

Legal Analysis Of The Nomination Of Former Convicts Corruptions In Convinient Elections In 2020

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Abstract

This research departs from the 2020 Boven Digoel Regional Head Election, where the regional head had committed criminal acts of corruption while serving as regional head for two periods, namely 2005-2010 and 2010-2013. Furthermore, when he was running again as regional head in 2020, he was a former convict. This corruption was disqualified by the constitutional court after he was re-elected as regional head because he did not meet the requirements of Per.PKPU No.1/2020. This research focuses on Per.PKPU No.1/2020. The type of research carried out by researchers uses normative legal research with conceptual, case and statutory approaches. The results of the research confirm that based on Per.PKPU No.1/2020 there is an exception which means that former corruption convicts can run for office after a five year gap period after being released from serving a criminal period in prison and former corruption convicts in Boven Digoel have fulfilled this exception. Based on the principles of popular sovereignty and democracy as regulated in Article 28C (2) UUD NRI 1945, the second amendment, former corruption convicts can participate in the state by nominating themselves as regional heads. This is reaffirmed in Article 1 (2) UUD NRI 1945. Based on Article 43 Law No.39/1999, former corruption convicts have the right to become regional leaders by nominating themselves as regional heads. Based on Article 28 (2) UUD NRI 1945, to fulfill justice, former corruption convicts are given the opportunity to become regional heads by fulfilling their human rights, such as the right to nominate themselves after a five-year hiatus from being a corruption convict.

1. Introduction

Article I paragraph (3) of the 1945 Constitution (hereinafter referred to as the UUD NRI 1945) states that Indonesia is a legal state, not a sovereign state (*machtsstaat*) which is subject to the law of reason; does not prioritize the rights of certain groups of individuals and individual freedoms within the framework of the legal system established by law. The legal rule in question is that everything that is done regarding an activity has rules that regulate it, which if violated will be followed by sanctions or punishment. Including in the implementation of regional elections, several laws regulate both the realization of a system of popular sovereignty and democracy, human rights and justice. The existence of law aims to guide social life to create a sense of security, order, justice and certainty in a country and protect human rights.

The election of regional heads is a requirement that individuals representing a certain organizational group are willing to be elected by the community as regional heads through self-nomination.¹ Nominating a regional head in the post-conflict regional election contestation is one of the hierarchies for community members if they want to offer themselves as regional head. Currently the main focus is the standards regulated in statutory regulations which are the determining factors for someone to be able to offer themselves as

¹ Riky Fajar Sujatmiko and Teguh Ilham, "Analisis Fenomena Pasangan Calon Tunggal Dalam Kepala Daerah Di Kabupaten Grobogan Tahun 2020," *Jurnal Ilmiah Wahana Bhakti Praja* 12, no. 1 (2022): 1-11, doi:https://10.0.131.165/jiwbp.v12i1.2459.

regional head.² Regional Head Elections (Pilkada) implement the people's right to determine their own destiny as a form of people's political rights. Apart from that, Pilkada can carry out a safe and peaceful change of government and guarantee the continuity of government and regional development, especially in its implementation by prioritizing the realization of the applicable Pilkada law.

General Election Commission Regulation Number 1 of 2020 concerning Nominations for the Election of Governor and Deputy Governor (hereinafter referred to as Per.KPU No.1/2020) states that regional leadership candidates must not be former convicts who face a sentence of five years in prison and are currently under supervision and still have prisoner status, except for former prisoners accused of political crimes.

In fact, in 2020, the people of Boven Digoel, which is a district in Papua Province, faced an unusual phenomenon where one of the pairs of candidates for regional leadership was convicted of corruption while serving as governor from 2013-2018 and had been in prison for 2013-2018. five years. This phenomenon has increased, so the former convict in the corruption case escaped as regional head in 2020.³ The person concerned has been proven together in court to have committed a criminal act of corruption and has been criminally sanctioned in 2011 with a sentence of having to serve less prison for five years. The corruption committed was related to the procurement of the LCT 180 Wambon tanker and the Boven Digoel District Budget in 2002-2005.

People's sovereignty as in Article 1 (2) UUD NRI 1945 states: "Sovereignty is in the hands of the people and is fully implemented by the People's Consultative Assembly.⁴ Constitutional judges can decide to disqualify candidate pairs who are former corruption convicts and then order a revote.⁵ This also gives former corruption convicts the freedom to again offer to become regional heads. ⁶ That people's sovereignty is closely correlated with Pilkada because popular sovereignty has a guarantee given to the people, such as the freedom to choose their leaders, including determining the government.⁷ Every government action should not be based on their own will because the government elected by the people must comply with the law and be responsible for their work as regional leaders according to the law.⁸ The government's legitimacy is the will of the people who own and control it; the people freely choose their representatives and, through them, form the government. However, the people are also free to demand a change of leader if the leader does not comply with the choice of the constitutional court.

Based on Article 43 Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights (HAM) (hereinafter referred to Law No.39/1999) states, "every citizen has the

² Muhajirin et al., *Mengawal Suara Rakyat Bentuk-Bentuk Pengawasan Dan Penindakan Pada Pilkada Di Sulawesi Selatan* (Pusat Kegiatan Belajar Masyarakat (PKBM) Rumah Buku Carabaca Makassa, 2021).

³ Indonesian Corruption Watch, "Calon Bupati Kabupaten Boven Digoel - Yusak Yaluwo, SH. M.Si.," 2021.

⁴ CNN, "MK Diskualifikasi Pemenang Pilkada Boven Digoel Yusak-Yakob," 2021.

⁵ Moch Gandi Nur Fasha and Amalia Diamantina, "Juridical Review Large-Scale Social Restriction Implemented By Local Governments," *JCH (Jurnal Cendekia Hukum)* 8, no. 2 (2023): 215-29, doi:10.33760/jch.v8i2.

⁶ Martha Eri Safira, *Hukum Perdata* (CV. Nata Karya, 2017).

⁷ Joko Riskiyono, "Kedaulatan Partisipasi Pemilih Dalam Pengawasan Pemilihan Kepala Daerah Dan Pemilihan Umum Serentak 2019 Voters' Agency in the Supervision of Regional Elections and the 2019 Simultaneous General Elections," *Politica* 10, no. 2 (2019): 145-65, doi:https://doi.org/10.22212/jp.v10i1.1450.

⁸ Susani Triwahyuningsih, "Sistem Demokrasi Dalam Pemilihan Umum Secara Langsung Di Indonesia," *Legal Standing* 3, no. 2 (2019): 62-69, doi:http://dx.doi.org/10.24269/ls.v3i2.2023.

right to be elected and vote in general elections based on equal rights through direct, general, free, secret, honest and fair voting in accordance with the provisions of statutory regulations. Therefore, this means that every person has the right to have rights in government and to have authority in elections, and this is one of everyone's human rights.⁹ Respect for the human rights of every community is not only a form of successful implementation of justice but can also encourage the formation of a democratic system in Indonesia. Human Rights allow everyone to develop themselves if they feel they have the talent and ability based on their aspirations to offer themselves and be elected as regional head in the general election. This means that everyone has the right and authority in elections to nominate themselves as regional head, this is one of everyone's human rights.

Based on Article 28 UUD NRI 1945, the principle of human rights is regulated in Article 28 (2) UUD NRI 1945 concerning Human Rights which states, "Everyone has the right to be free from discriminatory treatment on any basis and has the right to receive protection against discriminatory treatment That."¹⁰ This means that for the sake of justice, all citizens have the right to receive fair treatment in Indonesia, including in running for regional head and/or being elected as regional head for former corruption convicts.

Honest leaders can be developed in Indonesia, but to achieve this, prospective leaders must fulfill the requirements set out in Law of the Republic of Indonesia Number 10 of 2016 concerning The Second Amendment to Law of the Republic of Indonesia Number 1 of 2015 concerning Regulates Government Orders (hereinafter referred to Law No.10/2016 jo Law No.1/2015). Law of the Republic of Indonesia Number 1 of 2014 concerning the Validity of Elections for Governors, State Administrators and Mayors (hereinafter referred to Law No.1/2014), the law sets eligibility criteria, one of which is never being a former prisoner. This requirement is considered a visionary step to find the best leaders and efforts to prevent corruption as well as efforts to implement good and clean governance. Bearing in mind, in the period 2014 to 2018, no less than 84 regional officials were involved in corruption cases and the cases rose to the level of being handled in court.¹¹ The previous research above was of the opinion that in selecting leaders, efforts should be made to leaders who are honest and have passed the administrative selection in accordance with UUD NRI 1945 and Law No.10/2016 jo Law No.1/2015 where the law is an effort to prevent the proliferation of acts of corruption in government officials. Thus, this research supports what is contained in article (f) Per PKPU No.1/2020.

However, subsequent research suggests that every citizen has political rights based on the UUD NRI 1945. Former corruption convicts still have political rights and can be used to run for office as long as these rights have not been revoked by the court as a result of additional punishment, this is in the UUD NRI 1945. Former convicts can also nominate themselves to become regional leaders if they have passed the five-year gap period after

⁹ Rahman Yasin, "Hak Konstitusional Penegakan Hak Politik Pemilih Dalam Pemilu Serentak 2024 Berdasarkan Konstitusi," *KPU, Bawaslu, DKPP, Dan MK. Jurnal Bawaslu Provinsi Kepulauan Riau* 4, no. 2 (2022): 186-99, doi:10.55108/jbk.v4i2.194.

¹⁰ Natania Djesika Wongkar, Donald A. Rumokoy, and Lendy Siar, "Pelaksanaan Hak Untuk Hidup Berdasarkan Pasal 28A Undang - Undang Dasar Negara Republik Indonesia Tahun 1945," *Lex Administratum* 11, no. 3 (2023): 1-9.

¹¹ Fajrin, Y. A., & Triwiwijaya, A. F. (2019). Pencegahan Korupsi Pasca Putusan MK Nomor 71/PUU/XIV/2016 Melalui Pendekatan Kebijakan. *HUMANI (Hukum Dan Masyarakat Madani)*, 9(1), 30-56. <https://doi.org/http://dx.doi.org/10.26623/humani.v9i1.1443>. Hal. 31

leaving prison.¹² The discrepancy in the results of the study between researchers encourages the need to review the candidacy of former corruption convicts in terms of the aspects of popular sovereignty and democracy as well as human rights and justice.

Article 28 UUD NRI 1945 concerning HAM states that everyone has the right to equal opportunities in government.¹³ Therefore, this means that everyone has the right to have rights in government and have authority in elections, and this is one of everyone's human rights.¹⁴ Respecting the human rights of every community is not only a form of success in implementing justice but can also encourage the formation of a democratic system in Indonesia. HAM allow everyone to develop themselves if they feel they have the talent and ability based on their aspirations to offer themselves and be elected as regional head in the general election. This means that everyone has the right and authority in elections to nominate themselves as regional head, which is one of everyone's human rights.

The lack of understanding of the people of Boven Digoel regarding the meaning of Per.KPU No.1/2020 and related to people's sovereignty and democracy, human rights and justice in regional election matters for former corruption convicts was proven by protests from the relevant community and other candidate pairs, then the constitutional judge decided for disqualification for former corruption convicts after he was elected regional head.

Different from previous research conducted by Cahyani Regitha Primasari Cahyani in 2019 with the title "Revocation of Political Rights of Former Corruption Convicts Seen from the Dimension of Political Rights of Former Corruption Convicts Seen from the Human Rights Dimension (Setya Novanto Case Research Study)"¹⁵, this research reviews the governance ways of regulating political rights for Indonesian citizens and limiting political rights for former corruption convicts without examining it from the human rights dimension without explaining it from the perspective of sovereignty and democracy, human rights and justice. Then Susani Triwahyuningsih's research in 2023 with the title "Democratic System on Direct General Elections in Indonesia" examines problems related to democratic principles in Elections in Indonesia but does not discuss the democratic system of former corruption convicts.¹⁶ Iqbal Natsir's research in 2020 with the title "Analysis of Violations and Handling of Election Implementation/Administration", where the problems raised in this research is related to the handling and obstacles to violations in the implementation of elections/elections, but this research does not discuss the administration of violations specifically for regional head candidates who are former corruption convicts.¹⁷ So this

¹² Muzayanah, & Saputra, A. (2020). Kajian Yuridi Terhadap Hak Politik Mantan Narapidana Korupsi Untuk Mencalonkan Diri Pada Pemilihan Kepala Daerah. *Komunikasi Hukum (JKH) Universitas Pendidikan Ganesha*, 6(2), 524-533. <https://doi.org/https://doi.org/10.23887/jkh.v6i2.28100>. Hal.53.

¹³ Regitha Primasari Cahyani and Tri Sulistyowati, "Pencabutan Hak Politik Mantan Narapidana Korupsi Di Tinjau Dari Dimensi Hak Politik Mantan Narapidana Korupsi Ditinjau Dari Dimensi Hak Asasi Manusia (Study Penelitian Tentang Kasus Setya Novanto.," *Reformasi Hukum Trisakti* 1, no. 1 (2019): 1-14, doi:<https://doi.org/10.25105/refor.v1i1.10518>.

¹⁴ Prayoga, A. A. N. R. R., & Griadhi, N. M. A. Y. (2019). Pengaturan Mantan Terpidana Korupsi Dalam Pencalonan Anggota Legislatif Dari Aspek Hak Asasi Manusia. *Kerta Negara*, 7(12), 1-15. <https://ojs.unud.ac.id/index.php/Kerthanegara/article/view/55382>. Hal.2.

¹⁵ Cahyani and Sulistyowati, "Pencabutan Hak Politik Mantan Narapidana Korupsi Di Tinjau Dari Dimensi Hak Politik Mantan Narapidana Korupsi Ditinjau Dari Dimensi Hak Asasi Manusia (Study Penelitian Tentang Kasus Setya Novanto."

¹⁶ Susani Triwahyuningsih, "Sistem Demokrasi Dalam Pemilihan Umum Secara Langsung Di Indonesia."

¹⁷ Iqbal Nasir, "Analisis Pelanggaran Administrasi Pemilu/Pemilihan," *Khazanah Hukum* 2, no. 1 (2020): 41-50, doi:[10.15575/kh.v2i1.7689](https://doi.org/10.15575/kh.v2i1.7689).

research will also cover the shortcomings in this research by reviewing the legal analysis of the nomination of former corruption convicts in the 2020 election which refers to Per.KPU No.1/2020 and is reviewed from the perspective of people's sovereignty and democracy, human rights and justice.

2. Methods

This research was conducted by normative legal research.¹⁸ that explains research of this type emphasizes elements of legal principles.¹⁹ The approach used is an analytical approach, in the explanation of which this approach emphasizes the conceptual meaning of legislation, as well as the procedures for its application in practice and legal decisions.

The object of this study focuses on Per.KPU No.1/2020. The secondary materials in this research are books and various research results related to people's sovereignty and democracy, human rights, and justice. The research approach used is the concept, case, and legal approach.

3. Results and Discussion

3.1. Legal Analysis of Former Boven Regency Corruption Convict Disputed in Regional Elections in Accordance with KPU Regulation No.1/2020

Former corruption convicts do not have the right and authority to participate in regional head elections; in this case they offered themselves as regional heads as regulated in Article 35 (1) concerning the revocation of certain rights in the vision of eradicating corruption, Article 38 (1) and (2) of the concerning rights that can be revoked by judges concerning the revocation of certain rights in the vision of eradicating corruption. With this decision, Article 18 (1) concerning the eradication of criminal acts of corruption reaffirms the vision of eradicating corruption. These rules were then clarified further with Per.PKPU No.1/2020.²⁰

Based on Article 35 (1) and (2), former corruption convicts, including corruption convicts, are deprived of their rights in the form of certain positions, candidacy and livelihood. Meanwhile, for corruption convicts, in Article 35 (2) UUD NRI 1945, dismissal can be carried out immediately by an authorized party other than a judge. The confirmation of this rule is followed by Article 38 (1) and (2). Concerning the provisions for revocation of political rights which can be for life depending on the sentence carried out with deprivation of rights for a minimum of 2 years. These two articles clearly explain the powerlessness of former corruption convicts to participate in regional elections. This law was also issued as a form of effort to eradicate corruption which is rampant in Indonesia by regional heads.

The process for nominating himself as regional head has been regulated in Per.PKPU No.1/2020 not a former convict with the threat of imprisonment for five years in prison. Regarding Article 35 (1), Article 38 (1) and (2), Article 18 (1) in the vision of eradicating corruption, it is reaffirmed in Article 18 (1) includes a corruption convict who ran for regional head in Boven Digoel Regency in 2020 and was not in the process of having his political rights revoked because he was sentenced to five years in prison in 2010, then released in 2015 and in 2020 ran for re-election as regional head. Meanwhile, the period for revoking his rights in the political field is two years to five years after serving a five-year sentence, meaning that the former corruption convict can run for re-election as regional head

¹⁸ Nur Solikin, *Pengantar Sosiologi Hukum Islam* (CV. Penerbit Qiara Media, 2019).

¹⁹ Muhaimin, *Metode Penelitian Hukum* (Mataram University Press, 2020).

²⁰ Handrawan, *Pencabutan Hak Politik Dalam Pemidanananaan Tindak Pidana Korupsi* (Media Sahabat Cendekia, 2019).

in 2020, because he has received a five-year break after becoming a corruption convict. Apart from that, what needs to be understood is that in Per.KPU No.1/2020, there is a five year gap for former corruption convicts before they can regain their political rights. This is the main reason the former convict was able to run for regional head again. Former corruption convicts can run for office and/or become regional heads if their political rights have been restored.²¹

3.2. Legal Analysis of Former Corruption Convicts in Boven Digoel Regency during the Regional Elections Viewed from the Perspective of Sovereignty and Democracy

The principles of popular sovereignty and democracy are reflected in Article 28C (2) UUD 1945, the second amendment states that every person has the right to advance himself in fighting for his rights collectively to develop his society, nation and state.²² Based on the treatment of this law, this means that former Boven Digoel corruption convicts are given the opportunity to run for regional head and are elected regional head, without exception. Confirming this regulation, Article 1 (2) UUD NRI 1945 states: "Sovereignty is in the hands of the people and is fully implemented by the People's Consultative Assembly."²³ This means that when a former corruption convict has fulfilled the requirements to nominate himself as regional head, the decision is completely returned to the people, if he wins the election by the people he can become regional head.

Based on the theory put forward by Jean Jacques Rousseau, democracy refers to people's participation. Humans are born free and equal, namely from the assumption that humans are born pure and have the opportunity to develop their personality through the use of freedom. Therefore, each individual is seen as a subject, not an object.²⁴ The former corruption convict who ran for regional head in 2020, can develop himself based on his political rights to become regional head in order to realize a democratic system in government because in this view, all humans are considered equal or equal, especially those concerned who have regained their political rights.

3.3. Legal Analysis of Former Corruption Convicts in Boven Digoel Regency During the Regional Elections from a Human Rights Perspective

Based on regulations in article 43 Law No.39/1999 that:

- a. Every citizen has the right to be elected and vote in general elections based on equal rights through direct, general, free, secret, honest and fair voting in accordance with statutory provisions.
- b. Every citizen has the right to participate in government directly or through freely chosen representatives, in the manner specified in statutory regulations.
- c. Every citizen can be appointed to any government position.²⁵

Thus, former convicts who are running for office in Boven Digoel district have the right to have their choice respected in running for regional head. According to the theory put forward by Leah Levin, human rights are "human rights which mean moral claims that apply and are inherent in all human individuals simply because of their humanity" human rights, without which it is impossible for people to live as human beings". This means that

²¹ Muzayanah, & Saputra, A. (2020). Kajian Yuridi Terhadap Hak Politik Mantan Narapidana Korupsi Untuk Mencalonkan Diri Pada Pemilihan Kepala Daerah. *Komunikasi Hukum (JKH) Universitas Pendidikan Ganesha*, 6(2), 524–533. <https://doi.org/https://doi.org/10.23887/jkh.v6i2.28100>. Hal.53.

²² Dora Kusumastuti, *Negara HAM Dan Demokrasi* (UNISRI Press, 2020). Hal.52.

²³ Mohammad Saleh, *Anomali Kedaulatan Rakyat Dalam UUD 1945 Pasca Amandem* (Yayasan Rumah Pene-leh, 2019). Hal.78.

²⁴ Rukmana Amanwinata, *Hukum, Hak Asasi Dan Demokrasi* (usat Studi Kebijakan Negara Fakultas Hukum Universitas Padjadjaran (PSKN FH Unpad), 2019). Hal.17.

²⁵ Handrawan, *Pencabutan Hak Politik Dalam Pemidananaan Tindak Pidana Korupsi*. Hal.6.

former corruption convicts who are nominating themselves as regional heads in Boven Digoel district can also fight for their human and moral rights to have the opportunity to nominate themselves as regional heads like other people.

3.4. Legal analysis of former corruption convicts in Boven Digoel district on regional elections from the perspective of justice

Based on Article 28 (2) UUD NRI 1945 states every person has the right to be free from discriminatory treatment on any basis and has the right to receive protection against such discriminatory treatment.²⁶ This means that for the sake of justice, former convicts of corruption can lead as regional heads, especially as former convicts have had their political rights restored in 2020 because they have been on hiatus for five years after being detained as convicts of corruption.

Based on the theory put forward by Aristotle, one can uphold justice if one also considers the rights of other people.²⁷ Thus, based on this theory, the rights of former convicts as citizens must also be considered and can exercise their rights to become regional heads.

4. Conclusions

Based on Per.PKPU No.1/2020 Former corruption convicts do not have the right and authority to participate in regional head elections; in this case they offer themselves as regional heads as regulated in Article 35 (1) concerning the revocation of certain rights in the context of eradicating corruption, Article 38 (1) and (2) concerning rights that can be revoked by judges regarding the revocation of certain rights. certain rights in the vision of eradicating corruption. With this decision, Article 18 (1) concerning the eradication of criminal acts of corruption reaffirms the vision of eradicating corruption. This rule was then clarified further with Per.PKPU No.1/2020, however in Per PKPU No.1/2020 there is an exception where ex-convicts can nominate themselves after a five-year hiatus period, namely 2020, from becoming a prisoner. corruption from 2010 to 2015. This shows that the former Boven Digoel corruption convict mentioned by the author, can nominate to become regional head and/or serve again as regional head if he has been elected as regional head based on the people's vote because there has been a gap of five years after becoming a prisoner in 2015, the constitutional judge disqualified him without further analysis.

Based on the principles of popular sovereignty and democracy as regulated in Article 28C (2) UUD NRI 1945, the second amendment, former corruption convicts can participate in the state by nominating themselves as regional heads. This is reaffirmed according to Article 1 (2) UU 1945, where if former corruption convicts have met the requirements to become regional heads, they can nominate themselves to exercise the principle of popular sovereignty or leader of the people for the people. Where, Jean Jacques Rousseau's theory also states that all people must see their interests in order to become leaders.

Based on Article 43 Law No.39/1999 UUD NRI 1945 concerning Human Rights, the former corruption convict has the right to become a regional leader by nominating himself as regional head. According to the theory put forward by Leah Levin, human rights mean moral claims that apply and are inherent in all human individuals simply because of their humanity. This means that former corruption convicts who are nominating themselves as

²⁶ Tundjung Herning Sitabuana, *Hukum Tata Negara Indonesia* (Penerbit Konstitusi Press (Konpress), 2020). Hal. 259.

²⁷ Ramlani Lina Sinaulan, *Buku Ajar Filsafat Hukum* (Zahir Publishing, 2021). Hal.75.

regional heads in Boven Digoel district can also fight for their human and moral rights to have the opportunity to nominate themselves as regional heads like other people.

Based on Article 28 (2) UUD NRI 1945, to fulfill justice, every citizen is given the opportunity to become a regional head. Referring to the theory of justice put forward by Aristotle, justice can be upheld if someone also considers the rights of other people. So the regional head, a former corruption convict, can become regional head, for the sake of justice, everyone must consider the right of the former corruption convict to run again and/or become regional head because the person concerned has had his political rights restored after a five year gap as a corruption convict in 2015 after being released. from detention then in 2020 ran for re-election as regional head.

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