

Fairness in Re-Election: Examining Resignation Rules for Public Officials Through the Lens of Equality Before the Law

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Article History:

Submitted:

26-11-2024

Received:

05-12-2024

Accepted:

09-01-2025

Keywords:

public official;
equality before the
law; resignation

Abstract

The principle of equality before the law, which is the foundation of the country's legal system as stated in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, emphasizes that all citizens have an identical position in the realm of law and government without any exceptions. However, the regulation of the Resignation of Public Officials who intend to run for re-election to public office shows variations among the various existing constitutional regulations. This disparity of rules has the potential to create unequal treatment of Public Officials, which substantively violates the principle of equality before the law mandated by the 1945 Constitution of the Republic of Indonesia. This study aims to identify and analyze the suitability of Resignation arrangements for Public Officials who will run for re-election to public office according to the perspective of equality before the law in the Constitution. This research is a normative juridical study with a statutory analysis approach, conceptual approach, and case study approach to explore legal concepts and provide comprehensive juridical prescriptions. Based on the research findings, the implementation of the law related to the Resignation of Public Officials who are running for office is still not fully in line with the principle of equality before the law, so that regulatory reconstruction is needed to create equality before the law for all potential Public Officials.

1. Introduction

Indonesia as a state entity based on a legislative system and built on the philosophical foundation of national ideology, implements fundamental principles of dignity as a constitutional and philosophical foundation. As the main foundation of the state, Pancasila is seen as a reflection of the soul of the Indonesian nation which should be used as the main reference in law formation covering all dimensions of the implementation of national power, including regulation, legislation, government administration, democratic mechanisms, and various other related aspects.¹ In line with the provisions contained in the constitutional clause of Article 27 paragraph (1) of the Fundamental Constitution of the Republic of Indonesia 1945, which defines that "All citizens are equal before the law and government and shall uphold the law and government with no exception" is one of the fundamental principles in the constitutional jurisdiction system, namely the availability of a mechanism of equal protection and recognition for all components of society through equality before the law, which guarantees the absence of discrimination in the scope of regulation.² This principle is applied within a universal and single legal framework. The importance of this is related to the application of the philosophical values of national ideology (Pancasila) in the process of implementing jurisprudential regulations in the archipelago. The ideal enforcement

¹ Muhammad Taufiq and Pramono Suko Legowo, "Pancasila Sebagai Sumber Hukum Dan Penjabarannya Dalam Undang-Undang Dasar 1945," *Jurnal Idea Hukum* 8, no. 1 (2022): 16–25.

² Satjipto Rahardjo, *Hukum Dan Masyarakat* (Bandung: Angkasa, 1980). page 117.

mechanism of the legal system must be carried out without discrimination or partiality; every individual who violates the law must be tried and given a decision in accordance with the applicable provisions.

In the constitutional clause of Article 27 paragraph (1) of the Fundamental Constitution of the Republic of Indonesia 1945, it is emphasized that all components of society have an identical position in the area of jurisdiction, which is the primary foundation in guaranteeing fundamental human rights. As one of the essential principles in the structure of constitutional jurisdiction, equality before the law is interpreted as the absence of differentiation in legal procedures for all citizens.³ This principle, which is part of the concept of the state of law, ensures that differential treatment will not be given to certain parties, including those who hold office. Similar cases must be resolved with similar decisions so that the rule of law can be applied fairly and without differentiation between all parties.

Identical status within administrative structures and jurisdictional domains has been agreed upon as a fundamental consensus between power-holding authorities and the communities they govern. This has been confirmed in constitutional documents, where each entity is recognized and ensured that its rights, regardless of background, have an equal position in the national system of regulation and governance. This principle is one of the fundamental pillars in the framework of the jurisprudence system of the archipelago and is enshrined in the Fundamental Constitution of the Republic of Indonesia, 1945, specifically contained in the constitutional clause of Article 27 paragraph (1). This principle underlines that the law must be applied comprehensively and fairly, ensuring that every person is respected and their basic rights are protected. Without discrimination, each personal entity has the absolute right to identical status in the perspective of jurisprudence and state administrative procession. This indicates that all human components, including public officials, must be subject to the same rules and receive equal treatment, both in the legal process and in the implementation of government policies.⁴ However, the fact is that the arrangements in the resignation of public officials who will run for public office differ from one public office to another.

One prominent example of differences in treatment before the law lies in the procedural mechanisms related to the resignation of public officials who wish to re-register as candidates for certain specific positions. In practice, there are significant regulatory differences between different types of public office. For example, according to Article 170 of the paragraphs of Law No. 7/2017 regarding the Mechanism of Resignation of Public Officials regarding the Democratic Election Mechanism, which explicitly states that "State officials nominated by a Political Party Participant in the Election or a Joint Political Party as a candidate for President or Vice President are required to resign from their positions except for those who serve as President, Vice President, leaders and members of the MPR, leaders, and members of the DPR, leaders and members of the DPD, leaders and members of the DPD, governors, deputy

³ Khoirum Lutfiyah, "Equality before the Law Principle and the Legal Aid for the Poor: An Indonesian Insight," *The Indonesian Journal of International Clinical Legal Education* 3, no. 4 (2021): 517-36.

⁴ Ahmad Ihsan Amri and Bayu Dwi Anggono, "Implementasi Asas Equality Before the Law (Sebuah Perbandingan Sistem Peradilan Pidana Di Indonesia Dan Negara Lain)," *Al-Syakhshiyah Journal of Law & Family Studies* 5, no. 1 (2024): 85-95.

governors, regents, deputy regents, mayors, and deputy mayors”, in the sense that those who are excluded only need to apply for leave to the President without the need to resign.

However, different regulations are applied in other conditions. For example, in Article 240 paragraph (1) letter k and Article 258 paragraph (2) letter h of Law No. 7/2017 on General Elections which requires a regional head and deputy regional head, as well as the state civil apparatus to resign from their positions if they want to run for legislative officials (DPR, provincial DPRD, Regency or City DPRD, and DPD). Likewise, Article 7 paragraph (2) letter s of Law No. 10/2016 on the Stipulation of Government Regulation in Lieu of Law Number 1/2014 on the Election of Governors, Regents and Mayors into Law (Pilkada Law) stipulates that legislative officials (DPR members, DPD members, and DPRD members) who wish to run as Candidates for Governor and Deputy Governor Candidates, Candidates for Regent and Deputy Regent Candidates, and Candidates for Mayor and Deputy Mayor Candidates are required to resign from their current positions. A comparison between these rules shows a difference in treatment before the law, which should not occur in a state of law that upholds the principle of justice.

The different arrangements in the legislation have triggered a review at the Constitutional Court (MK) which resulted in the decisions listed in Decision No. 45/PUU-XV/2017, Decision No. 22/PUU-XVIII/2020, and Decision No. 91/PUU-XXII/2024. The subject matter examined in these various decrees is the regulation contained in Article 7 paragraph (2) point s of Law No. 10/2016, which is seen by the petitioners as a source of difference in regulating the resignation of public officials. They argued that this provision creates injustice because it provides unequal treatment between one public official and another. However, after going through the examination process, the judges in all their rulings decided to reject all the petitions. This proves that there are differences in the application of the principle of equality before the law, which requires equal rights for all individuals before the law. The differences in existing arrangements indicate that the principle of equality before the law has not been fully reflected in the rules applicable to public officials. Based on this, the author wishes to conduct an in-depth study related to the disparity of the regulatory provisions that have been described and determine the suitability of resignation arrangements for public officials who will run for re-election to public office from the perspective of equality before the law.

2. Methods

This academic study is a juridical study conducted to find legal issues or problems that occur, by utilizing Case Approach, Conceptual Approach, and Statute Approach analysis techniques. The findings of this normative review are the collection of various relevant legal concepts and the provision of legal prescriptions related to the legal issues discussed.

3. Results and Discussion

Positions involved in the formulation and implementation of a country's legal regulations can be termed as government administration apparatus or Public Officials. Referring to Hans Kelsen's perspective referred to by Jimly Asshiddiqie, positions that carry out the task of forming and implementing regulations are seen as government administration

apparatus. In the scope of constitutional law and administrative law, the term “Public Official” contains a definition that is equivalent to the phrase “State Administrative Official”.⁵

Public officials in the study of state administrative law have broad authority in carrying out government duties. This authority is given because public officials are considered the main holders of authority in the delivery of public services, both at the central and regional levels.⁶ This authority is a mandate handed over to certain individuals to carry out state duties in the interests of society. This authority is granted based on applicable laws and regulations. For the implementation of authority to be effective and accountable, it is necessary to have a clear separation between duties as public officials and personal interests, including political interests. One of the efforts to maintain bureaucratic neutrality and prevent conflicts of interest is to require public officials to resign from their positions when they want to run for public office again. The legal basis for this obligation to resign can be found in various laws and regulations.

Rules regarding the resignation of public officials who wish to run for another public office have become an important issue in the context of Indonesia's electoral system. These arrangements are often contained in election-related laws and regulations with the aim of maintaining the integrity of the democratic process and avoiding conflicts of interest that could be detrimental to justice.⁷ In the implementation of elections, either general or regional elections, public officials such as regional heads, legislative members, or officials in executive agencies often run for other positions. To maintain neutrality and prevent abuse of power, Indonesian regulations require certain public officials to resign from office before registering as a candidate in another election. Further related laws and regulations in Indonesia that regulate the resignation of public officials from certain positions or positions as administrative requirements for candidacy are as follows:

Table 1. Comparison of Resignation Provisions of Public Officials in Laws

Title and Law Number	Resignation Subject	Governing Article
Law No. 7/2017 on General Elections	Presidential or Vice Presidential candidacy: “State officials who run for election. Except for the President, Vice President, leaders and members of the MPR, leaders, and members of the DPR, leaders and members of the DPD, governors, deputy governors, regents, deputy regents, mayors, and deputy mayors.”	Article 170 paragraph (1)

⁵ Sabungan Sibarani, “Analisis Hukum Mengenai Pencabutan Hak Politik Bagi Koruptor Berdasarkan Sudut Pandang Hak Asasi Manusia,” *Prosiding Seminar Nasional Pakar*, 2019, 1–6.

⁶ Agus Budi Susilo, “Makna Dan Kriteria Diskresi Keputusan Pejabat Publik” (Jakarta, 2015).

⁷ Aimatul Millah et al., “Etika Politik Dan Netralitas Pemimpin Negara Dalam Pesta Demokrasi Pemilihan Umum” 7, no. 1 (2024): 327–35.

	Nomination of DPR, Provincial DPRD, Regency/City DPRD: "Regional heads, deputy regional heads, state civil servants, members of the Indonesian National Army, members of the Indonesian National Police, directors, commissioners, supervisory boards and employees at state-owned enterprises and/or regional-owned enterprises, or other bodies whose budgets are sourced from state finances."	Article 240 paragraph (1) letter k
	DPD candidacy: "Regional heads, deputy regional heads, state civil apparatus, members of the Indonesian National Army, or members of the Indonesian National Police, directors, commissioners, supervisory boards and employees of state-owned enterprises and/or regional-owned enterprises, administrators of other entities whose budgets come from the state budget and/or regional revenue and expenditure budgets."	Article 258 paragraph (2) letter h
Law No. 10/2016 on Election of Governors Regents and Mayors into Law	Regional Head Candidacy: "Members of the House of Representatives, members of the Regional Representative Council, and members of the Regional People's Representative Council."	Article 7 paragraph (2) letter s
Law No. 39/2008 on Ministry of State	Ministerial Appointments: "There is no mandatory resignation for public officials upon nomination as a minister."	Article 22 paragraph (2)
Law No. 20/2023 on State Civil Apparatus	Regional Head Nomination: "Intermediate high-ranking officials and pratama high-ranking officials." Nomination of President, Vice President, DPR members, DPD members, and Regional Heads: "State Civil Apparatus Employees"	Article 56 Article 59 paragraph (3)
Law No. 3/2024 on Second Amendment to Law No.6/2014 on Villages	Village Head Nomination: "There is no mandatory resignation for public officials when nominating as village heads"	Article 22

The resignation regulations mentioned above have unequal rules for nominating public officials. This is contrary to the principle of equality in the eyes of regulation adopted by the State of Indonesia. This principle, as one of the main foundations of the rule of law, indicates that everyone, regardless of status, position, wealth or background, has the same rights and obligations in the eyes of the law. All people must be treated equally before the law, both in

the process of making and implementing it.⁸ This imbalance can be considered to violate the principle of non-discrimination, which is an important element in the application of the concept of equality before the law. Article 27 paragraph (1) of the 1945 Constitution clearly states that “All citizens shall be equal before the law and government and shall uphold the law and government with no exceptions”. Ensuring equal treatment is a fundamental goal in the implementation of this principle, revealing that equality indicates that the legislative system does not apply different standards to every truth seeker. This aspect is intended so that this fundamental basis can dispel the practice of differentiated treatment in the legal order of the Republic of Indonesia when there is non-uniformity in the social sphere of society.⁹ Furthermore, the provisions of Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia also underline, “Everyone has the right to recognition, guarantees, protection and certainty of a just law and equal treatment before the law”. These articles embody the principle of equality before the law, which is an important basis for the concept of the rule of law.

The issue of differences in resignation arrangements for public officials who wish to run for public office is also closely related to the right to be elected as part of the political rights guaranteed by Article 28D paragraph (3) of the 1945 Constitution, which states that “Every citizen has the right to equal opportunity in government”. The right to be elected is an important element of political rights, which includes the right of every individual to actively participate in the democratic process, including running for election. When laws set different rules for resignation for public officials running for re-election, it creates differences in the application of the law. The law should be general and not differentiate treatment between citizens except based on legitimate and objective considerations, such as the public interest that truly requires such an exception.

Sir Ivor Jennings¹⁰ in expanding the idea of equality before the law said: “It assumes that among equals the laws should be equal and should be equally administered, that like should be treated alike. The right to sue and be sued, to prosecute and be prosecuted, for the same kind of action should be the same for all citizens of full age and understanding, and without distinction of race, religion, wealth, social status or political influence”.¹¹ The inequality in resignation arrangements for public officials who will run for office in Indonesia contradicts the concept of equality before the law as initiated by Sir Ivor Jennings. This inequality can be seen in the different resignation obligations for officials in various public offices, which are not always applied fairly or uniformly. Based on the principle of equality, the law should be applied equally to all citizens who have similar capacities and positions without exceptions related to position or social status.

Article 170 paragraph (1) of Law No. 7/2017 on General Elections (hereinafter referred to as the Election Law) states that “State officials who intend to run for president or vice

⁸ Ridwan et al., “Penerapan Prinsip Persamaan Di Depan Hukum Dalam Penanganan Perkara Tindak Pidana Korupsi Di Pengadilan Negeri Serang,” *Masalah-Masalah Hukum* 51, no. 2 (2022): 171–78.

⁹ Edwar, Faisal A. Rani, and Dahlan Ali, “Kedudukan Notaris Sebagai Pejabat Umum Ditinjau Dari Konsep Equality Before the Law,” *Jurnal Hukum & Pembangunan* 49, no. 1 (2019): 187.

¹⁰ Sir Ivor Jennings, “The Law and the Constitution” (University of London Press, 1938).

¹¹ Adetomiwa Fowowe, “Rule of Law: The Perspective of the Principle of Equality Before the Law,” *SSRN Electronic Journal*, 2024, 1–20.

president must resign, except for the president, vice president, leaders and members of the MPR, leaders and members of the DPR, leaders and members of the DPD, governors, deputy governors, regents, deputy regents, mayors, and deputy mayors.” This means that state officials who are not exempted must be willing to resign if they want to run for office. The existence of these exemptions indicates a difference in treatment between exempt and non-exempt state officials. Exempt officials can remain in their positions while running for office, giving them a certain advantage in the nomination process. Meanwhile, officials who are required to resign face the risk of losing their office if they are not elected, which indirectly affects their constitutional rights, including the right to be elected as citizens. Every citizen has the same opportunity to participate in nominating themselves as members of the DPR, DPD, President and Vice President, DPRD, and regional heads. Provisions that provide exceptions for certain officials not to resign when running for office, while other officials are required to resign, create significant differences in treatment. The principle of equality before the law requires that no citizen be treated differently by the law. Differences in treatment can only be justified if they are based on proportional grounds, such as the protection of certain human rights, a clear public interest, or an urgent need for justice.¹² In this case, the exceptions provided for in the Article raise questions of fairness and validity from a constitutional point of view. From the point of view of constitutional rights, this could be considered an unequal restriction of political rights, including the right to be elected, for the group of officials who do not benefit from the exemption.

Furthermore, in Article 240 paragraph (1) letter k and Article 258 paragraph (2) letter h of the Election Law that a regional head or deputy regional head who runs for election to the DPR, DPD, Provincial DPRD, Regency/City DPRD, is required to resign. The difference between these arrangements creates inequality among public officials who want to run for office, which potentially violates the principle of equality before the law. The principle of equality before the law demands that all citizens be treated equally before the law without disproportionate differences in treatment. The provision in Article 170 paragraph (1) of the Election Law, which excludes the obligation to resign for certain positions, contradicts this principle because it gives privileges to certain positions that other positions do not have. This difference hinders the creation of equality in access to political opportunities for public officials who wish to run for office and can be considered a form of discrimination that reduces the equal status of citizens under the law as guaranteed in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

The same thing is also contained in Law No. 10/2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law (hereinafter referred to as Law Number 10 of 2016). Regarding resignation as a condition for the nomination of governors, deputy governors, regents, deputy regents, mayors, and deputy mayors in Article 7 paragraph (2) letter s of this law stipulates that members of the House of Representatives (DPR), members of the Regional Representatives Council (DPD), and members of the Regional Representatives Council (DPRD) who wish to

¹² Ahmad Ihsan Amri and Bayu Dwi Anggono, “Implementasi Asas Equality Before the Law (Sebuah Perbandingan Sistem Peradilan Pidana Di Indonesia Dan Negara Lain).”

run as candidates for governor and deputy governor candidates, regent and deputy regent candidates, or mayor and deputy mayor candidates are required to resign from their positions. The provision of resignation as a requirement for regional head candidacy in Article 7 paragraph (2) letter s of Law No. 10/2016 has been tested several times by the Constitutional Court which resulted in decisions, among others:

1. Decision No. 45/PUU-XV/2017
Applicant: Abdul Wahid, S.Pd.I
Status: Rejected
2. Decision No. 22/PUU-XVIII/2020
Applicant: 1. Anwar Hafid; 2. H. Arkadius, Dt. Intan Bano; 3. Darman Sahladi; 4. Mohammad Taufan Daeng Malino
Status: Rejected
3. Decision No. 91/PUU-XXII/2024
Applicant: 1. Terence Cameron, B.Sc; 2. Raihan Husnul Wafa; 3. Wildan Nurmujaddid Erfan
Status: Rejected

The principle of equality before the law, as stated in Article 27 paragraph (1) of the 1945 Constitution, mandates that all citizens, including public officials, be treated equally before the law. Article 7 paragraph (2) letter s, which requires resignation for members of the DPR, DPD, and DPRD who are running for regional heads, raises the question of why similar requirements do not apply to certain positions, such as incumbent regional heads who can still run for office without having to relinquish their positions as stipulated in Article 70 paragraph (3) of Law No. 10/2016. This provides “different treatment for the same thing” where incumbent candidates are allowed to only apply for leave while regional head candidates who come from the legislative body are required to resign. Incumbent candidates have a great potential for abuse of authority and power. With these legal facts, it appears that there is different treatment of administrative requirements to participate in regional head elections which is contrary to the principle of legal equality that should be upheld in the Indonesian legal system.

Furthermore, another law that regulates the resignation of public officials who will run for another public position is Law Number 20 of 2023 concerning the State Civil Apparatus (hereinafter referred to as the ASN Law). Referring to Article 56 of the ASN Law, it stipulates that “middle high-ranking officials and senior high-ranking officials who intend to run for governor, deputy governor, regent, mayor, or deputy regent/deputy mayor are required to submit a written resignation from the status of Civil Servant (PNS) since being determined as a candidate” and Article 59 paragraph (3) in the ASN Law adds that “ASN employees who run for or are nominated for President, Vice President, member of the House of Representatives (DPR), member of the DPD, governor, deputy governor, regent, deputy regent, mayor, or deputy mayor must also declare their resignation in writing from ASN since they are officially designated as a candidate. ” This resignation is final and irrevocable after the nomination is ratified. The resignation provisions in Article 56 and Article 59 paragraph (3) of the ASN Law are the implementation of Constitutional Court Decision Number 41/PUU-XII/2014. Before the Constitutional Court Decision Number 41/PUU-XII/2014, Law

Number 5/2014 on the State Civil Apparatus stated in Article 123 paragraph (3) that “ASN employees from civil servants who run for or are nominated in elections and regional elections are required to resign in writing as civil servants since registering as candidates” so that many ASN employees felt that their rights were disadvantaged by the Law. Thus, a judicial review of the Law was conducted by the Constitutional Court in Decision 41/PUU-XII/2014. The article shows that the right to be elected and the right to equal opportunity in government have been limited, differentiated, and excluded.

Although Article 56 and Article 59 paragraph (3) of the ASN Law implement Constitutional Court Decision Number 41/PUU-XII/2014, restrictions on ASN, especially Civil Servants (PNS), related to freedom of choice and election still apply. On the one hand, this provision gives civil servants the political right to run for regional head without having to resign at the time of nomination. However, civil servants who run for office and have been determined as candidates for elections or local elections are still required to resign from their status as civil servants, even though civil servants who are determined as candidates by the KPU may not necessarily win.

One of the principles of the rule of law is the emphasis on the importance of social ties and interactions among community members to achieve common goals and values. The lives and communications of individuals in a community are structured around mutually agreed rules, which serve as guidelines and references for relevant parties when explaining legal actions so that it is ultimately expected to be able to form a civil society that has a balanced and equal position before the law (equality before the law).¹³ The rule of law should be designed to protect the rights and interests of all members of society in a fair and non-discriminatory manner. With mutually agreed legal guidelines in place, society is expected to evolve into a community that values equality, where everyone has equal access to the protection of the law and their fundamental rights without unfair or arbitrary treatment. Although the right to equality must be guaranteed and protected, the reality is that there are still many differences between individuals, such as differences in ethnicity, gender, religion, and others.

The different arrangements for the resignation of public officials who will run for re-election to public office have the potential to violate the principle of equality before the law emphasized by A.V Dicey that in terms of equality before the law, no one is above the law.¹⁴ To achieve state goals, in a state as an organization, it is necessary to have a text of rules (law) called the Constitution or the Constitution. In Indonesia, the principle of the rule of law is enshrined in the constitution, namely the 1945 Constitution of the Republic of Indonesia. The 1945 Constitution of the Republic of Indonesia is the highest rule of law, which contains the main provisions and becomes one of the sources of other laws and regulations that are under it. The Constitution is an abstract norm that needs to be elaborated and described in the legal products below it. Legal products under the Constitution must not contradict the Constitution. The constitution is the main instrument in realizing the principles of the rule of law because,

¹³ L Inrastuti and S Polamolo, “Hukum Tata Negara Dan Reformasi Konstitusi Di Indonesia,” *Hukum Tata Negara*, 2019, 1–208.

¹⁴ Iriyanto A. Baso Ence, *Negara Hukum Dan Hak Uji Konstitusionalitas Mahkamah Konstitusi* (Bandung: Alumni 2008, 2008).

through the constitution, state power is regulated and limited. The limitation of state power supports the existence of justice in the sense that state power is limited by what is called natural law, namely that state power must not exceed what is naturally exists or given to humans as God's creatures commonly referred to as human rights. This is also supported by Jimly Assidique's statement that one of the elements of the rule of law is the fulfillment of basic human rights.¹⁵ Therefore, Indonesia as a state of law should protect the rights of its citizens. The 1945 Constitution expressly contains the basic rights of citizens, hereinafter referred to as constitutional rights.

Constitutional rights are rights guaranteed by the constitution or basic law, whether the guarantee is expressly stated or implied, which must be respected by all branches of state power. As one of the constitutional rights guaranteed in the 1945 Constitution, especially Article 27 paragraph (1), the principle of equality before the law is a fundamental element of the principle of the rule of law. Within the framework of this principle of equality, inequality of legal treatment is a form of constitutional violation, including provisions that treat public officials differently in the rules of resignation when running for public office again.

The differences in regulations regarding the resignation of public officials who will run for re-election to public office are closely related to the principles of justice and equality which require equal treatment for similar issues. This principle underlines that if there is a situation that is essentially the same, the legal treatment given should also be similar.¹⁶ In this context, a person currently holding a political office should not be forced to resign when running for another political office, as long as there is no clear and objective reason that distinguishes his situation from other similar cases. Imposing resignation requirements only on certain officials, while exempting others, creates disparate treatment that can be detrimental to fair and equitable political competition.

This unequal treatment in terms of different resignation rules can create a hierarchy among public officials. This hierarchy is reflected in the special treatment of certain officials, such as incumbent presidents or incumbent regional heads, who are only required to take leave. Meanwhile, officials such as civil servants or legislative members are required to permanently resign from their positions. This difference creates injustice because officials who remain in office have access to state resources, networks, or facilities that can provide advantages in the electoral process. In contrast, officials who are required to resign lose their position and any privileges that come with it, which ultimately puts them at a disadvantage. This is contrary to the basic principle that all state officials, as citizens, are equal before the law and have equal political rights, including the right to be elected. Citizens' political rights, including the right to elect and be elected, are explicitly guaranteed in the 1945 Constitution, such as in Article 27 paragraphs (1) and (2), Article 28, Article 28D paragraph (3), and Article 28E paragraph (3). These provisions emphasize that political rights are fundamental rights that should not be discriminatorily restricted.

¹⁵ Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara* (Jakarta: Rajawali Pers, 2010). page 343.

¹⁶ Dino Ferdinanto, "Pelaksanaan Bantuan Hukum Dalam Melindungi Hak Tersangka Dan Terdakwa Pada Proses Penyidikan Dan Penuntutan Berdsarkan UU Nomor 16 Tahun 2011 Tentang Bantuan Hukum," *Lex Privatum* 11, no. 4 (2023): 145-54.

Citizen's political rights are not only recognized as a component of human rights but also as part of the sustainability of the nation and state. Political rights are interpreted as a form of participation, both personally and collectively, in the development and administration of the state. Every public official, as a citizen, has the freedom to actively participate in the political process, including running for certain positions. However, policies that regulate resignation differently based on their position can limit this participation for some, creating inequality in access to political rights.¹⁷

When norms provide for equal treatment of different things, public officials from different backgrounds or situations may be treated with uniform rules, even though their circumstances are substantially different. Conversely, different treatment of the same thing occurs when public officials who are in the same situation are treated to different standards. This can lead to discrimination in the application of rules against public officials, which is considered to deviate from the principle of equality before the law and the principle of non-discrimination, which underlines that every individual must be placed in an equal position and have the same rights and position.

The principle of non-discrimination places everyone in an equal position and has the same rights and position.¹⁸ This definition then develops into "a situation is discriminatory of unequal if like situations are treated differently or different situation are treated similarity".¹⁹ Discriminatory behavior is not only limited to giving different treatment but also giving the same treatment even though the situation is different. From there, a new term called positive discrimination emerged. Positive discrimination or affirmative action is a special step taken to accelerate the achievement of justice and equality.²⁰ This allows the state to give different treatment to different situations to achieve equality.²¹ The principle of non-discrimination is violated when injustice arises through inconsistent application of the law. Equal treatment of different situations or different treatment of the same situation, without objective reasons, can cause injustice.

On the other hand, the principle of equality before the law adopted by the 1945 Constitution is one of the main pillars in ensuring that every Indonesian citizen receives fair and equal treatment without discrimination before the law. Article 1 paragraph (3) of the 1945 Constitution expressly states that Indonesia is a state of law, which implies that law plays an important role in governance. In this framework, the state must adhere to the principle of the supremacy of law and not individual power, as well as the principle of the rule of law, and not

¹⁷ Chaerul Shaleh, "Hak Politik Warga Negara Dan Pemilu," *Siyasi: Jurnal Trias Politica* 1, no. 1 (2023): 17-26.

¹⁸ Anisatul Hamidah, "Urgensi Prinsip Non-Diskriminasi Dalam Regulasi Untuk Pengarus-Utamaan Kesetaraan Gender," *Jurnal Hukum & Pembangunan* 51, no. 3 (2021): 687-88.

¹⁹ Riyadi Eko, *Hukum Hak Asasi Manusia: Perspektif Internasionalisme, Regional, Dan Nasional* (Depok: Raja Grafindo, 2019). page 22.

²⁰ Fachriza Cakrafaksi Limuris, "Affirmative Policy Sebagai Bentuk Diskriminasi Positif Dalam Perolehan Hak Milik Atas Tanah Bagi Warga Negara Indonesia Keturunan Nonpribumi Di Daerah Istimewa Yogyakarta," *Jurnal Program Magister Hukum FHUI* 1, no. July (2022): 1773-86.

²¹ R Saputri, D A Putra, and ..., "Prinsip Non-Diskriminatif Dalam Persyaratan Kampanye Pemilihan Umum Bagi Pejabat Negara," *Jurnal Usm Law ...* 7, no. 3 (2024): 1134-54.

of a man which emphasizes that the law, not humans or certain parties, should lead.²² Thus, any power exercised by the state must be based on fair and impartial law.

One of the most important principles in formulating constitutional agreements that form the basic structure of society is the concept of fairness. One of the important philosophers who discussed the concept of fairness is John Rawls, a contemporary American philosopher who wrote a book entitled *A Theory of Justice and Political Liberalism*. As a proponent of the "liberal-egalitarian concept of social justice," John Rawls asserts that justice is the main value that must underlie the existence of social institutions.²³ According to John Rawls, every individual in society must be in an equal position, without any difference in status or position that makes one party superior to another. In this situation of equality, a fair agreement can be realized through the principles of rationality, freedom, and equality, which are the basis for organizing the basic structure of society fairly.²⁴ Justice according to John Rawls is a measure that must be given to achieve a balance between personal interests and common interests. There are three principles of justice, namely:²⁵

- 1) The Greatest Equal Liberty Principle: In this principle, John Rawls argues that everyone should have the same right to the broadest basic liberty, as broad as the same liberty for everyone. This means that with the guarantee of equal freedom for everyone, justice will be realized (in the context of equal rights).
- 2) The Difference Principle: Social and economic inequalities must be managed so that they can be overcome. It is necessary to pay attention to the principle of difference and the principle of equal opportunity, this aims to provide the maximum benefit to the disadvantaged community and emphasizes that under equal conditions and opportunities, all positions must be open to all.
- 3) The Equal Opportunity Principle: This principle is the principle of objective difference, meaning that this second principle guarantees the realization of proportionality in the exchange of rights and obligations of the parties, so it is reasonable (objectively) to accept exchange differences as long as it meets the requirements of good faith and reasonableness. That people with the same ability and motivation should have the same opportunity.

John Rawls' idea of justice as the main basis for social structure is in line with the principle of equality before the law in Article 27 paragraph (1) of the 1945 Constitution. John Rawls emphasizes that justice can only be realized if every individual is in an equal position without any privileges that give advantages to certain parties. Legal arrangements in accordance with Article 27 paragraph (1) of the 1945 Constitution not only demand equality before the law, but also demand affirmative policies that guarantee equal opportunities for all citizens. This principle demands that all people, including public officials, should be subject to the same rules and treated in an equal manner in all matters related to the law. This means that there should be no difference in treatment between them simply because of the type of

²² Indra Rahmatullah, "Meneguhkan Kembali Indonesia Sebagai Negara Hukum Pancasila," 'Adalah 4, no. 2 (2020): 39-44.

²³ Friedrich C.J, *Filsafat Hukum Perspektif Historis* (Bandung: Nuansa dan Nusamedia, 2014). page. 139.

²⁴ M.Yasir Said and Yati Nurhayati, "A Review on Rawls Theory of Justice," *International Journal of Law, Environment, and Natural Resources* 1, no. 1 (2021): 29-36.

²⁵ John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1997).

office or political position they hold. In addition, being subject to the same requirements ensures that the legal process is fair and transparent. Legislation that is subject to the same requirements for all parties ensures that the legal process is fair and transparent through the application of equality of treatment. Thus, if a public official is not required to resign by law, then the law should also not require other public officials to resign. Conversely, if public officials are required to resign in laws and regulations, then the laws and regulations must also require other public officials to resign.

It can be argued, then, that the principle of equal opportunity, as inspired by John Rawls' theory of justice, emphasizes the importance of opening equal access for all individuals to achieve positions or power without discriminatory barriers. Liberal freedom mandates that every citizen, including public officials, has the same right to run for election. In addition, this can also be closely linked to the concept of equal opportunity in political theory. The notion of equal opportunity emphasizes the importance of providing equal opportunities for all individuals to compete fairly for positions or offices.²⁶ In the context of the election of public officials, equal opportunities can only be created if there are no candidates who have special access or advantages because of their current position. Through the views of John Rawls, who promotes the equal opportunity principle, emphasizes that positions such as political office should be open to everyone, not only formally, but also substantively. This principle emphasizes that every individual with the same ability and motivation should have the same opportunity, without any injustice or advantage gained only because of one's status or position. This means that in addition to giving all individuals the same right to run for office, the system must also ensure that everyone has an equal opportunity in real terms to compete for the position.²⁷ John Rawls' notion of the equal opportunity principle, which emphasizes the importance of ensuring substantive equality in competition, so that no individual benefits from an unequal starting position or access to resources. Therefore, the implementation of equal resignation rules for public officials running for office not only promotes fairness, but also maintains integrity in the political system.

4. Conclusions

Indonesia's legal system is based on the principle of the rule of law, equality before the law is a principle that becomes the main pillar listed in Article 27 paragraph (1) of the 1945 Constitution, which guarantees that all citizens have equal status before the law without discrimination. However, provisions related to the obligation to resign for public officials who run for re-election to another public office indicate an inequality that violates this principle. This creates different standards in the application of the law to public officials, where the rules are not the same even though they should be equal before the law. This difference shows that the application of the law to public officials is still not in accordance with the principle of equality, so there needs to be harmony in the rules in order to create consistent legal treatment and in accordance with the mandate of the constitution.

²⁶Andy Mason, "Equal Opportunity," Encyclopedia Britannica, 2024, <https://www.britannica.com/topic/equal-opportunity>. Accessed on 27 November 2024, at 20.20 WIB.

²⁷Larry A. Alexander, "Fair Equality of Opportunity: John Rawls' (Best) Forgotten Principle," *Philosophy Research Archives* 11 (1985): 197-208.

5. Acknowledgments

The authors would like to thank the Universitas 17 Agustus 1945 Surabaya for the support provided during the writing of this journal. The author would also like to express his gratitude to the lecturers who have provided invaluable guidance, advice, and input so that the author can complete this journal properly the author would like to thank the Universitas 17 Agustus 1945 Surabaya for all its assistance in writing this journal. The author would also like to express his deepest gratitude to the supervisors who have provided invaluable assistance, advice, and input so that the author can complete this journal properly and on time.

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