

Hukum diciptakan untuk kemanusiaan dan bukan sebaliknya bahwa kemanusiaan dikorbankan atas nama hukum. Oleh karenanya, hukum harus sejalan dan sesuai dengan nilai-nilai luhur yang terpatri dalam diri bangsa yang bersangkutan termasuk Indonesia. Sehingga hukum akan senantiasa berproses menyesuaikan dengan perubahan sosial masyarakat serta tak lepas dari koridor nilai-nilai luhur bangsa itu sendiri. Di era globalisasi seperti saat ini, masyarakat berkembang dengan begitu pesatnya. Perkembangan ini tentunya menyisakan berbagai macam persoalan yang ada di masyarakat yang sangat dibutuhkan solusinya. Perkembangan masyarakat yang kian dinamis menuntut perkembangan hukum secara komprehensif di setiap aspek kehidupan. Sehingga tak heran jika kondisi ini turut mendesak

setiap negara untuk menemukan model serta sistem hukum yang cocok dengan kondisi masyarakat global tanpa menafikan nilai-nilai luhur yang ada di setiap sendi kehidupan masyarakat.

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Prakata

Sebagaimana penyusunan sebuah buku yang lain, maka book chapter ini pun dimulai dengan sebuah kata pengantar. Ucapan syukur kepada Tuhan YME mesti disampaikan karena hanya karena izin Tuhan YME semata book chapter ini telah tersusun sebagai yang direncanakan. Book chapter ini merupakan kompilasi dari artikel ilmiah yang disusun oleh para dosen Prodi Doktor Hukum Fakultas Hukum Universitas Bhayangkara Jakarta Raya dengan tema “Paradigma Hukum Dalam Berbagai Aspek”.

Penyusunan book chapter ini diinisiasi dan dilaksanakan oleh Program Studi Doktor Hukum Ubhara Jaya pada awal semester genap 2023/2024. Pelaksanaan dan penyusunan book chapter ini merupakan suatu upaya untuk senantiasa melakukan “silaturahmi gagasan” dari berbagai civitas akademika seluruh Indonesia. Silaturahmi ini sebagai ikhtiar untuk mengembangkan substansi keilmuan dalam bidang Pendidikan Hukum dan pengembangan Doktor Hukum.

Dalam book chapter terbitan pertama ini terdapat sebelas artikel. Artikel yang termuat dalam book chapter ini telah di-review oleh Tim

Reviewer yang ditunjuk oleh panitia sesuai dengan bidang kepakaran yang dimilikinya. Tim Reviewer juga telah melakukan beberapa kali korespondensi dengan penulis untuk mendiskusikan dalam rangka perbaikan artikel tersebut. Atas upaya ini, semoga book chapter ini melahirkan kemanfaatan kepada kita semua.

Kesempurnaan hanya milik Tuhan YME, sehingga book chapter ini pun tidaklah sempurna. Atas ketidaksempurnaan ini, diucapkan permohonan maaf berikut saran dan kritik sangat diharapkan. Terima kasih atas semua pihak yang turut berkontribusi atas terbitnya book chapter ini. Semoga Tuhan YME melimpahkan keberkahan kepada kita semua. Amin.

Jakarta, 17 Agustus 2024

Editor



Daftar Isi

Prakata..... iii
Daftar Isi..... v

BAB I

PENDAHULUAN 1

BAB II

KUMPULAN ARTIKEL HUKUM 5

I. Perjanjian yang dilarang pada Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat (UULPM) 5
Oleh: Alum Simbolon, Irene Puteri A.S, Japansen Sinaga 5

II. Ambiguitas Pasal *Living Law* Dalam Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP 30
Oleh: St. Laksanto Utomo 30

III. Memandu Langkah Menuju Penulisan Hukum Yang Berkualitas: Pedoman Lengkap Penulisan Hukum Bagi Mahasiswa Program Doktor.....	52
Oleh: H. Erwin Owan Hermansyah Soetoto.....	52
IV. Penerapan Pancasila Dalam Perspektif Islam	73
Oleh: Dwi Andayani Budisetyowati, Adi Nur Rohman	73
V. Penerapan Mediasi Dalam Penyelesaian Perselisihan Hubungan Industrial Pekerja/Buruh Dengan Perusahaan	95
Oleh: Joko Sriwidodo, R. Lina Sinaulan, Sugeng.....	95
VI. Penggunaan Senjata Api Oleh Polri Di Era Digital Dan Revolusi Industri 4.0 Suatu Tantangan	127
Oleh: Edi Saputra Hasibuan, Rr. Dijan Widijowati	127
VII. Urgensi Pencegahan Tindak Pidana Tawuran Pelajar	146
Oleh: Lukman Hakim.....	146
VIII. Ketahanan Pangan Dalam Perspektif Kearifan Lokal Masyarakat Hukum Adat Di Papua Barat	166
Oleh: Robert Kurniawan Ruslak Hammar, Henrikus Renjaan	166
IX. Konsep Dasar Pengawasan Notaris	181
Oleh: Sugeng Widya Romasindah Aidy Rona Apriana Fajarwati.....	181
X. Election Law Enforcement Against The Main Requirements of Natural Born Citizenship For The President of The Republic of Indonesia In The National Security Clause	217
By: Amalia Syauket Tyastuti Sri Lestari Hotma P. Sibuea	217
XI. The Position of Minority Rights In The Political Configuration of Indonesia.....	234
By: Erwin Syahrudin, Indra Lorenly Nainggolan	234
 Riwayat Hidup Penulis.....	 249



BAB I

PENDAHULUAN

Konsep “hukum dan ketertiban” (*law and order*) tidak dipahami dalam arti statis dimana hukum dibuat untuk hukum itu sendiri, akan tetapi seyogyanya dipahami dalam arti dinamis dimana hukum akan terus berproses, berinteraksi serta beradaptasi dengan fenomena serta dinamika yang ada serta perubahan sosial. Hukum, sebagaimana dipahami para sarjana hukum, harus mampu merefleksikan tiga nilai dasar, yakni kepastian hukum, kemanfaatan serta keadilan. Perwujudan nilai-nilai dasar tersebut dalam kehidupan masyarakat sejatinya adalah hakikat dari penegakan hukum itu sendiri.¹ Keseluruhan nilai dasar tersebut pada akhirnya akan bermuara pada nilai-nilai kemanusiaan.

Hukum diciptakan untuk kemanusiaan dan bukan sebaliknya bahwa kemanusiaan dikorbankan atas nama hukum. Oleh karenanya, hukum harus sejalan dan sesuai dengan nilai-nilai luhur yang terpatri dalam diri bangsa yang bersangkutan termasuk Indonesia. Sehingga hukum akan senantiasa berproses menyesuaikan dengan perubahan sosial masyarakat

1 Satjipto Rahardjo, *Ilmu Hukum* (Bandung: PT. Citra Aditya Bakti, 2014), 45

serta tak lepas dari koridor nilai-nilai luhur bangsa itu sendiri. Di era globalisasi seperti saat ini, masyarakat berkembang dengan begitu pesatnya. Perkembangan ini tentunya menyisakan berbagai macam persoalan yang ada di masyarakat yang sangat dibutuhkan solusinya. Perkembangan masyarakat yang kian dinamis menuntut perkembangan hukum secara komprehensif di setiap aspek kehidupan. Sehingga tak heran jika kondisi ini turut mendesak setiap negara untuk menemukan model serta sistem hukum yang cocok dengan kondisi masyarakat global tanpa menafikan nilai-nilai luhur yang ada di setiap sendi kehidupan masyarakat.

Dalam sebuah tulisan lama, Romli Atmasasmita menyebutkan bahwa ilmu hukum sejak berabad-abad lamanya hingga saat ini dikuasai oleh tiga sistem hukum utama, yakni sistem hukum Romawi, sistem hukum Yunani dan sistem hukum Islam. Prof. Romli melanjutkan bahwa bersamaan dengan itu, di belahan-belahan negara Asia dan Afrika dan beberapa negara Eropa, hukum Adat (lokal) ikut mewarnai fragmentasi hukum Indonesia.² Sementara Rene David dan John E.C. Brierly mengelompokkan sistem hukum kedalam beberapa corak: *the Romano-Germanic family, socialist law, the common law and other conceptions of law*.³ Dari sekian banyak corak hukum yang berkembang di dunia sampai dengan saat ini, Indonesia menganut tiga sistem hukum meliputi hukum Adat, hukum Islam dan hukum Barat. Ketiga sistem hukum ini berlaku secara bersamaan yang berfungsi sebagai sarana kontrol sosial (*law as a tool of social engineering*) sebagaimana dikemukakan Roscoe Pound.⁴ Semua sistem tersebut memberikan corak tersendiri terhadap hukum dan perumusannya di masyarakat. Pound menegaskan bahwa kontrol sosial diperlukan untuk menguatkan peradaban masyarakat dan menghindarkan masyarakat dari perilaku-perilaku menyimpang terhadap norma-norma serta nilai luhur kemasyarakatan. Oleh karena tuntutan perkembangan

2 Romli Atmasasmita, "Tiga Paradigma Hukum Dalam Pembangunan Nasional", *Jurnal Hukum Prioris*, Vol. 3, No. 1, 2012.

3 Rene David dan John Brierley, E.C., *Major Legal Systems in The World Today*, Third Edition (London: Stevens & Sons, 1985), 22-29

4 Roscoe Pound, *Filsafat Hukum* (Jakarta: Bhatara, 1978), 97

tersebut, hukum harus mampu dihadirkan sebagai sarana pembaharuan di masyarakat.


Dari sinilah peranan sarjana hukum mutlak diperlukan. Gagasan pemikiran serta inovasi pembangunan hukum yang berkeadilan menjadi kunci penting dalam membuka sekat-sekat hukum yang ada di masyarakat. Pada tahun 1910, Roscoe Pound mengintrodusir terma *law in books* dan *law in action*.⁵ *Law in books* merupakan panduan, doktrin, dogma serta teori yang dipelajari para sarjana hukum di bangku perguruan tinggi hukum. Namun demikian, kajian doktrin serta teori tersebut rupanya tidak cukup mampu menjawab persoalan di masyarakat. Sehingga *law in action* yang mengandung makna sebagai praktik hukum yang terjadi dalam realita kehidupan acapkali berseberangan dengan yang seharusnya dan seyogyanya.

Hukum yang hanya berupa teks tertulis dalam suatu peraturan perundang-undangan dan tidak dapat diterapkan maka akan dianggap mati dan berada di ruang hampa. Dalam kondisi yang lain, hukum seringkali juga dihadapkan pada pertentangan dan pergumulan antara peraturan yang satu dengan lainnya, sehingga memunculkan disharmoni peraturan perundang-undangan. Jika dibiarkan demikian, maka sudah tentu hukum tersebut tidak akan mampu mencapai tujuan hukum itu sendiri. Dari sini maka pemikiran progresif diperlukan guna mengurai benang kusut kejumudan dan pergumulan hukum tersebut. Konsep pembangunan hukum dan ide pembaharuan hukum akan terus digulirkan dalam rangka menarik ruang hampa hukum sehingga hukum yang diciptakan benar-benar menjadi kebutuhan masyarakat.

Buku ini merupakan kumpulan tulisan para sarjana, akademi serta praktisi hukum yang kompeten di bidangnya. Buah pemikiran para ahli hukum dituangkan dalam sebuah bunga rampai hukum dengan topik yang sangat relevan dengan kondisi sekarang ini terkait hukum dan dinamikanya di masyarakat. Topik-topik hukum diulas dan dikemas dengan

5 David Tan, "Revisiting Pound's Law in Action and Ehrlich's Living Law to Find the "Gap": A Compilation of Lecture Notes", *Journal of Judicial Review*, v.24, iss. 2, December 2022.

gaya bahasa terstruktur dan sistematis sesuai gaya masing-masing penulis yang memiliki latar belakang yang beragam. Disinilah letak kekuatan dari buku ini yang menampilkan dinamika hukum di masyarakat dilihat dari berbagai sudut pandang. Sehingga tulisan-tulisan tersebut dapat memotret kehidupan masyarakat dari sisi hukum sebagai salah satu alat yang membangun peradaban masyarakat. Harapan besarnya adalah bahwa tulisan-tulisan ini mampu mengurai ‘benang kusut’ yang terjadi dalam konstelasi hukum di Indonesia.



Election Law Enforcement Against The Main Requirements of Natural Born Citizenship For The President of The Republic of Indonesia In The National Security Clause

*By: Amalia Syauket
Tyastuti Sri Lestari
Hotma P. Sibuea*

Introduction

The basic principle of democracy is the division or separation of power functions in a government system known as the trias politica system. The functions of policy making by the Legislative Institution, the executive institution as policy implementer and the Judicial Institution which prosecutes policy violators are carried out separately by these institutions. The three branches of power are regulated and their authority is determined by the constitution ²²². In order to carry out the trias politica institution well, it needs public trust. The trias politica institution is a public trust institution which also means it is a respected institution. The logical consequence of this is that individuals who have moral integrity and have a strong and trustworthy personality and have undoubted sensitivity to ethical norms are worthy of holding positions in such institutions ²²³. The

222 Nurul Huda, *Hukum Lembaga Negara* (refika, 2022).

223 Hendarmin Ranadireksa, *Arsitektur Konstitusi Demokratik* (Bandung: Fokusmedia, 2007).

figure who is holding this position is automatically not an ordinary citizen but an honorable citizen

In the reform era which was more open and democratic as an expression of anti-dictatorship after the fall of the New Order regime, a clause was created which is scientifically known as natural born citizen citizenship status ²²⁴. According to Manan, 2003, it is an obligation that the positions of head of state and head of government must be filled by citizens of the country concerned. This position cannot be given to foreigners who are not citizens, or in other words, foreigners are prohibited from holding this position. This requirement points to the development of socio-political dynamics in determining the requirements for heads of state and heads of government in Indonesia ²²⁵. because the president as head of state and head of government is a position in executive power that has a central position.

In order to maintain the integrity of the institution's public trust, a "filter" is needed for potential institutional office holders. Candidates, especially those involving executive positions such as president, must be assessed based on their track record, not just their curriculum vitae. Must go through filters and have the ability to socialize with the community. Because the position of executive power, called the President, generally has the authority as a government leader who regulates various factors of life ranging from the economy to health, education, security, foreign affairs, and almost everything related to the lives of many people.

As a position that is attached to so much authority, it is necessary to ensure that the person who occupies the position of head of state and head of government must be a leader who has maturity, wisdom, insight, loyalty and matters related to the nature and attitude of a leader. The conditions for being nominated and elected as President and Vice President are the same, because at one point the Vice President can become President. Some

224 Mei Susanto and Susi Dwi Harijanti, *Syarat Kepala Negara Dan Kepala Pemerintahan, Perbandingan Konstitusi 195 Negara* (Sinar Grafika, 2023).

225 Susi Dwi Harijanti, *Kepala Negara Dan Kepala Pemerintahan, Perbandingan Konstitusi 195 Negara* (Sinar Grafika, 2023).

of these conditions apply generally or universally and some are specific and only apply in the country concerned. Determining the requirements for the head of state and head of government by taking into account the identity of the nation.

Referring to Law no. 7 of 2017 concerning General Elections (“Election Law”), Based on Article 169 of Law no. 7 of 2017 concerning General Elections states that the requirements to become a presidential candidate and vice presidential candidate are:

1. Fear God Almighty
2. Indonesian citizen since birth and has never accepted another citizenship of his own free will.
3. The husband or wife of the presidential candidate and the husband or wife of the vice presidential candidate are Indonesian citizens
4. Never betray the country and never commit criminal acts of corruption or other serious crimes.
5. Able spiritually and physically to carry out duties and obligations as President and Vice President and free from narcotics abuse
6. Residing in the territory of the Unitary State of the Republic of Indonesia.
7. Has reported his assets to the agency authorized to examine state administrators’ wealth reports.
8. Not currently having individual and/or legal entity debt obligations which are his or her responsibility which are detrimental to state finances.
9. Not being declared bankrupt based on a court decision.
10. Never commit a disgraceful act.
11. Not being nominated as a member of the DPR, DPD or DPRD
12. Registered as a voter
13. Have a taxpayer identification number and have carried out the obligation to pay taxes for the last 5 (five) years as proven by an annual individual taxpayer income tax notification letter.
14. Have never served as President or Vice President for 2 (two) terms in the same office.

15. Loyal to Pancasila, the 1945 Constitution of the Republic of Indonesia, the Unitary State of the Republic of Indonesia and Bhinneka Tunggal Ika.
16. Never been sentenced to prison based on a court decision that has permanent legal force for committing a criminal offense that is punishable by imprisonment for 5 (five) years or more.
17. Minimum age of 40 (forty) years. (Adapting to Constitutional Court Decision No. 90/PUU-XXI/2023)
18. At least complete education from high school, madrasah aliyah, vocational high school, vocational madrasah aliyah, or other equivalent school.
19. Not a former member of the banned Indonesian Communist Party organization, including its mass organizations, or not someone directly involved in the 30 September Movement/Indonesian Communist Party.
20. Have a vision, mission and program in implementing the government of the Republic of Indonesia.

The concept of citizenship for Presidential and Vice Presidential candidates in Indonesia is included in the classification of the concept of citizen/nationality by birth/born ²²⁶. The concept of citizenship requirements for candidates for President and Vice President is very important to be regulated in the constitution of each country with justification in the doctrine of eternal loyalty. This doctrine is in accordance with Indonesia and countries that adopt a presidential system of government, because the president is given very large powers, holding two positions of power. simultaneously, on the one hand as head of state, and head of government on the other ²²⁷.

The state of the art of this research is on the requirements for filling state positions, which is one of the important studies in Constitutional

226 Jamaludin Ghafar, *Presidential Threshold* (Malang: Setara Press, 2019).

227 Susi Dwi Harijanti et al., "Natural Born Citizen as a Requirement of Indonesian President: Significances and Implications," *Padjadjaran Jurnal Ilmu Hukum* 7, no. 3 (2020): 289–313, <https://doi.org/10.22304/pjih.v7n3.a1>.

Law. By looking at the development of regulations that prioritize social and political aspects and provide opportunities for the younger generation who already have experience working in the public or private sector.

Method

The scope of this research is Constitutional Law which studies state organizations, one of the scopes of which is the appointment of office holders or what is better known as filling positions. One of the types of elections which the constitution expressly states must be elected directly by the people is the election of the president as head of state and head of government. Thus, the object of study of constitutional law in this research is the law that regulates state organization and how to run government.

The issues raised in this research are discussed and analyzed using normative juridical legal research methodology or normative legal research. Which is basically an activity that will examine internal aspects (to resolve existing problems) of positive law. Data collection in normative legal research is carried out by means of literature studies in the form of secondary data as basic material for researching how election law is enforced against the main requirements of the President of the Republic of Indonesia's National Natural Born Citizen in the National Security Clause? by conducting searches on regulations and other literature related to the problem being researched or often referred to as library legal research (Library research) based on secondary data, with the logic of deductive thinking²²⁸.

Results and Discussion

1. Requirements for single citizenship for the President & Vice President of the Republic of Indonesia

Citizens in the material sense are permanent residents who live in the territory of the country. Included in this category are the people and

228 Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Jurnal Gema Keadilan* 7, no. 1 (2020): 20–33, <https://doi.org/10.24246/jrh.2019.v3.i2.p145-160>.

all government personnel, including bureaucratic personnel (civil and military). Meanwhile, citizens in the formal sense are all residents of a country who are recognized as part of the country, are officially registered, have or do not have an official identity such as an ID card, passport, birth certificate, etc. Meanwhile, for residents who are only registered but do not/don't have an official identity, even though they are not yet fully included in the formal category as citizens, they are still materially recognized as citizens based on the principle of *jus soli*, based on their place of birth or the length of their period of residence in a region ²²⁹.

A person who is registered and has an official identity as a citizen automatically has full rights and obligations as a citizen, including the right to take part in state events intended for citizens and must comply with state regulations and legislation. Thus, it is natural that citizens in a democratic country have the right to participate in determining the fate and future of their country. The most basic political rights for citizens are the right to vote (make a choice) in general elections and the right to be elected, not limited to whether they are in their position as ordinary people, or as executive, legislative or judicial officials. So, the right to vote in general elections is a citizen's right. Every citizen has the same obligation, namely to uphold the rules and laws of the country. Included in the obligations of citizens is the obligation to defend the country, especially when the existence of the country is threatened by attacks from foreign countries.

General elections are a minimum requirement that must exist for a democratic country. For this reason, Indonesia as a democratic country requires that general elections be held in democratic ways and fraud and manipulation must be avoided. In the discourse regarding the leadership of a country that adheres to a presidential system of government, the president as head of state and head of government, the regulations regarding these conditions are general (universal)

229 Ranadireksa, *Arsitektur Konstitusi Demokratik*.

and there are also special conditions that only apply to the country concerned. Table-1 below describes the citizenship requirements as general requirements for the President as Head of State and Head of Government in Indonesia

Table 1. Citizenship Requirements as a General Requirement for The President as Head of State and Head of Government in Indonesia

No	Citizenship requirements
1	Citizen by birth
2	Has no commitment to other countries/never betrays the country
3	Not someone who accepts another citizenship voluntarily/never renounces citizenship
4	spiritually and physically able to carry out the duties and obligations as President and Vice President.

Source: Processed by researchers from various sources, 2024.

After the amendment to the 1945 Constitution, the norm of Article 6 paragraph (1) was changed to read, “Presidential Candidates and Vice Presidential Candidates must be Indonesian citizens from birth and have never accepted another citizenship of their own free will, never betrayed the country, and are spiritually and physically capable. to carry out duties and obligations as President and Vice President. That is the sound of the Court’s legal considerations in Decision Number 50/PUU-XIX/2021 regarding the review of Law Number 7 of 2017 concerning General Elections (UU Election) and Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia (Citizenship Law) against the Law. The 1945 Constitution of the Republic of Indonesia (UUD 1945), which was read by Constitutional Justice Saldi Isra at the Decision Pronunciation Session which was held on Wednesday (27/10/2021).

According to Weis, 1979. The meaning or meaning of citizenship requirements is related to the philosophy of citizenship which is based on the doctrine of perpetual allegiance, aka eternal loyalty.

This doctrine originated during feudalism but is still relevant today, especially for important state positions such as head of state and head of government ²³⁰. Rubenstein and Adler, 2007, stated that the link between a person's single citizenship and their country in terms of proving loyalty is still considered important. Citizenship is not only related to legal status and rights, but also to political activities, collective forms of identity and nationalism. Citizenship shows the connection between citizens and loyalty to their country. It is natural that many countries limit the requirements for having a single citizenship or not having dual citizenship to occupy the positions of head of state and head of government

In terms of becoming candidates for President and Vice President in Indonesia, not all citizens can nominate themselves. Because these related settings are different. In Article 6 Paragraph (1), before the amendment to the 1945 Constitution, Indonesian citizens who could become presidential candidates were native Indonesians. Based on the explanation of Article 2 of Law no. 12/2006 genuine Indonesians are Indonesians who have been Indonesian citizens since their birth and have never taken on another citizenship of their own free will. After the third amendment to the 1945 Constitution, this provision was changed to mean that a person who wishes to become a candidate for President and Vice President of Indonesia must be an Indonesian citizen from birth, and must never have another nationality based on personal desire. The implications of the requirement of "citizen by birth" or natural born citizen will vary in each country depending on the citizenship laws that apply in each country. This requirement aims to guarantee strong enough loyalty to Indonesia.

After the third amendment to the 1945 Constitution, the concept of citizenship requirements changed, from the clause "original Indonesian" to "an Indonesian citizen since birth." The desire to

230 Susanto and Harijanti, *Syarat Kepala Negara Dan Kepala Pemerintahan, Perbandingan Konstitusi 195 Negara*.

change this clause was first expressed by J.E. Sahetapy on October 13 1999, during the seventh meeting which was a continuation of the second meeting of the Ad Hoc Committee III of the MPR RI Working Body. According to Sahetapy, if you use the term authentic, it means something is not authentic and has a very discriminatory tendency. However, this proposal was only accommodated in the third amendment to the 1945 Constitution. ²³¹ The amendments made to Article 6 paragraph (1) of the 1945 Constitution eliminated discrimination and avoided different interpretations of the words “original Indonesian.” The application of citizenship requirements for candidates for President and Vice President is based on the agreement of the constitutional framers in each country ²³¹.

After the amendment to the 1945 Constitution, the concept of requirements for candidates for President and Vice President in Indonesia was regulated in Article 6 Paragraph (1) with the provision “an Indonesian citizen from birth”. Conceptually, the provisions of Article 6 Paragraph (1) after the amendment to the 1945 Constitution are correct, apart from eliminating discrimination based on ethnicity, religion, race and between groups, apart from avoiding different interpretations. The concept of citizenship for Presidential and Vice Presidential candidates in Indonesia is included in the classification of the concept of citizen/nationality by birth/born. The concept of citizenship requirements for candidates for President and Vice President is very important to be regulated in the constitution of each country with justification in the doctrine of eternal loyalty. This doctrine is in accordance with Indonesia which adheres to a presidential system of government, because the president is given very large powers, where he holds two positions of power at once, in one side as head of state, and head of government on the other side ²³².

231 Sutan Sorik, “Problematika Persyaratan Kewarganegaraan Calon Presiden Dan Wakil Presiden Di Indonesia,” *Jurnal Konstitusi* 20, no. 2 (2023).

232 Sorik.

Bagir Manan states that in general it has become a standard that, 1) whenever and wherever important positions such as President are only permitted to be held by citizens of the country concerned, 2) it is prohibited for foreign nationals to serve as President and Vice President, 3) it is possible to have restrictions, for example they must be citizens. country since its birth, is still relevant today ²³³.

The implications of the requirement of “citizen by birth” or natural born citizen will vary in each country depending on the citizenship laws that apply in each country. This requirement aims to guarantee strong enough loyalty to Indonesia. This requirement for natural born citizenship has *mutatis mutandis* implications for its application to other state administration positions, both in the executive, legislative, judiciary and other state institutions ²³⁴.

2. Technical requirements for the President as head of state and head of government

All state activities are fully under executive coordination. The executive institution is responsible for the smooth running of the government. In this case the president is the manager of the government. Meanwhile, the president as a subject of government means that the president’s power in a presidential system is directly elected by the people. In substance, the election of the president in the election is the people’s recognition and approval of the vision and program offered in the campaign.

In this case the president develops a social contract, meaning carrying out what was promised, which was chosen by the people in the election. People need guarantees so that social contact can be realized. The logical consequence of this is that only individuals who have undoubted moral and ethical integrity are worthy of holding this position. For this reason, apart from the requirement of single citizenship as the first and main requirement, there are also technical

233 Bagir Manan, *Lembaga Kepresidenan* (FH UII Press, 2003).

234 Susanto and Harijanti, *Syarat Kepala Negara Dan Kepala Pemerintahan, Perbandingan Konstitusi 195 Negara*.

requirements for the election of the president as head of state and head of government, as shown in table-2.

Table 2. Regarding The Technical Requirements of The President as Head of State and Head of Government

No	Technical requirements
1	Age requirements
2	Language proficiency requirements
3	Educational requirements
4	Experience requirements

Source: Processed by researchers from various sources, 2024.

The existence of age requirements is generally associated with maturity, skills and maturity factors of a head of state and head of government. Although the measure of maturity is not absolutely seen from age, because the measure of maturity is based on certain values that apply in society²³⁵. Sociologically, the age limit for heads of state and heads of government depends on public perception. In mid-2023, there will be a process of reviewing the Election Law at the Constitutional Court regarding the age requirements for Indonesian presidential and vice presidential candidates. This is related to efforts to reduce the requirements for presidential and vice presidential candidates from a minimum of 40 years to 35 years. On October 16 2023, the Constitutional Court through its decision in case number 90/PUU-XXI/2023 changed the norm of article 169 letter q of Republic of Indonesia Law number 7 of 2017 concerning elections, namely: Declare Article 169 letter q of Law Number 7 of 2017 concerning General Election (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 6109) which states, “at least 40 (forty) years of age” is contrary to the 1945 Constitution of the Republic of Indonesia and

235 Susanto and Harijanti.

has no legal force binding, as long as it is not interpreted as “at least 40 (forty) years of age or has/is currently holding a position elected through general elections, including regional head elections.”

This maturity requirement is also relevant in relation to health conditions. Because it is feared that being too old will be vulnerable to health and government administration will not run well. Meanwhile, language skills remember that language is language is power so it plays a very important role in achieving national and international goals. In contacts as head of state and head of government, the priority is of course the ability to speak with one’s own people. In general, this requirement is related to the official language of a country which is nation building. Republic of Indonesia Law number 7 of 2017 concerning General Elections states that one of the requirements to become a presidential and vice presidential candidate is to have at least a high school diploma, Madrasah Aliyah, vocational high school, vocational Madrasah Aliyah or other equivalent school (article 169 letter r). Based on table-2 above, it appears that there is progress in setting the citizenship requirements for the President of the Republic of Indonesia. The development of these arrangements prioritizes political aspects

3. The National Security Clause has relevance to natural born citizens
The requirement for the head of state and head of government to have the right to participate in government and politics can be considered a human right in the civil and political field. Susi Dewi Harijanti further explained that there were at least five limitation clauses mentioned. First, the clause is prescribed by law or determined by generally applicable national law. Second, the in democratic society clause or the order of functioning of a democratic society, third, the public order clause or based on respect for public order, fourth, the public morals clause or public morality. Fifth, the national security clause, or restrictions that are justified in order to protect the existence of the

nation and territorial integrity or independence from other powers or from threats of violence.

From the five clauses above, it can be concluded that the requirements for being head of state and head of government in a presidential system such as that adopted by Indonesia, there are restrictions on human rights, for example restrictions must not be arbitrary or unreasonable, and must be clear and accessible to everyone. Do not disturb the order of democratic society, must respect public order in a country, maintain the fundamental values of society in order to protect the existence of the nation and the territorial integrity of the country.

This National Security clause is closely related to natural born citizenship. In the Indonesian state administration, the president is a position within the state institution as well as a position whose existence is very important. So the single citizenship requirement is the main requirement for the position of president in relation to strong loyalty to the country and also has strong relevance to the second condition “never betray the country” which is shown in table-1 above. This clause has been mandated in Republic of Indonesia Law number 7 of 2017 concerning general elections article 169. Having dual citizenship raised concerns among the drafters of the constitution regarding conflicts of interest, fears of foreign influence and incomplete loyalty²³⁶.

The urgency of the requirement for natural born citizenship for the President of the Republic of Indonesia is closely related to the issue of loyalty and allegiance in the National Security clause, according to Yudi Latif in the Indonesian context is manifested in: Loyalty to Pancasila, the 1945 Constitution of the Republic of Indonesia, the Unitary State of the Republic of Indonesia and *Bhinneka Tunggal Ika*²³⁷. In reality, the President of the Republic of Indonesia was able to actualize Pancasila, because Pancasila is said to be the basis

236 Susanto and Harijanti.

237 Yudi Latif, *Negara Paripurna, Historisitas, Rasionalitas, Dan Aktualisasi Pancasila* (Kompas Gramedia, 2022).

(philosophy) of the state, outlook on life, ideology and ligature (unifying) in the life of the Indonesian nation and state. The realization of a welfare state is largely determined by the integrity and quality of state administrators, accompanied by a sense of responsibility and humanity that radiates from every citizen.

Because citizenship speaks of a person's loyalty to their country, it is natural that many countries limit only single citizens who can occupy important and strategic positions such as President. This is closely related to the issue of loyalty and allegiance. However, according to Bagir Manan²³⁸, it is possible that there may be restrictions, for example having to be a citizen since birth or a natural born citizen²³⁹. This principle also reflects fundamental principles related to political stability and leadership maturity. In facing political dynamics that often change rapidly, political stability is considered the main key to creating an environment conducive to development²⁴⁰.

4. Election Law Enforcement is relevant to National Security

Before the amendment to UUD 1945, in the general explanation it was stated that the MPR held the highest state power, while the president had to carry out state policy according to the outlines set by the MPR. After the amendment to the 1945 Constitution, article 1 paragraph (2) was changed to Sovereignty is in the hands of the people and implemented according to the 1945 Constitution (Simorangkir, 1983).

The principle of democracy or popular sovereignty can guarantee community participation in the decision-making process, so that every legal regulation that is implemented and enforced truly reflects the community's sense of justice. Applicable laws and regulations may not be determined and implemented unilaterally by and or only

238 Manan, *Lembaga Kepresidenan*.

239 Mei Susanto, "Wacana Mengembalikan Syarat Presiden Orang Indonesia Asli Ditinjau Dari Perspektif Ketatanegaraan," *Jurnal Ilmiah Kebijakan Hukum* 12, no. 2 (2017): 193–204.

240 Askari Razak, "Reformulasi Pemimpin Usia Muda Sebagai Calon Presiden Dan Wakil Presiden: Tinjauan Ius Constituendum," *Risalah Hukum* 20 (2023): 61–75, <https://doi.org/http://dx.doi.org/10.21043/addin.v9i2.617>.

for the interests of the authorities ²⁴¹. In the design of electoral law enforcement in Indonesia, Bawaslu has authority that is increasingly extended and strengthened with every change in electoral law ²⁴².

Enforcement of election law related to the main requirements of the President of the Republic of Indonesia, namely natural born citizenship, has been implemented very well, because with consideration of national security which is linked to the principle of a person's loyalty to their country or other conditions because it allows for divisions in society and socio-political insecurity and even civil war. War) if these conditions are not met. This national security clause is also related to the public safety clause, where the head of state/head of government should provide guarantees for public security.

Conclusion

That each model of filling public positions relating to positions of state apparatus has different requirements depending on the characteristics of the position and its function as well as the method of filling the position, which influences the terms of the President's position as head of state and head of government. This academic research concludes that Election Law Enforcement according to the applicable laws and regulations relating to the implementation of the Presidential Election (Pilpres) in Indonesia regarding the requirements of natural born citizenship is good because it relates to eternal loyalty as a requirement for Single Citizenship with legal status and rights, political activity, form identity and nationalism are the main requirements for filling central state positions in order to maintain national security. Considering that the head of state and/or head of government is a political position as a central element of executive administration in a country, it is very possible that determining the requirements

241 Jimly Asshiddiqie, *Menuju Negara Hukum Yang Demokratis* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2008).

242 Veri Junaidi and Muhammad Ihsan Maulana, "Menata Kelembagaan Penegakan Hukum Pemilu Serentak Tahun 2024," *Jurnal Bawaslu Provinsi Kepulauan Riau* 2, no. 2 (2020): 41-60, <https://doi.org/10.55108/jbk.v2i2.240>.

depends on political factors and public acceptance as a form of people's expectations of their leaders. Proving someone's citizenship is not easy if there is no specific formal proof of citizenship. Therefore, something like a citizenship certificate is needed which can guarantee that someone can obtain their rights in terms of participating in general elections.

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pansel kompolnas 2024 2028.



Dr. Rr. Dijan Widijowati, S.H, M.H. Penulis telah malang melintang dalam dunia Pendidikan 2010 telah menduduki jabatan sebagai Rektor UNPUR (Universitas Purwakarta) kemudian menjadi Wakil Rektor Bagian Akademik di Universitas Mpu Tantular, dan saat ini menjadi Dekan di Fakultas Hukum Universitas Bhayangkara. Sebagai civitas akademika, penulis sangat produktif menghasilkan karya tulis, seperti buku, jurnal, dan artikel ilmiah. Selama berkarir, penulis telah mendapat beberapa penghargaan. Berawal pada tahun 2008 penulis mendapatkan penghargaan *Citra Ibu Indonesia* dari *Yayasan Penghargaan Indonesia* selanjutnya mendapat *Woman of The Year* dari *Yayasan Penghargaan Indonesia* pada 2009 kemudian berlanjut pada tahun 2010 memperoleh *Citra Wanita Kartini Indonesia* dari *Yayasan Mustika Indonesia* dan *The Best Indonesia Award 2012* dari *Yayasan Anugerah Indonesia* pada tahun 2012



Dr. Lukman Hakim, S.H, M.H. Lahir di Jakarta, 19 Juni 1976, adalah alumnus Fakultas Hukum Universitas Muhammadiyah dengan predikat lulusan terbaik ke-2 (1998), kemudian melanjutkan S-2 di Fakultas Hukum Universitas Indonesia (2002) dan S-3 di Fakultas Hukum Trisakti (2019) dengan predikat *cum laude*. Selain sebagai dosen tetap di S1, S2 & S3 FH Universitas Bhayangkara Jakarta sejak 2011 dengan jabatan fungsional terakhir sebagai Lektor Kepala (Associate Professor), Lukman juga berprofesi sebagai Senior Partner & Konsultan HaKI di MUHAJIR SODRUDDIN & PARTNERS sejak 2002. Lukman yang merupakan suami dari dr. Hj. Septy Zahrawi Kirana, MKM. serta ayah dari Zahra Nafika Hakim, Ghifari Khalifa Hakim dan Muhammad Haidar Hakim, juga aktif sebagai Pembicara dalam berbagai Diskusi Publik dan Seminar tentang Hukum Pidana dan Hukum Acara Pidana, serta seringkali diminta untuk

memberikan keterangan sebagai Ahli, baik dalam tingkat penyidikan maupun dalam proses pemeriksaan perkara di pengadilan. Adapun buku-buku yang telah diterbitkan oleh Lukman sebagai berikut: Tindak Pidana Dalam Bisnis Asuransi, Asas-Asas Hukum Pidana, Penerapan Konsep Pemaafan Hakim (*Rechterlijk Pardon*) Dalam Sistem Peradilan Pidana di Indonesia: Optimalisasi Teori Dualistis Dalam Sistem Pemidanaan, Penerapan dan Implementasi ‘Tujuan Pemidanaan’ Dalam RKUHP dan RKUHAP, Penerapan Konsep ‘*Plea Bargaining*’ Dalam RKUHAP dan Manfaatnya Bagi Sistem Peradilan Pidana di Indonesia, Hukum Acara Perdata: Permasalahan Eksekusi dan Mediasi, Pendidikan Latihan & Kemahiran Hukum (PLKH) Perdata: Teori dan Praktik Berikut Contoh-Contoh Suratnya, Hukum Acara Pidana, Gugurnya Kewenangan Penuntutan, Peniadaan Pidana, dan lain-lain. Serta puluhan artikel yang ditulis Lukman juga banyak tersebar di dalam jurnal-jurnal baik berskala internasional bereputasi maupun nasional.



Widya Romasindah Aidy, S.Psi, M.H, lahir di kota Palembang 31 Januari 1980, pendidikan SDN INPRES 1 Palu Timur Sulawesi Tengah, SMP Negeri 2 Palu (kelas 1), SMP Negeri 8 Palembang Sumatera Selatan (Kelas 2), SMP Negeri 2 Ciputat (Kelas 3) dan SMU Islam Al-Azhar Kebayoran Baru Jakarta Selatan. Meraih gelar Sarjana Psikologi Tahun 2003 Fakultas Psikologi

Universitas Persada Indonesia YAI. Meraih gelar Magister Hukum, 30 Maret 2016 Pascasarjana Universitas Bhayangkara Jakarta Raya. Penulis Pernah bekerja di Dewan Perwakilan Rakyat (DPR) RI sebagai Tenaga Ahli dari Partai Demokrat sejak Pertengahan 2012 sampai dengan tahun 2014. Saat ini bertugas di Fakultas Hukum Universitas Bhayangkara Jakarta Raya sebagai dosen tetap dan mengajar mata kuliah Psikologi Hukum dan Sosiologi Hukum. Selain itu juga aktif sebagai Tenaga

Kependidikan di Universitas Bhayangkara Jakarta Raya di Fakultas Psikologi.



Dr. Amalia Syauket, S.H, M.Si. Dosen profesional bidang ilmu pemerintahan pada Fakultas Hukum Universitas Bhayangkara Jaya dengan jabatan fungsional Lektor Kepala (2023). Selain itu juga sebagai Assesor Beban Kerja Dosen dengan NIRA: 212010310360043323149. Beliau dapat dihubungi di alamat email amalia.syauket@dsn.ubharajaya.ac.id.

Beliau aktif melaksanakan tridarma dalam bidang ilmu pemerintahan-politik dan anti korupsi. Dengan latar belakang akademik lulus program Doktor tahun 2013 dari Universitas Padjajaran Bandung. Sebelumnya, pada tahun 2000 telah menyelesaikan Magister Ilmu Pemerintahan pada Universitas Satyagama Jakarta. Sedangkan gelar Sarjana Hukum diraih dari Universitas Jendra Soedirman Purwokerto tahun 1990. Aktif sebagai peneliti pada Pusat Kajian Ilmu Kepolisian & Anti Korupsi Universitas Bhayangkara Jaya dan Asosiasi Dosen Ilmu Pemerintahan Seluruh Indonesia (ADIPSI). Beberapa karya dalam kategori publikasi terbaik sepanjang tahun 2023 antara lain: Beberapa karya dalam kategori publikasi terbaik sepanjang tahun 2023 antara lain : *Analisis Trend Koalisi Antar Partai Politik Jelang Pemilu 2024 Menggunakan Metode ISM (Interpretive Structural Modeling)*, Buku Referensi. *Meaningful Participation Dalam Pembentukan Perundang-Undangan Sebagai Upaya Membangun Open Governance*. Jurnal Nasional terakreditasi. *Fintech dan Bitcoin Modus Pencuci Uang Hasil Korupsi*. Jurnal Nasional terakreditasi. *Efforts To Eradicate Narcotics In The National Police: A Case Study Of Teddy Minahasa*. Jurnal internasional. *Jual Beli Jabatan Sebagai Area Rawan Korupsi Mengganggu Reformasi Birokrasi*. Jurnal Nasional terakreditasi. *Building an Anti-Corruption Village with Local Wisdom in Tourism Towards the Richest Village in Indonesia (A Closer Look at Kutuh-Badung-Bali Village)*. Jurnal Nasional terakreditasi. *Kepastian Hukum Masa Tunggu Eksekusi Pidana Mati Bagi Bandar Narkoba*. Buku Referensi. *Penjatuhan*

Hukuman Bagi Pelaku Suap Menyuap Dalam Proses Rekrutmen Aparatur Sipil Negara Dengan Modus Jual Beli Jabatan. Jurnal Nasional terakreditasi. *Flexing Harta di Media Sosial : Anak Kunci Pembuka Kotak Pandora.* Jurnal Nasional terakreditasi



Dr. Hotma P. Sibuea, S.H, M.H. Dosen Fakultas Hukum Universitas Bhayangkara. Jabatan Lektor Kepala sejak tahun 2001. Berhikmat dalam kajian Hukum Tata Negara. Aktif menulis buku yang diterbitkan oleh Penerbit Erlangga. Aktif menulis jurnal dan melaksanakan Tri Dharma Perguruan Tinggi. Aktif sebagai pembicara dalam pertemuan tingkat nasional dan daerah. Sering diminta sebagai ahli untuk memberikan pendapat di semua lingkungan peradilan termasuk ahli di Mahkamah Konstitusi. Alamat email pardomuansibuea58@gmail.com.



Dr. Dra. Tyastuti Sri Lestari, M.M. Seorang akademisi dan profesional di bidang Ilmu Pemerintahan yang memiliki latar belakang pendidikan yang kuat dan pengalaman luas dalam bidang akademik dan praktis. Sebagai seorang akademisi, Dr. Tyastuti Sri Lestari terlibat dalam pengajaran di berbagai mata kuliah khususnya Mata kuliah Wajib Khusus yaitu Pancasila dan Kewarganegaraan, serta aktif dalam penelitian dan publikasi ilmiah. Selain itu, beliau juga telah memegang berbagai posisi penting di Universitas Bhayangkara Jakarta Raya, termasuk sebagai Dekan dan posisi manajerial lainnya, di mana beliau berperan dalam Lembaga Sertifikasi Profesi P1 Universitas Bhayangkara Jakarta Raya.. Dalam dunia profesional, Dr. Tyastuti Sri Lestari juga dikenal sebagai seorang praktisi yang berkaitan dengan pelayanan public di pemerintahan daerah dan manajemen sumber daya manusia, serta manajemen strategis. Kompetensi beliau diakui melalui berbagai penghargaan dan sertifikasi yang telah diperoleh selama kariernya.



Dr. Erwin Syahrudin, S.H., M.H., CCD., CRA., CMED., CLI., adalah Intelektual Muda di Bidang Hukum di Universitas Bhayangkara Jakarta Raya yang bercita-cita menjadi seorang profesor di usia muda. Erwin Syahrudin mendapat gelar Doktor Ilmu Hukum (S3) di usia muda, yaitu 30 tahun di Universitas Brawijaya (UB), S-2 Ilmu Hukum Universitas Sebelas Maret (UNS), dan S-1 Ilmu Hukum dari Universitas Negeri Semarang (UNNES). Erwin Syahrudin lahir pada 4 Maret 1992 di Blora dan menempuh jenjang pendidikan sampai SMA di Kabupaten Blora. Ia juga merupakan seorang intelektual muda yang berprofesi sebagai akademisi dan praktisi hukum yang memiliki segudang pengalaman di bidang hukum dalam menangani berbagai kasus hukum dengan gelar yang ia miliki “Dr. Erwin Syahrudin, S.H., M.H., CCD., CRA., CMED., CLI.” Selain aktif sebagai dosen hukum, Erwin Syahrudin juga mendalami dunia praktisi sebagai pengacara, mediator, likuidator, dan kurator.



Indra Lorenly Nainggolan, S.H., M.H. Lahir di Pringsewu, Lampung 1989. Menyelesaikan studi Strata Satu dari Universitas Kristen Satya Wacana tahun 2012. Kemudian menyelesaikan studi Magister Hukum pada Universitas Diponegoro pada tahun 2014. Saat ini menjadi tenaga pengajar di Fakultas Hukum Universitas Bhayangkara Jakarta Raya, dengan bidang hukum kekhususan pada Hukum administrasi Negara, Hukum Kesehatan, dan Hukum Perijinan. Menulis berbagai artikel ilmiah pada jurnal yang terakreditasi Nasional. Saat ini menjabat sebagai Sekretaris Program Studi Ilmu Hukum pada FH Ubhara Jaya sejak tahun 2023.