

Legal Reform of the Political Freedom of the Indonesian National Army in Participating in Elections

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Abstract. This research will examine the urgency of legal reform concerning the political freedom of Indonesian National Army (TNI) members in elections in Indonesia. By highlighting the inconsistencies between the restrictions on TNI's political rights and the fundamental principles of democracy and human rights, this study will analyze the impact of existing policies on inclusive political participation and military neutrality. Based on theoretical studies and comparative reviews with international practices, this research will present alternative solutions and legal reform models that can be adopted to improve the current situation. Ultimately, this study will provide concrete recommendations for the government, legislative bodies, and other relevant parties to enhance the political freedom of TNI members in elections, aiming to strengthen democracy and uphold human rights in Indonesia.

Keywords: Legal Reform, Political Freedom, TNI, National Army.

1 Introduction

Political participation is a fundamental element in a democratic system. Through political participation, citizens can express their views, aspirations, and interests directly or indirectly, whether through elections, political party activities, or other forms of participation. This involvement not only allows individuals to play an active role in shaping policy and governance but also serves as a mechanism to control the abuse of power and corruption. Thus, political participation is the heart of a healthy democratic process and serves as the primary foundation for achieving representative and accountable governance.

Active citizen involvement in the political process also strengthens government legitimacy. When citizens feel that their voices are valued and influence decision-making, they are more likely to support and comply with the resulting policies. It creates a positive reciprocal relationship between the government and the people, where the government gains support and trust from the public, while the public feels satisfaction and engagement in the democratic process. Political participation also enriches public discourse, encourages constructive dialogue, and fosters a political culture that is more inclusive and responsive to the needs of all societal segments.

In Indonesian history, the role of the military and police, namely the Armed Forces of the Republic of Indonesia (ABRI), now known as the Indonesian National Army (TNI) and the Indonesian National Police (Polri), in politics has undergone significant changes over time.

During the Old Order era, TNI and Polri had the right to participate in general elections. This was regulated by Law No. 7 of 1953 on the Election of Members of the Constituent Assembly and Members of the House of Representatives. This voting right reflected the active role of the military and police in early Indonesian politics, where they participated in shaping the political direction of the country through elections. However, the situation changed during the New Order era. Under President Soeharto's leadership, TNI and Polri were no longer granted the right to vote in general elections. The decision was part of efforts to separate the military from direct politics, although in reality, the military still had significant influence in government. The political role of TNI was regulated through a special mechanism, where TNI representatives were appointed as members of legislative bodies. It was regulated by Law No. 15 of 1969 on the General Election of Members of the Deliberative/Representative Bodies. Thus, even though they did not participate directly in elections, TNI still had a voice in the legislative process.

During the New Order, the military's role in politics was more structured and integrated through the ABRI dual-function mechanism, which allowed the military to have dual roles in defense and security as well as politics and governance. This mechanism positioned the military as the guardian of state stability, with its representatives in various government and legislative institutions. The policy affirmed the military's role not only as a defense force but also as an important political actor involved in state decision-making. After the 1998 reform, significant changes occurred in the structure and role of the military in Indonesia. This reform emphasized a clearer separation between the military and politics. TNI returned to its primary function as the guardian of national defense, while Polri was separated from TNI and focused on security and public order tasks. This reform was a crucial step in strengthening democracy in Indonesia, asserting that the military no longer had a direct role in politics, but focused on professional duties in defense and security.[1]

MPR Decree Number VII/MPR/2000 concerning the Role of the TNI and Polri. MPR Decree No. VII/MPR/2000 in Article 5 states that:

1. State political policy is the basis for the policies and implementation of the duties of the Indonesian National Army.
2. The Indonesian National Army must be neutral in political life and not get involved in practical politics.
3. The Indonesian National Army supports the upholding of democracy, respecting the law, and upholding human rights.
4. Members of the Indonesian National Army do not have the right to vote and be elected. The participation of the Indonesian National Army in determining the direction of national policy was channeled through the People's Consultative Assembly until 2009 at the latest.
5. Members of the Indonesian National Army can only hold civilian positions after resigning or retiring from military services.[2]

TNI political rights are also regulated in Law Number 34 of 2004 concerning the Indonesian National Army, specifically in Article 39 which states that TNI soldiers are prohibited from being involved in:

1. Become a member of a political party;
2. Practical political activities;

3. Business activities;
4. Nominations as legislative members in general elections and other political positions.[3]

The TNI's non-participation in politics, especially the right to vote and be elected in elections, is caused by Indonesian reforms which are driven by the nation's spirit to organize a better life and future. This reform resulted in fundamental changes in the constitutional and state system. These changes were followed up with institutional arrangements by environmental developments and future task demands. Changes to the state system have implications for the Indonesian National Army, including the need to reorganize the role and functions of the National Army.[4] The People's Consultative Assembly Decree Number VII/MPR/2000 concerning the Role of the Indonesian National Army is a juridical reference in developing laws governing the TNI. The socio-political role in the dual function of the Indonesian Armed Forces has resulted in deviations in the role and function of the Indonesian National Army, which has resulted in hampering the development of democracy in the life of the nation, state, and society.

In Indonesia, the guarantee of citizens' rights to freedom of association, assembly, and expression of opinion is regulated in Article 28E Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states: "Everyone has the right to freedom of association, assembly and expression of opinion." However, the 1945 Constitution of the Republic of Indonesia also mandates in Article 28J Paragraph (2): "In exercising his rights and freedoms, every person is obliged to submit to restrictions determined by law with the sole aim of guaranteeing recognition and respect for the rights and freedoms of people. others and to fulfill fair demands by moral considerations, religious values, security, and public order in a democratic society."[5]

Article 20 of the Declaration of Human Rights states two things: first, everyone has the right to freedom of assembly and expression; secondly, no one should be forced to become a member of an association. The freedoms stated in Article 20 are universal, but their application in legislative products is not always consistent. It raises questions among TNI members regarding their political rights, especially the right to vote and be elected in elections, which should be part of their status as citizens. According to Law Number 39 of 1999 concerning Human Rights, Article 23 Paragraph (1) states that "Everyone is free to choose and have their political beliefs." In addition, Article 43 Paragraph (1) states that "Every citizen has the right to be elected and vote in general elections based on equal rights through direct, general, free, secret, honest and fair voting by the provisions of statutory regulations." Based on this provision, researchers think that National Army members also have the same rights as other citizens, especially the right to vote and be elected in elections. According to the concept of Human Rights, there should be no restrictions on the right to vote and be elected for the TNI in a democratic society in Indonesia. However, in reality, TNI members are not given the right to vote and be elected, and their political rights are deliberately limited.[6]

Therefore, there is an urgency to study legal reform for the TNI's political freedom. Although the current provisions limit the right to vote and be elected for TNI members, in the context of democracy and human rights, these restrictions need to be reviewed. This legal reform is necessary to ensure that TNI members can enjoy their political rights on an equal basis with other citizens, without ignoring the principles of neutrality and professionalism that must be upheld in carrying out their duties. This analysis will also help balance the need for military neutrality and individual rights in a democratic society, to support the development of a more inclusive and just democracy in Indonesia.

2 Literature Review

2.1 Indonesian National Army

The formation of the Indonesian National Armed Forces (TNI) began with the People's Security Agency (BKR), whose status and elements experienced confusion, leading to several name changes before finally becoming the TNI. The Indonesian National Armed Forces (TNI) function both as a profession and as a state instrument in the field of defense. It is under Article 1 of Presidential Regulation of the Republic of Indonesia No. 10 of 2010 concerning the Organizational Structure of the TNI, which states: "The Indonesian National Armed Forces, hereinafter abbreviated as TNI, is the main component ready to be deployed for the implementation of national defense duties." [7]

Soldiers are Indonesian citizens who meet the requirements set out in statutory regulations and are appointed by authorized officials to serve in military service, following Article 21 of Law of the Republic of Indonesia Number 34 of 2004 concerning the Indonesian National Army. TNI soldiers are divided into Indonesian National Army soldiers, Army soldiers, Indonesian National Army Navy soldiers, and Indonesian National Army Air Force soldiers, who carry out their duties individually or together under the leadership of the Commander in Chief. [8]

The Indonesian National Armed Forces (TNI) is defined in Republic of Indonesia Law Number 34 of 2004 (TNI Law) as the state armed forces formed based on legislation. Explanation of Article 2 Letter C in the TNI Law states that the TNI is the national military, not a regional, ethnic, racial, or religious military. The TNI prioritizes national and state interests above all regional, ethnic, racial, and religious interests. The tasks of the TNI include upholding state sovereignty, defending the integrity of the territory of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD NRI), as well as protecting the entire Indonesian nation and bloodline from threats and disturbances to the integrity of the nation and state. With this concept, the TNI is recognized to have a primary function in the defense sector. In the implementation of the national defense concept, the TNI plays a crucial role as the main component. [9]

Article 7 of the Republic of Indonesia Law Number 34 of 2004 concerning the Indonesian National Armed Forces outlines the roles, duties, and functions of the TNI. The role of the TNI is as a state instrument in the defense sector, carrying out its duties by the policies and political decisions of the state. As a defense instrument, the TNI functions to prevent all forms of threats, whether military or armed, from within or outside the country, against the sovereignty, territorial integrity, and safety of the nation. The functions of the TNI include preventing various military and armed threats from within and outside the country against sovereignty, territorial integrity, and national security, as well as taking action against any such threats. Additionally, the TNI is responsible for restoring the security of the nation disrupted due to security disturbances.

The main tasks of the TNI include upholding state sovereignty, protecting the territorial integrity of the Unitary State of the Republic of Indonesia by Pancasila and the 1945 Constitution of the Republic of Indonesia, as well as protecting the entire nation and homeland of Indonesia from threats and disturbances to the integrity of the nation and state. These main tasks are divided into military operations for war and military operations other than war. Military operations other than war include various activities, such as handling separatist movements, rebellions, terrorism, border security, protection of vital national objects, as well as world peace

missions. Apart from that, the TNI also plays a role in empowering defense areas, assisting in dealing with natural disasters, search, and rescue, as well as supporting in maintaining security and public order together with the National Police of the Republic of Indonesia.

The Indonesian National Armed Forces (TNI) is an integral part of the Indonesian people, actively engaged in developing its thinking for the progress of the nation and state in achieving its national ideals and objectives. The identity of the TNI is outlined in Article 2 of the Republic of Indonesia Law Number 34 of 2004 concerning the Indonesian National Armed Forces, as follows:

- a. The People's Army is an army whose members originate from Indonesian citizens.
- b. The Warrior Army is a resilient army that tirelessly fights to uphold the Republic of Indonesia and does not know the word surrender in carrying out and completing its duties.
- c. The National Army is the Indonesian national army tasked with serving the interests of the state and prioritizing national interests above regional, ethnic, racial, and religious interests.
- d. The Professional Army is an army equipped with adequate training, education, and equipment, not involved in practical politics or business, ensured of its welfare, and follows the state's political policies based on democratic principles, civilian supremacy, human rights, and by national and international legal provisions that have been ratified.

2.2 General Election

General elections are an important tool in implementing the principle of popular sovereignty by forming government institutions that represent the voices and interests of the people. The concept is rooted in a country's democratic system, which emphasizes that government should originate from, be implemented by, and for the benefit of the people. It means that government power is actually in the hands of the people, who act in their interests.[10] Thus, general elections are an important step in realizing the principle of popular sovereignty. The legal basis for holding general elections in Indonesia has been officially regulated in the 1945 Constitution of the Republic of Indonesia. It includes several articles, including:

1. Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia confirms that sovereignty is in the hands of the people and is implemented in accordance with the Constitution.
2. Article 2 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that the People's Consultative Assembly consists of members of the People's Representative Council and Regional Representative Council who are elected through general elections and are further regulated by law.
3. Article 6A paragraph (1) of the 1945 Constitution of the Republic of Indonesia regulates that the President and Vice President are elected directly by the people as a pair.

4. Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia states that Governors, Regents, and Mayors as heads of provincial, district, and city regional governments are elected democratically.
5. Article 22E, which consists of six articles related to general elections, namely Article 22E paragraphs (1), (2), (3), (4), (5), and (6).[11]

According to Syamsuddin Harris, general elections have several important functions, namely:

- a. Political Representative Function, which means that through elections, the people have the power to elect their representatives to occupy positions in the executive or legislative government.
- b. Political Legitimacy, which includes the importance of elections in providing legitimacy to the government in power.
- c. Political Education Facility, which means that elections can be a tool to teach people about politics directly and openly so that they become more aware of the importance of democratic political life.
- d. Change or Circulation of the Ruling Elite, which shows that elections are related to the change of rulers who represent the people or what is known as elite circulation.[12]

The principles of general elections stated in Law Number 23 of 2003 concerning the Election of the President and Vice President include:

- a. Direct Principle, which means that every citizen has the right to cast his vote directly according to the wishes of his conscience without intermediaries.
- b. General Principles, which means that all citizens who meet the age requirements have the right to vote, and those who have reached a certain age have the right to be elected without any discrimination.
- c. The principle of freedom, which means that every citizen is free to choose according to his conscience without pressure or influence from other parties.
- d. Secrecy Principle, which guarantees the confidentiality of each voter's choice in general elections by applicable laws and regulations.
- e. The Honest Principle, which requires all parties involved in general elections to act honestly by applicable legal regulations, including voters, political parties, election organizers, and election supervisors.
- f. The Fair Principle, which ensures that every political party participating in elections and constituents is treated without discrimination and avoids fraudulent actions from any party in the implementation of general elections.

2.3 Political Participation

Political participation is the activity of individuals or groups who are actively involved in political life, including electing state leaders and influencing government policy, either directly or indirectly.[13] This involves various actions such as voting in elections, joining interest groups, establishing relationships with government officials or members of parliament, and so on. According to the UNDP, political participation underlines the right of every individual, regardless of gender, to have an equal voice in the decision-making process, either

through direct participation or through institutional representation by their aspirations and interests.[14] Herbert McClosky, in the International Encyclopedia of Social Science, states that political participation is the voluntary activity of society in the process of selecting leaders and forming public policies, both directly and indirectly.[15]

Political participation has various forms and levels of intensity, which are often differentiated based on frequency and intensity. In the participation pyramid compiled by David F. Rooth and Frank L. Wilson, quoted by Miriam Budiardjo, there are several levels:

1. Activists, who are full-time party officials or interest group leaders.
2. Participants, who are involved in campaigns, become active members of parties or interest groups and are involved in social projects.
3. Observers, who attend general meetings, are members of parties or interest groups, discuss political issues, follow political developments through the mass media, and vote in general elections.
4. People who are apolitical, who do not participate in elections, are not interested, or have little understanding of political issues.[16]

One easily measurable form of political participation is through citizens' behavior in voting in general elections, by comparing the percentage of voters to those who have the right to vote. Political participation is a characteristic of political modernization. Participation and more specific channels of participation, which mobilize individuals and groups, can be influenced by social, economic, and political forces. In the long term, the processes of social and economic modernization will result in broader political participation. However, this process is not always stable and uniform and can change over time.

Political participation can take various forms, both conventional such as voting, political discussions, campaigns, forming or joining interest groups, as well as individual communication with political and administrative officials, and non-conventional forms such as demonstrations, confrontations, strikes, acts of political violence against property, political violence against individuals, guerrilla warfare, and revolution. Based on the explanation above, it can be concluded that political participation is the active involvement of the community in the decision-making process aimed at influencing government policies. Through this participation, the community provides input, and ideas, and seeks solutions to solve problems and advance collective community development.

3 Research Method

The research methodology used is normative juridical with a statutory approach. This approach involves analysis of various legal provisions relating to TNI political freedom, both in the context of national and international regulations. In this research, a review of relevant laws, regulations, and court decisions will be carried out to understand the legal framework that regulates the political rights of TNI members. Thus, this normative juridical approach will provide a strong basis for evaluating existing policies and formulating recommendations for appropriate legal reform in the context of TNI political freedom.

4 Result and Discussion

4.1 TNI Political Freedom in General Elections

The government regulates the right to vote and be elected as a step to ensure legal certainty and prevent abuse of power. This concept of limiting power has its roots in the time of Plato, who proposed that all people, including rulers, should obey the law to prevent arbitrary behavior. Lord Acton also emphasized that humans tend to abuse power, and absolute power will produce absolute abuse. Thus, regulating political rights is an effort to limit power so as not to abuse its authority, in accordance with the principles of the rule of law.

Article 260 of the Presidential Election Law states that members of the TNI and Polri do not have the right to vote in the 2009 Presidential and Vice Presidential Elections, while Article 326 of Law Number 8 of 2012 concerning Legislative Elections states that members of the TNI and Polri do not use their voting rights in the 2014 Legislative Elections. However, Article 28D Paragraph (1) in conjunction with Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia guarantees these political rights. This restriction is related to the legal relationship between the state and civil servants, especially TNI and Polri personnel, which is referred to as public service relations. Logemann explained that this relationship occurs when someone receives an order from the government to carry out a certain position within the country in exchange for a salary and other benefits. It implies that the employee is obliged to submit to an appointment to a position determined by the government without objection, while the government has the right to appoint an employee to a certain position without requiring the consent of the person concerned.

In the 1945 Constitution of the Republic of Indonesia, Article 28J Paragraph (1), it is stated that every person must respect the human rights of other people in the life of society, nation, and state. The Constitution underlines the importance of freedom as a fundamental right that must be safeguarded and protected. However, abuse of power that is contrary to the law, especially in countries that uphold constitutionalism, must be enforced by law enforcement to ensure justice in society. Limitations on human rights are also regulated in the Human Rights Charter, which confirms that human rights can be limited by law to maintain recognition and respect for the rights of others and meet fair demands in a democratic society. Restricting the right to vote and be elected for members of the TNI and Polri aims to ensure the implementation of defense and security duties, but this is contrary to the direction of development of a democratic society which emphasizes giving equal rights to every citizen.

The removal of voting rights for members of the TNI and Polri, while Civil Servants (PNS) still retain their rights, shows injustice and discrimination. Despite having the same position as civil servants, members of the TNI and Polri are given different treatment in terms of their political rights. Evaluation of the regulation of human rights restrictions in the context of moral considerations, religious values, security, and public order in a democratic society shows the need for rethinking. The concept of democracy which dedicates human rights and representation of TNI and Polri institutions in the political realm must be reevaluated, because this can damage democratic ideal values. In this context, the participation of every citizen in the government process is considered absolute, both directly and through representatives in representative institutions.

The absence of access to representation in legislative institutions and the absence of the right to be elected in elections for members of the TNI and Polri are not in line with state regulations regarding restrictions on their political rights. This shows the lack of legal protection against restrictions on voting rights for the TNI and Polri in the context of human rights in a democratic society in Indonesia. These limitations indicate that although the TNI and Polri have a vital role in maintaining state stability and security, their involvement in the political process is still not given equal space to the political rights of other citizens.

Therefore, the political rights possessed by Indonesian citizens who are also members of the TNI and Polri cannot be revoked by anyone, unless they choose not to exercise these rights. There are not only structural problems in efforts to uphold the supremacy of law as the main foundation of democracy and justice, but there are also problems with the non-fulfillment of justice values in legal norms, which sometimes become a tool of power. The implementation of the right to vote and be elected for members of the TNI and Polri in the 1955 elections without causing security problems shows that concerns about non-neutrality in the current elections do not have a strong basis. As Indonesian citizens, members of the TNI and Polri have the same position as other civilians, and the prohibition on their right to vote and be elected is not in line with the principles of democracy and human rights guaranteed by the 1945 Constitution of the Republic of Indonesia. In addition, there are concerns that the potential for authority abuse can be overcome by the establishment of legislation that regulates this by civil politicians.

4.2 The Urgency of Legal Reform Regarding TNI Political Freedom in General Elections

Analysis of the incompatibility between restrictions on the TNI's political rights in general elections and the basic principles of democracy highlights the fundamental conflict between individual political freedom and the need for military neutrality in the political context. The basic principles of democracy emphasize the importance of inclusive political participation, where every citizen has the same right to be involved in the political process, including the right to vote and be elected. However, limiting the TNI's political rights goes against this principle because it prevents some Indonesian citizens from fully participating in general elections.

Restrictions on the TNI's political rights also raise serious questions about human rights. The right to vote and be elected is a fundamental right that must be protected and respected by the state, by internationally recognized human rights principles. By limiting the political rights of the TNI, the state can be considered to be violating their human rights, because they are given different treatment from other citizens simply because of their status as members of the military. Apart from that, limiting the TNI's political rights could also disrupt the balance of power between the military and the civilian government, which is one of the basic principles of democracy. In a healthy democratic system, the military should be under civilian control and not actively involved in the political process, including elections. However, these restrictions could strengthen the military's position in politics and threaten underlying democratic principles.

The need for legal reform regarding the TNI's political freedom in general elections is very urgent in the context of strengthening democratic principles and human rights in Indonesia. One of the main cornerstones in a democratic system is inclusive political participation, where every citizen has the same right to be involved in the political process. In this case, restrictions on the TNI's political rights are contrary to the basic principles of democracy and human rights, which emphasize that the right to vote and be elected is a fundamental right that must be

protected and respected by the state. Therefore, legal reform is needed to accommodate the TNI's political freedom in general elections, so that they can participate fully in the political process without discrimination.

Alternative solutions or models of legal reform can include several approaches, namely:

1. The government can consider eliminating restrictions on TNI's political rights in general elections as a whole so that they have the same rights as other citizens. This approach would be in line with democratic principles and human rights, and support military neutrality in politics.
2. Giving the TNI political rights with certain restrictions, such as limiting active participation in political campaigns or establishing a strict code of ethics to ensure their neutrality.

So, what can be done is:

1. Revise the law that currently limits the TNI's political rights in general elections. The government and legislative institutions must work together to review Article 39 of Law Number 34 of 2004 concerning the Indonesian National Army and other related laws which prohibit TNI members from voting and being elected in elections. The revision must accommodate the political rights of TNI members as Indonesian citizens while ensuring that there are strict mechanisms to maintain military neutrality in practical politics. This process should involve consultation with a wide range of stakeholders, including civil society organizations, legal experts, and military representatives.
2. The government needs to develop and implement a clear code of ethics and internal regulations to ensure that TNI members remain neutral in politics even though they have the right to vote. This could include restrictions on participation in political campaign activities, special training on political neutrality, as well as strict sanctions for members who violate these rules. This code of conduct will help maintain military professionalism and prevent abuse of power or potential conflicts of interest that could arise from political participation.
3. Efforts need to be made to increase education and political awareness among TNI members. This educational program should be designed to provide an in-depth understanding of the military's role and responsibilities in democracy, human rights, and the importance of maintaining political neutrality. In this way, TNI members will be better prepared to participate in the political process constructively and responsibly.
4. Adopt a gradual approach to restoring the right to vote for TNI members. For example, voting rights can be restored first to military members who are not on active duty or who hold administrative positions. This gradual approach allows for better adjustments and regular evaluation to assess the impact of the changes so that the government can make the necessary adjustments to ensure the stability and success of the reform.

5 Conclusion

Political freedom for TNI members in general elections is an urgent issue for legal reform, considering the incompatibility between restrictions on their political rights and basic principles

of democracy and human rights. Although Article 260 of the Presidential Election Law and Article 326 of Law Number 8 of 2012 prohibit members of the TNI and Polri from voting, Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia guarantees the political rights of every citizen, including members of the military. These restrictions lead to discrimination and injustice, especially compared to Civil Servants (PNS) who still have the right to vote. Therefore, legal reform is needed to accommodate the political rights of TNI members, ensure their neutrality in politics, and strengthen democratic principles and human rights in Indonesia.

To achieve this, the government and legislative institutions need to revise laws that currently limit the political rights of TNI members, develop a clear code of ethics and internal regulations, and improve political education for military members. Adopting a phased approach to restoring voting rights for TNI members could also be an effective solution. These steps will not only ensure inclusive political participation but also maintain military neutrality and strengthen the foundations of democracy in Indonesia.

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