democratic state, it cannot be separated from the law (Herlina, 2022). When power is not limited or not regulated by law, then the power will act arbitrarily. Therefore, law is needed to limit and regulate power (Muhlashin, 2021).

In the Indonesian context, a law is issued by the DPR. The DPR itself is a group of people elected by the public to represent the public in controlling power. So the relationship between law and politics is like an endless circle. Laws are produced by institutions whose members are elected through the political process, while the institutions, their members, and the processes carried out by various state institutions, are regulated and must be subject to the law.

3.4. The role of Constitutional Court

The Constitutional Court was established as a controller of both legislative and executive power (Fudin, 2022). The main purpose of the establishment of the Constitutional Court is judicial review (Hadinatha, 2022). In the Indonesian context, laws are made by the DPR and the President (Pulungan & A.L.W, 2022). With the existence of the Constitutional Court, it can be understood that a legal product can be contrary to the constitution (Rangga Wijaya, 2023). In principle, a constitution serves to regulate the relationship between the state and its people, so that the state does not commit arbitrary actions (Bani et al., 2023).

The benchmark of the Constitutional Court in deciding a case is the constitution, in the constitution there are moral values that are guided by the people in a nation (Prihatin, 2023). A constitution that is not in accordance with moral values should not be said to be a constitution. The adage that the constitution is the highest law applies to constitutions that are in accordance with moral values (Jimly Asshiddiqie, 2015). As said above, the main purpose of establishing the Constitutional Court is to adjudicate whether a norm in the law is contrary to the constitution or not. In the Indonesian context, whether a law is in accordance with the moral values of the nation, namely Pancasila (Aminullah, 2023).

The question now is if there is a legal norm that limits citizens to participate in the political process to become candidates whose restrictions are only based on age not based on ability and integrity, whether the norm is in accordance with moral values or not (Saragih et al., 2023). In the author's view, legal norms that limit a person's right to run for leadership at all levels are contrary to moral values if the restrictions are not based on strong academic studies. Restriction of people's rights based solely on age violates moral values, because with such restrictions a person's rights are disturbed.

When there is a legal norm that is not in accordance with moral values, formally it does not automatically invalidate the norm. In the Indonesian context, the annulment of a legal norm can be done through the legislator himself (legislative review) and through the Constitutional Court (judicial review) (Dianti, 2017). The Constitutional Court's decision regarding the annulment of the norm that limits the age of a person to run for leadership is correct because the norm is not in accordance with moral values so it is appropriate for the norm to be annulled. However, the question is whether the Constitutional Court has the authority to create a new norm.

The Constitutional Court should not have the authority to create new norms (positive legislator) (Hanif Hardianto, Sri Wahyu Krida Sakti, 2024). This is based on the argument that someone brings a legal norm to be tested at the Constitutional Court not to change the sound or content of the norm. A person who tests a norm merely wants the Constitutional Court to decide that the norm is void and has no binding legal force. So with the cancellation and non-binding of the legal norm, the person who feels harmed by the legal norm is no longer harmed, because the norm no longer exists. It is different if, for example, the Constitutional Court creates a new legal norm. In this case, there is no guarantee that the legal norm created or formulated by the Constitutional Court is in accordance with moral and constitutional values. A concrete example is decision 90/XXI/PU/2024.

The legal norm that was brought to the Constitutional Court to be overturned was a legal norm that limited a person who wanted to run for President and Vice President to be at least forty years old. Then by the Constitutional Court, the norm was declared to have no binding legal force as long as it was not interpreted as having held positions resulting from elections, including regent or mayor. The norm formulated by the Constitutional Court is still not in accordance with moral values because it still limits a person's right to run for president and vice president with the condition that they must have been a regent or mayor. However, between the two norms formulated in the law and the legal norm formulated by the Constitutional Court, it is more contrary to the moral value of the legal norm in the law. However, if the benchmark is moral values, then the norm formulated by the Constitutional Court is also not in accordance with moral values because there are still restrictions so that people cannot enjoy their Human Rights.

Behind the decision, it can be understood why the Constitutional Court decided that way. According to the Constitutional Court, by having served as regent or mayor, his integrity and ability have been tested so that he can lead the country. This argument can be refuted with the argument related to whether someone has the integrity to lead there are at least two entities that can judge; namely the people as voters and political parties as supporters.

In Indonesia, to be able to become a candidate for President and Vice President, a party must be nominated by a party in parliament with a minimum of 20%. One party

with less than 20% of the total seats in the House of Representatives cannot nominate a president and vice president, so political parties must join forces. People who are active in political parties more or less understand the dynamics of politics, so they know what kind of leadership is needed by the country. People who are active in political parties must also know and often communicate with people who are active in state activities whether in the legislative, executive, or judicial fields, so that political party people know the character of people who are considered suitable to be nominated as presidential and vice presidential candidates.

In a democracy, the people decide whether or not a presidential or vice presidential candidate wins. In Indonesia, one person, one vote. The people will judge whether the presidential and vice-presidential candidates are worthy or not to be elected. Therefore, when there is a legal norm that limits a person to run for president or vice president based on age and not based on strong academic research, then the legal norm is against moral values, so the norm must be removed. With such restrictions, there are two groups of people whose rights are impaired; namely, people who want to become presidential or vice presidential candidates and the general public. The general public's rights are disturbed by the legal norm because the norm limits the public's right to freely choose their prospective leaders. If there is a person who is considered to have the integrity to lead the nation, but because he/she does not reach the age of forty, the person cannot run for president and vice president, so the people who want him/her cannot vote for the person who is considered worthy.

There are at least three characteristics of a state: a liberal or night-watchman state, a dictatorial state a middle state. A liberal state leaves everything to the will of the people. The state only takes part in a very small portion. Whereas in a dictatorial state, the people cannot have a will, because the people must fully submit to the ruler. The ideal state is in the middle, neither too interfering nor too detached from people's lives (Hotman P. Sibuea, 2010). In this case, the benchmark for when the state should interfere and when the state does not need to interfere is moral values, namely justice and human rights. Whether or not the state should intervene in people's lives by looking at whether if the state does not intervene, someone's rights will be disturbed. If because the state does not intervene in a certain matter then someone's rights are disturbed then the state is obliged to intervene by making rules related to this matter. However, if the state does not interfere, then the state does not need to interfere or make rules.

As mentioned above, without the regulation that presidential or vice-presidential candidates must be forty years old, no one's rights are harmed. On the contrary, with the regulation, someone's rights are harmed, whether it is the right of a person not to be able to run as a candidate or vice-presidential candidate or the right of the community to choose a person who is considered suitable to become a leader. So both the legal norms formulated in the law and the legal norms formulated by the Constitutional Court are incompatible with moral values. But if you have to choose which one violates moral values more, then the answer is the legal norms in the law.

4. Conclusions

Moral is a set of values of how humans should live, in Indonesia the moral value that guides is Pancasila which contains the value of justice and Moral is a set of values of how humans should live, in Indonesia the moral value that guides is Pancasila which contains the value of justice and human rights. Human rights are rights that are inherent in human beings. There are human rights that can be restricted and those that cannot. One of the rights that can be restricted is the right to elect and be elected to public office such as president or vice president, but such restrictions must not conflict with moral values. Restrictions on becoming presidential and vice-presidential candidates based solely on age contradict moral values, namely justice and human rights because there is no academically sound argument why those under the age of forty cannot become president or vice-president. Legal norms that provide such restrictions must be canceled so that no one's rights are disturbed by these legal norms. The institu-

tion authorized to annul legal norms is the Constitutional Court. The Constitutional Court should only have the authority to annul a norm and not to create a new norm. With this research, it is hoped that the understanding of the Indonesian people, especially those who are involved in the legal world, of law and moral values will become more comprehensive, not only seeing a problem from a legal perspective or only seeing it from a moral perspective. Because the two cannot be separated. Law is the physical form of morals while morals are the soul. So that with this comprehensive understanding, in the future people who have the authority to take or decide legal issues can decide based on law and moral values, so that the results of the decision not only have legitimacy from a legal perspective but also get legitimacy from a moral perspective. This research does not only focus on legal issues, but furthermore also focuses on moral values which are the soul of the law. The contribution of this research practically is to invite people working in the field of law to see a problem not only in terms of law, but also in terms of moral values. Theoretically, this research contributes to the idea that law and morals cannot be separated both in the preparation of a law and in court decisions. This research also contributes to the idea that Indonesia is a naturalist because all forms of law in Indonesia must not conflict with the values of Pancasila. So the moral value that becomes the touchstone of law in Indonesia is Pancasila.

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