Multiple Legislative Candidates in Different Political Parties: Morality in the Perspective of Philosophy of Law

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Abstract

This research analyzes the challenges associated with legislative candidates simultaneously registered by two distinct political parties and engaging in electoral processes. The requirement of a statement for a candidate to be nominated by only one political party in the general election needs to be revised to address the problem at hand. Efforts are needed to enhance the role of political parties participating in the election. Political parties face a challenging task as institutions authorized to register their members as legislative candidates. The institutional strengthening of the role of political parties in political recruitment is necessary. The selection process carried out by political parties aims to produce competent individuals prepared to assume public office. Apart from that, the moral attitudes of political party cadres as legislative candidates are tested before taking office. All mechanisms employed by political parties should be conducted democratically and with integrity. One proposed mechanism is to set a requirement that legislative candidates must have been members of a political party for at least five years. This five-year membership requirement should be introduced alongside the requirement for candidates to be nominated by only one political party. Consequently, it is imperative to amend the election law by including a provision that mandates a minimum five-year membership in a political party. This study adopts a normative juridical methodology underpinned by a conceptual framework guided by the relevant statutory regulations.
1. Introduction

Article 22E paragraph 3 of the 1945 Constitution of the Republic of Indonesia (UUD NRI Years 1945) states that the participants in the general elections elect members of the House of Representatives, and members of the Regional House of Representatives are political parties. The provision explicitly states that public positions, especially House of Representatives (DPR) members, are filled through general elections (elections) by political parties.

A derivative of the above regulation is Law No. 7/2017 on General Elections. It mandates political parties to select any Indonesian citizen who wishes to hold the position of DPR member. Article 241 states that political parties participating in the elections can select candidates for DPR members. The function of political parties is very central and essential. Selection is necessary because it directly correlates with their duties and responsibilities when forming laws in public positions.¹

In exercising this authority, there are limits that political parties must carry out, and the selection must be carried out democratically and openly. Political parties are the spearhead in the selection of legislative candidates. This is because political parties act as organizers or conflict managers, and political parties act as a means of aggression of interests (aggregation of interests).² Democratic elements and openness are essential to be put forward by political parties participating in the election.

The democratic element must be upheld by every political party to select anyone who qualifies. Democracy is then followed by openness. Openness means that the public must know it. Political parties, one of the elements of state infrastructure, are an essential part of state ownership, including community ownership. Democratic elements and openness have a strong basis. So that later, the various candidates who are elected will already have competence and a qualified track record in carrying out their duties and responsibilities.

In order to fulfill, at least the formal requirements in the selection process are essential. The selection process carried out by each political party participating in the election also requires institutionalization. This is because the end of the selection of formal requirements is then submitted to the KPU RI. In this perspective, political parties become the spearhead, while the KPU's position as a state representative is limited to administrative elements.

Article 7 paragraph 1 of General Election Commission Regulation No. 10 of 2023 on the Nomination of Members of the House of Representatives, Provincial House of Representatives, Regency/City Regional House of Representatives (PKPU No.10 of 2023) states that political parties are authorized to nominate candidates for members of the House of Representatives. As a basis for the fact that political parties have indeed carried out this mandate, the submission of candidates is

¹ Indra Lorenly Nainggolan dan Rahmat Saputra, Perlunya Syarat Surat Keterangan Catatan Kepolisian Calon Anggota Legislatif Berdasarkan Prinsip Checks and Balances, Jurnal USM Law Review, Volume 6 Nomor 1, hlm. 421.
followed by the submission of administrative candidates for DPR RI members. Political parties submit the administrative submission of candidates with proof that it has been signed by the general chairman and secretary general of the political parties participating in the election.³

Based on this description, it is clear that there are material and formal requirements. Material requirements strengthen the institutionalization of political parties, while formal requirements are on the KPU. The process of fulfilling formal requirements related to administrative requirements is evidenced by the existence of legislative candidates who are also members of political parties. This is confirmed in the regulation that each candidate states his/her willingness to be nominated by 1 (one) political party participating in the election for the legislature in one electoral district.⁴

The good norm is different from the reality that there are obstacles to its implementation. Member of the General Election Commission Idham Holik stated that 300 legislative candidates for the DPR RI were double.⁵ The double problem of legislative candidates registered by political parties participating in the elections is severe in the constitutional system. This is because the institutionalization of political parties as an infrastructure element has not fulfilled the elements of democracy and openness.

Several studies and scientific articles discuss the requirements for legislative candidates, including a Scientific Journal Article titled "Critical Review of the Requirements for Candidates for Legislative Members in the Perspective of Constitutional Law" written by M. Saoki Oktava et al.⁶ This article focuses on one of the requirements to become a candidate for DPR RI, namely related to the requirement that the prohibition of former drug convicts and sexual crimes against children remains valid and binding based on the provisions of PKPU Number 20/2018 concerning the Nomination of Legislative Members of the DPR, Provincial DPRD, Regency / City DPRD. From the results of this study, the author does not agree with the existence of freedom for former drug convicts and sexual crimes against children to be allowed to participate in legislative election contestation. So, the suggestion given by the author is that a strict norm needs to be made regarding the nomination of legislative members who are not former convicts of drugs and sexual crimes against children.

Second, scientific research was published with the title "Juridical Review of the Legal Position of Former Corruption Convicts as Candidates for Legislative Members in the Perspective of Human Rights," written by Jou Rapolin Simatupang

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⁴ Pasal 11 ayat 2 PKPU No.10 Tahun 2023.
⁵ https://news.republika.co.id/berita/rvw1pw409/kpu-temukan-300-bacaleg-ganda-perludem-bukti-lemahnya-rekrutmen-parpol, diakses pada 2 Oktober 2023, pukul 10.20 Wib
The article states that the requirements to become a candidate for legislative members of the DPR RI should not be a former corruption convict. There is no conformity of norms in the regulation, so the Law governing general elections and the KPU Regulation governing the requirements for DPR RI candidates are technical rules. This article also suggests that there needs to be an understanding and harmonization of requirements for DPR RI legislative candidates that prohibit former corruption convicts as candidates proposed by political parties participating in the elections.

Based on these studies, the requirements for legislative candidates to fill the positions of members of the DPR RI have an essential position. The requirements in question are not only related to the prohibition of former corruption convicts, the prohibition of former drug convicts, and sexual crimes against children; it is also essential to examine the prohibition of legislative candidates nominated by more than 1 (one) political party participating in the election.

Formal requirements are essential in nominating a person to become a legislative member. Fulfilling these requirements and even minimizing mistakes is essential for political parties. The function of political parties has a central position. This paper raises the following issues: First, are the legal provisions governing the selection of legislative candidates for the DPR RI conducted by political parties participating in the elections by the principles of democracy? Second, how is the regulation to make legislative candidates only nominated by one political party participating in the election based on moral values? Formulating the problems raised is appropriate for study and comprehensively put forward.

2. Research Method

This research uses normative juridical research methods to comprehensively understand legislative candidates nominated by political parties participating in the election. Normative juridical research departs from the view that it is necessary to understand and interpret positive or written law, legal principles, legal doctrines, legal concepts, and others. The approaches used are conceptual approaches and case approaches. A conceptual approach is research that examines and analyses various legal concepts. To support this research, it uses secondary legal data with primary legal materials, namely the 1945 Constitution of the Republic of Indonesia, Law Number 7 of 2017 concerning General Elections, General Election Commission Regulation Number 10 of 2023 concerning Nomination of Members of the House of Representatives, Provincial Regional House of Representatives, Regency / City Regional House of Representatives.

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7 Jou Rapolin Simatupang, dkk, “Tinjauan Yuridis Terhadap Kedudukan Hukum Mantan Narapidana Korupsi Sebagai Calon Anggota Legislatif Dalam Perspektif Hak Asasi Manusia”, Jurnal Hukum Patik, Volume 8 Nomor 1, hlm. 45.
3. Results and Discussion

The filling of state positions, according to Usep Ranawijaya, is usually carried out with 2 (two) mechanisms: autocracy or authoritarian mechanisms and democracy. The autocratic filling mechanism is for filling positions carried out by state rulers whose state officials are determined by a few state power holders.\textsuperscript{9} Based on this provision, it will produce absolute rulers and tend to be arbitrary. Meanwhile, filling positions through a democratic mechanism is a mechanism for filling state positions using the means of popular sovereignty.\textsuperscript{10}

The filling of positions through authoritarianism is usually carried out with mechanisms that include the following:\textsuperscript{11}

a) Determined by heredity;
b) It is based on submission by the would-be ruler to the existing ruler;
c) Drawings;
d) The mechanism of the ruler who appoints officials under him and
e) Filling positions through a power struggle.

Meanwhile, filling positions uses the people’s sovereignty using democratic elections. Democratic elections can be through direct elections or indirect elections. In this perspective, what needs to be considered is how the accountability of officials after occupying the state position. Furthermore, Bagir Manan suggests two things that must be considered in filling positions:\textsuperscript{12}

a) Whether the form of filling the position of state authority in question requires public or community support;
b) Whether the form of filling the position of state ruler is occupied by an individual or collectively.

Jimly Asshiddiqie also suggests a mechanism for filling public positions. In his book, it is said that the filling of positions is divided into:\textsuperscript{13} First, the filling of state positions that are usually carried out politically; Second, the filling of state positions that are usually by being appointed by their superiors, namely political officials of an administrative nature.

Based on this description, it can be stated that the filling of public positions can be done in several ways: First, the mechanism of filling public office by appointment; Second, filling public office by election mechanism; Third, filling public office by appointment (administrative). In the modern state of law, the filling of public positions can be done by various mechanisms, depending on the system of government adopted.

\textsuperscript{9} Usep Ranawijaya, Hukum Tata Negara Indonesia Dasar- Dasarnya, jakarta : Ghalia Indonesia, 1983, 211.
\textsuperscript{10} Ibid., 211.
\textsuperscript{11} Susi Dwi Harijanti, Pengisian Jabatan Hakim: Kebutuhan Reformasi dan Penegkangan Diri, Jurnal Hukum Ius Quia Iustum No. 4 Vol. 21, hlm. 535.
\textsuperscript{12} Ibid., hlm. 535-536.
\textsuperscript{13} Mei Susanto, dkk, Kekuasaan DPR Dalam Pengisian Pejabat Negara Dalam Sistem Ketatanegaraan Indonesia, Jurnal Penelitian Hukum De Jure, Volume 18 Nomor 1, hlm. 35.
by each country. Particularly for political positions, it is generally done by an election mechanism.

The filling of public office through the election mechanism is divided into two ways: Firstly, using direct democracy is where all citizens are given the freedom to participate directly and actively in government policy-making. Secondly, indirect democracy is often referred to as representative democracy. All of these mechanisms fulfill the principles of democracy and popular sovereignty. Both can be adopted in a country to fill public positions in the legislative and executive spheres. Even local government units sometimes adopt direct or indirect democracy.

Specifically, the requirements for legislative candidates have 2 (two) main elements, namely democracy and integrity. Specifically for the implementation of legislative elections, several aspects indicate that an election is carried out democratically, including:\n\n1. The existence of legal norms governing elections that are easy to understand and not vague;
2. There is an electoral system that has been chosen;
3. Electoral districts have been determined;
4. All citizens are eligible to vote and be elected;
5. The state establishes an election management body;
6. Voter registration and voter lists are accurate and transparent;
7. All electoral participants, political parties, and legislative candidates have access to ballot papers;
8. Scheduled and democratic campaigns:
   a. Arrangements regarding freedom of expression for media access;
   b. There are regulations regarding financing and expenditure reports;
   c. Strict norms governing voting;
   d. Fair, honest, and transparent vote recapitulation;
   e. There are witnesses for each of the election participants;
   f. Election monitoring;

The legal norms of general elections are the main thing in the rule of law. This norm is the basis for all legal subjects involved in implementing elections, starting from election participants, election stages, campaign stages, and even the voter requirements in elections. In the context of legislative elections, it is regulated in Law Number 7 of 2017 concerning General Elections. The provisions of the norms of laws and regulations governing general elections, starting from the level of the 1945 Constitution Laws to the implementing regulations made by the KPU RI, must be consistent and have vague meanings. In writing, Law Number 7 Year 2017 on General Elections has regulated the provisions regarding the willingness of legislative candidates to be nominated by 1 (1)

political party participating in the elections for the legislature in one electoral district. This is regulated in Article 240, paragraph 2, Letter J of the Election Law.

Similarly, the implementing regulations in PKPU regulate the same thing. It is stated that in Article 11, paragraph 2 letter a of the General Election Commission Regulation Number 10 of 2023 concerning the Nomination of Members of the House of Representatives, Provincial Regional House of Representatives, Regency / City Regional House of Representatives, each candidate for legislative members of the DPR RI must include a statement of being nominated by only 1 (one) political party participating in the election. Based on this, the norms that state administrators, including election administrators, have prepared are firm and careful. Furthermore, realizing this norm must be implemented further in the political party of each legislative candidate.

Political parties should conduct a strict selection for each of their legislative candidates. This is because ex-officio legislative candidates are part of their political party cadres. If there are multiple legislative candidates, their membership as cadres also doubles in other political parties. The function of political parties also becomes its evaluation in overcoming this problem. Political parties have an essential function in a country. Jimly Asshiddiqie suggests that the functions of political parties are:

1. Political communication is a political party conveying strategic policies or state ideals that it will realize;
2. Political socialization is closely related to political education related to socializing awareness of the constitutional state;
3. Political recruitment: Political parties have an essential function to select and recruit their cadres to start the process of filling public positions;
4. Conflict regulators, namely political parties, have a role in channeling or integrating various political interests and influence into government and state political policies.

The political recruitment function derives command rules from Law Number 7 of 2017 concerning General Elections and General Election Commission Regulation Number 10 of 2023 concerning the Nomination of Members of the House of Representatives, Provincial Regional House of Representatives, Regency / City Regional House of Representatives. Party. The rules regulated by these laws regarding legislative candidates to be nominated by 1 (one) political party participating in the election should be implemented carefully and precisely. Political parties have finished providing an organizational cadre for each candidate.

Every candidate for political party membership has undergone all the mechanisms carried out by it to produce competent cadres ready to occupy public positions.

At this point, the recruitment function carried out by political parties should have been well realized. It can even be proposed that political parties nominate legislative cadres who have officially participated in the cadre for a minimum of 5 (five) years. Therefore, the pre-submission of candidates is very important in filling public positions in the DPR RI.

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In order for the function of political parties to be optimized with various transparent and accountable policies, several improvements are needed, including:

1. The principle of democratization in making internal political party policies;
2. The principle of party openness is where citizens have opened the door to participate in giving opinions in order to fight for the aspirations of the community;
3. Stability of state administration through openness and accountability so that the political climate supports the growth of political parties;
4. An educational and professional press;
5. Guaranteed freedom of thought, expression, and peaceful organization.

In line with the above opinion, it is necessary to democratize in making policies within political parties, including the determination of legislative candidates. The existing selection process is often closed to the public, making it unknown. Public openness through the participation of citizens in selecting legislative candidates is a must. So that the public understands the candidates' vision and mission, competence, and track record, it is more than just a formal process of fulfilling the candidates who will be submitted to the election organizer.

Political parties can also use conventions for legislative candidates from among politicians and professionals. Hence, the pattern of membership recruitment and the pattern of tiered promotion of management are essential parts that must be addressed. For this reason, the problem of multiple candidates in the registration process for legislative candidates should not just be placed on the election organizers or the candidates. However, the institutionalization of political parties must be strengthened.

Law No. 2/2008 on Political Parties also states the function of political parties. Article 11, paragraph 1 states that:

1. Political education for all citizens in order to provide awareness of their rights and obligations;
2. The realization of a conducive political climate;
3. It has functions including absorbing, collecting, and channeling political aspirations from among the wider community, which are then determined in state political policies;
4. Citizen political participation;
5. Political recruitment in terms of filling political positions by upholding democracy and justice.

The process of absorbing, collecting, and channeling political aspirations from the wider community is then determined in state political policies, including political education, to prepare legislative candidates for the DPR. The public has not been able to control political parties. The five-year contestation process to fill public legislative positions is passive. The public can only choose candidates prepared by political parties participating in the elections and election organizers.

Malik Haramain and Nurhuda mentioned that the things that are important to realize democratic elections include:  

1. Elections must be conducted with free, fair, and honest competition for all participants;  
2. Elections are aimed at producing qualified public officials who uphold high moral integrity;  
3. Elections involve citizens without discrimination;  
4. Electoral law norms that guarantee freedom and fairness;  
5. Independent election organizers, maintaining the purity of elections;  
6. Uphold the realization of citizens’ rights in ensuring community participation.  

In this regard, it is necessary to select candidates for the positions of the House of Representatives's legislative members to produce qualified public officials. Qualified candidates will influence members of the DPR in carrying out their duties and responsibilities and will further influence the formation of laws they produce. The moral integrity of the candidate measures the quality a candidate has been approved as a representative of a political party participating in a particular election and then re-registers through another political party participating in the election; it indicates that political education within the political party still needs to be completed. The forging process carried out by political parties to their cadres should be education grounded in the values of awareness of the state constitution. Conversely, if a candidate still registers from two different political parties participating in the election, the understanding of constitutional values has yet to be well imprinted.  

That is why it is said that legislative elections are declared democratic with provisions including fair and honest elections, peaceful transfer of power, open selection, and accountability. An open selection process that involves public participation is a must. Based on this principle, accountability will be integrated with the moral values of the Constitution.  

The integrity referred to in the Election Law is closely related to morality. Moral, in the perspective of legal philosophy, says that the law is the result of meaning based on morality. Dworkin provides the idea of interpreting the law based on moral principles because the law is a branch of morality. Moral norms are closely related to obligations based on decency and modesty. The measure of morality is related to good and bad behavior based on ethics.  

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19 Indra Lorenly Nainggolan dan Rahmat Saputra, Perlunya Syarat Surat Keterangan Catatan Kepolisian Calon Anggota Legislatif Berdasarkan Prinsip Checks and Balances, Jurnal USM Law Review, Volume 6 Nomor 1, hlm. 429.  
21 Tanius Sebastian., Anti-Positivisme Ronald Dworkin: Menalar Hukum sebagai Moralitas, Undang: Jurnal Hukum, Volume 6, Nomor 1, hlm. 292.  
22 Salman Luthan., Dialektika Hukum dan Moral dalamPerspektif Filsafat Hukum, jurnal Hukum IUS IUSTUM, Nomor 4, Volume 19, hlm. 509.
Two main factors can determine the measure of good and evil: Firstly, subjective measures, where the existence of each person’s conscience will subjectively tell them directly what is good and what is evil. Second are objective measures, where norms generally tell everyone about good and bad actions.\textsuperscript{23} The objective measures of morality are religious norms, decency, norms of custom, and norms of law.\textsuperscript{24}

Article 240, paragraph 2 letter j of Law Number 7 Year 2017 on General Elections has explicitly regulated the provisions regarding the willingness of legislative candidates to be nominated by 1 () political party participating in the elections for legislative institutions in one electoral district. This willingness must be followed by the conscience of each candidate who will register himself as a candidate for DPR member. The norm provides obligations for everyone corresponding to basic human feelings about good and bad actions. If there is an act of multiple registration of legislative candidates, it can be concluded that there are bad feelings from the person.

Feelings of good and evil are actions that arise from each person's conscience to carry out the norms that have been regulated, which is a general moral measure. The response of legislative candidates to the use of Article 240, paragraph 2 letter j of Law Number 7 Year 2017 depends on the ethics attached to their conscience. The absence of a good response indicates that his attitude could be better, too. The impact of his actions will cause inner peace and even lawlessness in general.

Feelings of good and evil are actions that arise from each person's conscience to carry out the norms that have been regulated, which is a general moral measure. The response of legislative candidates to the use of Article 240, paragraph 2 letter j of Law Number 7 Year 2017 depends on the ethics attached to their conscience. The absence of a good response indicates that his attitude could be better, too. The impact of his actions will cause inner peace and even lawlessness in general. Political parties should also test their institutionalization by building party infrastructure, especially membership. If every legislative candidate has yet to become a cadre within 5 (five) years, then his party's understanding needs to be questioned. The conscience of party cadres in carrying out political duties in certain political parties is a fundamental measure of morality before registering themselves as legislative candidates. So, the forging process for each political party member is the primary capital to test their moral attitude.

This restriction is significant because it tests a person’s loyalty to a political party. If it does not meet the specified limit, it will automatically eliminate multiple candidates from political parties. The additional norms proposed by the author should be formed at the level of the electoral law. Limiting norms for every citizen’s right should be the domain of the law. Meanwhile, the rules implemented by the KPU only regulate technical matters to complete the file in question. These restrictions are part of the restrictions on citizens' rights to bring order to multiple candidates that can hinder the implementation of elections.

In legal science, one of the sources of law is known as the source of material law, which is factual. The factual nature can be related to the sociological conditions of the

\textsuperscript{23} Ibid.
\textsuperscript{24} Ibid. hlm. 210.
4. **Conclusion**

The commitment of legislative candidates for the House of Representatives with the provision of a statement nominated by only one political party participating in the election is a must. This is to support filling public positions in the DPR RI based on democratic principles and integrity based on the mandate of the General Election Law. Election norms in laws and regulations, starting from Law No. 7/2017 on General Elections and General Election Commission Regulation No. 10/2003 on the Nomination of Members of the House of Representatives, Provincial House of Representatives, Regency / City Regional House of Representatives, have strictly limited the intended candidates.

The existence of political parties participating in the elections is at the forefront of resolving this issue. Political parties with a recruitment function should select their cadres who will be nominated with the principle of political awareness based on the Constitution. The awareness in question is carried out by political education to produce quality public officials by upholding high moral integrity. In the future, political parties must be more democratic in managing every mechanism in their internals. Democratization in political parties is absolute in making political decisions. The more democratic a political party is the more integrity the DPR legislative candidates it proposes.

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