

Comparison of Constitutional Requirements for Heads of State in Indonesia, the United States, and the United Kingdom Between the Principles of Non-Discrimination and People's Sovereignty

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Abstract

This study compares the constitutional requirements for heads of state in Indonesia, the United States, and the United Kingdom, focusing on the dilemma between the principles of non-discrimination and popular sovereignty. The requirements for heads of state reflect the application of the rule of law theory, which seeks to maintain legitimacy, political stability, and national integrity. Indonesia and the United States require candidates for heads of state to be natural-born citizens to guarantee exclusive loyalty, while the United Kingdom uses a parliamentary system with a monarchical head of state and head of government elected by parliament, without strict formal restrictions on citizenship. This study examines the meaning of these norms in the context of modern democracy, analyzes the potential for discrimination against naturalized citizens through the lens of international human rights instruments particularly the International Covenant on Civil and Political Rights (ICCPR), and interprets how each country harmonizes the principle of popular sovereignty with the protection of state sovereignty through normative mechanisms and leadership recruitment. The results show that these differences in regulations represent historical and sociocultural adaptations that adhere to the principles of the rule of law and constitutional democracy. The scientific contribution of this research lies in its human rights-based comparative analysis of three different constitutional systems in assessing the proportionality of citizenship requirements for head of state candidates in the era of modern democracy.

Keywords: requirements for heads of state, democracy, rule of law, non-discrimination, popular sovereignty, Indonesia, United States, United Kingdom

A. Introduction

The head of state is the highest symbol of state sovereignty as well as the holder of political and governmental legitimacy in a state system. This position is not only ceremonial, but also reflects the identity, continuity, and stability of a nation. Therefore, constitutional requirements for candidates for heads of state are a fundamental aspect in the implementation of a political system based on the principles of the state of law and

democracy.¹ Indonesia, the United States, and the United Kingdom as countries with strong democratic traditions have different constitutional arrangements for the requirements of candidates for heads of state, which reflect the historical experience, system of government, and values embraced by each country.²

The theory of people's sovereignty states that the highest power in a country is in the hands of the people as the owner of the main mandate in the administration of the state. In this context, the election of heads of state and heads of government is a concrete form of the exercise of sovereignty, where the legitimacy of power is obtained through the consent of the people, generally through a democratic electoral mechanism.³ Thus, the people have a central role in determining the direction of state leadership.

However, the implementation of people's sovereignty is not without limits. The state sets various normative requirements for candidates for heads of state and heads of government, such as citizenship, minimum age, integrity, and other administrative requirements.⁴ From the perspective of people's sovereignty theory, these restrictions are an instrument to ensure that power is exercised by individuals who have the capacity, loyalty, and commitment to the national interest. In other words, these conditions serve as a screening mechanism to maintain the quality of democracy and prevent potential abuse of power.

On the other hand, the development of modern law also emphasizes the principle of non-discrimination, which is that every citizen has the equal right to participate in government without unfair treatment.⁵ This principle is often controversial when faced with exclusive constitutional requirements, such as the "citizen by birth" provision. Therefore, there is a tension between efforts to maintain state sovereignty and demands to uphold equal political rights.

In the practice of Indonesian democracy, the sovereignty of the people is realized through the direct election of the President and Vice President. The Constitution stipulates that presidential and vice presidential candidates must be Indonesian citizens from birth and meet a certain minimum age limit. This provision reflects the importance of exclusive loyalty to the state and nation, as well as efforts to prevent conflicts of interest that can arise from dual citizenship.

The United States also applies strict requirements for presidential candidates, namely that they must be a "*natural born citizen*", be at least 35 years old, and have lived in the territory of the United States for a certain period of time. This provision was born out of historical concerns about possible foreign influence in national leadership, thus serving as a mechanism to protect state sovereignty. In contrast to Indonesia and the United States, Britain adheres to a constitutional monarchy system where the head of state is a king or queen who acquires a position based on lineage. Meanwhile, the head of government is held by a Prime Minister who comes from a parliamentary majority, without the same strict

¹ Jimly Asshiddiqie, 2010, *Introduction to Constitutional Law* (Jakarta: Rajawali Pers), p. 112.

² Miriam Budiardjo, 2008, *Basics of Political Science* (Jakarta: Gramedia), p. 58.

³ Moh. Mahfud MD, 2012, *Constitution and Law in Controversy Issues* (Jakarta: Rajawali Press), p. 89.

⁴ Saldi Isra, 2018, *Indonesian Government System* (Jakarta: Rajawali Press), p. 134.

⁵ Jimly Asshiddiqie, *op cit*, p. 115

citizenship requirements as in other countries. This shows that the concept of people's sovereignty in the UK is realized through parliamentary supremacy, not through the direct election of the head of state.

Thus, the relationship between the theory of people's sovereignty and the constitutional requirements of the head of state and the head of government is complementary. These normative requirements not only serve to maintain the quality of leadership, but also ensure that the implementation of people's sovereignty runs within an orderly and responsible legal framework. On the other hand, the principle of non-discrimination demands that the restrictions remain proportionate. Therefore, a balance between these two principles is key in creating an inclusive and sustainable democratic system. Various previous studies have discussed the citizenship requirements of heads of state from the perspective of comparative constitutional law (Asshiddiqie, 2010; Budiardjo, 2008), but has not thoroughly analyzed the proportionality of these requirements based on international human rights instruments, especially Article 25 of the ICCPR which guarantees the right of citizens to be elected without undue discrimination. This study fills this gap by combining a comparative analysis of the constitutional laws of the three countries with the perspective of international human rights norms, resulting in a more comprehensive assessment of whether the restriction of citizenship from birth is a proportionate and constitutional restriction in the context of modern democracy. Thus, this research contributes to the development of an academic discourse on the reformulation of the requirements of heads of state that is balanced between national interests and universal human rights standards.

B. Research Methods

The research method used in this study is normative legal research with a *comparative approach*. This approach is combined with a *statute approach* and a *conceptual approach* to comprehensively analyze the constitutional requirements of heads of state in Indonesia, the United States, and the United Kingdom. The legal materials used include primary legal materials in the form of constitutions and related regulations, secondary legal materials in the form of scientific literature such as books and journals, and tertiary legal materials as support. The collection of legal materials was carried out through literature studies, which were then analyzed qualitatively with descriptive-analytical techniques to identify similarities, differences, and implications of the application of the principles of people's sovereignty and non-discrimination in each constitutional system. In order to ensure a systematic and measurable comparative analysis, this study uses explicitly defined comparative parameters, including: (1) the citizenship requirements of the candidate for head of state or head of government; (2) the mechanism of democratic legitimacy applied (direct, indirect, or inheritance elections); (3) constitutional regulation regarding the minimum age; (4) the conformity of constitutional norms with the standard of non-discrimination principles based on Article 25 of the ICCPR; and (5) the historical relevance of each provision in the context of the development of modern democracy. The choice of the United Kingdom as the third object of comparison is based on its consideration as the oldest democracy with a constitutional monarchy system that is fundamentally in contrast to the

presidential systems of Indonesia and the United States, thus providing a broader perspective in understanding the spectrum of the requirements of heads of state in various constitutional systems Results and Discussion.

1. The Principle of People's Sovereignty

Sovereignty is the concept of supreme *authority* in a country.⁶ The idea of sovereignty has been known since Ancient Greek times. Aristotle, for example, when studying various constitutions, had mentioned that there is something "superior" in a political unit, the musty is one few, or many.⁷ According to Jack H. Nagel⁸, the talk about power always includes 2 (two) aspects, namely the *scope of power* and the *domain of power*. The issue of the scope of sovereignty leads to activities in the sovereignty function which include 2 (two) focuses, namely (a) who holds the highest power in the state; and (b) what is controlled by the holder of the supreme power; while the scope of sovereignty talks about who is the subject and the holder of sovereignty. In general, Nagel's frame of thought will be used as a reference to seek an understanding of the sovereignty of the people, especially the question of who holds the highest power in the country.

The new conception of sovereignty was consciously and systematically formulated by a French thinker, Jean Bodin. He is the one who associates sovereignty with the state so that sovereignty is an attribute of the state. In this sense, sovereignty is seen as expressing the capacity to carry out obligations and to have the right and ability to take action.

According to Rousseau, the power given by the people to the government is a mandate that can be changed or withdrawn by the people at any time. Therefore, the exercise of power must always be in line with the will of the people, both the will of the whole people (*volonté de tous*) and the will of the majority or part of the people (*volonté générale*). This teaching emphasizes that the legitimacy of power depends on the harmony between the mandate given and the true will of the people, so that the holder of power must not deviate from the will of the people as the source of his power.⁹

After the fourth amendment to the 1945 Constitution of the Republic of Indonesia, Article 1 paragraph (2), the supreme power in the hands of the people means that all government activities must be based on the Constitution and applicable laws and regulations. These laws and regulations are a manifestation of the will of the majority of the people. In this case, government is said to be a government "from the people, by the people, and for *the people*", so this country is called a democratic country. Democratic values aim to resolve problems peacefully and institutionally, so that every change is carried out in a peaceful way through laws and regulations prepared by the people's

⁶ Jimly Asshidiqie, 1994, *The Idea of People's Sovereignty in the Constitution and Its Implementation in Indonesia*, Jakarta: Ichtiar Baru van Hoeve, p. 11. Compare with: Hamid S. Attamimi, 1990, *The Role of Presidential Decrees in State Administration*, UI-Jakarta Dissertation, pp. 129-130; Wirjono Prodjodikoro, 1989, *Principles of Constitutional Law in Indonesia*, Jakarta: Dian Rakyat, pp. 5-6; and Muhammad Kusnardi and Bintan R. Saragih, 1988, *State Sciences*, Jakarta: Gaya Media Pratama, p. 118.

⁷ Andrew Vincent, 1987, *Theories of the State*, Basil Blackwell, Oxford, p. 32 and Aidul Fitriadi Azhari, 2000, *Democratic Decision Making System according to the Constitution*, Surakarta: UMS Press, p. 25.

⁸ Miriam Budiardjo, 1986, *Various Thoughts on Power and Authority*, Jakarta: Sinar Harapan, p. 14

⁹ Munir Fuady, *Grand Theories in Law*, (Jakarta: Kencana Prenadamedia Group, 2013), Cet.1, p. 92

representatives in a legislative institution. This process pays attention to the will of the majority of the people, recognizes diversity, and ensures the realization of equitable justice throughout society.

Application of the People's Sovereignty Theory in Indonesia Indonesia is one of the countries that adheres to the theory of people's sovereignty. This is stated in Article 1 paragraph (2) of the 1945 Constitution which reads: *Sovereignty is in the hands of the people and is carried out according to the Constitution*. Furthermore, we can refer to the sound of the 5th precept of Pancasila which states: *Democracy is led by wisdom in representative deliberation*. Thus, from the explanation of the theory and legal basis above, we can understand that the application of the theory of people's sovereignty in Indonesia can be seen from the division of power in Indonesia, namely executive, legislative, and judicial powers.

This people's sovereignty is seen mainly in the legislative power consisting of 3 institutions, namely the People's Consultative Assembly (MPR), the House of Representatives (DPR), and the Regional Representative Council (DPD) as explained in the Meaning of Trias Politika and its Application in Indonesia, and also the election of the President as the holder of executive power who is directly elected by the people.¹⁰ So, the embodiment of delegate deliberation expressed in the 5th precept of Pancasila is reflected in the appointment of elected representatives who function to represent the people in carrying out state institutions.

People's sovereignty or democracy is the main basis of the thinking of the founders of the Indonesian state. Indonesian democracy is different from democracy in Western countries because it prioritizes the principle of deliberation to achieve social welfare. In this case, the people have a very broad right to determine their own destiny, especially in forming governments and regulating the economy for the sake of common welfare. Democracy is actually an idea or idea that is the basis for the implementation of government in a country. All government activities are based on applicable rules and laws, the power of which is given by the people to the leadership of the government (executive institution), through the representatives of the people in the legislature. In addition, there is protection of people's rights, including the right to civil liberties and political rights. This freedom is not absolute, but is limited by regulations regulated in the country's constitution. The implementation of the people's sovereignty must be carried out wisely and wisely, in accordance with the mandate given by the people.

The constitution and the sovereignty of the people are closely related because the constitution is essentially a legal form of the conception of people's sovereignty. In its development, the people carry out the sovereignty they have through their representatives. On the other hand, the theory of the rule of law states that the highest power in a country is the law, therefore both the king, the ruler, and the people and the state itself are subject to the law. Therefore, this concept of sovereignty then gives birth to a state of law which has the main element that every state action must be based on the law or must be accountable to the law.

¹⁰ Hendra Nurtjahjo, 2006, *Philosophy of Democracy*, Bumi Aksara Jakarta, pp. 32-33

People's sovereignty and the principle of constitutional democracy are very closely related and mutually supportive in the administration of the state. People's sovereignty refers to the concept that the highest power is in the hands of the people as the owner of the main mandate in government. This principle emphasizes that all state power must come from and be exercised for the people, and in accordance with the will of the people as manifested through the democratic system.

Constitutional democracy is a form of democracy that is limited by the constitution which regulates the procedures for the exercise of people's power so that it is not arbitrary and guarantees the protection of citizens' human rights. Within this framework, people's sovereignty becomes a moral and legal foothold that power holders, including heads of state and heads of government, must obtain legitimacy from the people through clear legal mechanisms, such as free and fair elections. Thus, the relationship between people's sovereignty and constitutional democracy is the foundation for the realization of legitimate, transparent, and accountable governance. People's sovereignty requires the active participation of citizens and the rule of law to ensure that the power exercised does not violate fundamental rights, while constitutional democracy provides mechanisms and limits to realize these demands in a structured and equitable manner. In short, people's sovereignty is the source of legitimacy of power, while constitutional democracy is governance that ensures that power is exercised according to the corridor of law and the principles of justice, keeping the state constitutionally in the hands of the people.

2. Comparison of Requirements for Heads of State of Indonesia, the United States and the United Kingdom

The requirements of the head of state are a key aspect in organizing a state of law and democracy, because it affects the legitimacy and stability of the government. Indonesia, the United States, and the United Kingdom as three major democracies have sharp differences in the determination of the requirements for heads of state that reflect the balance between the principle of non-discrimination and the implementation of the theory of people's sovereignty. This provision is influenced by the historical, socio-political, and constitutional background of each country. The comparison of the requirements for the head of state is as follows:

Aspects	Country		
	Indonesia	United States	English
Form of Government	Presidential	Presidential	Constitutional monarchy with a parliamentary system
Head of State	President	President	King/Queen
Head of Government	President	President	Prime Minister
Citizenship Requirements	Citizen by birth	Natural born citizen	There are no formal special requirements for

			PM (must be a citizen)
Minimum Age	40 years	35 years old	Not specifically regulated
Selection Mechanism	Direct elections by the people	Electoral College (indirect)	PM elected by parliament, hereditary king/queen
The Principle of Non-Discrimination	Removing the requirement of "native Indonesians" to be citizens by birth for inclusivity	The requirement of natural born citizen is considered a restriction of national loyalty	The parliamentary system allows for wider representation without strict citizenship restrictions
People's Sovereignty	Legitimacy of the people through direct elections	Legitimacy of the people through the electoral college	Legitimacy through a parliament that represents the people
Constitutional Role	The country's supreme leader and head of government	The country's supreme leader and head of government	The head of state is symbolic, the head of government has the main executive function

Based on the table above, the requirements for the head of state can be described, namely:

- a. Indonesia: Based on Article 6 of the 1945 Constitution, the president and vice president must be Indonesian citizens from birth, at least 40 years old, and have never received other citizenship voluntarily. This norm was changed from the original provision that referred to "native Indonesians" to avoid ethnic discrimination.
- b. United States: Presidential elections require a "natural born citizen", a minimum age of 35 years, and a minimum of 14 years of residence. These provisions are based on historical experience of ensuring full loyalty to the federal state as well as preventing foreign intervention.
- c. The United Kingdom: As a constitutional monarchy with the oldest tradition of parliamentary democracy in the world, the United Kingdom offers a fundamentally different perspective than Indonesia and the United States. The head of state is the King or Queen who acquires a position based on lineage and has a ceremonial role, while the power of government is effectively exercised by a Prime Minister who is elected based on the trust of the majority of parliament. Unlike the other two countries, Britain's unwritten constitution does not set strict citizenship

requirements for the Prime Minister, which historically reflects the tradition of parliamentary supremacy as a form of people's sovereignty. The choice of the United Kingdom as the object of comparison in this study is based on the consideration that the contrast between the parliamentary constitutional monarchy system and the presidential system actually enriches the analysis, because it shows that the mechanism of people's sovereignty and the principle of non-discrimination can be realized through structurally different models of governance. This allows for a more critical analysis of whether citizenship restrictions are a constitutional imperative or simply a political choice of individual legal traditions.

If analyzed based on the principle of non-discrimination as stipulated in Article 25 of the *International Covenant on Civil and Political Rights* (ICCPR) which has been ratified by Indonesia through Law Number 12 of 2005, every citizen has the right to vote and be elected in periodic, honest, and fair elections without undue discrimination. The UN Human Rights Committee in *General Comment No. 25* (1996) explained that restrictions on the right to vote are permissible as long as they are based on objective and reasonable criteria and are not arbitrary or discriminatory. In this context, the citizenship requirements from birth applied by Indonesia and the United States need to be evaluated proportionally.

From an international human rights perspective, these conditions technically limit the right of naturalized citizens; but on the other hand, historical and political considerations regarding the need for the exclusive loyalty of heads of state constitute legitimate objectives under international law. In the United States, the dispute over *the requirement of "natural born citizen"* has arisen in the context of the candidacy of Senator John McCain (2008) and Senator Ted Cruz (2016), which shows that the norm remains relevant but requires an interpretation that continues to evolve according to the dynamics of democracy. Meanwhile, in Indonesia, the Constitutional Court in several of its rulings emphasized that the restriction of constitutional political rights must meet the principle of proportionality and must not violate the essence of human rights. Thus, the principle of non-discrimination and the sovereignty of the people shows that the highest power lies with the people who must have the right to vote and be elected fairly and equally; However, to ensure legitimate and trustworthy leadership, the state may impose certain conditions related to citizenship, age, and loyalty as long as the restrictions are proportionate, based on the law, and are not arbitrarily discriminatory.

In the United States and Indonesia, citizenship restrictions from birth are a form of maintaining national stability and preventing the involvement of dual citizens that can cause conflicts of interest. While in Britain, the parliamentary system and monarchy do not place much emphasis on strict formal citizenship requirements on the head of government, since the sovereignty of the people is represented by parliament. This kind of provision reflects how the state maintains a balance between political inclusivity and the sovereignty of the state as a legal and political entity.

C. Conclusions and Recommendations

A comparison of the constitutional requirements of heads of state in Indonesia, the United States, and the United Kingdom shows significant differences that reflect the historical context, system of government, and democratic values embraced by each country. Indonesia and the United States implement strict citizenship restrictions, namely the requirement of citizenship from birth and "*natural born citizen*" as a way to maintain national loyalty and integrity so that the head of state is able to carry out the people's mandate effectively and legally. Meanwhile, Britain, which is a constitutional monarchy, places the head of state as a symbol of the country with the head of government elected in parliament, so that the citizenship requirements are not as strict as the other two countries, emphasizing the principle of people's sovereignty through parliamentary supremacy. Viewed from the perspective of Article 25 of the ICCPR which guarantees the right of every citizen to be elected without undue distinction, the requirement of "citizen by birth" does have the potential to limit the political rights of naturalized citizens. However, the UN Human Rights Committee in General Comment No. 25 acknowledged that states can impose reasonable restrictions as long as they are based on objective and proportionate considerations of public interest. A comparative analysis in this study shows that such restrictions in Indonesia and the United States rely on strong historical considerations regarding the need for national loyalty and the prevention of foreign intervention, so they can be categorized as proportionate restrictions based on international human rights standards. On the other hand, the British model shows that the sovereignty of the people and the stability of government can be realized without strict citizenship restrictions, as long as the parliamentary accountability mechanism works properly. The overall findings suggest that differences in the regulation of the requirements of heads of state are contextual adaptations that reflect the constitutional values of each country, and that the proportionality of such restrictions must always be evaluated against the development of international human rights standards and the dynamics of modern democracy.

Recommendations: Based on the findings of this study, there are several recommendations that are formulated academically. First, Indonesia needs to conduct regular constitutional studies on the relevance of the term "citizen by birth" in the context of global democratic development, taking into account proportionality standards based on the ICCPR. Second, the government and constitutional law academics need to develop alternative parameters for assessing national loyalty that do not solely depend on citizenship status from birth, but can also include a track record of service to the state. Third, further research is needed to examine the decisions of the Constitutional Court in various countries regarding disputes over the citizenship requirements of heads of state, as an empirical basis for the reformulation of norms that are more inclusive while maintaining national sovereignty.

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