

The Principle of Restricting Political Rights for Ex-Convicts of Corruption in the 2020 Regional Head Elections

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ABSTRACT

The implementation of regional head elections in Indonesia in 2020 is coloured by the presence of former convicts, especially corruption crimes or relatives as candidates, including some declared elected as regional heads. Election organizers and the public are being tested in this phenomenon, restrictions as contained in the provisions of Article 7 paragraph (2) letter g of Law No. 10 of 2016 concerning the Second Amendment to Law No. 1 of 2015 concerning the Determination of Perpu No. 1 of 2014 concerning the Election of Governors, Regents, and Mayors into law jo. The decision of MK RI Number 56/ PUU-XVII/ 2019 is not easy to implement. This legal research comprehensively examines the validity of the principles of restricting political rights related to former convicts or their relatives referred to in instruments or legal acts issued by the organizers of regional elections in Indonesia in 2020.

Keywords: *Ex-Convicted of Corruption, Restrictions on Political Rights, Local Elections*

1. INTRODUCTION

With regard to the trend of the spread of Corona Virus Disease 2019 (COVID-19) in Indonesia, the President of the Republic of Indonesia has established the status of health emergencies in the Presidential Decree 11-year 2020 as well as stated in the Presidential Decree 12 Year 2020 that non-natural disasters caused by COVID-19 as a national disaster. The consequences are varied, some of which are related to the election stage of the regional head. These stages are based on Law No. 10 of 2016 (Law of the Republic of Indonesia No. 10 of 2016), including:

- Registration Stage;
- Nomination Stage;
- Campaign Stage;
- Stages of procurement and distribution of logistics
- Stages of voting and counting of votes;
- Stages of recapitulation;
- Out of stages.

That with the status of health emergency as a national disaster, it has enough reason so that it can be delayed

implementation based on the provisions of Article 120 of the Indonesian Law No. 10 of 2016. This then gave rise to polemics in the implementation of regional head elections in 2020, the pros and cons between the stages of elections should be continued or postponed popping up. Until then the President of the Republic of Indonesia issued a Government Regulation Replacement Law of the Republic of Indonesia Number 2 Year 2020 (PERPU RI No. 2 year 2020), making it possible to be implemented during the pandemic. So, it can be declared the implementation of regional elections in 2020 since before it was held has raised a series of records, but legally the implementation is declared valid followed by 270 regions.

Conflict conditions occur, namely between the principles of elections and the principles of handling health emergencies. Regional head elections as part of the electoral regime in Indonesia are a manifestation of the idea of representative democracy.[1] Indonesia as a country that calls itself a democracy, then the general elections must be held at certain times.[2] This is so that the implementation of the election requires a condition of joy, in which the people as the owner of the sovereignty cheerfully declare their will in an election contest. The condition is of course very contrary to the principle known as the "health protocol" during this pandemic.

Where the people are required, even on a certain scale, "forced" with sanctions to stay at home. Although it does not limit voting rights, a pandemic condition is a condition of grief that causes people to be silent. The holding of the 2020 regional head general election in the midst of this concern is not enough to only target voter participation, but far more important is the reasoning of the election organizers.

Election organizers in the 2020 post-conflict local elections are in the same situation as the voting community, they both feel widespread fear and everything due to the impact of the pandemic. This coincided with the emergence of former corruption convicts including their relatives in the registration stage, based on the records of the Indonesian Corruption Watch (ICW) regions that have candidates for regional heads of former convicted corruption cases are:

- North Nias Regency, North Sumatra;
- South Lampung Regency, Lampung;
- Dompu Regency, West Nusa Tenggara; and
- Bengkulu Province.[3]

Apart from that, the Boven Digoel area was recorded to be phenomenal with the winning votes coming from former corruption convicts who have not yet past five years after the completion of their prison sentence. The following also included relatives of corruption convicts who were also superior in the 2020 post-conflict local election in the South Tangerang area, this can indicate that the voting community is not traumatized by the criminal acts of corruption that have been committed by candidates or their relatives.[4] Of the several candidates for regional heads who can become regional heads over time, what deserves to be examined in depth is the process that has taken place in the Boven Digoel area. This is because voter organizers since the registration and nomination stages have shown different views regarding whether or not the candidate pair is appointed, given the candidate's status at that time as a former convict of corruption in a criminal case. The difference in views can be seen from the start, seen from the dispute over the KPU RI Decree Number 584 / PL.02.2-Kpt / 06 / KPU / XI / 2020 dated November 28, 2020, until then after being elected also continued disputes over election results at the Constitutional Court which basically is whether or not a former convicted person in a criminal case of corruption is deemed not to have passed five years after the sentence has been served and then determined as a candidate for regional head in the 2020 post-conflict local elections.

The interpretation of the five-year period for former convicts to be able to run again in a general election is based on the provisions of Article 7 paragraph (2) letter g of the Republic of Indonesia Law Number 10 of 2016 concerning the Second Amendment to Law of the

Republic of Indonesia Number 1 of 2015 concerning Stipulation of Perpu Number 1 of 2014 concerning the Election of Governors, Regents and Mayors Becoming a Law which was later stated in the Constitutional Court Decision Number 56 / PUU-XVII / 2019. With regard to these norms, the Indonesian KPU then issued KPU RI Regulation Number 9 of 2020. So that with regard to the interpretation of the past five years for the former convict must certainly examine the entire legal instrument comprehensively, including by examining the concept of punishment as the basis for calculating the commencement time.

One of the objectives of the Indonesian state to be realized through a government is the achievement of the people's welfare, such a thing has been formulated by the founders of the nation and expressly stated in the Preamble of the Constitution of the Republic of Indonesia Year 1945 (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia). The meaning of self-government according to Philipus M. Hadjon can be understood by two meanings: on the one hand in the sense of "government function" (governing activity), on the other hand in the sense of "government organization" (collection of government units). The function of this government as a whole consists of various acts of government, only the legislation of the political and judicial authorities by the judges is not included therein. With regard to this understanding, asserting that government has two meanings, namely in a broad sense and in a narrow sense. Governance in the broad sense is called regearing or government, that is the execution of the duties of all agencies, institutions, and officers who are entrusted with the authority to achieve state objectives.[5] Concrete meaning of government includes the legislative, executive, and judicial authorities or other state equipment's as long as acting for and on behalf of the state. While the government in the narrow sense is called bestuurvoering, which includes the organization of functions that perform government duties. The government in this narrow sense relates only to the exercise of executive function alone.

As one form of government in Indonesia, pursuant to the provision of Article 18 paragraph (1) of the 1945 Constitution of Republic of Indonesia established regional government. More specifically, the regions in question are the provinces, districts, and urban areas. So that the structure of the Indonesian government as a whole based on the opening of the fourth alenia of the 1945 Constitution of the Republic of Indonesia is the central government, as a result of the birth of the state of Indonesia. And in Article 18 of the 1945 Constitution there is also regional government, which in Article 18 A of the 1945 Constitution of Republic of Indonesia is determined on the existence of authority relationship between the central government and regional government.

Implementation of regional government as in the Consideration of Law of the Republic of Indonesia Number 23 Year 2014 on Regional Government (Act 23 of 2014), directed to accelerate the realization of community welfare through service improvement, empowerment, and community participation and enhancement of regional competitiveness by taking into account the principle of democracy, equity, justice, and uniqueness of a region in the system of the Unitary State of the Republic of Indonesia. Such a thing illustrates the importance of the role of local government in the effort to realize the state's goal of achieving people's welfare.

One of the factors supporting the success of the role of regional government is the regional head, as according to the provisions of Article 59 paragraph (2) of Law No. 23 of 2014 consists of governors for the province, regents for districts, mayors for urban areas. Concretely, the absolute regional head must be filled by the best people. The filling model, pursuant to the provisions of Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, shall be implemented by democratically elected.

When examined, the birth of the provisions of Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia is a result of reform. The model of election of regional head desired by the people is to use General Election. It is proven that the issuance of the Law of the Republic of Indonesia Number 22 Year 2014 on the Election of Governors, Regents and Mayors governing the mechanism of local elections indirectly through the Regional People's Legislative Assembly has received wide rejection by the people.

Implementation of General Elections as one of the indicators of a democratic country, it can also harm democracy itself. This is due to fraud committed by parties related to the election, the worst conditions as disclosed by Joseph Deckert, Mikhail Myagkov, and Peter C. Ordeshook as a means of corrupt regimes to seek democratic legitimacy.[6]

In this regard, the holding of an election as well as the General Election which is included in the election law regime is needed a rule of the game to be able to support the implementation is really running democratically, in line with those requirements in Law No. 1 of 2015 on Stipulation Perpu No. 1 of 2014 On the Election of Governor, Regent, and Mayor Become Law, Law RI Number 8 Year 2015, and Law of RI Number 10 Year 2016 About The Second Amendment of Law Number 1 Year 2015 has mentioned various kinds of criminal acts of General Election which is directed to the subject -the subject matter concerning the holding of elections.

With regard to the implementation of the 2018 Regional Head General Election which consisted of 17 Provinces, 39 Municipalities, and 115 Regencies, the important role of the Politic Party.[7] All candidates for

regional head in Pemilukada are carried by political party or coalition of political party. Faced with this condition, it can be said that political party is the entrance for every person who want to run to become head of region. With regard to the position of political parties as one of the subjects having an important role in the General Election and the types of criminal acts of Pemilukada in the election law package, the problems in this study can be formulated with the question "Can political parties be subject to criminal liability for criminal acts of regional head election?"

2. RESEARCH METHODS

With regard to restrictions on former convicts to be designated as candidates for regional head, the problems in this study can be formulated with the following questions: 1) What is the authority of regional head general election administrators in determining the period of imprisonment in the registration stage for regional head candidates? 2) What is the principle of limiting political rights for former convicts in the 2020 regional head elections in Indonesia?

This legal research was conducted to solve the problems faced, the research method used was the Statute Approach, namely the problems described were studied and formulated based on the approach to the relevant laws and regulations. With regard to this method, legal materials consisting of primary legal materials are used in the form of RI Law Number 10 of 2016 concerning the Second Amendment to Law of the Republic of Indonesia Number 1 of 2015 concerning Stipulation of Perpu Number 1 of 2014 concerning Election of Governors, Regents and Mayors into Laws. Decision of the Constitutional Court of the Republic of Indonesia Number 56 / PUU-XVII / 2019, KPU Regulation Number 9 of 2020 and other related regulations. Whereas secondary legal materials in the form of journals, text books, articles, and others that overall support primary legal materials, all legal materials are grouped and studied systematically and compared with legal theories and principles put forward by legal experts until finally a thorough analysis is carried out. normative.

3. RESULTS AND DISCUSSION

Ideally, government and at the same time, it is inevitable now is democracy [8], this is what continues to wrestle with practice towards the ideal. Reflecting on the failure of direct democracy as stated by Robert A. Dahl which occurred during the Roman era,[9] the subsequent practice gave birth to representative democracy with the aim of keeping the interests and will of the people accommodated by their representatives. With regard to community representation, the technique that is considered the most against is the general election. Thus,

general elections are an implementation that always takes place in a democratic country.

An election that is based on democratic values, of course, in its implementation, it must have democratic nuances as well.[10] In general, a democratic election is an election that is carried out periodically and is held based on the principles of free, honest and fair elections.[11] Regional head general elections in Indonesia as one of the electoral regimes that aim to produce regional heads, therefore its regular implementation must reflect democratic values. The rules of the game regarding who can be appointed as a candidate for regional head, until finally they are actually used as the basis for the election organizers in its implementation. Based on the provisions of Article 7 paragraph (2) letter g of the Republic of Indonesia Law Number 10 of 2016 which is then stated in the Constitutional Court Decision Number 56 / PUU-XVII / 2019, it has been determined that the qualifications of subjects who can be assigned as pairs of candidates are related to their position as a former convict. In this discussion, first tracing the authority of regional head general election administrators in determining crimes and convictions that have been completed by Regional Head Candidates, then continues with the principle of restrictions imposed on former convicts to be designated as candidates for regional head in regional head elections in Indonesia. the year 2020.

A. The Authority of Regency/ City KPU to Determine Crime and Criminalization in Registration Stages of Regional Head General Election in Indonesia in 2020

Based on the provisions of Article 4 paragraph (1) letter f of the Republic of Indonesia KPU Regulation Number 9 of 2020, it is explicitly stated that the subjects who can become candidates for regional head are Indonesian citizens who have never been convicted with a sentence of five years or more, except for the crime of negligence or other acts. political crime. Furthermore, in paragraph (2a), the provision as a convict is exempted for former convicts with the threat of imprisonment of five years or more which has passed a period of five years after the completion of serving imprisonment. This provision is the basis for the election organizers, especially the Indonesian General Election Commission in determining candidates at the 2020 post-conflict local election registration stage. Concretely, the Indonesian KPU in the registration stage must verify with certainty whether the candidate has never been a convict, or if a former convict is a has elapsed five years from the completion of the crime.

This provision looks simply, only about determining the punishment and calculation, but in its implementation, it is not always easy. This is like the case of the Boven Digoel KPU in determining whether or not

one of the regional head candidates passed the registration stage for the 2020 regional head elections, there are prospective candidates with qualifications based on the Supreme Court Decision Number: 127 PK / Pid.Sus / 2012 dated 11 September 2013, it is declared that the said candidate legally and convincingly commits a criminal act of corruption as stipulated in Article 2 paragraph (1) jo. 18 Corruption Law jo. Article 55 paragraph (1) 1st jo. Article 65 paragraph (1) of the Criminal Code. The criminal details against the prospective candidate are stated in the ruling, namely:

- Stating that the convict is legally and convincingly proven guilty of committing a criminal act of corruption as a concurrent act;
- Sentenced the convicted person to imprisonment for 4 (four) years and 6 (six) months, and a fine of Rp.200,000,000, - (two hundred million rupiah) provided that if the fine is not paid then it is replaced by imprisonment for 6 (six) months;
- Convict the convict to pay compensation amounting to Rp. 45,772,287,123, - (forty-five billion seven hundred seventy-two million two hundred eighty-seven thousand one hundred and twenty-three rupiah) provided that the convict does not pay replacement money within 1 (one) month after the Court's decision has permanent legal force, the property can be confiscated by the prosecutor and auctioned off to cover the replacement money, and in the event that the convict does not have sufficient assets to pay replacement money, the convict is sentenced to 2 (two) imprisonment. year;

The conviction of the prospective candidate can be seen from the letter of the head of the Sukamiskin Prison Number: W11.PAS.PAS.1-PK.01.01.02-7176 dated 11 September 2020, which explains that the prospective candidate is released due to conditional release based on a Decree of the Minister of Law Human Rights Number: PAS.17.PK.01.05.06 Year 2013 dated January 31, 2013 and based on research on the register book and correctional data base system (SDP) the candidate underwent parole on August 7, 2014 with the probation period ending on August 7, 2014. 26 May 2017 and did not pay a compensation penalty of Rp. 45,772,287,123, - (forty-five billion seven hundred seventy-two million two hundred and eighty-seven thousand one hundred and twenty-three rupiah) a subsidiary of 2 (two) years.

Responding to such conditions, the attitude of the local Regency KPU as stated in the Decree of the KPU of Boven Digoel Regency Number 19 / PL.02.3- Kpt / 9116 / KPU-Kab / IX / 2020 dated 23 September 2020 concerning the Stipulation of Candidate Pairs for the Election of Regent and Deputy Regent of Boven Digoel Regency. 2020 has stated if the intended candidate meets

the requirements to be appointed as a regional head candidate. Furthermore, based on the Decree of the KPU of Boven Digoel Regency Number: 20 / PL.02.3-Kpt / 9116 / KPU-Kab / IX / 2020 concerning the Stipulation of the Serial Number and List of Candidate Pairs for the Election of Regent and Deputy Regent of Boven Digoel Regency in 2020 dated September 24, 2020, a serial number has been assigned for the said candidate.

The conditions changed when the Indonesian KPU through the Decree of the Indonesian KPU Number 584 / PL.02.2-Kpt / 06 / KPU / XI / 2020 concerning the Determination of Candidate Pairs for Election Contestants of Boven Digoel District Heads and Deputy Regents in 2020 dated 28 November 2020 annulled the Digoel KPU Decree and at the same time declaring that the candidate does not meet the requirements on the grounds that the probationary period is completed in 2017 so that five years have not passed when nominating for regional head. Coupled with the statement that the replacement money penalty has not been carried out by the candidate, so it has an impact on the implementation of a subsidiary of two years. So, at the registration stage, the candidate is not in accordance with the five-year period. Next, based on the Decision of the General Election Supervisory Board of Boven Digoel Regency No. 001 / PS.REG / 33.04 / XII / 2020, the RI KPU decision was cancelled on the grounds that basically the candidate had met the requirements.

KPU RI Regulation Number 9 of 2020 states that former convicts who are threatened with imprisonment of 5 (five) years or more have passed a period of 5 (five) years after completing a prison sentence based on a court decision that has permanent legal force as long as it is not a former convict. Drug dealers or sexual crimes against children can nominate or be nominated as regional heads, with the following documents:

- Form Model BB.1-KWK;
- Advertising announcements in the mass media;
- Letter from the editor in chief of the local daily mass media;
- A copy of the BHT decision;
- Certificate of completion of serving imprisonment from prison;
- Certificate of completion of "PB, CB or CMB";
- Not a residive certificate.

Whereas in the statement of the Sukamiskin Prison it was stated that on 22 September 2012 the candidate was given conditional release based on the Decree of the Ministry of Law and Human Rights of the Republic of Indonesia No. substitute money punishment until August 7, 2014. So that starting from August 7, 2014 to May 26, 2017, regional head candidates undergo a period of parole, with regard to registration, the five-year period

must be determined whether starting from August 7, 2014 as the date of parole or 26 May 2017 as a free date.

Parole as described in Article 12 letter k of The Republic of Indonesia Law No. 12 of 1995 is the release of a convicted person after serving at least two-thirds of his sentence with the provision of two-thirds of it is not less than 9 (nine) months, concretely in certain conditions the convicted become not serving a prison sentence. Parole in its implementation has similar principles with conditional criminal, as conveyed by Muladi that the convicted do not need to serve the criminal.[12] The distinguishing thing is that conditional criminal is considered by the judge in a ruling, with the provision according to Roeslan Saleh that is when the judge does not want to sentence the prison sentence more than one year.[13] Further imposition of conditional criminal is guided by the provisions of Article 14a - 14f of the Criminal Code contained under the stb. In 1926 Number 251,[14] this could be an alternative for judges in handing down sentences other than prison. This alternative is certainly an objective alternative, and not subjective based on the will of the judge. But by looking at the purpose of criminalization that is not solely as an attempt at retaliation, but in the view of utilitarian as a means of education for convicts in order to be re-accepted in the community.[15] That the perpetrator who later became convicted is someone who deviates, is not in harmony with society, can even be considered useless to society. Judges in dropping the criminal will always be faced with the goal that the negative side or deviate from the perpetrator is lost, not only the culprit is eliminated. This is so that the criminal is not just a matter of weight or lightness of punishment, but effective or not punishment in improving the person of the perpetrator. The highest prison sentence can be declared ineffective if the offender repeats his actions, otherwise the prison sentence is not too high or even other than the prison sentence can be declared effective if the perpetrator is truly insophilic and does not re-explore the crimes he committed.

The excess conditional criminal if applied, then for the convicted and the state or society can:

- Provide education for the convicted to be able to continue their community life;
- Reduced stigma against convicts;
- Gaining labour;
- Reduce the costs that must be incurred by the state in relation to the needs of the convicted;
- Act as a mobilizer in society not to commit irregularities.

Convicted sentenced to a conditional criminal sentence, there is no need to serve the restrictions behind the walls of the correctional institution. This is in contrast to the application of prison sentences both for life and a certain time, the characteristic is the loss or decrease of

freedom for a while.[16] The state in this case the correctional institution plays a full role in the implementation of prison sentences, in the sense that everything concerning the needs and existence of the convicted becomes the responsibility of the Prison. When the verdict is conditional, then the imposition of this prison with certain conditions becomes not carried out. The same thing happened on parole, affirmed in Article 14 of Law No. 12 of 1995, parole is a criminal right. The details of these rights are realized in the provisions of Article 15 - 17 of the Criminal Code, which is then determined in PP No. 32 of 1999 as successively subject to the last amendment based on PP 99 Year 2012. The construction built in the PP positions that convicted of corruption crimes is one that can obtain the right of parole, meaning that the Ministry of Justice and Human Rights of the Republic of Indonesia will conduct an assessment on the appropriate or not convicted of corruption granted the right of parole. This will thus be able to trim the implementation of prison sentences given based on the judge's decision, with certain conditions then the convicted can get out of the correctional institution.

With regard to the conditions applied to convicted corruption crimes in order to obtain the right of parole, in Article 43 paragraph (2) PP stated that it must be eligible with regard to:

- The criminal period must be 2/3, at least 9 months;
- Be well-behaved;
- Follow the coaching program well;
- The community can receive a program of criminal coaching activities.

Furthermore, the conditions specified in Article 43 A, namely:

- Cooperate with law enforcement to track criminal acts;
- Has undergone assimilation;
- Has shown awareness and remorse.

The authority to grant parole is based on the provisions of Article 43B paragraph (1) pp is the authority of the Minister, after obtaining consideration from the Director General of Corrections. That the meaning of release in parole, then from the date of issue of the Decree of the Minister leads to the end of the prison sentence of a convicted. With certain conditions and supervision, he can carry out activities outside the prison walls, with restrictions when those conditions are violated causing the rest of the prison term to be imposed on the convicted. Based on the provisions of Article 42 paragraph (1) letter a Law of the Republic of Indonesia No. 12 of 1995, the status of the convicted becomes conditional convicted. Status as a conditional criminal

causes the birth of obligations under the provisions of Article 39 of the Correctional Law, namely following the guidance program by bapas in an orderly manner. This means that in the implementation of parole, the permanent status as a convict is just not serving a prison term.

Aristoteles once stated that man is a "political animal". The meaning of that statement with regard to the condition in every society is always a lack of valuable resources, forcing people to play politics. The political meaning of Aristotle in this connection is a process of determining who gets what, when, and how. Politics is one type of human interaction involving a political party that gains and exercises power over others. If left to the individuals themselves, politics can be a bad game, with players trying to strangle each other to protect their own interests.[17] In general, what is called politics is related to various activities in a political or state system, which concerns the process of determining and implementing the goals of a country. So, it can be stated that politics is a process of implementation of state goals. With regard to the process, Ronald F. Wright has mentioned many actors involved in it.[18] One of the actors is a political party and so the candidate.

B. Principles of Restriction of Political Rights in Regional Head Elections in Indonesia in 2020

The political right in the form of voting and being elected in an election is a very classic and fundamental thing, so important is this right that it is then determined expressly in Article 28J of the NRI Constitution of 1945. Consequently, the right to vote and be elected is part of human rights, the state must be present and at the same time fulfil. The affirmation of the right to vote and be elected is part of human rights also seen in the provisions of Article 43 paragraph (1) of Law No. 39 of 1999, expressly stated that citizens are entitled to be elected and vote in an election. As important as the right to vote and to be elected, the reduction or revocation of it must be done carefully. It is determined precisely as to who is authorized to revoke, here is the reason for what the revocation of political rights is done. In line with this, it is specified in Article 35 of the Criminal Code. The meaning of political rights as in the provisions of Article 35 of the Criminal Code in the form of voting and being elected in elections, precisely the right to be elected in this case in the form of running for office or nominated one of them in the contest of regional head elections is determined by the judge.[19] The length of the revocation of the right, in Article 38 of the Criminal Code is determined in accordance with the type of criminal. The criminal clusters in question include:

- Death penalty or life imprisonment;

- Imprisonment of a certain time or confinement;
- Criminal fines.

Revocation or restriction of political rights that can be imposed by a judge on a defendant with the death penalty or a life imprisonment, then the duration of such restrictions is for life. While on defendants with a certain prison sentence or confinement, the duration of the restriction is at least two years and is five years. As for criminal fines, the restrictions are also at least two years and a maximum of five years. In the provisions of the Article, it is also affirmed that the implementation of the penalty comes into force since the judge's decision can be carried out, the meaning remains synergy with the implementation of the criminal and does not always begin from the date of the verdict of permanent legal force.

Furthermore, based on the provisions of Article 7 paragraph (2) letter g of Law No. 10 of 2016 has opened another room against the restriction of political rights for regional head candidates that is done on a non-judicial basis, it is said that because it is different from the construction of Article 35 of the Criminal Code where restrictions on political rights can only be expressed by the judge in his ruling. In the registration stage of the regional head elections, KPU Kabupaten / Kota has the authority to determine the right to be elected on a prospective candidate is limited. Thus, the exercise of that authority should be based on the reason for what the authority is given, and in relation to that reason it is appropriate to trace the principles of restriction of political rights. Tracing the principle of restrictions in Article 7 paragraph (2) is used by the source based on the decision of the constitutional court, in this case the spirit built on the Decision of the Constitutional Court Number: 56/PUU-XII/2019 is to affirm the previous decisions of the Constitutional Court, namely:

- Decision of the Constitutional Court No. 14-17/PUUV/2007;
- Decision of the Constitutional Court No. 4/PUU-VII/2009;
- Decision of the Constitutional Court No. 120/PUU-VII/2009;
- Decision of the Constitutional Court No. 79/PUU-X/2012; and
- Decision of the Constitutional Court No. 71/PUU-XIV/2016;
- The whole ruling is essentially the norm in Article 7 of the Law is declared unconstitutional conditional, the conditions are:
- Applies not to elected officials;

- Limited to a period of 5 (five) years after the former convict has finished serving a prison sentence based on a court ruling that has a fixed legal force;
- honesty or openness regarding his background as a former convict;
- Not as a repeat offender.

The validity of the conditions in the final decision of the Constitutional Court is in principle so that every candidate for regional head must have sufficient character and competence, personality and integrity, honesty, responsiveness, social sensitivity, spirituality, values in life, respect for others and others. Therefore, in fact, if it is associated with the condition "never sentenced to prison based on a court ruling that has obtained a permanent legal force for committing a crime that is threatened with a prison sentence of 5 (five) years or more" then the goal to be achieved is for the regional head to have integrity and honesty.

Constitutionally based on the provisions of Article 28J paragraph (2) of the NRI Constitution of 1945, political rights can be limited.[20] Restrictions referred to as giving a grace period for prospective candidates who have been convicted are not something that is contrary to the constitution. The principle of restriction on human rights as referred to in Article 28J paragraph (2) of the 1945 Constitution is the values carried out in a democratic society that, among other things, includes the values of propriety, piety, fairness, reasonableness, and justice. The selection of a period of 5 (five) years for adaptation is in accordance with the five-year mechanism in elections in Indonesia, both legislative elections, president and vice-presidential elections, and elections of regional heads and deputy heads of regions. That is, the existence of the period is intended so that prospective candidates have actually integrated the values in question. So that when the five-year agenda is held again, prospective candidates have completely recovered. Not the other way around this restriction is aimed at preventing voters from recalling corruption crimes including other crimes that had previously been committed by prospective candidates, then constitutionally it can be done even importantly realized. The state through the election organizers in a regional head election contest must really be able to present a qualified candidate, not solely in the name of democracy everything is handed over to the electoral community. That when the election is conducted, there is certainty if the public chooses the right candidate. Elections are a dignified way, in this case the success is very determined by the KPU.[21] Related to its implementation, KPU has issued KPU RI Regulation Number 9 of 2020. Restrictions as a condition of prospective candidates as in the construction of the KPU RI Regulation in translating the decision of the Constitutional Court is as long as it is not a former convicted drug dealer or sexual

crimes against children, then it can nominate or be nominated as the head of the region. Against former convicts there is also a requirement to advertise announcements in the local daily mass media according to the area of the candidate in question to run for office and / or nationally verified to the Press Council containing:

- the background of his identity as a convicted person is not in prison or Former Convicted;
- type of crime; and
- not as a repeat offender

This is so that the election of a qualified regional head can be realized, KPU district/ city in the registration stage will carry out strict controls related to the conditions proposed, especially former convicts. It is more than just formal, that the restrictions are intended so that prospective candidates are completely aligned with the principle of required values.

The holding of regional head elections in Indonesia is expressly stipulated in Article 62 of RI Law Number 23 Year 2014 concerning Regional Government, which pursuant to that provision shall be open to further regulation in the Law. The Act in question, respectively to the present day is the Law No. 1 of 2015 on the Determination of Government Regulation No. 1 of 2014 on the Election of Governors, Regents and Mayors Becoming Laws, Law RI No. 8 of 2015, and the Law of the Republic of Indonesia Number 10 Year 2016 About the Second Amendment to Law Number 1 Year 2015. Because all of them are still valid and become one unit, then together can be referred to as the package of Election Law.

With regard to the implementation of PemiluKada in Indonesia, as in the package of Election Law consists of a series of stages from the registration phase to the recapitulation stage. As already mentioned, that the implementation of General Elections as well as the General Election must be truly democratic in the context of Indonesia should be able to realize the principles of direct, public, free, confidential, honest and fair general elections (law requires criminal law) including enforcement the law to fortify. Such efforts according to Sreedhar consists of preventive and repressive efforts.[22] The importance of this effort because of the Election as well as PemiluKada, according to Siddhartha and Bryan C. McCannon can cause impact after.[23] PemiluKada in Indonesia which designated to choose Governor, Regent, and Mayor have characteristic difference with election of Attorney as happened in America.[24] Head of Region in Indonesia function to accelerate people prosperity especially in region, while US Attorney is having function in law enforcement field. Election, as well as PemiluKada according to Powel has the potential of cheating.[25] Because of this potential, then in the package of Election Law has been mentioned

kinds of criminal acts in the stages of the implementation of PemiluKada. Criminal acts are always formulated in the Act, as a form of legal principle.[26].

4. CONCLUSION

Based on the description in the discussion can be known norms built in the provisions of Article 7 paragraph (2) letter g Law No. 10 of 2016 following in the Regulation of the Republic of Indonesia No. 9 of 2020 is to emphasize on prison sentences, in the sense of parole although qualified remains in the status as a convicted but does not count as the start of a period of 5 years as a condition of being able to nominate or be nominated in the general election of regional heads in Indonesia in 2020. More than just grammatical criminal affairs and bribery, the spirit of the Constitutional Court to restrict prospective regional heads as in the Decision of the Court of The Republic of Indonesia No. 56 / PUU-XVII / 2019 On the testing of Article 7 paragraph (2) letter g Of Law No. 10 of 2016 so that the candidate has sufficient character and competence, personality and integrity, honesty, responsiveness, social sensitivity, spirituality, values in life, respect for others and others. This becomes the basis for KPU district/ city in verifying at the election registration stage, so that the resulting candidates are really qualified. Conclusion should be explained clearly and concisely. Suggestion placed after conclusion contains a recommendation on the research and give possibility for future research.

KPU District/ City has a very strategic authority in the stage of registration of regional elections, then the authority should be realized in the form of assessing the track record of prospective regional heads, especially former convicted of corruption. If there are prospective candidates who do not have sufficient character and competence, personality and integrity traits, honesty, responsiveness, social sensitivity, spirituality, values in life, respect for others and others then it is eligible to be declared ineligible. Legal instruments or policies to the standard of procedures that correspond to the spirit of the Court's Decision need to be built in order to support the running of authority, so that the occurrence of mutual annulment as happened in Boven Digoel will not be repeated.

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