



## RESEARCH ARTICLE

**Balancing Human Rights and Public Integrity: Legal Perspectives on Former Convicts' Eligibility to Run for Regional Heads in Indonesia**Dede Arwinsyah<sup>1\*</sup>, Aswanto<sup>2</sup>, Achmad Ruslan<sup>3</sup>, Amir Ilyas<sup>4</sup><sup>1,2,3,4</sup> Faculty of Law, Hasanuddin University, Makassar, Indonesia**ARTICLE INFO****ABSTRACT**

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The right to vote and be elected is a human right, but there are limitations for former prisoners in Indonesia. The core issue lies in the balance between providing a second chance for former prisoners and ensuring the integrity and quality of elected officials. The concept of "development" emphasizes the reintegration of prisoners into society, but concerns remain about their suitability for public leadership roles. The Constitutional Court's disqualification of several former prisoners from running for public office emphasizes the importance of maintaining the integrity of the electoral process. Debates revolve around whether these restrictions constitute discrimination against former prisoners or necessary protections for the public interest. The article concludes by emphasizing the need to balance individual rights with the broader interests of society, especially in ensuring that elected leaders are individuals of high morals and integrity. The research method used in this study is normative legal research, which focuses on examining legal norms and rules. This involves analyzing secondary data such as legal documents, regulations, and relevant literature to address the legal issues under investigation. This study uses a statutory approach, focusing on legislation, and a conceptual approach, exploring the underlying legal concepts. Emphasizing the need to balance individual rights with the broader interests of society, particularly in ensuring that elected leaders are individuals of high morals and integrity, this article suggests that while giving ex-convicts a second chance is important, safeguards must be in place to maintain the integrity of public office and maintain public trust in elected officials.

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**1. INTRODUCTION**

The Republic of Indonesia is not a country of power but a country of law. Characteristics of a country of law (*rechtsstaat*) among them there is protection of human rights, separation or division of powers to guarantee these rights, government based on regulations and administrative justice. A government has noble ideals, including advancing public welfare and improving the life of the nation (M. Kasim et al., 2019). In the course of constitutional development, people's sovereignty has been the subject of discussion when we discuss modern states. (Hakim et al., 2024). Currently, Indonesia is a developing country that continues to improve its democratic image in the eyes of the world, which is marked by the amendment to Article 2 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) which mandates the people as the holders of sovereignty in Indonesia (Musakkir, 2022).

Article 28 letter D of the 1945 Constitution of the Republic of Indonesia states that "everyone has the right to obtain equal opportunities in government". Based on this article, in terms of elections, the political rights of citizens in general elections including regional head elections, namely the right to vote and be elected, are basic rights guaranteed in the 1945 Constitution of the Republic of Indonesia. Of course, its implementation must be carried out based on the constitution as a form of a state of law (Khaerul et al., 2022). The implementation of people's sovereignty cannot be separated from

general elections, because general elections are the result of following the principle of sovereignty in the hands of the people in national and state life. The principle of democratic state life is that every citizen has the right to participate in the political process. Community participation is crucial in all decision-making processes, influencing government policies and ensuring transparency in government activities, as these are conducted directly by the community (Mukhlis et al., 2024)

The existence of citizens' political rights as mentioned above is a universal right as stated in *the International Covenant on Civil and Political Rights*, which have been ratified by Indonesia through Law No. 12 of 2005, Article 25 of the civil and political covenant on the implementation of people's sovereignty cannot be separated from general elections, because general elections are the result of following the principle of sovereignty in the hands of the people in the life of the nation and state. The principle of democratic state life is that every citizen has the right to participate in the political process of civil and political rights. General elections are a democratic event that determines the election of legislative candidates who can channel the aspirations of the people and regulate policies democratically that are free from corruption, collusion, and nepotism. That the purpose of general elections is to implement the principles of democracy by electing representatives of the people through general elections. The implementation of elections in Indonesia is regulated by the constitution, which is expressly stated in Article 22E of the 1945 Constitution, Paragraph (1), which states, "General elections are carried out directly, generally, freely, secretly, honestly, and fairly every five years. That the Election of Regional Heads in the Constitution is reaffirmed through the provisions contained in VI Regional Government, Article 18 paragraph (4) of the Governor, Regent, and Mayor, respectively each as head of the provincial, district and city regional government is elected democratically.

The existence of the Regional Head Election has developed over time, as have the laws that serve as the legal basis for implementing the Regional Head Election. Initially, the existence of the Regional Head Election regulations was included in the Regional Government regime as per the Regional Head Election Law in Law No. 22 of 1999 concerning Regional Government, then replaced by Law No. 32 of 2004 concerning Regional Government.

This law has undergone two amendments and finally the last amendment was on April 28, 2008. The existence of Law No. 32 of 2004 concerning Regional Government and its amendments has adapted the 4th amendment from (1999-2002) to the 1945 Constitution of the Republic of Indonesia.

Governors, Regents, and Mayors as heads of provincial, district and city governments are elected democratically. This year, the first Pilkada was held democratically by the people. On April 28, 2008. The President at that time, Dr. H. Susilo Bambang Yudhoyono (SBY) issued Law Number 12 of 2008 concerning the Second Amendment to Law Number 32 of 2004 concerning Regional Government.

In this Law, every person who runs for office does not have to join or enter a political party first. Then on September 30, 2014, SBY ratified Law Number 22 of 2014 concerning the Election of Governors, Regents, and Mayors which regulates the mechanism for indirect regional head elections through the Regional People's Representative Council. However, the law was widely rejected by the public. Due to this rejection, SBY stipulated the Government Regulation in Lieu of Law (Perppu) of the Republic of Indonesia Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors. Furthermore, on October 2, 2014 with the joint approval of the People's Representative Council of the Republic of Indonesia (DPR RI) and the government, Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law was then ratified.

Period 2015 The newest President at that time, Ir. Joko Widodo ratified the Republic of Indonesia Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law. Then the Law underwent improvements to the Republic of Indonesia Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law Number 10 of 2016 the law that regulates the Pilkada to date (Rosa, 2022).

That during the Covid 19 period, the government then stipulated Law Number 6 of 2022 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2020 concerning the Third Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law (Election Law).

In the Election Law, there are several things that are the requirements for Candidates and Nomination Requirements. That one of the requirements for candidates in the Election Law that attracts attention and has been tested in the Constitutional Court several times is the Provision of the Norm of the requirements for candidates that regulates the requirements for Regional Head Candidates who have never been sentenced to prison based on a court decision that has obtained permanent legal force for committing a crime that is threatened with a prison sentence of 5 (five) years or more. Regarding the substance of the norm, the meaning that can be drawn is that Prisoners who have been sentenced to a crime that is threatened with a prison sentence of 5 years and serve a period of imprisonment in a correctional institution are limited in their Political rights to become Regional Head Candidates.

The concept of limiting the political rights of former convicts who have served their sentences in correctional institutions is something that violates the principles of legal certainty, justice and human rights. Restrictions on political rights through candidate requirements in the Election Law are something that needs to be studied because in essence people who have served their sentences in correctional institutions have served their sentences for the crimes they have committed.

The concept of corrections is in principle a concept of guidance for prisoners who enter corrections so that by entering a person into a correctional institution, it means that the person is expected to become a good human being through the concept of guidance, not punishment. Therefore, when a former prisoner's political rights are then restricted even though the former prisoner has served his sentence, then this is the same as again imposing a type of punishment on the former prisoner because the restriction is the same as the type of additional punishment regulated in the Criminal Code, namely the punishment in the form of revocation of certain rights for a period of time, so that when the restriction of political rights is regulated by law, it is the same as imposing a punishment for the same crime that has obtained permanent legal force on former prisoners so that the principle of legal certainty for former prisoners is not realized because after they leave correctional institutions, the person has not become a completely free human being because political rights which are the rights of citizens are then restricted.

The existence of candidate requirements in the election law with the substance of norms restricting the political rights of former convicts has now been tested many times through the Constitutional Court, including Decision 14-17/PUU-V/2007 which was then reaffirmed in decision 4/PUU-VII/2009, decision number 120/PUU-VII/2009, Decision 79/PUU-X/2012 that the core of all these decisions is the strict or cumulative application of the requirements, namely that they do not apply to elected public *positions* . *officials* ), is limited to a period of 5 years after the former convict has completed his prison sentence, honesty or openness regarding his background as a former convict, not as a repeat offender. Furthermore, the Constitutional Court through decision number 42/PUU-XIII/2015 and Constitutional Court Decision number 71/PUU-XIV/2016 has shifted from the previous cumulative to an alternative of whether to wait for a 5-year grace period or announce through the mass media regarding his identity as a convict.

Finally, the Constitutional Court re-tested this norm through Decision Number 56/PUU-XVII/2019 which re-enforced the requirements cumulatively. That the norm of the candidate requirements which are restrictions on political rights have many problems in implementation, for example, the limit for calculating the gap period whether it starts after being completely free or when leaving prison, calculating the final limit whether it is when registration is carried out or when the voting day is held, what if the former convict is also sentenced to additional punishment by the judge, then where is the limit for calculating if this requirement is enforced.

The existence of norms on restrictions on political rights as well as the norm on the requirement for regional head candidates to never have been sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a crime that is threatened with imprisonment of 5 (five) years or more by the technical organizers of regional head elections, namely the General

Election Commission (KPU), is usually included in the technical legal instrument, namely through the General Election Commission Regulation (PKPU) so that the existence of these norms on restrictions on political rights, apart from being regulated in the Election Law, is also regulated in the PKPU.

In its development, the norm of rights restrictions by the KPU through the PKPU has also been tested in the Supreme Court so that the legal issue is when two similar legal materials are included in different legal instruments, namely the Law and the PKPU, then a material test is carried out on both in different institutions, the Constitutional Court for the Election Law and the Supreme Court for the PKPU, but different decisions or interpretations are obtained, then this also makes it difficult for election organizers and former convicts to obtain legal certainty regarding the issue of restrictions on political rights, therefore based on this, the author is interested in the legal issue regarding the implementation of the Restrictions on Political Rights of Former Convicts as Regional Head Candidates.

That in a dissertation, *a novelty* or ideal concept is needed so that through this dissertation the author tries to offer an ideal concept of limiting political rights, namely that limiting political rights is divided into 2 ideal concepts, namely regulating restrictions through the judicial process and regulating them through means outside the judicial process or through legal instruments, but the types of criminal acts that are restricted must be specific.

That related to the requirements for candidates for restrictions on political rights should be regulated through a judicial process and not regulated through legal means, but restrictions on political rights for a certain period are sufficient to be a type of additional criminal penalty for the revocation of certain rights which will be imposed by the judicial institution through a judicial process. Revocation of political rights through a judicial process is something that is mandatory in the context of a state of law because there is a principle of *presumption of innocence* that applies in the Indonesian legal system as a mechanism to assess the appropriateness and propriety of imposing a criminal penalty of revocation of political rights for a criminal case that will be decided by the court (Handrawan, 2019).

Criminalization of revocation of political rights in the Indonesian legal system is permitted on condition that it is carried out through a judicial mechanism, but revocation of political rights is unconstitutional and violates human rights if it does not go through a judicial mechanism (Handrawan, 2019).

That currently the restriction on the political rights of regional head candidates who are former convicts in the general election law targets former convicts who have committed crimes with a sentence of 5 years or more, this is very disturbing to the sense of justice of former convicts because the norm of the requirement for limiting political rights is now also targeting criminal acts that are not related to public office, for example all criminal acts due to negligence with a sentence of 5 years are subject to this restriction requirement, so the concept of regulating the requirements for candidates regarding the restriction of political rights of former convicts, if it captures the aspirations of the wider community, is that for *extraordinary crimes*, it must be imposed in the judge's decision. In addition, the author offers an ideal concept if you still want to include it in legislation, you must mention the type of criminal act that applies to this requirement and its alternative application.

If the regulation of candidate requirements is required to be regulated through a legal instrument in the election law, then the election law must state the class or type of criminal offense imposed or threatened against former convicts and be subject to the candidate's requirements.

## 2. RESEARCH METHOD

Legal research that focuses on researching legal rules or norms is called normative research. Normative legal research is legal research that is carried out by researching library *materials* ( *research* ) or secondary data as basic material for research by conducting a search for regulations and literature related to the problems being researched (Soekanto & Mamudji, 2006). According to Peter Mahmud Marzuki, normative legal research is a process of finding legal rules, legal principles, and legal doctrines in order to answer legal problems that are currently the object of research, by using a statutory regulatory approach ( *statute* ) approach, and conceptual approach ( *conceptual approach* ) (Mahmud Marzuki, 2005). After the legal materials are collected, the next stage is to analyze the legal materials. At this stage, the legal materials collected will be processed and utilized

in such a way that they can be used to answer the problems. Basically, the management, analysis and construction of legal materials can be done qualitatively and quantitatively.

### 3. RESULT AND DISCUSSION

#### 3.1 The nature of socialization

Before discussing further the restrictions on the political rights of former convicts/convicts who run as regional heads, it is necessary to discuss the contents of corrections, namely the substance of corrections which include criminalization, convicts and prisoners or inmates, it is first necessary to explain the definition of convicts or prisoners, it is important to know the definition of convicts or prisoners so that there is the same understanding of the two nomenclatures of the term, between convicts and prisoners, do they have the same or different meanings and intentions, this of course must be studied by looking at the understanding contained in the laws and regulations or expert definitions of both of these things.

The term convict can be found in Article 1 point 32 of the Criminal Procedure Code (KUHAP), which states :

*"A convict is a person who is punished based on a court decision that has permanent legal force."*

In the case where a suspect is still in the process of being prosecuted, examined and tried in court, the status held by that person is referred to as a defendant.

The term "convict" is clearly stated in Law Number 12 of 1995, Article 1, number 7, which states that:

*"A prisoner is a convict who is serving a sentence of loss of liberty in prison ."*

Meanwhile, the Big Indonesian Dictionary defines a prisoner as a person who is serving a sentence for a crime, a convict.

Saharjo in his promotional speech for the award of the *Doctorate degree Honorary Causa* on July 5, 1963. Saharjo was awarded by the Faculty of Law, University of Indonesia for his services in legal science and the development of the Republic of Indonesia's legislation entitled: *"The Banyan Tree Protects Pancasila/Manipol/ Usdek Law "*. In the promotional speech, Saharjo mentioned the term prisoner, Saharjo's view on legal protection is that legal protection must not only be given to free members of society, but must also be enjoyed by prisoners. More completely, Saharjo stated as follows: (Panyarikan & Sahardjo, 1984)

*"... Under the banyan tree of protection that we have appointed to be a guide for officers in treating prisoners, we have formulated the objectives of imprisonment:*

*In addition to causing suffering to the convict due to the loss of freedom of movement, it guides the convict to repent, educates him so that he becomes a useful member of Indonesian socialist society.*

*In short, the purpose of imprisonment is correctional. From this formulation it is clear that not only is society protected from repeating evil acts by convicts, but also people who have gone astray are protected by providing them with provisions for life as useful citizens in society.*

*From this protection, it is clear that imposing criminal penalties is not an act of revenge by the state.*

*Repentance cannot be achieved through torture, but through guidance. The convict is also not sentenced to torture, but to the penalty of loss of liberty.*

*Heavy imprisonment means that the suffering is felt to be heavy because guidance and education require a long time. The state that has taken away a person's freedom and in time will return that person to society again, has an obligation to the convict and to society. The state has no right to make a person worse or more evil than before he was imprisoned ... "*

It can be said that the term convict is a substitute for the term convict, the term punishment is considered less appropriate, because the word punishment can be imposed on civil convicts, can also be criminal convicts, it is better to replace it with "criminal" which clearly states criminal punishment. The term Criminal Code is also common and better than the Criminal Code. (Soemadipradja & Atmasasmita, 1979) .

It can be concluded that, the author defines prisoners freely based on/referring to laws and regulations and terms used by experts as a convict who has received a permanent court decision, and is serving a criminal sentence that causes loss of freedom in a correctional institution. Meanwhile, the criminal itself has several definitions based on expert opinions, according to Wirjono Rodjodikoro , defines criminal law as something that is criminalized , namely the imposition of punishment for people who are considered to have acted badly (Prodjodikoro, 1985) . This means that someone who violates the agreed rules is considered a person who deserves to be punished because they have acted badly in community life. Criminal events are actions ( *handelingen* ) that are contrary to the law and are strictly subject to punishment (criminal) by law (Sundari & Sumiarni, 2015) .

Therefore, the criminal justice system is closely related to criminal legislation, both substantive law and criminal procedural law, because criminal legislation is basically the enforcement of criminal law "*in abstracto* " which is realized in the enforcement of law "*in concreto* " .

According to Robert D. Pursley , as quoted by Oly Vaina Agustine, the criminal justice system has several functions, namely: (Agustine, 2019)

- a. Prevent health;
- b. Taking action against perpetrators of criminal acts by providing an understanding to perpetrators of criminal acts where prevention is not effective;
- c. Review of the legality of preventive and repressive measures;
- d. Court decision to determine the guilt or innocence of a detained person;
- e. The appropriate disposition of a person found guilty, and
- f. Correctional institutions by state apparatus approved by society for behavior that violates criminal law.

The final part of the criminal justice system is the correctional system which is a series of law enforcement aimed at making correctional inmates aware of their mistakes, improve themselves, and not repeat criminal acts so that they can be accepted back into society. As a component of the criminal justice system, as the final stage of the criminal justice process, correctional institutions carry the hope, namely to try so that perpetrators of criminal acts no longer repeat the crimes they have committed? This means that the correctional system is organized in order to form correctional inmates to become whole human beings, so that correctional inmates can interact healthily with society, so that they can play a role again as free and responsible members of society (Agustine, 2019)

Even though prisoners are in prison as correctional inmates, their rights are not automatically revoked, however, prisoners' rights must be protected and fulfilled while in prison, including:

- a. Performing worship in accordance with one's religion or beliefs;
- b. Receive care, both spiritual and physical care;
- c. Getting education and teaching;
- d. Get adequate health services and food;
- e. Submitting complaints;
- f. Obtaining reading materials and following other mass media broadcasts that are not prohibited;
- g. Receive wages or bonuses for work done;
- h. Receiving visits from family, legal counsel, or other specified persons;
- i. Get a reduction in sentence (remission);
- j. Getting the opportunity to assimilate including leave to visit family;
- k. Obtaining parole;
- l. Get leave before being released, and
- m. Obtain other rights in accordance with applicable laws and regulations.

### **3.2 Democracy and the principles of honest and fair elections**

The values of honesty are true principles that our nation already has and have been stated in the constitution of the Republic of Indonesia through Article 22 E paragraph (1) of the 1945 Constitution which reads:

*"General elections are held directly, generally, freely , secretly, honestly and fairly every five years."*

The implementation of honest elections is an important factor for the election of more qualified people's representatives who are able to voice the wishes and hopes of the people. The people must

better understand and know in detail the track record of who they choose to be their representatives for the next five years or state officials.

According to Denis F Thompson, state officials are not ordinary citizens, they are given the right and responsibility to express opinions and act on behalf of the state and can even intervene with the people as long as this is justified by law. The authority of the people's representatives or state officials is so great that it is natural for the people to know exactly who the people who will occupy that position are (Ghazali, 2004).

The government has an important role in improving services to the community (Fadli et al., 2023). One can imagine what it would be like if a leader who should be a role model and who would make policies related to the lives of many people had a background as a murderer and had been imprisoned for his actions. Every member of society should have an understanding of who will become a public official. Before choosing who will be their leader, members of society have the right to know the ins and outs and achievements of the prospective leader, including his personality profile (Karim, 2007)

As a leader, the regional head is a person who moves first, pioneers, directs the thoughts and opinions of members of the organization, guides, directs, and moves others through his influence, sets organizational goals, motivates members of the organization to be in accordance with organizational goals. And must be able to influence and supervise the thoughts, feelings, and behavior of members of the group he leads. "Furthermore, Mitchell put forward the characteristics of regional heads, such as personality, ability, and capability. This means that regional heads as leaders of administrative organizations in the region must have leadership qualities, namely the application of the basics of leadership in general, such as nature, style, technique, behavior, and power within the scope of the Indonesian government system (Kaloh, 2009).

Law Number 15 of 1974 is more detailed regarding the requirements to become a regional head. There are 15 requirements that can be grouped into four groups, namely:

- a. A regional head must have basic characteristics, namely characteristics that are non-negotiable, such as being pious to God Almighty, loyal and obedient to Pancasila and the 1945 Constitution, loyal and obedient to the state and government. This basic attitude tends to the moral and mental criteria of ideology which are the pillars for every government leader in leading a government organization;
- b. A regional head must have certain characteristics which are outlined in the requirements, namely a sense of devotion to the nation and state, authority, honesty and justice;
- c. A regional head must have an individual background, namely innate factors described in physical health, age at least 30 years, education level of at least high school, have sufficient experience in the field of government, not be directly or indirectly involved in any activity that betrays the Unitary State of the Republic of Indonesia, and not have had their voting rights revoked based on a court decision that has permanent legal force;
- d. A regional head must have the qualities outlined in the following requirements: have personality and leadership, be intelligent, capable, and skilled. The individual background requirement is the most (Kaloh, 2009).

As in the case of Dirwan Mahmud, the elected regent candidate who was disqualified by the Constitutional Court because it was proven legally and convincingly that he had been sentenced to 7 years in Cipinang Class I Prison, East Jakarta. The Court was of the opinion that Dirwan Mahmud violated the election principle, namely honesty as regulated in Article 22E paragraph (1) of the 1945 Constitution. Jimly Asshiddiqie, stated in his book entitled Comments on the 1945 Constitution of the Republic of Indonesia, stated that there were two important things contained in Article 22E paragraph (1) in the 1955 general election, namely the principle of "equality" in addition to the principle of direct, general, free, and secret, abbreviated as *luber*. However, after the reform period, Article 22 E paragraph (1) determined the addition of 2 (two) principles, namely honesty and fairness or commonly abbreviated as "*jurdil*". Thus, these six principles, namely the principles of free and fair elections, must be used as a guide in every election implementation (Asshiddiqie, 2009).

The principle of "honesty" in elections has also been universally adopted and recognized by modern nations. *Universal Declaration of Human Rights* (UDHR) which was declared by the United Nations in 1948. In particular, Article 21 of the UDHR states:

- a. Everyone has the Right to take part in the government of his country , directly or through freely chosen representatives ;
- b. Everyone has the right of equal access to public service in his country ;
- c. The will of the people shall be the basis of the authority of government ; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures (United Nations, 1948) .

The article states that everyone has the right to take part in the government of his country, directly or through freely chosen representatives. Everyone has the right to equal access to public service in his country. And the will of the people shall be the basis of the authority of government. This shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by free voting procedures (United Nations, 1948) .

Regional elections as a primary mechanism of democracy, have an important meaning for regions and communities in the regions because they are a democratic mechanism for choosing a figure for the head of the regional government who determines the development of regional development for the next five years. Regional elections are not just a procedure for changing the power of the regional head. Improvements to the system and mechanisms for direct, general, free, secret, honest, and fair implementation are expected to produce regional government heads who truly meet the requirements and are also the choice of the people. Therefore, the principles of honest and fair elections must be the spirit in the implementation of regional elections . In line with that, Axel Hadenis said that an election, including direct regional head elections, can be said to be democratic if it has a meaning that refers to three criteria, namely: openness, accuracy, and effectiveness of the election. These three criteria must be met not only during voting, but also during the campaign until the vote counting (Prihatmoko, 2005) .

The verdict for Dirwan Mahmud who was disqualified as a candidate pair for the elected Regent of South Bengkulu is a form of appropriate action to maintain the principle of "honest" elections not being violated by the dishonesty of the election contestants . Another problem, besides the dishonesty of the election candidates , is the lack of a *track identification process*. *record* of prospective regional election participants . The problem is, the process of identifying *track* *This record* has the potential to lead to character *assassination* . *assassination* ) besides that we are also often deceived by the term "political conversion", which makes someone appear with a "new face" (Ghazali, 2004) .

Article 58 letter f of Law Number 32 of 2004 concerning Regional Government in the case of the Bengkulu Selatan regional election became the basis for Dirwan Mahmud, the elected regional head candidate, to be annulled by the Constitutional Court. This article became controversial among the judges of the court itself. One of the constitutional judges had a different opinion (*dissenting*) *opinion* ) on the application of this article in the case of the Bengkulu Selatan regional election . Ahmad Sodiki stated that, is our knowledge of the truth of the facts (*knowledge* ) alone relevant and appropriate enough to apply Article 58 letter f of Law Number 32 of 2004 concerning Regional Government (hereinafter referred to as Article 58 letter f) without considering other things that not only fulfill the elements mentioned in Article 58 letter f, but also consider other aspects that are more useful and at the same time as an attempt at a new, more appropriate interpretation of the article on the basis of *situationally sense* , with the aim *to display a situation is nothing but to act wisely* , so that it produces another better conclusion. Furthermore, if a convict after serving a prison/correctional sentence still cannot be equated with someone who has never been imprisoned, then this is a clear statement, directly or indirectly, as well as an admission that the correctional process so far, carried out by the state, has not succeeded in restoring the position of former convicts as normal members of society, as well as failing to create *legal equality*. *and legal opportunity before the law* (Ghazali, 2004) .

The case of Dirwan Mahmud as a regional head candidate who was declared to have received the most votes who was disqualified by the Constitutional Court was the first case when the Constitutional Court exercised its authority to resolve disputes over the results of the election of governors, regents, and mayors. The following is a table of cases of former convicts who were disqualified by the Constitutional Court (Ghazali, 2004) .



**Table 1: Cases of former convicts disqualified by the constitutional court**

NO	Candidate Pair Names	Owner Name / Region / Year	Reasons for the Constitutional Court's Consideration
1	Dirwan Mahmud, SH and Hartawan	Election of Regent and Deputy Regent of South Bengkulu 2008	Not eligible since the beginning of the nomination, proven to have served a prison sentence for murder which is punishable by imprisonment of more than 5 (five) years. The Constitutional Court disqualified and ordered a re-vote.
2	Drs. Hendrik Jan Rumkabu and Marinus Maryar , S.Sos., M.Kes.,	Election of Regent and Deputy Regent of Supiori Regency in 2010	The disqualification of the candidate pair for regent because it was proven that they had been sentenced to prison, so they were declared invalid/did not meet the requirements for regional head candidates, the Constitutional Court ordered a re-vote (PSU) without including the pair Drs. Hendrik Jan Rumkabu and Marinus Maryar , S.Sos., M.Kes., (pair number 2)
3	Yusak Yaluwo and Yakob Waremba	Election of Regent and Deputy Regent of Boven Digoel Regency in 2020	Declared disqualified for not fulfilling the nomination requirements, the convict status is still attached, because the 5 (five) year grace period has not passed when registering as a prospective candidate for Regent of Boven Digoel, the Constitutional Court ordered a re-vote (PSU) without including the candidate pair Yusak Yaluwo and Yakob Waremba.
4	Erdi Dabi (Candidate for Regent of Yalimo Regency )	Election of Regent and Deputy Regent of Yalimo Regency in 2020	Disqualified because they no longer meet the requirements as a candidate pair for the regent and vice regent election. Because in the revote process after the Constitutional Court's decision, Erdi Dabi was sentenced by the court with a prison sentence of more than 5 years. Meanwhile, the Constitutional Court gave the opportunity for the candidate for vice regent Jhon W. Wilil to find a new partner in the revote after the Constitutional Court's decision, as long as he meets the requirements.

### 3.3 Restrictions on voting rights of former convicts in Indonesia

The principle of limitation can be interpreted as the state's intervention with various interests and reasons that can be justified to impose limitations on the rights of a citizen. One of the reasons for limiting the rights of former convicts to run for regional heads is that the election of regional heads that is elected democratically based on the principles of direct, general, free, secret, honest, and fair, is able to produce leaders who have integrity and good morals. To obtain such regional leaders, certain provisions and conditions are certainly required as regulated in laws and regulations.

The question is, whether by limiting the rights of former convicts with various terms and conditions to run for regional head is a form of state discrimination against a person's rights. When talking about rights, the context being discussed is justice. John Stuart Mill stated that rights are something that must be protected by society. If anyone denies or questions why they must be protected, the answer has been prepared by John Stuart Mill is nothing but "general public benefit" (*general public benefit utility*) (Latif, 2007).

Stuart's emphasis Mill is in protecting the rights for the benefit of society, meaning that the state must intervene to provide protection for the rights of its citizens. The state or government is obliged to take measures to protect the rights of its citizens that are potentially violated by state *actors* and private actors (*private actors*) (Kasim, 2001). In line with that, Sudikno Mertokusumo provides an understanding that rights provide enjoyment and freedom to individuals in carrying them out,

while obligations are restrictions and burdens. If the law is general in nature because it applies to everyone, then rights are individual in nature, attached to the individual. Furthermore, Sudikno explains that rights are "interests" that are protected by law, while interests are demands of individuals or groups that are expected to be fulfilled, interests essentially contain powers that are guaranteed and protected by law in carrying them out. Of course the interests discussed are public interests, because public interests are very broad in scope (Mertokusumo, 1999).

The meaning contained in the public interest is so broad, so that actions in implementing the law can include all kinds of actions, which constitute "an all embracing act", which in practice can mean "carte blanche" to limit rights and freedoms freely. Because in society there are many and varied interests that must be respected and protected, and it is natural that every individual or group expects or demands that these interests be fulfilled. So, the public interest is which must be prioritized over other interests while still paying attention to the proportion of importance and still respecting other interests. So did Roscoe Pound argued that the freedom to hold legitimate office should be limited, that a rigorous process of education and examination should be required for those who wish to hold a job, so that rights that could be detrimental to public health, safety, or morality are prevented. Pound simply illustrated this with a companies, anyone is allowed to establish a company that serves the public and is free to compete in running the public company, but the government has the authority to make rules that do not allow damaging competition within the company. This means that there must be limitations on the rights or freedoms (Pound, 1972).

Below, the author presents a matrix of each article in the law that regulates the phrases regarding the requirements for holding public office as follows:

**Table 2: Phrases about the conditions for holding public office.**

No	Constitution	Condition
1.	Law Number 24 of 2003 concerning the Constitutional Court	Article 16 paragraph (1): <i>"To be appointed as a constitutional judge, a candidate must meet the following requirements:</i> a. <i>Never been sentenced to prison based on a court decision that has permanent legal force for committing a crime that is punishable by imprisonment of 5 (five) years or more."</i>
2.	Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court	Article 7b number 4: <i>"To be appointed as a Supreme Court Justice, a candidate for Supreme Court Justice as referred to in Article 68 must meet the following requirements:</i> b. <i>Non-career :</i> <i>Never been sentenced to prison based on a court decision that has permanent legal force for committing a criminal act of imprisonment for 5 (five) years or more."</i>
3.	Law Number 12 of 2008 concerning the second amendment to Law Number 32 of 2004 concerning Regional Government	Article 58: <i>"Candidates for Regional Head and Deputy Regional Head are Indonesian citizens who meet the following requirements:</i> c. <i>Never been sentenced to prison based on a court decision that has permanent legal force for committing a crime that is punishable by imprisonment for 5 (five) years or more."</i>
4.	Law Number 42 of 2008 concerning the General Election of the President and Vice President	Article 5 letter n: <i>"The requirements to become a presidential candidate and vice presidential candidate are:</i> d. <i>Never been sentenced to prison based on a court decision that has permanent legal force for committing a crime that is</i>

		<i>punishable by imprisonment for 5 (five) years or more."</i>
5.	Law Number 15 of 2006 concerning the Audit Board of Indonesia	Article 13: <i>"To be selected as a BPK member, candidates must meet the following requirements: e. Never been sentenced to prison based on a court decision that has permanent legal force for committing a crime that is punishable by a sentence of 5 (five) years or more."</i>
6.	Law Number 10 of 2008 as amended by Law Number 8 of 2012 concerning the Election of Members of the DPR, DPD, and DPRD	Article 12 letter g: <i>"The requirements as referred to in Article 11 paragraph (2): f. Never been sentenced to prison based on a court decision that has permanent legal force for committing a crime that is punishable by imprisonment for 5 (five) years or more." Article 51 paragraph (1) letter g: "Prospective candidates for members of the DPR, provincial DPRD, and district/city DPRD must meet the following requirements: g. Never been sentenced to prison based on a court decision that has permanent legal force for committing a crime that is punishable by imprisonment for 5 (five) years or more."</i>
7.	Law Number 18 of 2003 concerning Advocates	Article 3 paragraph (1): <i>"To be appointed as an Advocate, you must meet the following requirements: h. Never been convicted of a crime punishable by imprisonment for 5 (five) years or more."</i>
8.	Law Number 2 of 2002 concerning the Indonesian Police	Article 21: <i>"(1) To be appointed as a member of the Republic of Indonesia National Police, a candidate must fulfill at least the following requirements: i. Never been convicted of a crime. j. Be authoritative, honest, fair and have irreproachable rigidity."</i>
9.	Law Number 22 of 2004 concerning the Judicial Commission	Article 26: <i>e. "have integrity and an impeccable personality. f. Never been convicted of a crime."</i>
10.	Law Number 14 of 2002 concerning Tax Courts	Article 9: <i>"Each candidate must meet the following requirements: e. Never been convicted of a criminal offence".</i>
11.	Law Number 34 of 2004 concerning the TNI	Article 28: <i>"The general requirements to become a soldier are: f. "Does not have a criminal record issued in writing by the Indonesian National Police".</i>
12.	Law Number 15 of 2002 concerning the Crime of Money Laundering	Article 21: <i>"To be appointed as head or deputy head of PPATK, the candidate concerned must meet the following requirements: g. Never been sentenced to prison".</i>

13.	Law Number 31 of 1997 concerning Military Justice	Article 19: <i>"To be appointed as a High Military Judge, a soldier must meet the following requirements:</i> h. <i>Be authoritative, honest, fair and have irreproachable behavior."</i>
14.	Law Number 26 of 2000 concerning the Human Rights Court	Article 29: <i>"To be appointed as an ad hoc judge, you must meet the following requirements:</i> i. <i>Be authoritative, honest, fair and have irreproachable behavior."</i>
15.	Law Number 16 of 2004 concerning the Indonesian Attorney General's Office	Article 20: <i>"The conditions for being appointed as Attorney General are as intended in Article 9 letters a, b, c, d, f and g.</i> Article 9 letter g: <i>"Be authoritative, honest, fair and have irreproachable behavior."</i>
16.	Law Number 24 of 2003 concerning the Corruption Eradication Commission	Article 29: <i>"To be appointed as the Head of the Corruption Eradication Commission, the following requirements must be met:</i> 6. <i>Never commit a disgraceful act;</i> 7. <i>Competent, honest, have high moral integrity, and have a good reputation."</i>
17.	Law Number 32 of 2002 concerning the Indonesian Broadcasting Commission	Article 10: <i>"(1) To be appointed as a KPI member, the following requirements must be met:</i> e. <i>authoritative, honest, fair, and of irreproachable behavior."</i>
18.	Law Number 30 of 2002 concerning the Corruption Eradication Commission	Article 57: (1) <i>"To be appointed as a Corruption Crime Court Judge as referred to in Article 56, the following requirements must be met:</i> d. <i>Never been subject to disciplinary punishment."</i> (2) In order to be proposed as an ad hoc judge at the Corruption Criminal Court as referred to in Article 5, the following requirements must be met: e. <i>Never committed any disgraceful act.</i> f. <i>Competent, honest, have high moral integrity, and have a good reputation."</i>
19.	Law Number 9 of 2004 concerning the State Administrative Court	Article 14. (1) <i>"To be appointed as a Judge at the State Administrative Court, a candidate must meet the following requirements:</i> a. <i>Be authoritative, honest, fair and have irreproachable behavior."</i>
20.	Law Number 8 of 2004 concerning Amendments to Law Number 2 of 1986 concerning General Courts	Article 14: <i>"To be appointed as a District Court Judge, a candidate must meet the following requirements :</i> g. <i>Be authoritative, honest, fair and have irreproachable behavior."</i>
21.	Law Number 22 of 2007 concerning the Presidential Advisory Council	Article 8: <i>"To be appointed as a member of the Presidential Advisory Council, a person must meet the following requirements:</i> f. <i>Honest, fair and impeccably behaved."</i>

22.	Law Number 22 of 2007 concerning the Implementation of General Elections	<p>Article 11:  <i>"Requirements to become a candidate for member of the KPU, provincial KPU, and district/city KPU:</i>  j. <i>never been sentenced to prison based on a court decision that has permanent legal force for committing a crime that is punishable by imprisonment for 5 (five) years or more."</i></p> <p>Article 86:  <i>"Requirements to become a candidate for Bawaslu, Panwaslu , Province and Regency/City Panwaslu , and Sub-district Panwaslu , as well as Field Election Supervisors:</i>  j. <i>never been sentenced to prison based on a court decision that has permanent legal force for committing a crime that is punishable by imprisonment for 5 (five) years or more."</i></p>
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#### 4. CONCLUSION

Restrictions on political rights for former prisoners who wish to run for public office, particularly regional heads in Indonesia. The crux of the issue lies in the balance between giving former prisoners a second chance and ensuring the integrity and quality of elected officials. The concept of "correctional" emphasizes the reintegration of prisoners into society, but concerns remain about their suitability for public leadership roles. The article also highlights the importance of upholding democratic principles and fair elections, ensuring that elected leaders are of good morals and integrity. The Constitutional Court's disqualification of several former prisoners who ran for public office underscores the importance of maintaining the integrity of the electoral process. The debate revolves around whether such restrictions constitute discrimination against former prisoners or are necessary protections for the public interest. The article concludes by emphasizing the need to balance individual rights with the broader interests of society, especially in ensuring that elected leaders are individuals of high morals and integrity.

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