The Role of the President-Elect and Vice President-Elect in Relation to Their Supporting Political Parties (An Analysis Based on Utilitarian Ethics and the Pure Theory of Law)

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ABSTRACT
The relation between the President-elect and Vice President-elect and the political parties that nominated them is an important issue to examine, considering that post-election constitutional practices often reveal political connections that manifest through the formation of governing coalitions and the distribution of cabinet positions. This study aims to analyze the legal relations between the elected President and Vice President and the political party or coalition of political parties that nominated them from the perspectives of utilitarianism and the Pure Theory of Law. This is a normative legal study employing both a statutory and a conceptual approach. The results of the study indicate that the legal relationship between the candidate pair and the supporting political party exists only during the nomination and election stages and ends once the President and Vice President are elected. From a utilitarian perspective, the absence of such a legal relationship better ensures governance oriented toward the interests of the broader public rather than those of a specific political party. Meanwhile, according to the Pure Theory of Law, the relationship that continues between the elected President and Vice President and the political party that nominated them after the general election is a political relationship, not a legal one, because it is not regulated by legal norms.

ABSTRAK
Hubungan antara Presiden dan Wakil Presiden terpilih dengan partai politik pengusung merupakan isu yang penting untuk dikaji mengingat praktik ketatanegaraan pascapemilihan umum sering menunjukkan adanya relasi politik yang diwujudkan melalui pembentukan koalisi pemerintahan dan pembagian jabatan dalam kabinet. Penelitian ini bertujuan untuk menganalisis hubungan hukum antara Presiden dan Wakil Presiden terpilih dengan partai politik atau gabungan partai politik pengusung ditinjau dari perspektif utilitarianisme dan the Pure Theory of Law. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan peraturan perundang-undangan dan pendekatan konseptual. Hasil penelitian menunjukkan bahwa hubungan hukum antara pasangan calon dengan partai politik pengusung hanya berlangsung pada tahap pencalonan dan penyelenggaraan pemilihan umum, serta berakhir setelah Presiden dan Wakil Presiden terpilih. Ditinjau dari perspektif utilitarianisme, ketiadaan hubungan hukum tersebut lebih menjamin penyelenggaraan pemerintahan yang berorientasi pada kepentingan masyarakat luas

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dibandingkan kepentingan partai politik tertentu. Sementara itu, menurut the Pure Theory of Law, relasi yang tetap berlangsung antara Presiden dan Wakil Presiden terpilih dengan partai politik pengusung setelah pemilihan umum merupakan hubungan politik, bukan hubungan hukum karena tidak didasarkan pada norma hukum yang mengaturnya.

INTRODUCTION

The issue of democratic development in a country is almost certainly linked to general elections. Etymologically, the term "democracy" means "rule by the people" or "government by the people," (Budiardjo, 2013, p. 105) and general elections are the embodiment of that popular sovereignty. Elections are a crucial tool for measuring the growth and development of both procedural and substantive democracy in a country; if elections are conducted fairly and democratically, then democracy in that country has matured fully. The electoral system in Indonesia has undergone changes over time with each election. The process of revising regulations for each election involves political and legal dynamics—namely, the political, economic, social, and cultural contexts that shape the creation of the General Election Law.

Throughout the history of Indonesia's system of governmental administration, the President and Vice President were elected by the People's Consultative Assembly (MPR). However, following the constitutional amendments, Article 6A, paragraph (1) of the 1945 Constitution of the Republic of Indonesia stipulates that, "the President and Vice President shall be elected as a single pair directly by the people," furthermore, Article 6A, paragraph (2) of the 1945 Constitution of the Republic of Indonesia also stipulates that, "the presidential and vice-presidential candidate pair shall be nominated by a political party or a coalition of political parties participating in the general election prior to the conduct of the general election." These provisions serve as the legal basis for holding direct general elections, in which the competing candidate pairs are those nominated by political parties participating in the election.

Article 6A, paragraph (2), serves as the starting point for why the elected president and vice president have a "special relationship" with the supporting political party or coalition of political parties. Indirectly, the Constitution has established such a relationship, which ultimately creates a system in which the elected president and vice president must accommodate the interests of their supporting political parties once they take office.

In the 2024 election, due to the enactment of Article 222 of No. 7 of 2017 on General Elections, which requires that political parties or coalitions of political parties intending to nominate a presidential and vice-presidential candidate pair must meet the presidential threshold of 20% of the seats in the House of Representatives (DPR) or have secured 25% of the valid votes nationwide in the previous DPR election, candidate pairs participating in the election are nominated by coalitions of various political parties. This provision contributed to an expanding list of interests that the elected president and vice president would have to accommodate after the election, as the greater the number of parties in the coalition, the more interests would need to be addressed post-election. Now, the Constitutional Court has declared this provision no longer legally binding as affirmed by Constitutional Court Decision No. 62/PUU-XXII/2024, as it was deemed to contradict the 1945 Constitution of the Republic of Indonesia.

The elected presidential and vice presidential ticket the Prabowo-Gibran ticket is backed by a fairly large coalition of political parties, consisting of; the Gerindra Party; the Golkar Party; the Democratic Party; the National Mandate Party (PAN); the Indonesian Solidarity Party (PSI); the Crescent Star Party (PBB); the Indonesian People's Wave Party; and the Indonesian Republican Guard Party (Garuda). This constitutional structure places a dual burden on the elected president and vice president, as they must fulfill the roles of party leaders and head of state or deputy head of state. Political party coalitions also give rise to fairly political quid pro quo relationships, and it is not surprising that they often have to bend the law.

The dual roles performed by the president-elect and vice president-elect do not only entail dual responsibilities but also dual interests. The hierarchy within the party structure also contributes to unusual patterns of interaction when individuals who hold positions within the party leadership subsequently assume key government roles. An example of such an unusual interaction is when President Prabowo Subianto, who is the chairman of the Gerindra Party, instructed Ahmad Muzani a Gerindra Party cadre and chairman of the People's Consultative Assembly (MPR) to attend the funeral of Ayatollah Ali Khamenei in Iran. Ahmad Muzani himself admitted that he was the president's special envoy to attend the funeral of Iran's supreme leader. Such an interaction between the President and the MPR chairman is unusual because there is no mechanism stipulating that the President can issue orders to the MPR chairman, as the executive and legislative branches are two of the state's highest institutions that cannot command one another.

This electoral legal framework forces the elected president and vice president into a dual role and compels them to grapple with the politics of reciprocity. From a utilitarian perspective, the law must provide the greatest possible benefit and happiness to the greatest number of citizens (Ridwansyah, 2023). Therefore, regulations regarding electoral law, particularly concerning the relationship between supporting political parties and the elected president and vice president, should not overlook the general welfare, which has been agreed upon as the state's objective. From the perspective of the "pure theory of law," Hans Kelsen asserts that law must be free from all non-legal elements, including sociological and political ones (Situngkir, 2024). Thus, the relationship between the supporting political parties and the elected President and Vice President can only be categorized as a legal relationship to the extent that it is based on a normative foundation explicitly regulated by legislation. Conversely, if such a relationship is based solely on political commitments, coalition interests, or practices of reciprocity that lack legitimacy under positive law, then that relationship falls outside the realm of law and constitutes a political relationship. From this perspective, it is important to examine the limits of the legal relationship between the elected President and Vice President and the political parties that nominated them, and to assess the implications for governance oriented toward the public interest based on the perspectives of utilitarianism and the Pure Theory of Law.

METHODS

The method used in this study is the normative legal research method, which involves examining legal materials by referring to written regulations or other legal sources. The approach used in this study is the one popularized by Peter Mahmud Marzuki, who explains that in legal research, several approaches are used, namely the statutory approach, the comparative approach, and the conceptual approach, (Marzuki, 2010, p. 93) in this study, the author employs the statutory approach. The theories used are the Pure Theory of Law, popularized by Hans Kelsen, and the theory of utilitarianism, popularized by Jeremy Bentham.

RESULTS AND DISCUSSIONS

The key actors in democracy that connect the interests of the people with the state and the government are political parties (Fadjar, 2008, p. 16–17). This is particularly true at the levels of electoral democracy and political democracy. Both reflect representative democracy. The term "political party" derives from the Greek word "pars," meaning "part" or "a part of the whole." Therefore, a political party is an association of people who share the same principles, views, and goals, and who strive to win and achieve their political and social aspirations collectively. The sociological basis of a political party rests on two elements: ideology and interests, both of which are directed toward efforts to gain power. Without these two elements, a political party would be unable to identify with its supporters.

According to Koentjoro Poerbopranoto, political parties have two functions: First, the function of political parties toward society, namely: (a) influencing and shaping public opinion; and (b) securing election results. Second, the function of political parties toward the conduct of state affairs, namely: (a) toward representative bodies; and (b) toward the conduct of government (Poerbopranoto, 1987, p. 50). In fact, every Indonesian citizen has the right to become president and vice president, as guaranteed in Article 27, paragraph 1, and Article 28D, paragraph 3, of the 1945 Constitution of the Republic of Indonesia; however, to be nominated as president and vice president, one must meet the requirements specified in Article 6 and Article 6A of the 1945 Constitution of the Republic of Indonesia; among the requirements that must be met is that the candidate must be nominated by a political party or a coalition of political parties participating in the general election.

To understand the legal relationship between the President and Vice President and the political parties that nominated them, we can refer to Article 6A, paragraph (2) of the Constitution of the Republic of Indonesia, which stipulates that presidential and vice presidential candidates must be nominated by a political party or a coalition of political parties participating in the general election prior to the election. This serves as the logical basis for an initial answer to the question of why the President and Vice President who are, in fact, directly elected by the people have a legal relationship with political parties.

Thus, only political parties have the constitutional right to nominate candidates for President and Vice President. Although an individual has the constitutional right to become a candidate for President and Vice President under the 1945 Constitution of the Republic of Indonesia, if they are not nominated by a political party or a coalition of political parties participating in the general election, then no one possesses the constitutional right as referred to in Article 6A, paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

In addition to Article 6A, paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the legal provisions governing the relationship between the president-elect and vice president-elect and the political parties that nominated them include several articles in No. 7 of 2017 on General Elections, namely Articles 221 through

230, with the caveat that Article 222 has been ruled unconstitutional by the Constitutional Court (Al-Asyi, 2018, p. 85).

Law No. 2 of 2011 Amending Law No. 2 of 2008 on Political Parties also addresses the relationship between the president and vice president and political parties, specifically in Article 29, Paragraph (1), letter d, regarding the recruitment by political parties of Indonesian citizens to serve as prospective presidential and vice presidential candidates. This article stipulates that political parties must select a presidential and vice-presidential candidate pair to be fielded in the elections held every five years. Literally, this legal provision only requires parties to field a candidate pair; in other words, this provision applies only before and during the conduct of the elections.

There are no other legal provisions governing the relationship between the president-elect and vice president-elect and the political parties that nominated them, aside from the legal provisions mentioned above. All of these legal provisions only address the relationship between the two before and during the election, as they deal solely with the recruitment process, nomination mechanisms, and other provisions that apply only before and during the election. There are no legal provisions governing their relationship after the general election has taken place.

The legal relationship between the President-elect and Vice President-elect and their political party exists only prior to the election and ceases after the election. Once elected, the author believes that the relationship between the President and Vice President and their supporting political party is purely political in nature. The author has conducted a study on this legal relationship, which is regulated in legislation such as the 1945 Constitution of the Republic of Indonesia; it only addresses the pre-election phase specifically, the administrative requirements that presidential and vice-presidential candidates must fulfill before being elected as President and Vice President of the Republic of Indonesia.

The relationship between the President and the political party that nominated him or her ends when the candidate assumes office as President and/or Vice President, because according to Article 6A, Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, political parties serve only as a vehicle for nominating the party's best candidates to hold the offices of President or Vice President, since Article 6A, Paragraph (2) stipulates that candidates for President and Vice President are only nominated by political parties or coalitions of political parties; there is no provision stating that the elected candidate pair is under the party's command, must obey the party chairman, or must advance the party's interests. In the absence of legal provisions governing the relationship between the elected candidate pair and the political party or coalition of political parties that nominated them, it is understood that there is no legal relationship between the two after the election.

According to Jimly Ashidiqie, the provisions set forth in Article 6A, Paragraph (2), already indicate that the participants in the general election are the presidential and vice-presidential candidate pairs. Political parties merely serve as the nominating entities. Once declared as candidates, the candidate pairs themselves become the legal subjects in the subsequent process. Based on this position, Jimly Ashidiqie stated that once elected as President and Vice President, there is no longer any legal relationship with the political party; therefore, if the political party is dissolved, it has no effect on the offices of President and Vice President, because the political party's role is complete once it has nominated the presidential and vice presidential candidates.

According to the Pure Theory of Law proposed by Hans Kelsen, this phenomenon is analyzed solely by referring to applicable legal norms (Situngkir, 2024). Hans Kelsen argued that there is a separation between law and morality (Asshiddiqie, 2014, p. 9), meaning that law must not be mixed with other elements including morality, sociology, or politics except for law itself. When the relationship between the president and vice president and the political party or coalition of political parties that nominated them is examined from the perspective of the Pure Theory of Law, the relationship between the two exists only before and during the general election, as stipulated by legal norms. Thus, according to the Pure Theory of Law, any form of relationship that continues after the general election is a political relationship arising from the dynamics of power and political interests, not a legal relationship with a normative basis. Therefore, if, in practice, political parties continue to seek to influence the President's policies by claiming credit for political contributions made during the nomination process, such a relationship cannot be viewed as a legal consequence, but rather as a political consequence that falls outside the scope of positive law.

Although positive law does not regulate the continuation of the legal relationship between the elected President and Vice President and the political parties that nominated them, in constitutional practice this relationship is often perceived as continuing through various forms of political demands, such as the distribution of positions, the formation of the cabinet, and the adoption of strategic policies. This phenomenon highlights a discrepancy between the normative legal framework and political reality. From the perspective of the Pure Theory of Law, such practices cannot be regarded as legal relationships because they lack a normative basis in legislation; rather, they are consequences of the political dynamics that emerge following general elections.

Although such political ties are an unavoidable reality in a multiparty presidential system, they should not be understood as a legal obligation of the President toward political parties. From a utilitarian perspective, the President's independence from legal ties to political parties is more likely to result in policies aimed at serving the interests of the broader public rather than those of specific political groups.

From a utilitarian perspective, the absence of a legal relationship between the elected President and Vice President and the political parties that nominated them is the arrangement that best serves the public interest. With the legal relationship ending after the general election, the President has no legal obligation to accommodate the interests of the nominating political parties but is instead obligated to prioritize the public interest as mandated by the Constitution. Therefore, any attempt to interpret post-election political relations as a legal relationship has the potential to diminish the public good by placing the interests of a particular group above those of the broader public.

CONCLUSIONS

The conclusion drawn from the analysis and discussion above is that the legal relationship between the elected President and Vice President and the political party or coalition of political parties that nominated them exists only during the nomination phase and the conduct of general elections, as stipulated in the 1945 Constitution of the Republic of Indonesia, Law No. 7 of 2017 on General Elections, and Law No. 2 of 2011 Amending Law No. 2 of 2008 on Political Parties, such that this relationship ends once the candidate pair is declared the elected President and Vice President. Therefore, any relationship that continues after the election is a political relationship that lacks a normative basis as a legal relationship. From a utilitarian perspective, this interpretation aligns with the principle of utility because it preserves the President's independence in governing in the public interest; whereas, according to the Pure Theory of Law, such a relationship cannot be classified as a legal relationship as long as it is not based on legal norms that govern it.

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