



Constitutional Right Of Citizens In The Recruitment Of State Officials

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Abstract. Every Indonesian citizen has the same rights to participate in government, including registering for every recruitment for state officials. The amendments to the 1945 Constitution have outlined that all citizens have the same status and rights in occupying public positions in the government structure in Indonesia. In reality, not all citizens can participate in government, due to discrimination in terms of age, education, race and certain groups in the recruitment of public officials in Indonesia. This research uses normative juridical methods for several laws and regulations in Indonesia. Through this research, it is hoped that there will be no discrimination in the recruitment of state officials, all citizens have the same position in the recruitment of state officials. Apart from that, clear methods and criteria are needed in the recruitment of state officials, so that citizens' constitutional rights remain protected from discrimination in the recruitment of state officials. For this reason, research is very important to provide parameters for the recruitment of state officials in Indonesia, so that no citizens are disadvantaged in the recruitment of state officials..

Keywords: constitutional, rights of citizens, recruitment of state officials

1. Introduction

One of the main problems that often arise in the implementation of state official recruitment is the inequality of citizen rights. One of the causes of this inequality of citizen rights is the existence of sectoral egos between those with power and those who do not have power in the recruitment of state officials ⁽¹⁾. Another problem is how the community can easily and simply exercise their constitutional rights in participating in government, especially in the recruitment of state officials. Not only that, the differences in social status and background become serious problems so that it is not uncommon for the elected candidates to be part of the people who are close to power, even those who do not have access to power will be marginalized.

Such conditions are further exacerbated by the existence of an oligarchic system in power, resulting in the rights of citizens being increasingly revoked by the power that only prioritizes its group, with or without thinking about a wider life, namely the rights of citizens that tend to be eliminated by certain groups and circles that have power in government ⁽²⁾. This is not only in the form of laws that regulate procedures and methods for recruiting state officials that tend to be collusive but also lead to patterns and cultures that tend to provide benefits to certain individuals so that they can provide easy access for only a handful of certain groups in government.

In the midst of political turmoil and bureaucratic dynamics, one of the serious challenges faced by the Indonesian government system is collusion in the recruitment

of state officials. The very process of selection, which must ensure the selection of officials according to their merit and competence, is thus often compromised by such collusion. An instance that has come to light is when a selection commission which is reportedly collusive for a senior post in a ministerial post. In this instance, some members of the selection commission were said to have conspired with political parties to make sure that the candidates they selected were ones who were friendly to their party. It is reported in the paper, what should have been a transparent meritocratic process, turned into a vehicle to automatically pass candidates who did not satisfy the criteria properly (3). Some candidates get an undeserved bonus points because of having a rich political connection with the political party while some much competent without a big political chain are required to be sacrificed.

Collusion in the recruitment process has significant impacts. First, the appointment of unqualified officials can reduce the quality of performance of government institutions. Officials who are selected based on collusion tend to be less competent and do not have the skills needed to carry out their duties effectively. Second, collusion creates public distrust of government institutions. The public sees that the selection process for state officials is unfair and prioritizes personal or political connections over merit. Such lack of trust weakens government legitimacy and diminishes public compliance to enacted policies. The third is this practice aggravates corruption and nepotism. Collusion creates a situation in which elected officials owe favors to some groups and pays back returns to groups that help them. Until it becomes a perpetual cycle of corruption, which merely dilutes the integrity of the governmental apparatus.

Oligarchy is the problem that plagues politics and economy in Indonesia, as in any other countries (4). Here in this country, it is called an oligarchy and it manifests itself as a small handful of ruling individuals and families possessing all of the political and economic power and with the vast majority of their countrymen being reduced to mere serfs for the oligarchs they serve. For the most part, Indonesia has gone through progressive changes politically since the Reformation era in the late 1990s. Despite countless reforms from this moment on to improve the democratic system, oligarchy continue to be a major issue (5). Various groups of politic-economic elites — big businessman, entices, and strong families — have broadened their power base by taking advantage of their wealth and power.

The influence of oligarchy is well visible in the political and economic sectors. Many Indonesian families and conglomerates have direct links to political parties and government officials. They frequently use their wealth to steer public policy and shape policy-making. Aha, reports of how some conglomerates finance political campaigns of candidates, and then receive great returns in the shape of official contracts or state regulations suiting their enterprises. It creates therefore a model of where private business dominates public interests and worsens social and economic inequality.

Economic Inequality: The concentration of wealth in the hands of a small group often exacerbates economic inequality. Resources and opportunities may be more controlled by the elite, while the general public, especially the poor and middle class, face difficulties in accessing equal opportunities. **Corruption and Nepotism:** Oligarchy is often closely associated with corruption and nepotism. Powerful families and individuals tend to engage in practices that benefit themselves, such as awarding projects to their own companies or protecting their business partners from healthy competition. **Neglect of Public Interest:** With great power and influence, the elite group can often

influence policies that are supposed to be in the public interest. The small group wielding power tends to attend to its interests rather than the interests of the masses. Oligarchy can undermine the integrity of democracy itself by exerting influence over the selection and appointment of officials. Candidates endorsed by the subtle elite will be prioritized, even if the more logical candidate has less social and economic connections than the elite group.

Just in the contrast of the oligarchy dynamics in government and politics in this case, the recruitment process of state officials has a strong influence. Oligarchy: government by a few, or the, control of government by few individuals or families (influence and influence-able) (6). Hiring state officials must be based on the most qualified and capable people for important jobs. But in practice, this procedure has often been manipulated by the power of natural oligarchy.

Recruitment of state officials in Indonesia is a crucial aspect in maintaining the quality and effectiveness of government (7). However, this process often faces various problems that can affect the results and their impact on governance. These problems, if not addressed seriously, can have a major impact on the quality of public services and public trust in the government. Based on that, constitutional restrictions are needed in order to re-interpret the limits of citizens' rights to participate in government through recruitment mechanisms and procedures that are in accordance with the values contained in Pancasila and the 1945 Constitution, so that in the end it will reflect an open recruitment process and provide opportunities for all Indonesian people to participate in the government of the Republic of Indonesia ⁽⁸⁾.

This article will discuss how citizens' rights play an active role in participating in government ⁽⁹⁾. Because effective and democratic governance depends not only on its institutions and officials, but also on the active participation of its citizens. Citizens have a very important role in the government system, and their involvement can influence policies, decision-making, and the quality of public services. This paper will describe the various roles of citizens in government and how their contributions can strengthen democracy and state governance. For this reason, it is very important for the author to describe how citizens' rights are in the recruitment of state officials in Indonesia, so that they can contribute to efforts to create a clean bureaucracy that is free from corruption, collusion and nepotism.

2. Literature Review

In the discussion of this paper will use the theory of citizen rights in government referring to ideas and principles that explain the rights and obligations held by citizens in the context of state governance and government systems. This theory usually involves a discussion of how these rights affect the role of citizens in the political process, decision-making, and government accountability. Here are some of the main theories that are often discussed in the context of citizen rights:

2.1 Social Contract Theory

The social contract theory, developed by philosophers such as Thomas Hobbes, John Locke, and Jean-Jacques Rousseau, argues that government is formed through an agreement between individuals to form a society and agree on common rules for the sake of security and well-being ⁽¹⁰⁾. In the context of this theory, the rights of citizens

are derived from this agreement. These rights include the right to participate in the political process, the right to legal protection, and the right to enjoy personal liberty. The government, according to the social contract theory, has an obligation to protect these rights and to carry out its duties in accordance with the social agreement.

Rousseau emphasized the importance of popular sovereignty in a political system. According to him, sovereignty cannot be given to a particular individual or group; rather, sovereignty is the collective right of the entire society, namely ⁽¹¹⁾ : a) *Volonté Générale* (General Will): Rousseau introduced the concept of *Volonté Générale*, or general will, which refers to the collective will of society. The general will is not simply the sum of individual desires, but reflects a higher common interest.. b) *Direct Democracy*: Rousseau argued that the ideal government is one that allows direct participation of the people in decision-making, so that the general will can be accurately represented.

2.2 Participatory Democracy Theory

Participatory democracy theory emphasizes the importance of active citizen participation in the governance and decision-making process. This involves more than simply electing representatives in elections; citizens are expected to be directly involved in various aspects of public governance. Based on this theory, citizen rights are the right to attend meetings where public actions are discussed, to vote on referendums, and to participate in political debates (12). Such engagement is viewed as vital to ensuring government policies and decisions are aligned with the interests and aspirations of the people.

One theory of participatory democracy is an active citizen involvement or participation, citizens will obtain the power to decide on policies. The theory stresses the significance of citizens being engaged in all stages of the political process and not merely when electing officials. The point of this approach is to bolster the legitimacy — the accountability and responsiveness — of government. Theory of participatory democracy stresses active citizen Participation in decision-making and Policy-making(13). This theory seeks to increase government accountability, legitimacy, and responsiveness through providing a platform for citizens to engage themselves directly. In summary, participatory democracy (in spite of the difficulty in its implementation) offers us the possibility of a more democratic society, which attends to collective needs and wants and affirms the value of all those involved in democratic decision-making.

2.3 Human Rights Theory

Human rights cannot be given away; they come first and must be recognized and protected by the government. These are the right to life, the freedom of expression, right to justice (14). In terms of governance, the theory requires rights to be respected and ensured by the state. Some rights of citizens as: right to legal protection, freedom of expression and assembly, right to free and equal justice before the courts.

According to this theory, citizen rights come with the right to participate in political decision-making and also the duty to protect the government system from corruption. Citizens are supposed to participate in strengthening democracy, combating corruption and abuse of power. The rights of citizens in a government theory include a range of ideas & principles regarding the rights of the individual in relation to a political entity or state. These rights typically involve participation in the political process, legal protection, and involvement in decision-making ⁽¹⁵⁾.

3. Method

In writing this paper using the normative legal method. The normative legal method is the main approach in legal research that emphasizes the analysis and interpretation of applicable legal norms⁽¹⁶⁾. This method focuses on the understanding and application of legal rules, as well as how the law is applied in practice⁽¹⁷⁾. Not only that, in the use of this method is also connected to the practices and symptoms that appear in society, especially in the mechanism and procedures for recruiting state officials which are increasingly far from what is expected, in order to find an ideal conception regarding public participation in the recruitment of state officials so that the rights of citizens in the recruitment of public officials do not tend to be neglected.

4. Findings And Discussion

4.1 Participation in Government in the 1945 Constitution.

In the constitution of the Republic of Indonesia, namely the 1945 Constitution of the Republic of Indonesia (UUD 1945), there are important principles that regulate equality before the law and government. This principle reflects a commitment to justice, transparency, and equality in the legal and government systems. The following is an explanation of equality before the law and government according to the 1945 Constitution:

a. Equality Before the Law

Article 28D Paragraph (1): *"Everyone has the right to recognition, guarantee, protection, and certainty of fair law and equal treatment before the law."* In Article 28D Paragraph (1) it means that there is Recognition and Protection, meaning that every individual has the right to be recognized and protected by law without discrimination. Then Legal Certainty, meaning Guaranteeing that the law is applied consistently and fairly, and equal treatment, meaning that everyone has the right to receive equal treatment before the law, without distinguishing between ethnicity, religion, race, gender, or social status. Article 28I Paragraph (2): *"Everyone has the right to be free from discriminatory treatment on any basis and has the right to receive equal treatment before the law."* The meaning contained in Article 28I Paragraph (2) is Freedom from Discrimination: The right not to be treated discriminatory in any way. There is Equality Before the Law, meaning how important legal equality is for all individuals in the legal system.

Justice as Fairness (18) Political philosopher and moral philosopher John Rawls developed a well-known theory of justice, which he called (19) Justice as Fairness. This is an ethical theory of social justice extensively discussed in Rawls' book *A Theory of Justice* (1971). Below, I will explain Rawls' theory of equality, including the main concepts and what they say about inequality. This is the thought experiment that Rawls called the "original position" with his "veil of ignorance." The original position is a situation in which people select from a number of principles of justice behind a (curtain of darkness), unaware of what their social and economic status is. That way anyone will select the fairest/ equal to all rules of behavior as they will have no idea whether they will be in a more beneficial position or otherwise. Doing so will help ensure that

the principles chosen will not only advance the interests of the more vulnerable among us, but the less fortunate as well.

b. Equality Before the Government

Article 27 Paragraph (1): *"All citizens have the same position before the law and government and are required to uphold the law and government without exception."* The meaning that can be understood in Article 27 Paragraph (1) is that all citizens have the same position before the law and government. Obligation to Uphold the Law, meaning that every citizen is required to obey the applicable laws and regulations without exception and obligation to the Government, meaning that all individuals must obey and respect the legitimate government and the decisions taken by the government.

Thus, there must be Equality Before the Law and Government in the 1945 Constitution focusing on two main aspects, namely Legal Equality, namely that all individuals have the right to receive equal treatment before the law without discrimination. This includes fair legal protection, legal certainty, and equality before the courts, and equality in Government: All citizens have the same rights and obligations in the government system. This includes the obligation to obey laws and regulations, as well as the right to participate in the government process fairly and equally⁽¹⁹⁾. These principles ensure that the government and legal system in Indonesia are fair, transparent, and inclusive, providing protection and equality for all citizens.

John Rawls' theory of equality and justice provides a deep and systematic framework for understanding how the principles of justice can be applied in society. With the concepts of the "original position" and the "curtain of darkness," Rawls offers a method for determining the principles of justice that are objective and impartial. The principle of equal liberty and the principle of difference create the basis for a just and inclusive social structure, ensuring that all individuals, especially those who are disadvantaged, receive equal and fair treatment. Rawls' theory contributes to thinking about social and political justice, offering guidance for designing a society that is not only fair in treatment but also in the distribution of benefits and opportunities. By applying Rawls' principles, we can develop a social and political system that is more inclusive, just, and supports the well-being of all members of society.

4.2 Ideal Concept of Citizens' Rights in Recruitment of State Officials.

Fortunately, states are responsible for recruiting the people who fill many critical posts throughout the government system, and doing this with a degree of professionalism, if not expertise. Citizens rights in recruitment of state officials is supposed to be based on some fundamental principles that would ensure fairness, transparency and inclusive participation in the recruitment process of officials. Here is an analysis of the notion of ideal:

a. Right to Equality and Justice

Equal citizen rights in re-cruitment of state officials without discrimination. It must be done in the most fair and impartial way possible, to give each qualified person equal chance for his or her consideration. Selection criteria must be clear, objective — and closely aligned with relevant skills and qualifications⁽²⁰⁾. Non-Discrimination: There must be no discrimination in the recruitment process based on race, religion, gender,

sexual orientation, social status, or other factors. This principle ensures that all individuals are treated equally and that recruitment decisions are not influenced by factors that are irrelevant to their performance and competence.

b. Right to Transparency and Accountability

The recruitment process of state officials should be open and transparent so that the people can understand and supervise the process. All information relating to the recruitment process – including criteria, procedures, and results (including names, how many shortlisted, Gender etc., and rejected) – should be publicly available. This avoids the abuse of power and makes sure that the process of selection is done by the spirit of justice. Accountability in decision-making decisions related to the recruitments of state officials should be accountable to the people. Decision makers should give succinct and logical hearings of why candidates were selected or rejected. Furthermore, selection processes must include complaint and appeal mechanisms for those who feel aggrieved.

c. Right to Participation and Access

Equal Opportunity to Engage All citizens meeting the qualifications must be able to engage in the recruitment process. The government should provide appropriate channels of information and equal opportunity for everyone to participate in recruitment process. This also includes job availability information and job requirements. Right to Information and Documentation Citizens need adequate access to information about the recruitment of state agents, which, at the very least, should include information regarding the criteria and process used. Specific documents and information concerning recruitment must be disclosed so that both recruiting party as well as the other concerned parties are aware with the whole process and judgement criteria adopted while selection.

d. Right to Protection and Legal Certainty

Protection of Personal Rights and Interests In the recruitment process, citizens must be protected from specific arbitrary actions. There are laws in place that provide safeguards for those involved in recruitment that they cannot be treated unfairly or prejudicially. Nature of Legal Certainty in the Selection of State Ministers; The selection of state officials must comply with statutory provisions. Legitimacy – All steps taken during the selection process must follow laws and policies so at no point are any of the individual rights violated.

The above principles should be furthered through regulations and policies concerning state official recruitment. Transparency and fairness of recruitment are regulated by certain laws, as well as non-discrimination and clear rules (21). Existing regulations demand that recruitment be conducted, and that there is supervision for conduct (22). The creation of an autonomous agency or commission that supervises the hiring process and addresses issues or complaints. Through awareness and education, ensure that principles of fairness and transparency in recruitment are understood by, and applied at, all relevant levels. Training for selection panels on the principles of equity and non-discrimination and community education programs on their recruitment rights

The notion of citizen rights itself in the recruitment of state officials highlights essential aspects of the ideal concept such as equality, transparency, accountability, and participation. If the selection process can be carried out fairly, openly, and without discrimination, the government will gain public trust so that those chosen as state officials are the best and most qualified people. These principles can be implemented through regulations, supervision, and education to have a much more efficient and accountable recruitment system.

5. Conclusion

A indispensable part of good governance is citizen participation in the recruitment of the state officials responsible for governance, an aspect that needs urgent action and improvement. Involving citizens and civil society in this process actively will not only strengthen democracy but also enhance the quality and legitimacy of the government. Citizen participation in the recruitment of state officials is central to a fair transparent, accountable state. By engaging in the process, the public can help ensure that selection is carried out in a fair manner, that there is greater accountability of state officials, that democratic legitimacy is enhanced and that there is better representation. Appropriately designed participation mechanisms and openness in the recruitment process could enhance public trust, which would promote governance stability and effectiveness.

References

1. Stewart, Jenny: *Public Policy Values*. London, Palgrave Macmillan (2009).
2. Winters, Jeffrey A: *Oligarchy*. Cambridge University Press, p. 43 (2011).
3. Addink, Henk et al: *Sourcebook, Human Rights & Good Governance*. Utrecht: HUGO European Asian Network on Human Rights and Good Governance (2010).
4. Asshiddiqie, Jiml.: *Economic Constitution*. Kompas Book Publisher, Jakarta 2010).
5. -----: *Strengthening the Government and Justice System in Indonesia*. Sinar Grafik, Jakarta (2015).
6. -----: *The Idea of Popular Sovereignty in the Constitution and its Implementation in Indonesia*. Ichtiar Baru-van Hoeve (1994)
7. Callahan, Kathe: *Elements Of Effective Governance: Measurement, Accountability, And Participation*. Taylor & Francis Group, Boca Raton Florida (2007).
8. Box, Richard C., ed: *Democracy And Public Administration*. M.E. Sharpe New York (2007).
9. Anam, Saiful: *System of Recruitment of Legal Profession In A Nation of Law of Pancasila*, Pandecta Research Law Journal 12 (1), 10-18
10. Anam Saiful and Jimly Asshiddiqie: *Public official recruitment system: Towards creation of a rule of law based on Pancasila*, Law and Justice in a Globalized World, 181-186
11. Rasjidi, Ira and Lili Rasjidi: *Basics of philosophy and legal theory*. Citra Aditya Bhakti, Bandung (2010).
12. Jean-Jacques Rousseau, *Du Contrat Social, ou Principes du Droit Politique* (1762).
13. Manan, Bagir: *Development of Thought and Regulation of Human Rights in Indonesia*, Bandung Alumni (2001).
14. Harlow, Carol, and Richard Rawlings: *Law and Administration* 3ed. Cambridge University Press, New York (2009).
15. Mulya Lubis: *Todung: In search of Human Rights: Legal-Political Dilemmas of Indonesia's New Order 1966-1990*. Berkeley, California (1990).
16. Arinanto, Satya: *Human Rights in Political Transition in Indonesia*. Center for Constitutional Law Studies, Faculty of Law, University of Indonesia, Jakarta (2008).
17. Waluyo, Bambang: *Legal Research in Practice*. Sinar Grafika, Jakarta (2002).
18. Green, Judith: *A Guide to Using Qualitative Research Methodology*. Nouria Brikci -Research Officer, MSF UK London (2007).
19. Rawls, John: *A Theory of Justice*. Revised edition. Cambridge Harvard University Press (1999).

20. Crouch, Harold, *Indonesia Democratization and the Threat of Disintegration*. Southeast Asian Affairs (2000).
21. Nugraha, Safri: *Privatization Of State Enterprises In The 20th Century A Step Forwards Or Backwards*. Institute For Law And Economics Studies, Faculty Of Law, University of Indonesia. Jakarta, (2004).
22. Fauzi Achmad, Abdillah: *State Governance in Political Perspective*. Golden Terayon Press, Jakarta (2012)

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