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The Political Rights of Former Corruption Convicted Prisoners to Run in 2019 Legislative Election and 2020 Regional Head General Election: An Overview of Human Rights Perspective

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ABSTRACT
The constitution guarantees political rights of citizens as outlined in several laws and regulations, particularly Law Number 39 Year 1999 concerning Human Rights, even international world by the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). The consideration of revoking political rights of former corruption convicted prisoners as an additional punishment is indicated to be reasonable because it is not categorized violations against human rights, so it is categorized as *derogable right* as referred to in Article 28J Paragraph (2) of the 1945 Constitution. However, towards the former corruption prisoners who do not receive additional punishment with the revocation of political rights but their political rights remain revoked by the laws and regulations, that is what would be feared to violate the human rights. Heading for the 2020 regional head general election, the restrictions on ex-convicts of corruption reappeared, considering that in 2018 the The General Elections Commission (KPU) had issued The General Elections Commission Regulation (PKPU) on this matter and held the discourse to implement it again in the regional head general election of 2020. The normative empirical research type, with normative juridical writing methods used by reviewing the relevant laws and regulations to the legal issue under review and conducting interviews directly with informants as supporting data. It will be examined in detail how the political rights of former corruption convicted prisoners are regulated protected and implemented as well as their correlation according to the Human Rights perspective.
Keywords*: political rights, former corruption convicted prisoners, General Elections, Human Rights, constitution*

I. INTRODUCTION

The former corruption convicted prisoners who have finished serving their sentences of the courts' verdicts return to be ordinary people. So do the restitution of their own rights either. One of such mentioned rights is the political rights which is inherent to all citizens. A former corruption convicted prisoner has the political rights in the form of his/her participation as a candidate for executive or legislative candidates as well as to exercise his right to vote someone in an election. These political rights are guaranteed by the constitution in Indonesia. But along with its development, there are many rules which make the former or ex-prisoners, especially corruption convicts, unable to exercise their political rights again. This is based on several issues, including efforts to prevent corruption. Indeed, changes in social life cannot be avoided [1]. However, certainly that cannot be used as a justification for depriving someone's rights.

On the other hand, the dilemma reappears when a former corruption convicted prisoner getting deprived of his/her political rights by laws and regulations which does not include additional punishment from the court. Do the laws and regulations below have the rights to punish former corruption convicted prisoners who have served their sentences in accordance with the court's verdict considered insufficient to make amends, or is there any despotism of state institutions in formulating provisions in determining the providence of citizens [2]. As well as how the implementation of human rights is carried out in protecting the former prisoners of corruption and how the implications of verdicts related to judicial review filed against several regulations on revocation of the former-prisoners' political rights to the Constitutional Court and the Supreme Court including a judicial review on KPU Regulation issued in 2018 to limit prisoners who want to run for 2019 legislative election contestation, also will be discussed how the regional head election in 2020 which will be held can position theformer prisoners of corruption

to take part that every citizen basically has the right to vote and to be elected.

Values always become references in the development of legal studies. Therefore, law as the object of legal studies is the result of human creations with the objective of fulfilling human needs in an orderly justice life [3]. Each rule of positive law is the product of human evaluation on human behavior which refers to such orderly justice, and therefore rooted in values. Law and its various rules are cultural aspects as a product of enculturation process, which means that the legal system is loaded or reflects a system of value. The scientific understanding of law and its application in real life only will be possibly meaningful if it is done by referring to the value of a limited internal standpoint (gematigd). In other words, the science of law is not free of value [4].

1.1. Formulation of Problem

The first problem is how to protect the rights of former corruption convicted prisoners in the general election. And the second problem is how the Constitutional Court's and the Supreme Court's decisions in regulating the political rights of corrupt prisoners as well as how the Human Rights perspective looks at it.

This research applies the qualitative analysis method by analyzing primary and secondary sources that have been already obtained during the research. This research is a juridical normative research which applies secondary data sources in the form of library study results. The legal material examined was primary legal material, i.e. the 1945 Constitution of the Republic of Indonesia, Law Number 39 Year 1999 concerning Human Rights and other relevant laws and regulations as the source of the objective of this research. This research also uses secondary data, specifically the library study. However, to support data originating from secondary sources such as books, magazine articles and journals, primary sources are also applied, that is interviews with relevant resource persons, i.e. policy makers and the former corruption convicted prisoners who participate again in the general election. By applying the normative perspective, consequently the research problem will be critically explored and explained from the substantive and material aspects of law and human rights law procedure in line with the rational legal thinking [5].

1.2. Our Contribution

This paper presents and discuss the political rights of former corruption convicted prisoners, especially legislative candidates ex-convicts of corruption. Hopefully the results of this research will be useful for academics, students, government and participants who take part in the general election.

1.3. Paper Structure

Section 1 introduces a background of the paper, paper contribution and structure of this paper. Section 2 discusses political rights of former corruption convicted prisoners, and discussed are several decisions of the Constitutional Court and Supreme Court decisions related to the judicial review of former corruption convicts. Analysis based on the perspective of human rights is also used in answering problems. There are also KPU regulations related to restrictions on the rights of corrupt prisoners, which are analyzed in more depth and also discussed how the upcoming 2020 general election will run. Finally, Section 3 concludes the paper and presents direction for future research.

2. BACKGROUND

2.1. The Political Rights of Former Corruption Convicted Prisoners

One of the objectives of the state is to support the happiness of the society [6]. Therefore, every citizen who lives and legitimately as an Indonesian citizen is entitled to be provided protection by the state and his/her rights are protected, including political rights to be elected in a general election, as well as the imposing obligations to be obeyed as a good citizen. The basis of these rights protection are clearly set forth in several statutory provisions, among others in the 1945 Constitution in Article 27 paragraph (1) which states: "All citizens are at the equal position in law and government and obliged to uphold the law and the government without any exception". Article 28D paragraph (1) also states: "Every person reserves the right to recognition, guarantees, protection and certainty of law that is just and equal treatment before the law", and Article 28J paragraph (2) "... the possibility of limitation of one's rights and freedoms by the law ".

Compared with the customary rules, legislation shows characteristics, a norm for more mature social life, especially in terms of clarity and certainty [7]. This is inseparably in connection with the growth of the country itself. Customary rules could be said to regulate the relations among people, while legislation regulates the relationship between people and the State. This form of legislation will not emerge before reaching the understanding of the State as the bearer of central and supreme power [8].

Speaking about sanctions, as legal criteria sanctions play an important role in various legal theories; in some theories the law is almost equated with sanctions. Without trying to put aside its importance, Leopold Posipil doubts that the sanction attribute is an exclusive criterion of the concept of law which makes that criterion more important than other legal factors even though its existence together with those legal factors is the nature of law itself. Merely sanctions cannot define a social phenomenon as law. The

reason is simple, that is many political decisions are taken ad hoc. There is no intention of the leader to apply it similarly in the future. Such a decision is certainly not a legislation, because it does not have one of the most essential legal attributes that have been generally identified as an intention of universal application [10].

Other than the source of legislations, there are also sources of decisions from the top highest Court of justice in the Republic of Indonesia, namely the Constitutional Court and the Supreme Court. The Constitutional Court regulated in Decision of the Constitutional Court Number 011-017/PUU-I/2003 which established the rights guaranteed by the constitution. Regarding the limitation, the Constitutional Court stated "just to guarantee the recognition and respect for the rights and freedoms of others and to meet fair and just demands in accordance with moral considerations, religious values, security and public order in a democratic society".

The following are some of decrees of the Constitutional Court relevant to the
guarantees of the political rights of the former prisoners of corruption convicts.

a. Decrees of the Constitutional Court

1) MK Decree No. 14-17/PUU-V/2007

The decision on the application which reviewed Article 58 letter f of Law Number 32 Year 2004 concerning the Regional Government which is contradictory to Article 27 paragraph (1), Article 28D paragraph (3), Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia. In that decision, the Constitutional Court allowed the former prisoners of corruption to exercise their political rights, however, there are some limitations including not being elected for the public office as long as there is no additional criminal sentences in the form of revocation of voting rights by a verdict which has been final and binding. Other limitations are limited in the period of 5 (five) years after the former convicts have finished serving the prison sentence(s) based on a verdict that has been already final and binding, and restrictions regarding honesty or frankness regarding their identity as former convicts and the related restriction not as perpetrators of repeated crimes.

2) MK Decree No. 004/PUU-VII/2009

This decision examined Article 12 letter g and Article 50 paragraph (1) letter g of Law Number 10 Year 2008 concerning General Elections of Members of the People's Representative Council, Regional Representative Council, and Provincial Regional People's Representative Council as well as Article 58 letter f of Law Number 12 Year 2008 concerning the Second Amendment to Law Number 32 of 2004 concerning Regional Government of the 1945 Constitution of the Republic of Indonesia. The Constitutional Court in this decision gave the former prisoners the opportunity of adaptation process to the community at least 5 (five) years after serving his sentence period with the purpose of proving that the ex-convict has had well conduct and does not repeat the criminal conduct as the purpose of the penal system regulated in Law Number 12 Year 1995 concerning Rehabilitation. In this Constitutional Court decision is also emphasized that the convicted person who had already regretted his conduct was not appropriate to be sentenced again as stipulated in Article 7 letter g of Law Number 8 Year 2015. This is in accordance with what was petitioned by the petitioner who requested that the limits of criminal law applied to a person (including the Petitioner himself) when the person was named as a suspect, undergoing legal proceedings in the court until finish serving the sentence(s) handed down to him. The Constitutional Court has the view that former convicted prisoners who have served their sentences and then are freed, the label of an ordinary person is re-attached to him and restored the rights taken from him during his sentence.

3) MK Decree No. 42 / PUU-XII / 2015

In examining Article 7 letter g and Article 45 paragraph (2) letter k of Law Number 8 Year 2015 concerning Amendment to Law Number 1 of 2015 concerning the Establishment of Government Regulations in Lieu of Law Number 1 Year 2014 concerning the Election of Governors, Regents and The Mayor to become Law on Article 1 paragraph (2) and paragraph (3), Article 27 paragraph (1), Article 28C paragraph (2), Article 28D paragraph (1), and paragraph (3), Article 28J paragraph (2) 1945 Constitution. One expert from the Petitioner, Hasanudduin Massaile, revealed that philosophically and sociologically, the Penitentiary System views lawbreakers (convicts) as subjects who are no difference from other human beings who at any time can make mistakes and errors which can be subject to be sentenced criminal, so it doesn't have to be eradicated. What must be eradicated are the factors that cause prisoners to break the law. Criminalization is an attempt to make prisoners realize in order to regret their conducts, and rehabilitate them to be good citizens, obey the law, uphold moral, social and religious values so as to achieve a safe, orderly and peaceful community life. The Court's opinion that is outlined in the main petition; at the end, it also states that if a former prisoner has fulfilled certain requirements, then the person should not be punished anymore by the judge, except if the person concerned repeats his conduct(s). If the Law limits the right of a former convicted prisoner not tobe able to nominate himself as the head of a region then it is equally meant that the Law has given additional punishment to those concerned while the 1945 Constitution has forbidden imposing discrimination on all members of its community. With respect to the Court's ruling, there were three constitutional judges who had dissenting opinions, namely Constitutional Judge Maria Farida Indrati, as well as Constitutional Judge I Dewa Gede Palguna, and Constitutional Judge Suhartoyo. The Constitutional Judge Maria Farida Indrati argued that the Court should reject the petition of the petitioner, considering that Article 7 letter g of Law Number 8 Year

2015 could not be interpreted other than in accordance with the Court's Decree Number 4/PUU-VII/2009, because the Court's Decree had provide a way out, which gives the opportunity for ex-convicts to occupy elected officials. With the opportunities opened up for ex-convicts in politics, it means that the Constitutional Court has apply justice and has restore their rights that have been deprived because it was already previously convicted. Thus, the interpretation of the provisions 9f "conditions have never been convicted" has been completed, so that the "conditions have never been convicted" remain interpreted in accordance with the Decree of the Constitutional Court Number 4/PUU-VII/2009, dated March 24, 2009, however the Law makers should put the four conditions contained in the explanation of Article 7 letter g of Law Number 8 Year 2015 into the norm of Article 7 letter g of Law Number 8 Year 2015.

Constitutional Judge I Dewa Gede Palguna and Constitutional Judge Suhartoyo have a similar opinion to be different from other constitutional judges, i.e. in the a quo case, to date there are no reasons which constitutionally fundamental in nature and hence create the need for the Court to change its position. Therefore, insofar as it relates to Article 7 letter g of Law Number 8 Year 2015, the Court should state that the considerations as outlined in the previous decisions mutatis mutandis apply to the a quo petition.

4) MK Decree No. 71-PUU-XIV-2016

Application filed for review of Article 7 paragraph (2) letter g, Article 163 paragraph (7) and paragraph (8), and Article 164 paragraph (7) and paragraph (8) of Law Number 10 Year 2016 concerning the Second Amendment to Law Number 1 Year 2015 concerning the Establishment of Government Regulations in Lieu of Law Number 1 Year 2014 concerning Election of Governors, Regents and Mayors BecomeLaws. In this ruling, the Court believes that the phrase "have never been convicted" based on the final and binding court's decision is contradictory to the 1945 Constitution if not interpreted "never as a convicted based on a court decision that has been final and binding due to a criminal offense threatened with 5 (five) year imprisonment or more, except for committing criminal conducts of negligence and political criminal offenses in the sense of conducts declared as a criminal offense in the positive law only because the culprit has a different political view from the regime in power" whereas the phrase "or for the former convicts has openly and honestly stated to the public that the concerned is ex-convict".

b. Decree of the Supreme Court

In addition to the Constitutional Court, at the Supreme Court there were also several judicial reviews petitioned related to the prohibition of former corruption convicts from running in the general election. Among them is the judicial review of Article 16 paragraph (1) letter g and j PKPU Number 14 of 2018 concerning the Nomination of Individual Election Participants for the Members of the Regional Representative Council (DPD nomination) including 30P/HUM/2018, 33P/HUM/ 2018, 36P/HUM/2018, 53P/HUM/2018. In the same year there was also a review of KPU Regulation Number 20 Year 2018 concerning Nominations of Members of Representative Council, the Provincial Regional People's Representative Council, and the Regional Regency/City People's Representatives Council (DPRD nomination). The initial publication of this PKPU was briefly highlighted by the mass media. Numerous legislative candidates claimed on having legal standing who wanted to compete in reviewing the mentioned regulation.

Legal considerations by the Court seemed consistent in viewing the political rights of ex-convicts in their nominations as DPD and DPRD members in case 30P/HUM/2018 jo case 46P/HUM/2018, which states: That the right to vote and being elected as a legislative member is a basic right in the field of politics guaranteed by the Constitution, i.e. Article 28 of the 1945 Constitution of the Republic of Indonesia. Recognition of this political right is also recognized in the International Covenant on Civil and Political Rights (abbreviated ICCPR) established by the General Assembly of the United Nations - Nations based on Resolution 2200 A (XXI) on December 16, 1966 as ratified through Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights (International Covenant on Civiland Political Rights); Whereas further regulation regarding political rights is regulated in Article 43 Paragraph (1) of Law Number 39 Year 1999 concerning Human Rights (Human Rights Law), which states "Every citizen has the right to be elected and to vote in general elections based on equal rights through voting which is directly, publicly, freely, confidentially, honest and just votes in accordance with the laws and regulations" and Article 73 of the Law stipulates" Rights and freedoms set forth in this Law can only be limited by and based on the law, merely to guarantee the recognition and respect for human rights and the basic freedoms of others, decency, public order and the interests of the nation". Whereas in the above Human Rights Law it is clearly stipulated that every citizen has the same right to be elected and to vote in general elections and if there are restrictions on those rights then it must be determined by law, or based on the Verdict of a Criminal Judge who has been final and binding which includes the said limitation in additional penalty according to the provisions in Article 18 paragraph (1) letter d of Law Number 31 Year 1999 concerning the Eradication of Corruption Crime; Whereas the implementation of General Elections which are fair and with integrity as the spirit of PKPU (HUM Object) is a necessity, so the nomination of legislative members must come from clean figures and not integrity defects. However, the regulation of restrictions on the basic rights of citizens to be elected or to vote and the political rights of a citizen must be included in the law, not regulated in the statutory provisions under the law in casu the General Election Commission Regulation Number 14 Year 2018 concerning Individual Participants Nomination in the General Election of Members of the Regional Representative Council (Vide Article 10 paragraph (1)

letter a of Law Number 12 Year 2011 concerning Formation of Laws and Regulations stipulating the following: "(1) material content that must be regulated by law containing: (a) Further regulation regarding the provisions of the 1945 Constitution of the Republic of Indonesia).

Constitutionally, the political rights of the former convicts based on court decisions both the Constitutional Court and the Supreme Court, in line with the 1945 Constitution which states in Article 27 paragraph (1) that "all citizens are at equal position in law and government and obliged to uphold the law and government with no exception", also Article 28 which states that "Freedom of association and assembly, expressing thoughts verbally and in writing and so on, are stipulated by law" and Article 28 D paragraph (3) also reinforces that "every citizen has the right to obtain equal opportunities in the government". The 1945 Constitution of the Republic of Indonesia says, the matters concerning the constitutional rights of citizens are guaranteed by the Constitution, in conjunction with restrictions on the constitutional rights of these citizens. The constitution guarantees the right of people to vote and to be elected in general elections, the right to participate in government directly or by the mediation of their elected representatives, the right to pass opinions, requests, complaints and or proposals to the government, both verbally and in writing, and the right to be positioned and to be appointed in any public office in the government, which in this case is elected through general elections or not through general elections. Although the constitution guarantees those rights, the constitution also regulates the limitation of rights in Article 28J paragraph (2) which states that: "every citizen in exercising their rights and freedoms, everyone is obliged to be subjected to restrictions imposed by law with the intention merely to guarantee the recognition and respect for the rights and freedoms of others and to fulfill the just provisions in accordance with moral considerations, religious values, security and public order in a democratic society".

Nevertheless, the Constitutional Court in the decision Number 11-017/PUU-I/2003, mentions the relevant rights guaranteed by the Constitution i.e. Article 28 J paragraph (2) of the 1945 Constitution of the Republic of Indonesia contains provisions allowing for the limitation of a person's rights and freedoms by the Law, which in the view of the Constitutional Court, the limitation on these rights must be based on strong, reasonable and proportional reasons and not excessive in its application. Such limitations can only be carried out with the intention "merely to guarantee the recognition and respect for the rights and freedoms of others and to meet the fair demands in accordance with moral considerations, religious values, security and public order in a democratic society. In this case, of course the Constitutional Court seems intended to be fair in its view on everyone's right to be remained fulfilled and no one is harmed by each other.

2.2. Legal Analysis of Revocation of Political Rights Based on Human Rights

The scope of human rights is increasingly broad. Protection of human rights is not only limited to the right to life or the right to fundamental freedoms, but has reached civil and political rights. Western countries in general tend to recognize human rights (especially civil and political rights), but this recognition has serious defects. People's participation in political institutions in their country is often formal. Therefore it is often questioned (at the same time doubted) how important is people's participation in elections as reflected in the 1966 charter of civil and political rights [9].

Justice is one of the needs in human life that is generally recognized in all places in this world. If justice is then confirmed in an institution whose name is law, then the legal institution must be able to become a channel so that justice can be carried out carefully in society [11]. Indeed, justice is abstract and its definition varies from person to person, but the ultimate goal or impact of the functioning of the law is what is always expected to achieve from justice itself.

In international areas that require the rule of law, especially at the national level has long been echoed. The rule of law is also scattered throughout the country in the world. For example, it was President Putin who declared himself to carry out massive legal reforms in the Russian government system to guarantee procedural justice. The same thing was also conveyed by President Jiang Zemin in a seminar on the rule of law in China. Robert Mugabe stated the same thing as other world leaders, namely the need for a government based on law to guarantee the rights of the people of Zimbabwe. In Indonesia there is the 4th President Abdurrahman Wahid who also confirmed that Indonesia is starting a rule of law project. President Muhammad Khatami believes that strengthening civil society and the rule of law is like a democratic state. Vicente Fox Quesada also believes that the rule of law is at the heart of the development of a dignified human civilization. Until Afghanistan through spokesman Abdul Rashid Dostum who struggled to reduce the impact of tanks and rifles through legal transitions that were more effective to be carried out [12].

The affirmation of the constitution of political rights of citizens already exists in Article 43 paragraph (1) of Law Number 39 Year 1999 concerning Human Rights which states that "every citizen has the right to be elected and to vote in general elections based on equal rights through direct voting, general, free, confidential, onest and fair in accordance with the provisions of laws and regulations ", then in paragraph (2) which states that "every citizen has the right to participate in directly or through the mediation of the representative he chooses freely, in the manner specified in laws and regulations". Paragraph 3 then states that "every citizen can be appointed in every government position".

Criminal penalty imposed on someone who commits an offense is a blow which will certainly have a deterrent

effect in general for the convicted person. This is because the convict will be reduced to the rights he has during being a free person, including the human rights he has had so far. Article 7 letter g of Law Number 8 Year 2015 stipulates that candidates for regional heads must meet the requirements of never having been convicted of a criminal offense that is threatened with imprisonment of 5 (*five*) years or more, then the same means someone who has been convicted of a criminal offense for committing criminal offenses threatened with imprisonment for 5 (*five*) years or more, revoked their right to be elected in the election of Regional Head. This is directly proportional to the provisions of Article 35 paragraph (1) Number 3 of the Criminal Code that the convicted person can be revoked "the right to vote and be elected in elections held based on general rules". The difference is, if the right to be elected as the Regional Head revoked pursuant to Article 7 letter g of Law Number 8 Year 2015 is carried out by the law makers, while the rights to be ekected revoked from the convict based on Article 35 paragraph (1) number 3 of the Criminal Code are carried out by a judge's decision.

The matter is whether constitutionally the law makers have the authority to revoke the rights of individual citizens to get the honor of being elected as regional head, or should this be done by the judge by observing the personal circumstances of the defendant who will later become prisoners. The provisions of Article 28J paragraph (2) of the 1945 Constitution state that "limitations on the rights and freedoms of individuals stipulated by law are merely to guarantee recognition and respect for the rights of freedom of others ". This means that the restrictions imposed by the legislators can only be imposed if without the rights and freedoms of others become obstructed or ignored. In view of its implications for the elections so far (including the 2019 legislative elections) no legislative candidate or regional head candidate whose right to become a regional head will be impeded because there is an ex-convict who is a legislative candidate or a regional head candidate. Thus, the limitation of citizens' constitutional rights and human rights introduced in Article 7 letter g of Law Number 8 of 2015 is an "excessive" provision, which illustrates unnecessary phobias for ex-convicts including ex-convicts of corruption.

As part of the international community, Indonesia also cannot deny international law, but its application must be in accordance with the provisions of Indonesian law [13]. Surely the initial enthusiasm in the formulation of the Correctional Law is good. The spirit to be generated, of course, is in addition to re-fulfillment of the human rights of prisoners who have been taken while the prisoners are in prison, but also want to improve their moral rights to be able to re-blend in the community. The initial intention and the basis for correctional purposes included in Article 2 of Law Number 12 Year 1995 concerning Corrections, which are carried out to make prisoners who have undergone the entire sentence process "acceptable to the community, can actively play a role in development, and can live a normal life as a good and responsible citizen ", just as if it was discarded by Article 7 letter g of Law Number 8 Year 2015. Therefore, of course there is disappointment about the recapture of the fulfillment of human rights in a country that upholds the law as its commander.

According to Hans Kelsen, the legal norms are tiered and multi-layered in a hierarchical arrangement, where the norms are applicable, sourced, and based on higher norms, and so on until finally stopping at a highest norm called the basic norm (*grundnorm*) [14]. Revocation of political rights based on synchronization with other laws and regulations is an imbalance. The overlapping rules, both in several laws, as well as the Constitutional Court and MA decrees that governing the problem.

First, especially in corruption cases, the revocation of political rights over court decisions, even though the reference in the Criminal Code remains clear, is an excessive decision - meaningless - even useless. Because it only becomes a "momentary sweetener" for the public who had such great expectations of the judge who dared to use the additional sentence.

This is considered excessive because without the revocation of political rights, as a revocation of the right to be elected through several laws that are relevant to the opportunity to occupy public positions (such as members of the DPR-DPD-DPRD, Supreme Court or other state officials) have been required "never sentenced criminal offenses with a crime that is punishable by imprisonment of five years or more." The act of corruption is a criminal offense that carries a sentence of more than five years. That is, without being included in a court sentence, the revocation of political rights directly applies to him.

Second, limitations of the start to take effect, or they start counting on convicts who serve additional sentences of revocation of political rights (the right to hold office, the right to vote and be elected: Article 35 of the Criminal Code) also overlaps with the Constitutional Court's decree (Constitutional Court). Article 38 of the Criminal Code stipulates "revocation of rights comes into force on the day the court ruling begins" While the Constitutional Court ruling Number 4/PUUVII/2009 (March 24, 2009) has determined that the penalty for revocation of political rights is considered constitutional with the limitation of revocation of rights only valid for up to five years since the convicted person has finished his sentence. The Criminal Code outlines on the day the court's ruling began to revoke political rights over its conviction. That means for those sentenced to imprisonment, for example, the period of revocation of political rights will be counted at the time of commencement of the period of punishment (imprisonment/confinement). Whereas the Constitutional Court Decree has also set its limits; that is, the count starts from the time the convict is finished serving his main sentence (especially imprisonment and confinement). It's as good and ideal as the Constitutional Court's decree to be followed and become a reference for court judges (Supreme Court to its ranks: District Court/Corruption Court and the High Court) because the Constitutional Court's decision is final and binding. But there are still judges who often ignore the Constitutional Court's decree,

by taking refuge in the principal; independence of each court.

Third, the revocation of political rights based on the decree of the Constitutional Court Number 4/PUUVII/2009 also stipulates that the revocation of the right is only valid for five years since the convicted person has finished serving his sentence, and can then occupy positions elected by the people through elections, in addition to the positions achieved due to appointment. The problem is then in several provisions of the Law {such as the Law on Legislative Election (DPR, DPD, and DPRD); and the Law of the Regional Head Election/Government Regulation in lieu of Law on the Regional Head Election} still requires the nominee to be elected by the people "has never been convicted of a criminal offense because of a crime that is threatenned by imprisonment of five years or more". How could an ex-convict for example have gone through a period of revocation of his political rights for five years, then wanted to become a candidate for a Legislative member (a position elected by the people) constitutionally (based on the Constitutional Court's Decree) that was permitted, but by the Law still limited it.

Fourth, the Constitutional Court's decree which had limited the period of revocation of political rights was only valid for five years. But based on the provisions of the Criminal Code; especially in Article 38, for life imprisonment, the period of revocation of political rights applies for life. The overlap here, lies in the Constitutional Court's decree which has determined the period of revocation of political rights for only five years, while the Criminal Code; revocation of political rights actually applies for life. If the sentence is life imprisonment, when the revocation of political rights is imposed by following limitations based on the Constitutional Court's decree, then the revocation of political rights can no longer apply, because the counting phase starts from the completion of the basic sentence (ie life imprisonment sentence). The short question is how to start undergoing deprivation of political rights, while the basic life sentence is not clear when it will be completed.

2.3. Legal Analysis of the Supreme Court's Decision Against PKPU Number 20 Year 2018

Furthermore, the basis for the prohibition of former corruption convicts from running in the general election was considered odd. This is because the former corruption convicts are still allowed to use their voting rights in the general election. So that by prohibiting their right to be elected but allowed to vote is really a confusing question mark. If the KPU really feels there must be a deterrent effect for them, why not at the same time the right to vote is revoked. Indeed, the freedom to choose is in itself the most basic value that makes human beings a human or an existential individual. For Kierkegaard, the recognition and use of freedom is far more important than a full understanding of the object of choice [15].

Deputy Chairman of the House of Representatives Commission II of the Gerindra faction whose scope of work is in the fields of the Domestic Affairs, State Secretary, and General Election, Ahmad Riza Patria said that "let the people determine and elect their own representatives who will lead at the legislative and executive levels. Even if an ex-convict is elected, it means that the community sympathizes with the person concerned. Sovereignty is in the hands of the people not in the hands of KPU (General Election Commission), Bawaslu (Supervisory Body of the General Election) or DKPP (the General Election Organizer Honorary Board)". He added again that "a lot of people who want in the context of efforts to make clean government in the future ex-convicts of corruption not to be able to advance in the regional or regional legislative contestation, but then the Constitutional Court's decision has been decided that ex-convicts of corruption are allowed to participate in general election contestation. The Supreme Court is also like that," he said (direct interview with Ahmad Riza Patria).

In general, many circles would agree that former corruption convicts did not advance back to the general election because there are still many other layers of society who are more suitable to fill these positions. However, the problem is whether the issuance of KPU or PKPU regulations that limit the participation of ex-convicts to contest the general election can be our reference in justifying a former corruption convict or not. We also know that the Law applies well if the philosophy is not violated. Then there are other aspects such as aspects of sociology and juridical aspects which must not be violated as well. If only one of the three aspects is violated, the rule will be null and void. In terms of the KPU regulations, the aspect that was violated was the juridical aspect. This is based on Law Number 7 Year 2017 Regarding General Election, related matters have been regulated. Even in the Constitutional Court Decree No. 42 Year 2105 juncto the Constitutional Court Decree Number 4 Year 2009 states that the phrase as long as the former corruption convicts "declare their status", it is permissible for those ex-convicts of corruption to take part in the general election.

The KPU regulation limits the rights of someone who has been regulated both in Law Number 7 of 2017, the Law on Election of Regional Heads, even to the 1945 Constitution of the Republic of Indonesia NRI Article 28 paragraph (3) j which regulates related matters. So the granting of the right to the KPU to regulate one's fate to not be elected is really not very appropriate. Even a new problem arises why the regulation only limits a former corruption convict to be elected, why not at the same time his right to vote is also revoked.

The KPU's interpretation of Article 240 which seems excessive is also considered inappropriate. So what is encouraged by the community that the eradication of corruption should be appreciated, but the path taken is certainly in a more appropriate corridor. For example when the bombing in Surabaya some time ago. The President, the National Police Chief, the Head of BNPT, and the Armed Forces Commander did not immediately issue the latest regulations related to terrorism. The

decision makers seemed to be waiting for the latest revision. One thing that is very likely to happen later is that the KPU can act unprofessionally in the holding of elections. In fact it is very possible, this will certainly damage the regulations or official actions under it, such as standard operating procedures established, or circular to be issued. The KPU could actually have acted more wisely such as by issuing circular letters to political parties so as not to nominate ex-convicts of corruption, but the KPU did not take advantage of this loophole. This was done by the DPR in a Hearing Meeting (RDP) with the KPU last year.

KPU regulations that limit the participation of ex-convicted corruption are also not limited in their application. So that it will last a lifetime for ex-convicts of corruption to be stripped naked. Then a new question arises, is it true that ex-convicts of corruption are worse than those who have not been arrested by law enforcement or have legally committed acts of corruption? Observing from a philosophical point of view of Law Number 7 Year 2017 Regarding General Election which aims to bring about efficiency and effectiveness in the process of election management, of course, it must be done by professional organizers as well. So that when the professionalism of the KPU has been violated, it will be very possible that the sociological aspects or the process will be disrupted. Thus, if the KPU issues a similar KPU regulation in the contesting of the regional head elections in 2020 next year, it is possible that the regulation will be tested again by the competent court and even fatal actions could have impeachment actions from those who have legal standing against all KPU Commissioners.

2.4. Toward the Regional Head General Election of 2020

Election of Regional Head or Pemilukada of 2020 will be held in 270 regions. The details are nine provinces, 224 districts and 37 cities. Originally the 2020 *Pemilukada* Simultaneous Regional Election was followed by 269 Regions. But it increased to 270 because the implementation of the Makassar City Election was repeated. With many regions holding direct elections in determining their leaders, the post-conflict local election in 2020 is one of the most lively elections held in Indonesian history since the reforms. Certainly, there will also be many problems that will arise with the holding of the five-year democratic party. Rules began to be made to regulate the registration process until the election took place. The organizer of the election, namely the KPU, has even issued Regulation of the General Election Commission (PKPU) Number 15 Year 2019 regarding Stages, Programs and Schedule of the 2020 elections, which has been enacted. KPU Chairman Arief Budiman asked all relevant parties to study and run the PKPU properly [16].

This KPU regulation is very important to pay attention to the post-conflict local election in 2020. For election organizers, the PKPU serves as a guide for the preparation of programs, activities and stages of the elections. As for election participants, PKPU is a reference for the nomination, campaign and voter data updating stages. PKPU is also used as a reference for the provincial and district/city governments to process the Regional Grant Agreement Manuscript (NPHD) which is the forerunner of *Pilkada* funding. It is expected that each related element understands the contents and explanations of the PKPU. In the new PKPU it is also important to note that the KPU does not re-enter the provisions on the prohibition of ex-convicts of corruption to go forward in the regional elections in their regions. Previously the proposal of former corruption convicts not to run in 2020 Pemilukada was also submitted by the Corruption Eradication Commission or KPK. The KPK asks political parties not to nominate people who have a bad track record to participate in the 2020 *Pemilukada*. Political parties have become an important feature in modern politics because they have strategic functions [17]. The request was based on the case of the Holy Regent Muhammad Tamzil who was stumbled by corruption for the second time in mid-2019.

One of the characteristics inherent in legislation or written law is the authoritative nature of the formulation of the regulations. However, writing in the form of writing or litera scripta is really just a form of effort to convey an idea or thought. In this connection people often refer to it as the "spirit" of a rule [18]. The effort will be carried out by the court power in the form of interpretation or construction, which is a process that will be carried out by the court in order to obtain certainty about the meaning of the statutory law in those authoritative forms.

Even though the limitation of political rights to ex-convicts of corruption is different from the revocation of the political rights of ex-convicts of corruption who "return" to commit the same crime for the second time, the rules are still contrary to the constitution. As the basis for an order of national law in a country, the constitution is the highest source of positive law in which all legal order under it gets legality [19]. The Constitutional Court which stated one of the points limiting political rights is that those who commit the same criminal act repeatedly are right. However, as a rule of law that upholds the law as its commander, it is better if the matter is not regulated by a state institution, but in a judge's decision that considers a convicted person to get the additional sentence or not. [20] Thus the principle of orderly law will be upheld and minimize the emergence of distrust and disharmony of regional head candidates with the election organizer.

3. CONCLUSION

The political rights of the former convicted corruption are constitutionally guaranteed by the 1945 Constitution of the Republic of Indonesia. The international world even regulates them in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). The court's decision also agreed to protect the political rights of former corruption convicts as stated, among others, the Constitutional Court's Decree No. 14-17/PUU-V/2007, No. 004/PUU-VII/2009, No. 42/PUU-XII/2015, No. 71-PUU-XIV-2016. The Supreme Court's decision also reestablished that is in

Supreme Court Decision No. 30P/HUM/2018, 46P/HUM/2018.

The urgency of revoking political rights for the corruption convicts who did not imposed additional penalty for revoking their political rights by a statutory regulation was deemed unnecessary or excessive. Laws and regulations that limits the political rights of prisoners of corruption is also not appropriate to be applied. The law must also be truly democratic and in favor of the people, should not sided with anyone except the people and guarantee the democratic rights of each person / individual. So it's not fair if someone who has finished serving his/her sentence is not allowed to run the nomination again. People who have the right to judge whether ex-corruption convicts have the right to be voted. Corruptors have been imposed additional penalty from the community in the form of social sanctions in the form of negative stigma and unpleasant treatment to the corruptors and their families. In view of this reality, it is inappropriate to deprive them of their political rights in the legislative and regional head elections. If appropriate, where is the place of humanity that the state provides to its citizens. Even though the state has the responsibility to rehabilitate again the corruption convicts in order that they become more dignified human beings again.

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