



Loosening Requirements for Parliament Membership: The Meaning of Power in Forming Election Law?

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Abstract. After the Indonesian reformation in 1998, the government enacted Law No. 28 of 1999 on Clean and Free State Administrators from Corruption, Collusion, and Nepotism. In line with that spirit, the Election Law should require that candidates for the People's Representative Council (DPR): are not currently serving and/or have never been sentenced to imprisonment based on a court decision, for committing a criminal offense punishable by imprisonment of 5 (five) years or more. Corruption is one of the criminal offenses punishable by imprisonment of 5 (five) years or more, so former corruption convicts cannot run for or be nominated to become members of the People's Representative Council (DPR). However, Law Number 7 of 2017 on General Election relaxed the requirements to allow former corruption convicts to run for or be nominated in elections for members of the People's Representative Council (DPR). The Supreme Court and Constitutional Court also confirmed this in their decisions. If former corruptors can become People's Representative Council (DPR) members, as House of Representative or Parliament, they can change all Corruption Eradication Laws. In this normative juridical research, researchers questioned: 1) How is the comparison of the requirements for candidates for the People's Representative Council (DPR) in various post-reform election laws? And 2) Does the loosening of the requirements for candidates for the People's Representative Council (DPR) show the meaning of power in the formation of the election law? To answer these legal issues, the researchers use the statute approach with structural and systematic interpretation methods.

Keywords: Meaning of power, requirements for candidates, People's Representative Council, election law

1 Introduction

Inspired by the euphoria of reform, Indonesia has Law No. 28 of 1999 on Clean and Free State Administrators from Corruption, Collusion and Nepotism [3]. Corruption is a criminal offense as referred to in the provisions of laws and regulations governing corruption [4]. Collusion is an unlawful agreement or cooperation among State Administrators, or between State Administrator and other parties that harms other people,

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R. Abdul Rahman et al. (eds.), *Proceedings of the 12th UUM International Legal Conference 2023 (UUMILC 2023)*, Atlantis Highlights in Social Sciences, Education and Humanities 15,

https://doi.org/10.2991/978-94-6463-352-8_5

the community, and/or the state [5]. Nepotism is any unlawful act of a State Administrator that benefits the interests of his/her family and/or cronies over the interests of the community, nation, and state [6].

Parliament in Indonesia consists of 3 (three) institutions: The People's Consultative Assembly (MPR), the People's Representative Council (DPR), and the Regional Representative Council (DPD) [7]. The People's Consultative Assembly (MPR) amends and establishes the Constitution,[8] while the People's Representative Council (DPR)[9] and Regional Representative Council (DPD)[10] form the Acts.[11] However, this research only discusses the People's Representative Council (DPR), as a state organizer with a very decisive role in the administration of the state to achieve the ideals of the nation's struggle to realize a just and prosperous society as stated in the Constitution of 1945 [12].

Unfortunately, the Corruption Eradication Commission (Komisi Pemberantasan Korupsi/KPK) noted that from 2004 to 2022 political actors who had been detained reached 522 people, including members of the People's Representative Council (DPR) and Regional People's Representative Councils (Dewan Perwakilan Rakyat Daerah/DPR), governors, mayors/regents and deputies [13]. This fact interests researchers to analyze its legal aspects in several published studies:

1. Un-supporting Regulations for The Implementation Of ISO 37001:2016 In The Indonesian Parliament (2021), [14]
2. Comparison Of the Requirements For Candidate For President And Member Of the House Of Representatives in The Election Law (Based On The Perspective Of Pancasila) (2021) [15]
3. Reformulation Requirements for the Nomination of People's Representative Council in Law Number 7 of 2017 Concerning General Elections in a Progressive Legal Perspective and the Imamah Al-Ghazali Concept (2023) [16]

Therefore, this research is a follow-up study with novelty in the research questions: How is the comparison of the requirements for candidates for the People's Representative Council (DPR) in various post-reform election laws? And 2) Does the loosening of the requirements for candidates for the People's Representative Council (DPR) show the meaning of power in the formation of the election law? The purpose of this study is to compare the requirements for candidates for the People's Representative Council (DPR) in various post-reform election laws and to show the meaning of power in the formation of the election law by loosening the requirements for candidates for the People's Representative Council (DPR).

2 Research Methods

Based on the substance of the legal issues, this research is designed as normative juridical research, to analyse legal issues in legal dogmatics, legal theory, and legal philosophy. Research at the level of legal theory, legal issues must contain legal concepts [17]. This research uses a statutory approach and a conceptual approach that departs from the views and doctrines that develop in legal science so that researchers will find legal definitions, legal concepts, and legal principles that are relevant to the legal issues in this study [18]. Legal construction is carried out because the laws and regulations are not clearly regulated and cannot be directly applied to the legal problems, so there is ambiguity or obscurity of legal norms (vague norms). To clarify the vagueness of the law, logical reasoning must be used to further develop a statutory text, no longer adhering to the sound of the text [19].

Primary Legal Materials are legal materials that are authoritative, meaning they have authority. Primary legal materials consist of legislation, official records or minutes of legislation, and judges' decisions [20]. Primary legal materials are binding, and authoritative in the form of laws and regulations, in this study including The Constitution of 1945, the Law on Clean and Free State Administrator from Corruption, Collusion, and Nepotism, the Law on General Election, the Law on General Election of Members of The People's Representative Council (DPR), Regional Representative Council (DPD), and Regional People's Representative Council (DPRD), Law on Judicial Power, Law on Supreme Court, Law on Constitutional Court, Law on Formation of Legislation, Law on Eradication of Corruption, Supreme Court Regulation (PerMA), and General Election Commission Regulation (PKPU).

Secondary legal materials include all publications on law (textbooks, legal dictionaries, legal journals, and commentaries on court decisions). While tertiary legal materials consist of dictionaries and encyclopedias. Legal materials can be obtained by searching legal materials or library research at legal documentation and information centers, in libraries of related agencies, and on the internet [21].

3 The Comparison of The Requirements for Candidates for The People's Representative Council (Dewan Perwakilan Rakyat) in Various Post-Reform Election Laws in Indonesia

The members of the People's Representative Council are elected through general elections. [22] Since the 1998 reform, there have been 5 (five) general elections for members of the People's Representative Council (DPR), in 1999, 2004, 2009, 2014, and 2019.

Table 1. Various Post-Reform Law on General Election of Members of The People's Representative Council (DPR)

General Election	Legal Basis
1999	Law No. 3 of 1999 on General Election Law No. 12 of 2003 on General Election of Members of The People's Representative
2004	Council (DPR), Regional Representative Council (DPD), and Regional People's Representative Council (DPRD)
2009	Law No. 10 of 2008 on General Election of Members of The People's Representative Council (DPR), Regional Representative Council (DPD), and Regional People's Representative Council (DPRD)
2014	Law No. 8 of 2012 on General Election of Members of The People's Representative Council (DPR), Regional Representative Council (DPD), and Regional People's Representative Council (DPRD)
2019	Law No. 7 of 2017 on General Election

Article 43 of Law No. 3 of 1999 on General Elections regulates the requirements of candidates for members of the People's Representative Council (DPR), First Regional People's Representative Councils (DPRD I) and Secondary Regional People's Representative Councils (DPRD II), while subsequent laws regulate the requirements of candidates for members of the People's Representative Council (DPR), Regional Representative Council (DPD) and Regional People's Representative Councils (DPRD). Regional Representative Council (DPD) is a new state institution in the third[23] and fourth[24] amendments to the Constitution of 1945. While First and Secondary Regional People's Representative Councils (DPRD I and DPRD II) were previously not mentioned in the constitution, since the second amendment of the Constitution of 1945 became the Provincial Regional People's Representative Councils (DPRD Propinsi), City Regional People's Representative Councils (DPRD Kota), and Regency Regional People's Representative Councils (DPRD Kabupaten) in Article 18 paragraph (3) Constitution of 1945.[25]

The following is a comparison of the requirements for candidates for the People's Representative Council (members in various post-reform Election Laws in Indonesia):

3.1 Nationality, Age and Religion

Article 43 paragraph (1) letter a of Law No. 3 Year 1999 stipulates the requirements of citizenship, age, and religion: "A candidate for members of the People's Representative Council (DPR) must fulfill the following conditions: a citizen who has reached the age of 21 (twenty-one) years, devoted to God Almighty." These requirements are then regulated in Article 60 letters a and b of Law No. 12 Year 2003 and Article 50 paragraph (1) letters a and b of Law No. 10 Year 2008, "Candidates for members of the People's Representative Council (DPR), must meet the requirements: (a) citizens of the Republic of Indonesia who are 21 (twenty-one) years or more; (b) devoted to God Almighty." Then Article 51 paragraph (1) letters a and b and Law No. 8 of 2012, and Article 240 letters a and b of Law No. 7 of 2017 paragraph (1) letters a and b: "Candidates for members of the People's Representative Council (DPR), are Indonesian citizens and must fulfill the requirements: (a) 21 (twenty-one) years or more; (b) devoted to God Almighty."

3.2 Domicile

Article 43 paragraph (1) letter b of Law No. 3 of 1999 stipulates the domicile requirement: "residing in the territory of the Republic of Indonesia as evidenced by an ID card or a statement from the village head (Lurah) regarding his/her permanent address." Furthermore, it is more briefly regulated in Article 60 of Law No. 12 Year 2003 letter c, Article 50 paragraph (1) letter c of Law No. 10 Year 2008, Article 51 paragraph (1c) of Law No. 8 Year 2012, and Article 240 paragraph (1) letter c of Law No. 7 Year 2017: "domiciled in the territory of the Unitary State of the Republic of Indonesia."

3.3 Loyalty to Indonesia

Article 43 paragraph (1) letters c and e of Law No. 3 of 1999, Article 60 of Law No. 12 of 2003 letters d and f, Article 50 paragraph (1) letters d and f of Law No. 10 of 2008, Article 51 paragraph (1) letters d and f of Law No. 8 of 2012, and Article 240 paragraph (1) letters d and f of Law No. 7 of 2017 stipulate the requirements of patriotism: "able to speak, read and write in Indonesian;" and "loyal to Pancasila as the ideology of the state, the Constitution of 1945, and the ideals of the proclamation of August 17, 1945."

3.4 Education

Article 43 paragraph (1) letter d of Law No. 3 Year 1999 stipulates the education requirement: "educated to at least Senior High School or equivalent knowledge and experience in the field of society." Shortened in Article 60 of Law No. 12 Year 2003 letter e: "educated to at least senior high school or equivalent." Then it is detailed in Article 50 paragraph (1) letter e of Law No. 10 of 2008, Article 51 paragraph (1) letter e of Law No. 8 of 2012, and Article 240 paragraph (1) letter e of Law No. 7 of 2017: "Educated at least at the senior high school level (SMA), Madrasah Aliyah (MA), Vocational High School (SMK), Madrasah Aliyah Kejuruan (MAK), or other equivalent forms.

3.5 Not Involved in " September 30th Movement (G30S/PKI)" [26]

Article 43 paragraph (1) letter f of Law No. 3 Year 1999 and Article 60 of Law No. 12 Year 2003 letter g stipulate: "not a former member of a banned organization of the Indonesian Communist Party, including its mass organizations or not someone who was directly or indirectly involved in the " September 30th Movement (G30S/PKI)" or other banned organizations." This requirement is absent from Law No. 10/2008, Law No. 8/2012, and Law No. 7/2017. In fact, the threat to the ideology of Pancasila is not only the potential for the revival of the ideology of communism, but also the desire to establish an Islamic state (caliphate) in Indonesia, so it is necessary to dissolve radical Islamic mass organizations.

3.6 Have the right to vote

Article 43 paragraph (1) letter g of Law No. 3 of 1999 and Article 60 letter h of Law No. 12 of 2003 stipulate the conditions for having the right to vote: "not being deprived of the right to vote based on a court decision that has obtained permanent legal force." This revocation of voting rights is one of the additional punishments regulated in Article 10 of the Criminal Code, in line with the International Convention which states that the revocation of certain rights can only be carried out if regulated by law. However, this requirement of having the right to vote is no longer found in Law No. 10/2008, Law No. 8/2012, and Law No. 7/2017.

3.7 Non-convicts sentenced to imprisonment of 5 (five) years or more

Article 43 paragraph (1) letter h of Law No. 3 Year 1999 and Article 60 letter i of Law No. 12 Year 2003 stipulates: "not currently serving imprisonment based on a court decision that has obtained permanent legal force, for committing a criminal offense punishable by imprisonment of 5 (five) years or more." The redaction is different in Article 50 paragraph (1) letter g of Law Number 10 Year 2008 and Article 51 paragraph (1) letter g of Law Number 8 Year 2012: "has never been sentenced to imprisonment based on a court decision that has permanent legal force for committing a criminal offense punishable by imprisonment of 5 (five) years or more." The requirements are the same

as the previous two laws, but there are additions that cause crucial differences, namely Article 240 paragraph (1) letter g of Law No. 7 of 2017: "has never been sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a criminal offense punishable by imprisonment of 5 (five) years or more, unless openly and honestly disclosing to the public that the person concerned is a former convict." (bold by the author).

3.8 Healthy

Article 43 paragraph (1) letter i of Law No. 3 Year 1999 regulates the health requirements: "obviously not mentally/memory disturbed." Furthermore, Article 60 letter j of Law No. 12 Year 2003 regulates: "physically and mentally healthy based on the results of a medical examination from a competent doctor." Article 50 paragraph (1) letter h of Law No. 10/2008 and Article 51 paragraph (1) letter h of Law No. 8/2012 stipulate: physically and mentally healthy. Refined in Article 240 paragraph (1) letter h of Law No. 7/2017: "physically and mentally healthy, and free from narcotics abuse."

3.9 Registered in the Electoral List

Article 43 paragraph (1) letter j of Law No. 3 the Year 1999, Article 60 letter k of Law No. 12 the Year 2003, Article 50 paragraph (1) letter i of Law No. 10 the Year 2008, Article 51 paragraph (1) letter i of Law No. 8 the Year 2012, and Article 240 paragraph (1) letter i of Law No. 7 the Year 2017 stipulate the requirement: "registered in the voters' list".

3.10 Willing To Work Full-Time

This requirement is not regulated in Law No. 3 the Year 1999 and Law No. 12 the Year 2003 but is only regulated in Article 50 paragraph (1) letter j of Law No. 10 the Year 2008, Article 51 paragraph (1) letter j of Law No. 8 the Year 2012 and Article 240 paragraph (1) letter j of the Law No. 7 the Year 2017: "willing to work full time."

3.11 Resignation from another position

This requirement is not regulated by Law No. 3 of the Year 1999 and Law No. 12 the Year 2003. Meanwhile, Article 50 paragraph (1) letter k of Law No. 10/2008 stipulates: "resignation as a civil servant, member of the Indonesian National Army, member of the Indonesian National Police, manager of state-owned enterprises and/or regionally owned enterprises, and other entities whose budgets are sourced from state finances, which is stated in an irrevocable letter of resignation." Furthermore, the requirements as stipulated in Article 51 paragraph (1) letter k of Law No. 8/2012 and Article 240 paragraph (1) letter k of Law No. 7/2017 are added: "resignation as regional head, deputy regional head, civil servant/state civil apparatus, member of the Indonesian National

Army, member of the Indonesian National Police, directors, commissioners, supervisory board and employees at state-owned enterprises and/or regional-owned enterprises or other entities whose budgets are sourced from state finances, which is stated in an irrevocable letter of resignation."

3.12 Willingness to refrain from practicing in a profession that may pose a conflict of interest.

This requirement is not regulated by Law No. 3 the Year 1999 and Law No. 12 the Year 2003. Whereas Article 50 paragraph (1) letter l of Law No. 10 of 2008, Article 51 paragraph (1) letter l of Law No. 8 of 2012, and Article 240 paragraph (1) letter l of Law No. 7 of 2017 stipulate: "willing not to practice as a public accountant, advocate/lawyer, notary, land deed official (PPAT), and not to do the work of goods and services providers related to state finances as well as other jobs that can lead to conflicts of interest with duties, authorities, and rights as members of the People's Representative Council (DPR), Provincial Regional People's Representative Councils, and City or Regency Regional People's Representative Councils in accordance with statutory regulations."

3.13 Willing Not to Hold Concurrent Positions

This requirement is not regulated by Law No. 3 in the Year 1999 and Law No. 12 in the Year 2003. Meanwhile, Article 50 paragraph (1) letter m of Law Number 10 the Year 2008 regulates: "willing not to concurrently hold positions as other state officials, administrators at state-owned enterprises, and regionally owned enterprises, as well as other bodies whose budgets are sourced from state finances." Furthermore, it is more detailed in Article 51 paragraph (1) letter m of Law No. 8/2012 and Article 240 paragraph (1) letter m of Law No. 7/2017: "willing not to hold concurrent positions as other state officials, directors, commissioners, supervisory boards and employees at state-owned enterprises and/or regional-owned enterprises and other bodies whose budgets come from state finances."

3.14 Member of a Political Party

This requirement is not regulated by Law No. 3 of the Year 1999 and Law No. 12 of the Year 2003. However, it is regulated in Article 50 paragraph (1) letter n of Law No. 10 of 2008, Article 51 paragraph (1) letter n of Law No. 8 of 2012, and Article 240 paragraph (1) letter n of Law No. 7 of 2017: "become a member of a political party participating in the election."

3.15 Nominated in only 1 (one) representative institution and 1 (one) electoral district.

This requirement is not regulated by Law No. 3 of the Year 1999 and Law No. 12 of the Year 2003. However, it is regulated in Article 50 paragraph (1) letters o and p, Law

No. 10 of 2008, Article 51 paragraph (1) letters o and p of Law No. 8 of 2012, and Article 240 paragraph (1) letters o and p of Law No. 7 of 2017: (o) nominated only in 1 (one) representative institution, and (p) nominated only in 1 (one) electoral district.

4 The Loosening of the Requirements for Candidates for the People's Representative Council (DPR) In Forming Election Law

In the previous section, we have seen several changes in the requirements for People's Representative Council (DPR) candidates in various post-reform election laws. The problem of power relations in the requirements for People's Representative Council (DPR) candidates is analysed starting from the existence of Law No. 28/1999 on Clean and Free State Administrators from Corruption, Collusion, and Nepotism. This law was established a year after the reformation, with the spirit of eradicating corruption committed by state administrators. Power tends to corrupt, during the time of Suharto it was executive heavy, now it's legislative heavy. Legislative-heavy era, the People's Representative Council (DPR) is prone to corruption [27].

The political basis for the 1999 elections was the growing demand of the Indonesian people to reform the political system. The power of the Soeharto regime for approximately 32 (thirty-two) years was considered to have corrupted all ideas and practices of the democratic political system. The people as the legitimate owners of sovereignty had been personified into Soeharto's hands as the sole ruler supported by the military, capital owners, and the bureaucracy. As a result, the basic building blocks of democracy created and fought for by the founding fathers at independence in 1945 were destroyed and turned into authoritarianism [28].

Starting from Law No. 3 of 1999, Law No. 12 of 2003, Law Number 10 of 2008, to Law No. 8 of 2012 requires that former corruption convicts cannot be nominated or run for office without exception. It was only in 2017 that Law No. 7 of 2017 provides an exception: "never been sentenced to prison based on a court decision that has obtained permanent legal force for committing a crime punishable by imprisonment for 5 (five) years or more **unless openly and honestly stated to the public that the person concerned is a former convict.**" (bold by the author).

With this anti-corruption spirit, the General Election Commission (KPU) [29] also issued General Election Commission Regulation (PKPU) Number 20/2018.[30] Article 4 paragraph (3) PKPU No.20/2018: "In the selection of candidates in a democratic and open manner as referred to in paragraph (2), do not include former convicted drug dealers, sexual crimes against children, and corruption." Furthermore, Article 11 paragraph (1) letter d PKPU No. 20/2018: "Documents required for the submission of candidates as referred to in Article 10 paragraph (1) in the form of d. integrity pact signed by the Leader of the Political Party in accordance with its level using the Model B.3 form." The provision is a continuation of Article 7 PKPU No.20/2018 paragraph (1) letter g: "Candidates for members of the People's Representative Council (DPR), Provincial DPRD, and Regency / City DPRD are Indonesian Citizens and must meet the requirements: g. never been convicted based on a court decision that has obtained permanent

legal force which is punishable by imprisonment of 5 (five) years or more based on a court decision that has permanent legal force."

In 2018, a former corruption convict, Jumanto, filed a judicial review of PKPU No. 20/2018 to the Supreme Court. The judicial review was based on Article 24A paragraph (1) of the Third Amendment to the Constitution of 1945, which states that "the Supreme Court has the authority to hear and test at the first and last levels, whose decisions are final, to test laws and regulations under the Law against the Law". The same authority is then elaborated in Law Number 48 of 2009 concerning Judicial Power [31], Law Number 5 of 2004 concerning Amendments to Law Number 14 of 1985 concerning the Supreme Court in conjunction with Law Number 3 of 2009 [32], Supreme Court Regulation Number 01 of 2011 concerning Right to Judicial Review.[33]

The order of laws and regulations is regulated in Article 7 and Article 8 of Law Number 12 of 2011 concerning the Formation of Legislation. Whereas Article 7 paragraph (1) of Law Number 12 of 2011 Concerning the Formation of Laws and Regulations has regulated the types and hierarchy of laws and regulations consisting of: "(a) the 1945 Constitution of the Republic of Indonesia; (b) Decree of the People's Consultative Assembly; (c) Laws/Government Regulations in Lieu of Laws; (d) Government Regulations; (e) Presidential Regulation; (f) Provincial Regulations; And; (g) Regency/City Regional Regulations." Meanwhile, Article 8 of Law No. 12 Year 2011 stipulates: "(1) Types of Laws and Regulations other than as referred to in Article 7 paragraph (1) includes regulations stipulated by the People's Consultative Assembly (MPR), the People's Representative Council (DPR), the Regional Representative Council (DPD), the Supreme Court (MA), the Constitutional Court (MK), the Supreme Audit Agency (BPK), the Judicial Commission (KY), Bank Indonesia, Ministers, agencies, institutions, or **commissions** of the same level established by Law or Government by order of Law, Provincial Regional People's Representative Council, Governor, Regency / City Regional People's Representative Council, Regent / Mayor, Village Head or equivalent. Regency/City, Regent/Mayor, Village Head or equivalent. (bold by the author).

(2) The laws and regulations as referred to in paragraph (1) shall be recognized and have binding legal force to the extent ordered by higher laws and regulations or formed based on authority."

Referring to the two articles, the General Election Commission Regulation is included in the laws and regulations that are hierarchically under the law. Regulation of the General Election Commission of the Republic of Indonesia Number 20 of 2018 concerning the Nomination of Members of the People's Representative Council (DPR), Provincial People's Representative Council (DPRD Propinsi), and Regency / City Regional People's Representative Council (DPRD Kota/Kabupaten) is included in the laws and regulations that are hierarchically under the Law. The Regulation of the General Election Commission of the Republic of Indonesia Number 20 of 2018 in the Considering Consideration says "that in order to implement the provisions of Article 249 paragraph (3), Article 257 paragraph (3) of Law Number 7 of 2017 concerning General Elections, it is necessary to stipulate the General Election Commission Regulation on the Nomination of Members of the People's Representative Council, Provincial People's Representative Council, and Regency / City Regional People's Representative

Council ". The Regulation of the General Election Commission of the Republic of Indonesia Number 20 of 2018 concerning the Nomination of Members of the People's Representative Council, Provincial People's Representative Council, and Regency/City Regional People's Representative Council (State Gazette of the Republic of Indonesia Year 2018 Number 834) is hierarchically under the law, so the Supreme Court of the Republic of Indonesia has the authority to examine, hear and decide on the Petition.

Regarding this judicial review, the Supreme Court later in the Supreme Court Decision Number 46 P/HUM/2018 decided that PKPU No. 20 of 2018 violates Law No. 7 of 2017:

Stating Article 4 paragraph (3), Article 11 paragraph (1) letter d, and Appendix Model B.3 of the Republic of Indonesia General Election Commission Regulation Number 20 of 2018 dated 2 July 2018 concerning Nomination of Members of the People's Representative Council, Provincial Regional People's Representative Council, Regency/City Regional People's Legislative Council (State Gazette of the Republic of Indonesia of 2018 Number 834) along the phrase "former convicted of corruption" is contrary to higher laws and regulations, namely with Law Number 7 of 2017 concerning General Elections juncto Law Number 12 of 2011 concerning Formation of Legislation, therefore it does not have binding legal force and is not generally applicable.

To implement the Supreme Court Decision No. 46 P / HUM / 2018, the KPU stipulated PKPU No. 31/2018 concerning Amendments to the General Election Commission Regulation Number 20/2018 concerning the Nomination of Members of the People's Representative Council, Provincial People's Representative Council, and Regency / City Regional People's Representative Council. One of the important points is to remove the word 'corruption' so that Article 4 paragraph (3) reads: "In the democratic and open selection of candidates as referred to in paragraph (2), exclude former convicted drug dealers and sexual crimes against children." Thus, former corruption convicts can run for the People's Representative Council in accordance with Law No. 7/2017 on Elections.

In 2022, Leonardo Siahaan submitted a judicial review of Article 240 paragraph (1) letter g of Law No. 7/2017 to the Constitutional Court. Article 240 paragraph (1) letter g of Law No. 7 of 2017: "has never been sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a criminal offense punishable by imprisonment of 5 (five) years or more, unless openly and honestly disclosing to the public that the person concerned is a former convict." Article 24 paragraph (2) Constitution of 1945: "The judicial power shall be conducted by a Supreme Court and the subordinated judicial bodies in the realm of the general judiciary, the realm of the religious judiciary, the realm of the military judiciary, the realm of state administrative judiciary, and by a Constitutional Court." Article 24C paragraph (1) Constitution of 1945: "The Constitutional Court has the authority to adjudicate at the first and final instance, the judgment of which is final, to review laws against the Constitution, to judge on authority disputes of state institutions whose authorities are granted by the Constitution, to judge on the dissolution of a political party, and to judge on disputes regarding the result of a general election."

The authority of the Constitutional Court to review laws against the 1945 Constitution is also regulated in Law Number 7 of 2020 concerning the Third Amendment to

Law Number 24 of 2003 concerning the Constitutional Court (hereinafter referred to as the Constitutional Court Law) [36] dan Law No. 48 of 2009 on Judicial Power. [37]

In his petition, the applicant requested the Constitutional Court to declare the phrase "unless openly and honestly declaring to the public that the person concerned is a former convict" Article 240 paragraph (1) letter g of Law Number 7/2017 on General Elections contrary to the 1945 Constitution and has no binding force. The applicant's reasons:

1. The result is that there are no legislative candidates who do not have integrity
2. Resulting in potential abuse of power
3. The existence of a Supreme Court Decision that can be used as a weapon by former corruptors in arguing that they have the right to run as candidates
4. Resulting in many abstentions
5. Provide a loophole for former corruptors to participate in general elections even though they are undergoing revocation of political rights.
6. Contrary to Article 18 of Law Number 31 Year 1999 on the Eradication of Corruption which reads: "revocation of all or part of certain rights or elimination of all or part of certain benefits, which have been or can be given by the Government to convicted persons."
7. giving a bad image or negative labeling from the public so that morally or attitude-wise it is not feasible to give former convicted corruptors the opportunity to run for the legislative body representing the interests of the community.
8. The existence of candidates who do not have integrity will certainly add problems for parliaments both at the center and in the regions in the future.
9. There is a concern that ex-corruptor candidates will only spread the seeds of corruption to other legislators or even repeat corrupt practices that have been done before.

In Decision Number 87/PUU-XX/2022. The Constitutional Court stated that the norm of Article 240 paragraph (1) letter g of Law Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 6109) is contrary to the 1945 Constitution and has no conditional binding legal force as long as it is not interpreted as follows as if formulated in full reads:

(1) Candidates for members of the People's Representative Council (DPR), ... are Indonesian citizens and must fulfill the requirements:

...

g. (i) has never been convicted based on a court decision that has obtained permanent legal force for committing a criminal offense punishable with 5 (five) years or more imprisonment, except for convicts who commit negligence crimes and political crimes in the sense of an act that is declared as a criminal offense in positive law only because the perpetrator has a political view that is different from the current regime;

(ii) for ex-convicts, has passed the period of 5 (five) years after the ex-convict has finished serving his/her imprisonment based on a court decision that has permanent legal force and honestly or openly announces his/her background as an ex-convict; and

(iii) not as a repeat offender.

One can argue that a written and rigid constitution is still not a sufficient restraint on parliamentary majorities unless there is an independent body that decides whether laws

are in conformity with the constitution. If parliament itself is the judge of the constitutionality of its own laws, it can easily be tempted to resolve any doubts in its own favour. The remedy that is usually advocated is to give the courts or a special constitutional tribunal the power of judicial review - that is, the power to test the constitutionality of laws passed by the national legislature [38].

5 The Meaning of Power in Forming Election Law

Max Weber (1864-1920) defined power as the possibility to impose one's own will on the behavior of others.[39] Furthermore, according to John Kenneth Galbraith (*The Anatomy of Power*, Corgi Books, 1985), power can be divided into three types: [40]

- a. **Coercive power:** power that is born from a person's ability to cause unpleasant things to those who do not want to follow his will. Example: a speeding bus driver, if you don't want to move aside, you know it yourself!
- b. **compensatory power:** power possessed by someone who can give rewards to anyone who wants to follow his will. Example: student lecturer
- c. **conditioned power:** power that arises because of one's ability to change the beliefs, visions/mindsets of others. The controlled party does not realize that he has succumbed to the will of others.

Max Weber argues that power is the ability to, in a social relationship, exercise one's own will despite resistance, whatever the basis of this ability [41]. Robert Strausz-Hupe defines power as the ability to impose one's will on others [42]. According to C. Wright Mills, power is domination, which is the ability to carry out one's will even if others oppose it, meaning that power has a coercive nature [43].

According to Talcott Parsons,[44] power is the general ability to ensure the implementation of binding obligations by collective organizational units in a system which are recognized obligations with reference to the achievement of their collective goals and if there is a denial of obligations can be subject to certain negative sanctions, whoever enforces it. This definition emphasizes the public power to enforce the rules of society that are coercive to provide protection to the community.

Niccolo Bernado Machiavelli's teaching: "The end justifies the means" as the power of coercion [45] is considered to override moral values [46]. In *Il Principe*, Machiavelli mentions two types of government: monarchy and republic. A republic is called a populist state because the supreme power is in the hands of the people (*republica*). The power of the ruler in a republic is limited and regulated by the constitution [47]. Furthermore, constitutional power takes place in a republic and is regulated by law. The ruler is elected based on ability and virtue as well as shrewdness in garnering popular support. However, Machiavelli warned that rulers who gain popular support will be the greatest danger if their power is exercised absolutely.

Power without law will be arbitrary, law without power becomes wishful thinking. The characteristics of the relationship between law and power, especially in terms of legalization of power and law enforcement, are explained by Mochtar Kusumaatmadja in one expression "Law without power is wishful thinking, and power without law is

negligence".[48] meaning that the law can only be enforced with power, on the other hand, power without a legal basis is arbitrary.[49]

State power is essentially derived from the people. In limiting the power of the state, John Locke (1632-1704) provides three ways that must be taken: [50]

- a. The constitution that underlies the existence and functioning of the state where its legitimacy is decided by parliament using the principle of majority.
- b. The division of power into functional institutions, where the government is supervised by parliament.
- c. Control from the people can be exercised under certain conditions that legalize the mobilization of citizens to seize "by force" state power if the state colludes to betray the constitution. This happened in the 1998 reformasi, where massive demonstrations succeeded in forcing President Soeharto to resign.

Legal norms are not only orders but also contain certain reasoning according to the assessment made by the community towards the desired behavior and actions in society [51]. According to Zevenbergen, legal norms contain two things, namely assessment benchmarks and behavioral benchmarks [52]. Legislation is part of the law that is made intentionally by state institutions [53]. The law is formed with certain systems and procedures by the People's Representative Council (DPR), President, and Regional Representative Council (DPD) as officials authorized to draft the law and set out in written form [54].

Law as written law, not only because of its written form but because it is made by an institution authorized to form it [55]. This definition of law is to distinguish other forms of law that are not made intentionally and are not written, namely customary law, and also legal formations made by non-state institutions such as agreements between civil law subjects [56].

Law formation is certainly inseparable from the influence of the power holders at the time [57]. Political debates during the drafting of laws are not just debates without interests, but conceptualizations of assumptions, values, interests, and norms. Laws are not value-free, but politically charged [58].

During the People's Representative Councils' Public Hearing Meeting (RDPU) with the Coordinating Committee for the Prevention and Eradication of Anti-Money Laundering (TPPU), [59] chaired by Minister of Political, Legal and Security Affairs Mahfud MD, Chairman of Commission III of the People's Representative Council Bambang Wuryanto, aka Bambang Pacul, openly admitted that he did not dare to pass the Asset Forfeiture Bill and the Cartal Money Transaction Limitation Bill if he was not ordered by "mother". Bambang Wuryanto as a legislator from the Indonesian Democratic Party of Struggle (PDIP) who served as chairman of commission III. The mother in question is most likely Megawati, chair of the Indonesian Democratic Party of Struggle (PDIP). This statement was made by People's Representative Council Commission III Chairman Bambang Wuryanto when Coordinating Minister for Political, Legal and Security Affairs Mahfud MD requested that the People's Representative Council Commission III pass the two bills [60].

According to Salman Luthan, [61] there are three forms of manifestation of the relationship between law and power:

- a. Law is subject to power
- b. Power is subject to law
- c. Reciprocal (symbiotic) relationship between law and power. It is a compromise type because power has a function on law, and vice versa.

Law is a product formed by power holders; the fact is that when the ruler changes, the law also changes. All binding laws are arranged hierarchically to determine their respective degrees with the consequence that if there is a rule that contradicts a higher rule, the higher degree applies (*lex superior derogat legi inferior*) [62].

According to Kelsen and Austin, law is a product of power. The desire of the rulers to organize the government can be seen in the laws they form. Law as a product of power becomes a problem when the law is created only to perpetuate the existence of the ruler, [63] in this study in the form of perpetuating the position of former corrupt prisoners in the People's Representative Council (DPR).

According to the power relations perspective, some of the fatal mistakes in democracy today are the lack of consideration of contestation, competition, interests, conflicts, and power relations between actors in political practice, which has led to the strengthening of political corruption [64]. Democracy that has begun to bloom so far will wither before it develops and give rise to a situation of weak democracy that is not solid (frozen democracies). In this condition, the democratic process decays due to the inability of the ruling government to make social, political, and economic changes in accordance with the demands of reform [65].

The President, the People's Representative Council (DPR), the Supreme Court, and the Constitutional Court did not set strict requirements for the selection of People's Representative Council (DPR) members, thus failing to create a climate conducive to the continuation of the democratization process [66]. The process of consolidation and political culture did not develop. Political consolidation and culture should develop if there is open competition and public participation as well as political/civil liberties [67]. Allowing former corruption convicts to run for re-election undermines the selection system for officials who are free from corruption (limited competition). Allowing ex-corruption convicts to run for re-election closes the opportunity for other people who are clean from corruption to run for the People's Representative Council, so that political regeneration does not work, and the people do not have many choices to elect members of the People's Representative Council because the candidates are the same ones, some of whom are ex-corruption convicts. Ideally, public participation will enable people to better assess the performance of their representatives and weigh the impact of their decisions on people's lives [68].

Ignas Kleden [69] stated that Indonesia's political orientation still revolves around the power struggle rather than the effective use of power. The use of power (power exercise) should be aimed at benefiting as many people as possible, in the Indonesian context is the greatest prosperity of the people.

Legislative members elected through fair and honest elections do not always fight for the aspirations of the people and are even involved in acts of corruption, collusion, and nepotism [70]. Corruption is a crime of power (in the fields of law, bureaucracy, and politics). As a crime of power, corruption has a deconstructive impact that is more

widespread and dangerous than all other crimes. Corruption that occurs at the heart of power will undermine the human spirit. Humans without souls and morality become worse than animals [71].

Corruption can only be committed by those who have formal power and authority over state administration and financial resources. The people are victimized because finances that should be used for the benefit of the people have been illegally seized through manipulation of state administration and finances [72].

Since the 1998 reforms, the issue of corruption eradication has always been a central theme in law enforcement in Indonesia. Internationally, corruption is an extraordinary crime because it fulfils four characteristics: [73]

- a. Organized crime that is carried out systematically to multiply profits as efficiently as possible [74].
- b. A crime with a modus operandi that is difficult and not easy to prove [75].
- c. Related to power.
- d. Related to the fate of many people because the state finances that are corrupted are supposed to be for the welfare of the people.

Impact of corruption: [76]

- a. Undermines democracy. For example, money politics in the election of public officials
- b. Undermines the rule of law. Every word, sentence, dot, and comma in the discussion of draft laws in the People's Representative Council (DPR) has a value of rupiah. Capital owners are willing to spend money so that the resulting law is in their favour. The fear of People's Representative Council (DPR) members is that if they apply strict articles on corruption, they will ensnare themselves.
- c. Interferes with sustainable development, as the corrupted money could have been used for future development. Development is hampered because the budget is corrupted.
- d. Undermines the market, creating unfair competition.
- e. Damages quality of life, for example, corruption of education and health budgets.
- f. Violates human rights

Political corruption as a crime in government is the excessive use of power, and the rejection of law enforcement against the ruler and his cronies [77]. This is what happened in the formulation of the requirements for People's Representative Council (DPR) candidates in the Election Law.

The defiance of power against the law is seen in the behavior of state officials, government officials, and politicians who commit corruption in congregation in a terrible amount in the social and political history of the Indonesian nation [78].

Corruption and money politics should be overcome by building a system that is able to organize political competition more fairly, transparent political party funds, accountability, and clear sanctions for anyone who commits violations and irregularities [79].

The rule of law stands for a very unlikely aspiration: the creation of a stable political system in which compliance with the rules is guaranteed, these rules being subject to certain conditions. Under the rule of law, political activity is lawful. The political system is self-contained because brute power never enters directly into it. However, it is not independent of brute power, given that its feasibility and endurance depend on the distribution of brute power and the costs of subversion. Whether democracy is the political system that, combined with development, will achieve this aspiration cannot be said [80].

6 Conclusion

The relaxation of the requirements for DPR candidates demonstrates the power of the People's Representative Council (DPR) in drafting the Election Law. The Supreme Court also ruled that the judicial review of the General Election Commission Regulation only fulfills formal procedural justice. Meanwhile, the Constitutional Court decided on a judicial review of the Election Law based on the constitutional rights of former corruption convicts to receive equal treatment before the law and government. In fact, the criminal law code allows for the imposition of additional punishment for corruptors in the form of revocation of political rights to be elected, as an additional punishment. International human rights conventions also allow restrictions on rights if they are regulated in law. The opportunity for former corruption convicts to become People's Representative Council (DPR) members has reduced the chances of clean people becoming People's Representative Council (DPR) members. It is suspected that this has hampered political regeneration in Indonesia. The fight against corruption is also difficult to implement because the laws as the legal basis are made by former corruptors.

7 Acknowledgement

Dedicated to Sanrenor Majsal Witar Hanini, Rira Rahmazanti, Ahadi Adzani Janua Flare Anzare, and Kamisa Nuriana Fajriyah. Thank you for all dedication, support and kindness.

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