

Political Rights Of Former Corruptors In View Of The Constitution

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Abstract

The Supreme Court (MA) ordered the General Election Commission (KPU) to revoke Article 11 paragraph (6) and Article 18 paragraph (2) of KPU regulation (PKPU) Number 10 of 2023. Some feel the order violates human rights because it deprives a person of the political right to be elected to public office. The Supreme Court in decision Number 28 P/HUM / 2023 has granted the application for Material Test against Article 11 paragraph (6) and Article 18 paragraph (2) of PKPU Number 10 of 2023. The PKPU is considered contrary to Article 240 paragraph (1) letter g and Article 182 letter g of the election law because it provides a red carpet for former corruption convicts to become election participants. revocation of political rights is done because the convict has abused his authority as a public official, this punishment is expected to protect the public from similar actions and cause a deterrent effect for the convict. Whereas, for Contra-groups, denial of revocation of Rights is chosen or chosen because it violates human rights. This research includes library research, which is a research conducted by reading books, literature and examining various theories and opinions that have a relationship with the problem under study. In this case the author reads and takes theories from books related to issues of Political Rights and establishing laws and concludes the results of research from various kinds of such books. Judging from its nature, this study includes normative juridical Law Research. The form of normative juridical research is legal research conducted by researching library materials. This research is conducted or submitted only on Written regulations or other legal materials.

1. Introduction

The emergence of 15 Former corruption convicts as a temporary list of prospective candidates for the DPR RI and DPRD in the 2024 election has become a discussion that exceeds the discussion of presidential candidates, vice presidents, and even maps of political party coalitions in facing elections. The issue of whether former corruptors can become legislative candidates greatly hurts the spirit of Corruption Eradication.

The most basic logic is that ordinary people will be disappointed in the occurrence of this magical phenomenon. How not magical, Indonesia which has been trying hard to fight to eradicate the corruption virus was suddenly infiltrated by former corruptors who felt innocent and wanted to devote again to becoming people's representatives.

Questioning the possibility of former corruptors becoming candidates for legislative members is not necessarily judging past events and then not believing in the mission they carry for the future. However, it would be better for political parties to recommend other cadres as new fighters who are more qualified and have an anti-corruption spirit.

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The General Election Commission (KPU) as an institution that has the task to hold elections has now made the public increasingly distrustful of the clean holding of elections. The reason is that the KPU allows former corruptors to become candidates for legislative members in the 2024 election. This indicates that the KPU is no longer an election organizing institution that has an anti-corruption commitment.

KPU regulation No. 10/2023 Article 11 paragraph (6) and Article 18 paragraph (2), in a simpler intent, both regulations state that former corruption convicts may become candidates for legislative members without passing a five-year pause period as long as the court's verdict contains political disenfranchisement. This means that former corruptors can return without having to wait for a five-year break.

In fact, the KPU regulation clearly contradicts the decision of the Constitutional Court No. 87/PUU-XX/2022 and the decision of the Constitutional Court No. 12/PUU-XXI/2023 which decided that corruption must pass a five-year gap after passing the prison term to return to politics. This is an additional crime, namely the revocation of political rights to corruptors. Before the spread of the KPU regulation controversy, long before, the ban on ex-corruptors becoming candidates for legislative members had been applied with reference to KPU regulation number 20 of 2018. However, efforts to combat corruption often run into obstacles. The noble efforts of the KPU in preventing the recurrence of corruption by officials instantly disappeared over the unique phenomenon displayed by the Supreme Court (MA). MA granted Lucianty's lawsuit over the Prohibition of former corruption convicts to become legislative candidates. The ban on former corruptors becoming candidates for legislative members according to KPU regulations then no longer applies to the issuance of Supreme Court decision Number 30 P/HUM/2018 which allows former corruption convicts to become candidates.

The KPU in forming the regulation has exercised its authority, namely the attribution authority given specifically by law No. 7 of 2017 on general elections. The KPU is given the authority to form regulations in terms of holding general elections. However, the authority possessed by the KPU has been transformed into arbitrariness in the KPU body itself. The conflict between the KPU regulation and the Constitutional Court's decision on the permissibility of former corruptors to become candidates is clearly and clearly, that the KPU has hurt the spirit of anti-corruption from an early age by playing with regulations that have major implications for Indonesia's efforts to eradicate various modes of corruption. Politicization of the rule of law like this will aim sharply at the portrait of the 2024 election and make the law a social engineering event.

The possibility of former corruption convicts becoming candidates will create negative norms for the community. The community does not mean that it does not accept former criminals, but when former corruptors succeed in becoming DPR, what is feared is the repetition of criminal acts (recidivists). The ease in nominating former corruptors as members of the Legislature will form outdated norms (out of date norms) that are not in accordance with the legal needs of the community.

The formation of obsolete norms will form a void of positive legal norms because of the imbalance between the needs of the community and legal instruments that will cause a decline in public confidence and even damage the credibility of the government in combating corruption. In this context, the public certainly expects people's representatives who have credibility, integrity, and most importantly have never been caught up in corruption cases. Then it is important to remember what was said by Abraham Samad, former chairman of the KPK (2011-2015), that corruption has a tendency to repeat and even metamorphose patterns. Therefore, it is necessary to prevent officials from repeating corruption. One way that can be done by the KPU is not to pass candidates who have been caught up in corruption. In the long term, the KPU is expected to reformulate new rules related to the Prohibition of former corruptors to become candidates. Likewise, the Supreme Court should not sell the verdict by granting a lawsuit that is considered an obstacle in combating corruption.

Through the authority possessed, the KPU is expected not only to make regulations regarding the Prohibition of ex-corruputors. But it also forbids ex-convicts in any case to run for re-election as members of the legislature, executive, or judiciary in order to prevent the recurrence of criminal acts as an effort to realize officials with integrity and free from corruption.

The 2024 elections are on the horizon; in the next few months, candidates will seize votes, steal each other's attention and compete for roles. People are expected to be more careful and thorough in using their voting rights. Choosing a candidate for leader or candidate for DPR members must first know how the previous performance and track record. This is very important to realize a developed and prosperous Indonesia with an anti-corruption spirit for the community and government officials.

2. Method

Viewed from its type, this research includes library research, which is a research conducted by reading books, literature and examining various theories and opinions that have a relationship with the problem under study. In this case the author reads and takes theories from books related to issues of Political Rights and establishing laws and concludes the results of research from various kinds of such books. Judging from its nature, this study includes normative juridical Law Research. The form of normative juridical research is legal research conducted by researching library materials. This research is conducted or submitted only on Written regulations or other legal materials.

2.1. Sources Of Legal Materials

Legal materials used in this study are legal materials obtained by means of literature studies, consisting of primary, secondary and tertiary legal materials.

- a) primary legal materials are binding legal materials. In this study the primary legal materials are amendments to the 1945 Constitution, and relate legal regulations.
- b) secondary legal material is legal material that provides an explanation of the primary material. In this study the secondary legal material consists of books, thesis, mass media, and so on.
- c) tertiary legal materials are legal materials that provide explanations regarding secondary legal materials.

2.2. Methods of collecting legal materials

The method of collecting legal materials used in this study is literature, which is research conducted by collecting various data contained in literature books, papers, scientific articles, scientific papers, and legislation related to the object to be studied. Documentation is to find data about things for variables in the form of notes, transcripts, books, newspapers, magazines and so on.

2.3. Methods Of Analysis Of Legal Materials

To analyze is done qualitatively with normative juridical approach. Normative juridical research is an approach based on the main legal material by examining the theories, concepts, principles of law and legislation related to this research

3. Result and Discussion

The word political rights consists of two words: rights and politics. In the Indonesian dictionary the word right means right, property, authority, power, to do something because it has been determined by law to demand something and right also means degree or dignity. While the word politics, in Arabic called Siyasah comes from the ancient Greek word "polis". Polis is a city that is considered a state contained in ancient Greek culture, which at that time the city was considered synonymous with the state. Thus, the word "polis" is taken from the latin word politicus and the Greek word politicos which means relating to citizen. Both words

are also derived from the word polis which means “city” which means City, politics then absorbed into the Indonesian language with the meaning, namely: all Affairs and actions (wisdom, strategy and so on). About the government of a country or against other countries, trickery or cunning and is also used as a name for a discipline of knowledge, namely Political Science.

In the Indonesian dictionary politics is defined as the science of governance or statehood, all Affairs and actions (policies, tactics and so on) regarding state government or other countries, policies on how to act in facing or dealing with a problem. Politics is a collective word that has thoughts that aim to gain power. In general, it can be said that politics is an attempt to determine the rules that can be accepted by most citizens, in order to bring society into a harmonious life together.

According to Miriam Budiardjo, politics is a variety of activities in a political system or country that involves the process of determining the goals of the system and implementing those goals. Furthermore, as a political system is a conception that contains provisions on who is the source of state power, who is the executor of that power, what is the basis and how to determine and to whom the authority to exercise that power is given, to whom the executor of that power is responsible and how is the form of responsibility.

Basically, politics has the scope of the state, talking about politics is basically talking about the state, because political theory investigates the state as a political institution that affects people's lives, so the state is in a state of motion. In addition, politics also investigates ideas, principles of the history of state formation, the nature of the state and the form and purpose of the state.

Politics is a way and effort to deal with people's problems with a set of laws to realize the benefits and prevent things that are detrimental to human interests. Referring to the notion of politics which comes from the word polis which means the state can be good, therefore every country must have a rule of play called the law is also interpreted as a form of a collection that is deliberately formed to obtain a law or law, holders of legal authority who are then referred to as politicians or kings, and who carry out the rules of government in this case all levels of society that recognize the power of a leader.

From the explanation above, broadly speaking, political rights can be interpreted as a freedom in making choices that cannot be disturbed or taken by anyone in the life of society in a country. According to jurists political rights are those that a person has and acquires in his capacity as a member of an organization (state), such as the right to vote and be elected, to run for office and to hold public office within the state. Political rights it is a right in which individuals contribute through that right in managing the problems of the state or governing it. Political rights are the fundamental rights of every citizen to gather and unite (form parties) and the right to express opinions including supervising and criticizing the government in the event of abuse of power or making policies that are contrary to the aspirations of the people. Elections are a political mechanism for articulating the aspirations and interests of citizens. Political rights are used in the conduct of elections both from voters and elected. There are at least four most important functions of elections: political legitimacy, the creation of political representation, the circulation of political elites, and political education. Through elections, the legitimacy of the government / ruler is confirmed because it is the result of the choice of citizens who have sovereignty. The existence and policies made by the government will receive strong support and sanctions because they are based entirely on the aspirations of the people and not because of coercion from above. Furthermore, through elections, the selection of leadership and representatives of the people is carried out more fairly due to the involvement of citizens.

Various kinds of political rights of Indonesian citizens in the field of politics, namely:

1. Right to be elected to the executive and legislative branches
2. Right to elect members of the executive and legislature
3. The right to have freedom to participate in government activities
4. The right to form a political party.
5. Right to create organizations in the field of politics

6. The right to express an opinion in the form of a proposed petition

In 1986, a new concept of Human Rights emerged, namely the right to development. This right / or for development includes equal rights or opportunities to progress that apply to all nations, and includes the rights of everyone who lives as part of the life of that nation. Which includes human rights among others:

1. The right to self-determination
2. Right to life
3. The right not to be put to death
4. The right not to be tortured
5. The right not to be arbitrarily detained
6. The right to a fair, independent, and impartial trial
7. The right to express or express an opinion
8. Right to assembly and association
9. The right to equal treatment before the law
10. The right to vote and be elected

3.1. POLITICAL RIGHTS OF FORMER CORRUPTORS IN VIEW OF THE CONSTITUTION

Eliminating political rights in corruption perpetrators aims to limit their participation in political processes such as the right to vote or be elected. This is a consequence of the Corruption Act (TPK) that he has done. The revocation of political rights is also said to mark that the perpetrators of TPK have abused public trust. The Supreme Court granted a material test on PKPU Number 10 of 2023 Article 11 paragraph (2) and PKPU number 11 of 2023 Article 18 paragraph (2) launched by Indonesia Corruption Watch, the Association for elections and democracy (Perludem) and two former KPK leaders, namely Saut Situmorang and Abraham Samad.

The Supreme Court ordered the KPU to repeal the two rules that provide a red carpet for former corruption convicts so they can run as candidates for legislative members. The law does not require a 5-year break for former corruption convicts to run for the Legislature. "Instruct the respondent to revoke Article 11 paragraph (6) PKPU 10/2023 and Article 18 paragraph (2) PKPU 11/2023 and all technical guidelines and implementation guidelines issued by the respondent as an implication of the implementation of the provisions of Article 11 paragraph (6) PKPU 10/2023 and Article 18 paragraph (2) PKPU 11/2023," said MA.

According to MA, in principle, the normalization of the five-year period after the convict carries out the criminal period is a time that is considered sufficient to conduct self-introspection and adapt to the surrounding community. This is as MK decision number: 87/PUU-XX/2022 and MK decision Number: 12/PUU-XXI / 2023. With this period of time, the public can assess the candidates they will choose critically and clearly. But in the rules, the KPU actually negates the 5-year gap period for former corruption convicts to run as legislative candidates. With the view of corruption as an extraordinary crime, according to MA, the additional crime in the form of revocation of political rights is the addition of a deterrent effect for perpetrators of corruption crimes. On that basis, according to the Supreme Court, the KPU should draw up more severe requirements for perpetrators of crimes sentenced to the main crime and additional crimes in the form of revocation of political rights.

The Supreme Court has previously ruled No.46p/Hum / 2018 is just right. The decision that was finally handed down by the Supreme Court was based on the existing constitution in our country, the 1945 Constitution, namely Article 28 of the 1945 NRI Constitution on citizens' political rights and laws and Regulations Article 43 paragraph (1) and Article 73 of Law Number 39 of 1999 on Human Rights and Article 240 paragraph (1) letter g of Law Number 7 of 2017 on general elections.

Based on these legal bases, the Supreme Court finally stated that the legal norm:

Article 4 paragraph (3), Article 11 paragraph (1) letter d and appendix Model B.3, which regulates the political rights of citizens, is a new legal norm that is not regulated in higher legislation, in this case law Number 7 of 2017 concerning general elections, the provisions of Article 4 paragraph (3), Article 11 paragraph (1) letter d, and appendix Model B.3 PKPU number 20 of 2018 throughout the phrase “former corruption convict” must be stated Contrary to Law Number 7 of 2017 concerning general elections.

In 2017 the election law has been updated, the law that regulates the requirements for every citizen who wants to become a candidate for legislative members both DPD, DPR, and DPRD, these requirements are contained in Law Number 7 of 2017. That one of the requirements to become a member of the Legislature is in Article 240 paragraph (1) letter g of Law Number 7 of 2017: “prospective candidates for members of the DPR, provincial DPRD, and Regency/city DPRD are Indonesian citizens and must meet the requirements:

a) 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 it is openly and honestly stated to the public that the person concerned is a former convict.

This law was passed by President Joko Widodo on August 15, 2017, consisting of 573 articles, explanations, and 4 attachments. On several grounds of consideration based on the arguments of the applicant, the evidence of the letter, the submitted expert statement, the statement of the government and the applicant. Finally, the Supreme Court decided to grant the entire application from the applicant.

4. Conclusion

The Supreme Court (MA) ordered the General Election Commission (KPU) to revoke Article 11 paragraph (6) and Article 18 paragraph (2) of KPU regulation (PKPU) Number 10 of 2023. Some feel the order violates human rights because it deprives a person of the political right to be elected to public office. The Supreme Court in decision Number 28 P/HUM / 2023 has granted the application for Material Test against Article 11 paragraph (6) and Article 18 paragraph (2) of PKPU Number 10 of 2023. The PKPU is considered contrary to Article 240 paragraph (1) letter g and Article 182 letter g of the election law because it provides a red carpet for former corruption convicts to become election participants. Revocation of political rights is done because the convict has abused his authority as a public official, this punishment is expected to protect the public from similar actions and cause a deterrent effect for the convict. Whereas, for Contra-groups, denial of revocation of Rights is chosen or chosen because it violates human rights. Corruption is an act that is carried out to obtain something by depriving others of their rights, indirectly using their power and position to obtain what is beneficial to themselves or groups. Corruption is understood as the act carried out by a public official by abusing his power. The regulation regarding the revocation of political rights is contained in Article 35 paragraph (1) of the Criminal Code (KUHP) which states that there are certain rights that can be revoked by the state when the convict violates the law, among which are the right to vote and be elected. In line with the Criminal Code, the UN Convention Against Corruption in Article 30 paragraph (7) also provides for sanctions against people who commit corruption so that the person is disqualified for a certain period of time in holding public office. The existence of additional penalties against former corruption convicts due to the existence of elements of convicts where they have abused their authority as public officials that cause violations against the wider community. The granting of this additional punishment does not mean to deprive a person of Honor or rights, but the revocation of political rights is considered necessary to prevent a person from repeating a similar act. Based on these matters, the Supreme Court's decision to provide a five-year pause for former corruption convicts to contest elections is not a violation of human rights, it is done as a deterrent effect and preventive efforts so that former corruption convicts do not repeat acts that will harm the community.

Author Contributions

The author's contribution to the research outlined in this scientific article consists of searching for legal materials and related references, as well as analysis in the discussion of the background and legal issues. The distribution of the author's contribution is Rahmad Rafid and Ahmad Daniyal Fanani in charge of finding legal materials, references related to research, editing and Riski Febria Nurita in charge of analyzing the discussion of the background and legal issues, editing and review.

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