

Juridical Analysis of the Voting Rights of the TNI and the National Police in General Elections in Indonesia Reviewed from the Perspective of Human Rights

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Abstract

This study aims to analyze the voting rights of members of the Indonesian National Army (TNI) and the Indonesian National Police (Polri) in general elections in Indonesia from the perspective of human rights (HAM). Constitutionally, the right to vote is part of human rights regulated in various national and international legal instruments. However, in Indonesia, members of the TNI and Polri are restricted from active and passive voting rights in elections on the grounds of maintaining institutional neutrality and professionalism. This study uses a normative juridical method with a legal approach and literature studies related to human rights theory and democratic principles. The results of the study show that there is a dilemma between the protection of human rights for members of the TNI and the National Police and the need to maintain political stability and neutrality in the Indonesian democratic system. This study recommends the importance of policy evaluations that provide a balance between respect for human rights and the institutional functions of the TNI and the National Police. This study is expected to contribute to the formulation of more inclusive policies without ignoring the basic principles of democracy and human rights.

I. Introduction

Elections are one of the tangible manifestations of the implementation of democracy that provides space for all citizens to participate in determining the direction of state policies. Through a fair and transparent election process, elections are the main means for the people to voice their aspirations and elect trusted leaders and representatives (Nadziri & Mashari, 2024). In the context of democracy, the participation of all elements of society, including members of the TNI and Polri, is an important aspect to ensure that the votes of each community group are also taken into account in the political decision-making process. However, in Indonesia, the voting rights of members of the TNI and Polri are regulated specifically and tend to be restricted (Ananingsih, 2024). Based on the law, active members of the TNI and the National Police are not allowed to exercise their voting rights in elections. This restriction aims to maintain the neutrality of the two institutions in the dynamics of national politics (Harkrisnowo et al., 2017; Gusman, 2024). This neutrality is very important because the TNI and the National Police have a strategic role in maintaining the stability of the country's security and must not be influenced by practical political interests. Thus, this restriction is not a form of denial of democratic rights, but a step to ensure the integrity of neutral and professional state institutions (Richmond, 2024).

Nevertheless, these restrictions pose challenges in efforts to ensure that the human rights of members of the TNI and Polri as citizens are still recognized and respected (Rustam & Riswadi, 2024). Therefore, efforts are needed to continue to improve the mechanism for implementing democracy that is able to accommodate the role of all elements of society, including the TNI and the National Police, without reducing the basic principles of democracy. This reflects the importance of balancing the neutrality of state institutions and ensuring inclusive political participation in Indonesia (Aspinall, 2005).

Furthermore, the right to vote is one of the fundamental rights guaranteed in the framework of the Indonesian constitution and international legal instruments. In the national context, this right is regulated in the 1945 Constitution, especially Article 27 paragraph (1) which guarantees equal rights for all citizens before the law, and Article 28D paragraph (3) which states that every citizen has the right to equal opportunities in government. This guarantee strengthens the position of the right to vote as part of the essential political right to ensure citizens' participation in democratic life (A et al., 2009). This right is not only a symbol of people's sovereignty, but also an instrument to realize a fair, transparent, and responsible government. At the international level, the right to vote is widely recognized through various human rights instruments, such as the Universal Declaration of Human Rights (UNC) adopted by the UN General Assembly in 1948.

Article 21 of the State Code affirms that everyone has the right to participate in the government of his country, either directly or through freely elected representatives. This right is reinforced by the International Covenant on Civil and Political Rights (ICCPR), which in Article 25 states that every citizen shall have the right and opportunity to vote in general elections freely, without discrimination. This instrument underscores the importance of the right to vote as an integral component of human rights, which cannot be taken away without a valid reason (Heryani et al., 2022).

However, although the right to vote has been guaranteed in the constitution and international instruments, challenges still often arise in its implementation (Brain et al., 2022). Discriminatory practices, injustice in access to elections, and corrupt political influence often hinder the optimal exercise of these rights. Therefore, sustained efforts are needed from governments, civil society, and the international community to ensure that the right to vote is truly accessible to all individuals, without barriers based on gender, race, religion, or social status. That way, the right to vote is not only a legal norm, but also a reality that every citizen can enjoy within the framework of a healthy and inclusive democracy (Brain et al., 2022). The policy of restricting voting rights of the TNI and the National Police aims to maintain the neutrality of these institutions from political influence, with the hope that they remain focused on the main task of protecting the security and sovereignty of the country. However, these restrictions pose a dilemma with human rights principles, especially the right to participate in the democratic process. Every individual, without exception, is guaranteed political rights as part of fundamental freedoms in a democratic state. This restriction, although considered important for the national interest, can be seen as a violation of the basic rights of members of the TNI and Polri as citizens (Omara, 2017).

Restrictions on voting rights are also designed to prevent the politicization of the TNI and Polri, which has the potential to threaten national security stability (Aminuddin, 2019). Political neutrality is considered important so that these institutions are not divided by partisan political interests. However, this policy presents a conflict with individual political freedom that is the core of the democratic system (Anwar, 2001). On the one hand, national stability is a priority that cannot be ignored; On the other hand, restrictions on political freedom create room for criticism that the state does not fully uphold democratic values that are equal to all citizens (Hadiprayitno, 2010).

The TNI and the National Police have an inherent professional responsibility in maintaining security and order in the community. Their neutrality is considered vital to ensure this task is carried out without political partisanship. However, as part of a broader civil society, members of these institutions also have democratic obligations, including the right to vote in elections (White et al., 2018; Sarbini &

Hartantien, 2023). This conflict reflects the dilemma between the need to maintain institutional professionalism and respect for individual rights, thus raising a debate about whether states can or should seek alternative mechanisms to balance these two interests (Sefriani & Mahardhika, 2023).

Research on the voting rights of the TNI and the National Police in elections in Indonesia has been widely discussed from the perspective of politics and constitutional law (Sefriani & Mahardhika, 2023). Previous studies have focused on historical arguments regarding the prohibition of voting rights for members of the TNI and Polri to maintain institutional neutrality. Several studies have also highlighted the importance of maintaining democratic stability by ensuring that the military and police are not involved in practical political dynamics. On the other hand, the perspective of human rights (HAM) which emphasizes that the right to vote is the basic right of every individual often receives attention, but is limited to conceptual or normative discussions without an empirical approach or comparison with other countries that have similar regulations. Although many studies have discussed restrictions on the right to vote in the TNI and Polri, few specifically explore the conflict between the principle of institutional neutrality and the protection of human rights (Sefriani & Mahardhika, 2023; White et al., 2018). Previous research has tended to focus on the politicization of institutions or on the legality of the policy based on national law. However, there are not many studies that have reviewed in depth the perspective of human rights in the Indonesian context, especially how this policy compares to international practice and what its implications are for democracy in the modern era. There is also a lack of research on the impact of this policy on the perception of TNI and Polri members as part of citizens. This research offers a new perspective by analyzing the policy of restricting the voting rights of the TNI and the National Police through a broader legal and human rights framework (Aspinall, 2005; Isra et al., 2017).

The study not only examined domestic regulations, but also compared them with international standards and practices in other countries. In addition, the study will identify a balance between maintaining institutional neutrality and ensuring respect for individual rights. This approach is expected to make an important contribution to the formulation of more inclusive, fair, and democratic policies in the future, which take into account institutional needs as well as respect for human rights.

2. Research Method

This study uses a normative juridical method, which focuses on the analysis of applicable legal rules related to the voting rights of the TNI and Polri in elections in Indonesia. The main data of this study consists of primary legal materials, such as the

1945 Constitution of the Republic of Indonesia, the Law on Elections, and various regulations related to the TNI and the National Police. In addition, secondary legal materials, such as books, journals, articles, and other documents relevant to the topic, are used to enrich the analysis. The study also draws on international instruments on human rights, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), to provide a global perspective on the issues studied.

This research approach is descriptive-analytical, in which the researcher describes the conflict between the policy of restricting the right to vote and human rights principles, then analyzes it critically based on legal theories, human rights principles, and international practices. The comparative analysis was conducted by studying how other countries regulate voting rights for members of the military and police, so that it can provide new insights for the Indonesian context. The research process includes data collection through document study and textual analysis of legal materials, followed by systematic interpretation to answer the research questions asked.

3. Results and Discussion

The right to vote for members of the TNI and Polri is seen from the perspective of Human Rights (HAM)

The right to vote and be elected in general elections is one of the universally recognized human rights. In Article 21 of the Universal Declaration of Human Rights (DUHAM), everyone has the right to participate in government, either directly or through freely elected representatives. In Indonesia, this right is also guaranteed in Article 28D paragraph (3) of the 1945 Constitution which states that every citizen has the same right to obtain opportunities in government. However, the issue of voting rights for members of the TNI and Polri raises debate, considering the special roles and functions they carry out in maintaining national neutrality and stability (Nadziri & Mashari, 2024).

The TNI and the National Police have a unique role in Indonesia's state structure. As a tool of the state, they are required to be neutral in politics, in accordance with the mandate of Article 28 Paragraph (3) of Law Number 34 of 2004 concerning the TNI and Law Number 2 of 2002 concerning the National Police (Harkrisnowo et al., 2017). This neutrality is considered important to maintain institutional independence and prevent potential conflicts of interest. If members of the TNI and Polri are given the right to vote, concerns arise regarding the possibility of disrupting the neutrality, which could undermine public trust in the country's security institutions. Although the right to vote is part of human rights, not all rights can be exercised without restrictions. In Article 29 of the Human Rights Code, restrictions can be made to ensure respect for the rights of others or to maintain public order. In the context of the TNI and Polri, restrictions on voting rights are considered part of efforts to protect democratic stability. However, these restrictions

must be balanced and must not violate basic human rights principles, such as the principles of non-discrimination and equality before the law (Richmond, 2024).

On the other hand, there is an argument that restrictions on voting rights for the TNI and the National Police can be considered a form of discrimination. As citizens, they also have political rights that should be recognized and respected (Aspinall, 2005). Some countries, such as the United States and Britain, allow members of the military and police to participate in elections, without compromising their neutrality. With strict regulation and a clear mechanism, institutional neutrality can be maintained even though members of the TNI and Polri are given the right to vote. The provision of voting rights for members of the TNI and Polri in Indonesia faces its own challenges, especially in the context of supervision and implementation. The main concern is the potential for politicization of institutions that can threaten the professionalism of the TNI and the National Police. In addition, clear regulations are needed to ensure that the right to vote is not used to influence institutional policies or give rise to political loyalties that can damage the integrity of the institution (Ummah, 2019).

The right to vote for members of the TNI and Polri is a complex issue, involving a balance between respect for human rights and the need to maintain the neutrality of state institutions. An approach that can be considered is to gradually give voting rights to members of the National Police first, considering that their role is closer to civilian society than the TNI (Harkrisnowo et al., 2017). In addition, a comprehensive dialogue is needed by involving various parties, including human rights organizations, the government, and representatives of the Indonesian Armed Forces and the National Police, to find the solution that best suits the Indonesian context.

Regulation of the voting rights of the TNI and the National Police in general elections in Indonesia

The Constitution of the Republic of Indonesia guarantees the right of every citizen to vote and be elected in general elections (Elections). However, members of the Indonesian National Army (TNI) and the National Police of the Republic of Indonesia (Polri) are excluded from the right to vote based on the principle of neutrality (Harkrisnowo et al., 2017). This provision is stated in Article 280 paragraph (1) of Law Number 7 of 2017 concerning Elections which states that members of the TNI and the National Police may not use their voting rights in elections to maintain professionalism and ensure that the institution is free from political influence. The neutrality of the TNI and the National Police is a fundamental principle that ensures that these two institutions are not involved in practical political activities (Nadziri & Mashari, 2024). As guardians of national security and order, the TNI and the National Police are required to be above all political interests. This neutrality also aims to prevent conflicts of interest that can disrupt national security

stability, especially during the election process. Without neutrality, there is a risk of using state power to support certain political agendas (Heryani et al., 2022).

The prohibition of voting rights for the TNI and the National Police is rooted in the experience of Indonesian history, especially the New Order era, when the military had a significant political role through the dual function of the Indonesian Armed Forces (Brain et al., 2022). The military's involvement in practical politics at that time raised various problems, including corruption, abuse of power, and human rights violations. The reforms in 1998 brought about major changes, including the separation of the TNI and the National Police and the elimination of their practical political roles to create a healthier democracy. The elimination of voting rights for the TNI and Polri has legal and ethical implications. Legally, this rule provides certainty that the institution is impartial during the election process. However, from the point of view of democratic ethics, this arrangement raises a debate about whether the abolition of the right to vote violates the human rights of individuals. However, the majority of legal experts argue that this arrangement actually strengthens Indonesia's democracy by ensuring that state power remains neutral (Brain et al., 2022).

The discourse to give voting rights to members of the TNI and Polri often arises, with the argument that this is the fundamental right of every citizen. However, proponents of the status quo argue that suffrage could reduce the neutrality of the two institutions. Some countries, such as the United States, allow the military to vote, but the system in those countries has strict oversight to prevent abuse. Indonesia needs to consider its context and history before making changes (Omara, 2017). The regulation that prohibits the TNI and the National Police from using the right to vote is a policy designed to protect the neutrality and professionalism of the two institutions. In the context of a growing democracy, these policies must be evaluated periodically to ensure their suitability with the needs of society and political dynamics. Open discussion and in-depth study are needed before considering changes, in order to maintain a balance between individual rights and national stability.

Legal Analysis of the Prohibition of Voting Rights of the TNI and the National Police

The right to vote is part of the human rights recognized in the constitution and international law. However, in Indonesia, members of the Indonesian National Army (TNI) and the National Police of the Republic of Indonesia (Polri) are prohibited from exercising their right to vote in general elections. This ban is based on the principle of institutional neutrality in maintaining the stability and security of the country (Sarbin & Hartantien, 2023). A legal analysis of this prohibition is important to assess whether the restriction is in accordance with the principle of proportionality and does not contradict national and international legal frameworks. The right to vote for members of the TNI and Polri is regulated in Article 280 paragraph (1) of Law Number 7 of 2017 concerning Elections. This regulation states that members of the TNI and the National Police are not allowed to

exercise their right to vote in elections in order to maintain institutional neutrality. In addition, Article 39 paragraph (2) of Law Number 34 of 2004 concerning the TNI also emphasizes that the TNI must be neutral in politics. This legal basis aims to prevent conflicts of interest that can arise if the two institutions are involved in practical politics (Sefriani & Mahardhika, 2023).

The right to vote is universally recognized as a fundamental right as stipulated in Article 21 of the Universal Declaration of Human Rights (DUHAM) and the International Covenant on Civil and Political Rights (ICCPR). However, this right is not absolute and can be restricted for certain reasons, such as state security. In the context of the TNI and the National Police, the ban on voting rights is considered a legitimate restriction because it aims to maintain neutrality and public trust in the two institutions (Sefriani & Mahardhika, 2023). Nonetheless, it is important to ensure that these restrictions do not violate the principle of non-discrimination (Heryani et al., 2022). The prohibition of voting rights for the TNI and the National Police has significant legal and practical implications. Legally, this restriction provides a foundation to maintain the professionalism of the two institutions, so that they can remain focused on the task of maintaining security and order in the country. However, in practical terms, this ban also raises questions about the individual rights of members of the TNI and Polri as citizens. In a democratic system, these restrictions must be continuously evaluated to ensure that individual rights are not disproportionately sidelined (Isra et al., 2017).

Similar policies have also been implemented in several other countries under the pretext of maintaining military and police neutrality. In the United States, members of the military are allowed to vote but with strict scrutiny to ensure their neutrality in the political process. Meanwhile, some countries such as Turkey and Myanmar have strict restrictions similar to Indonesia. This comparative study shows that the regulation of voting rights for members of the military and police is greatly influenced by the historical, political, and social contexts in each country (Mufti et al., 2009). The ban on voting rights for the TNI and Polri in Indonesia has a strong legal basis and aims to maintain institutional neutrality. However, from a human rights perspective, it is important to evaluate these policies periodically to ensure that they remain relevant and proportionate. Recommendations that can be given include strengthening the oversight mechanism for institutional neutrality and further studies on the possibility of granting limited voting rights with close supervision (Gusman, 2024). Thus, this policy can continue to support political stability and security without sacrificing democratic principles.

4. Conclusion

From the results of this study, it can be concluded that the prohibition of voting rights for members of the TNI and Polri in general elections in Indonesia is a policy that aims to maintain institutional neutrality in the country's political system. This regulation is based on Article 280 paragraph (1) of Law No. 7 of 2017 concerning Elections and Article 39 paragraph (2) of Law No. 34 of 2004 concerning the TNI, which stipulates that the TNI and the National Police must not be involved in practical politics. From a legal point of view, this policy is in accordance with the principle of neutrality aimed at maintaining national stability and security. However, this restriction also poses a dilemma in the context of human rights, especially related to the individual rights of members of the TNI and Polri as citizens guaranteed in the constitution and international human rights instruments. While these prohibitions can be justified under the principle of proportionality for the greater good, periodic evaluation of regulations is necessary to assess their relevance amid social, political, and legal dynamics. The implementation of this policy must ensure that the principles of democracy and non-discrimination are maintained, and consider the possibility of granting limited voting rights to the TNI and the National Police in the future with strict supervision. This approach will help to strike a balance between institutional protection and respect for human rights, thus creating a

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