

Study of Morality And Human Rights On Former Corruption Prisoners Who Become A Prospective Regional Head

Sulistiyani Eka Lestari

Faculty of Law, Sunan Bonang University, Indonesia

Corresponding author E-mail: sulis_usb@yahoo.com

Article History: Received: Oktober 11, 2022; Accepted: Oktober 25, 2022

ABSTRACT

After the Constitutional Court's Decision No. 56/PUU-XVII/2019 which provides a legal loophole for former corruption convicts to become candidates for Regional Head, there is a polemic in its application and the integrity of the law itself, distancing the function of law as a tool that can be used as a deterrent effect for a crime. The dialectic between the political rights guaranteed by the Constitution which is firmly held by ex-convicts is very contrary to the teachings of morality taught by Immanuel Kant. The study of morality always prioritizes behavior based on inner truth, not because of external factors or in this case while the law allows, which makes humans far from the inner truth itself. This study uses a normative juridical law research with a legal approach and a conceptual approach. The results of this study indicate that the Constitutional Court's decision places the law above morality, by setting aside something that must be owned by the Regional Head, namely a balance between attitudes and behavior. Furthermore, according to the concept of democracy, the state actually has the right to totally limit the political rights of former convicts of corruption not to go forward again or to abolish them completely, in order to guarantee the integrity of the Government from corrupt actors in the future and also to make the law a function of deterrent effect and the last remedy in enforcement, but in fact the state does not implement it, the state prefers to give access to ex-corruption convicts to advance to become candidates for regional heads on the legal basis of this decision.

Keywords: Regional Head Election, Morality, Corruption

1. INTRODUCTION

In the 1945 Constitution of the Republic of Indonesia there is a division of power, namely the Legislative, executive and judicial, this is in line with the trias politica theory, which states; The definition of government in a broad sense is that it must have legislative power, executive power and judicial power, which are referred to as the three parts of the government that uphold the sovereignty of the people (Manan, 2000). From the three branches of power, we have seen that executive power is not only exercised by the Central Government, but the Regional Government is

also given autonomous rights after the 1998 reform, which requires each region to have a Governor and Deputy Governor, Mayor and Deputy Mayor and Regent and Deputy Regent. directly elected by the people, because this is one manifestation of the principle of decentralization in a democratic country (Sinaga, 2018).

The election of regional heads must be made through regional head elections (Pilkada) which are directly elected by the people. The essence of Pilkada is a means for the people to exercise their sovereignty and is a democratic institution. Pilkada is a process that provides the opportunity for the people to elect people who will occupy leadership seats in an area in the executive branch of power, either at the provincial level or at the district and city levels. Regional power will be led by the Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor.

In connection with the regional head election (Pilkada) it is a long political journey marked by tug-of-war between the interests of the political elite and the public will, the interests of the Central Government and Regional Governments, until ending with the issuance of Law no. 8 of 2015 concerning Amendments to Law No. 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law concerning the Election of Governors, Regents, and Mayors which revoke Law Number 22 of 2014 concerning Regional Head Elections which are carried out indirectly through the DPRD.

Through history and a long tug of political interest, the Pilkada can finally be carried out directly, with the mechanism of the people choosing their own candidate for leader in their respective regions. The hope of all of this is for the people to participate directly and get a just and proper leader for the welfare of the people in their area. But the classic problem with Regional Leaders is that they cannot escape the corruption cases that ensnared them, as if they cannot learn from the past and the laws that supervised them, almost every year there are still several Regional Heads who are caught in corruption cases (Nazriyah, 2015). But corruption cases have re-emerged. In January, for three weeks in a row, the public had been treated to news of the arrest of a regional head who was entangled in corruption. No less than three regional heads have been

named as rasuah suspects. The arrests of the three opened a black sheet at the beginning of the year and added to the long list of corruption cases involving regional heads. The fact that the corruption of Regional Heads has emerged is not a new thing. Based on data on the kpk.go.id website, from 2004 to January 3, 2022, no less than 22 governors and 148 regents/mayors have been prosecuted by the Corruption Eradication Commission. This number could certainly be higher if combined with data from the Attorney General's Office and the Police. Indonesian Corruption Watch (ICW) noted that during 2010 to June 2018 no less than 253 regional heads were appointed as corruption suspects by law enforcement officials.

It doesn't just stop here, under the pretext of democracy and the political rights of every citizen as regulated in the Constitution, it turns out that there are ex-corrupt convicts who are still running for regional heads in the next period, after the period of detention in question is over. How can this be done? It turns out that there are legal loopholes that can be exploited and allow former corrupt convicts to run again in the next Pilkada, the legal basis for that is; Constitutional Court Decision No. 56/PUU-XVII/2019.

In Article 7 paragraph 2 letter g the Constitutional Court Decision No. 56/PUU-XVII/2019 states that; "(i) has never been a convict based on a court decision that has obtained permanent legal force for committing a crime punishable by imprisonment of 5 (five) years or more, except for the convict who commits a crime of negligence and a political crime in the sense of an act. which is declared a criminal act in positive law only because the perpetrator has a different political view from the regime in power; (ii) for former convicts, a period of 5 (five) years has passed after the former convict has finished serving his prison sentence based on a court decision that has permanent legal force and honestly or publicly announces his background as a former convict; and (iii) not being a repeat offender."

The Constitutional Court's decision shows that there are conditions and exceptions that former corrupt convicts can take advantage of to run again as a candidate for Regional Head. The author assumes that the entry of former corrupt convicts as candidates for Regional Head is a setback for democracy, where the Government only acts through legal calculations that can be

calculated, far from the moral values that exist and grow in this country. In this study the author will review the morality of regional head candidates from ex-convicts of corruption cases as regulated in the Constitutional Court Decision No. 56/PUU-XVII/2019 with the morality theory of Immanuel Kant and how political rights should be arranged against former corrupt convicts as the theory of Januz Symonides regarding restrictions on political rights, in order to create synchronization between law enforcement and moral values in it.

2. RESEARCH METHODS

In this study the method used is normative legal research, through two approaches, namely the statutory approach and the conceptual approach. research), namely the method of searching and inventorying primary and secondary legal materials by tracing documents, literature books, legal journals, and laws and regulations related to the object of research. The legal materials that have been obtained will be described and presented descriptively in a more systematic writing. Furthermore, the results of the study will be concluded using the deductive method, namely drawing conclusions from a general matter to the concrete problems faced in this study (Ruslinawati & Sudantra, 2016).

3. RESULTS AND DISCUSSION

Morality Review of Candidates for Regional Heads of Former Corrupt Convicts in accordance with Constitutional Court Decision No. 56/PUU-XVII/2019

According to Immanuel Kant, morality (moralitat/sittlichkeit) is the conformity of attitudes and actions with the inner norms or laws that exist in each person. Morality will be achieved when obeying the outward law/inner feeling that exists in every individual, not because it brings beneficial consequences or because of fear of the power or law that orders or forbids it, but realizes for himself that the law is an obligation, which arises from within himself (McKie, 2019). Article 7 paragraph 2 letter g Constitutional Court Decision No. 56/PUU-XVII/2019 can be interpreted that there is a dispensation that former corrupt convicts can use to advance to become a Regional

Head Candidate which is explicitly far from the moral conformity described by Immanuel Kant. Morality strongly emphasizes that the actions taken by a person must be born from his own inner feelings, not because of the temptation of legal opportunities or because of fear of prohibition from the law. This decision distances the principle of morality that should be firmly held by a candidate for Regional Head.

Morality is meant by Kant not just a matter of conformity to external rules, such as state law, religion or customs. In simple terms Kant ensured that the criterion of a person's moral quality is his loyalty to his own conscience. Kant started a new thought in the field of ethics where he saw human actions as morally valid, if these actions were carried out based on obligations that arise from him not because of fear of consequences.

Former corruption convicts who run as candidates for Regional Head show an attitude that distances themselves from the moral norms that exist within them. Behavioral adjustments are not only based on the Constitutional Court's decision, but also loyalty to his conscience. Inside a person's heart there must be a truth that tells every human being to introspect themselves. The Constitutional Court's decision provides an opportunity for candidates for Regional Heads from former corrupt convicts to distance themselves from the value of self-introspection and replace it with the pretext of the political rights of citizens with the aim of gaining profits (Khaerunnaila, 2018).

According to Kant, actions that seem good can shift morally if they are done not based on the resulting sense of obligation and self-interest. An act is considered good if it is done solely out of respect for the moral law, namely (inner) obligations. From the point of view of Human Rights (HAM) it is stated in the Constitution of the Republic of Indonesia the phrase that every citizen has political rights and there is no phrase limiting political rights in the constitution. In short, a good deed according to the law is not necessarily good according to morality. In the law there is still a sense of selflessness and calculation of profit while morality is an inner voice that does not expect reciprocity. Kant distinguishes between categorical imperatives (immediate) and hypothetical imperatives (conjecture) as two different moral imperatives. Categorical imperatives are

unconditional orders that simply oblige a moral action, while hypothetical imperatives always include an if-then structure or may be further clarified by calculating whether this action is harmful or not.

Kant considers the hypothetical imperative to be morally weak because what is good is reduced to its consequences, so that humans as moral actors are not autonomous, because all actions are controlled by conditions that exist outside of themselves. Human autonomy is only possible if humans act according to categorical imperatives that oblige without any conditions. Categorical imperatives animate all moral actions such as promises to be kept, loan items to be returned and so on, without thinking about the beneficial or not.

Article 7 paragraph 2 letter g Constitutional Court Decision No. 56/PUU-XVII/2019 is included in the category of hypothetical imperatives, namely; provide opportunities for former corrupt convicts who run for elections to be controlled by profit interests as a result of legal regulations that make these candidates distance themselves from the inner truth that is within them. If every candidate for Regional Head who is a former corrupt convict has a categorical imperative in him, it is impossible for them to go forward again, because after undergoing the process of being sentenced in prison, he realizes that he is not capable of carrying out this mandate.

The most famous implication that Kant can draw from his calculations of our moral capacity to know and live the moral law is his argument that man should not be treated as a means, but always as an end. The Constitutional Court's decision has clearly placed the Candidate for Regional Head of Ex-Corrupt Convicts as a means of oligarchic interests only, the goal is still far from the moral values that have existed in Indonesia.

From several points that can be viewed morally in Article 7 paragraph 2 letter g of the Constitutional Court Decision No. 56/PUU-XVII/2019, this Article puts forward the legal function as a loophole to provide dispensation to former corruption convicts to become candidates for Regional Head. The phrase never getting a sentence of more than 5 years is one of the legal loopholes that can be exploited by candidates for regional heads who are ex-corruption convicts. The purpose of morality theory as a benchmark for moral criticism is intentionally omitted in this

legal basis, meaning that the Constitutional Court's decision was not made with the aim of improving the morality of regional head candidates in the next period.

The second phrase which states that it is permissible to run as a candidate for regional head after passing a grace period of 5 years after serving a period of detention is a legal basis that keeps this decision far from the purpose of the law itself. We all know that the purpose of the law is to create justice. Besides that, the law also has another purpose, namely a deterrent effect. In more detail, one of the principles contained in the law is that the law is the *ultimum remedium* (last remedy).

How can it be a deterrent effect and the last remedy for former corrupt convicts and other officials who have not stumbled upon a corruption case, if there is a right of exception in the future that can be used under the pretext of the Constitutional Court's decision. This means that in addition to not being able to make a deterrent effect for the perpetrators, Article 7 paragraph 2 letter g of the Constitutional Court Decision No. 56/PUU-XVII/2019 is still far from morality because it still places profit calculations on the legal basis that regulates it above the morality that should be owned by every person. public official

Review of Political Rights Restrictions for Candidates for Regional Heads with the Status of Former Corruption Convicts According to Januz Symonides.

Limiting the political rights of candidates for Regional Head Ex-corruption prisoners is one form of effort to prevent the occurrence and recurrence of corrupt practices for public officials, especially regional heads. The tightening mechanism for the selection of regional head candidates should start with political parties. However, the fact that political parties are not serious in selecting candidates to be proposed, it is not integrity that is prioritized, but popularity and strong financial strength are the main factors for these candidates to pass the internal selection of the party (Fariz, 2020).

The implementation of the Pilkada is one of the actualization of Human Rights in the state, political rights guaranteed by the 1945 Constitution of the Republic of Indonesia and also the Law

on Human Rights require guarantees of political rights, including freedom of belief, freedom of expression, opinion, freedom of association and assembly, equal rights before the law and government, and the right to vote. Human rights related to the implementation of the Pilkada are included in the category of political rights. Political rights have the meaning, that these rights are inherent in the status of citizens. Therefore, the state's obligation is to protect (obligation to protect) so that these rights can be owned and implemented. As a means as well as a measure of whether or not people's sovereignty is implemented, the essence of Pilkada is an acknowledgment of the existence of the right to vote and the right to be elected by every citizen. The current Pilkada system is a value in constitutional law, which refers to the principle of people's sovereignty.

By referring to the principle of people's sovereignty for the implementation of the Pilkada, the 1945 Constitution of the Republic of Indonesia provides legitimacy to this principle, so that there is no room to reduce the people's right to determine who will govern and the people's right to contest to seize regional power through the Pilkada. That is, our Constitution has embodied the right of every citizen to be given equal and effective opportunities to vote and to be elected.

Various restrictions on rights and differences in treatment for citizens who become candidates for Pilkada can be understood as an effort so that elections become a way to create quality leaders or public office holders, have integrity, capacity, adequate morals and gain the trust of the community. Pilkada as a mechanism for filling political positions at the regional level must be used as a means to attract leaders or public officials who are free from corruption problems, both past and present and have moral integrity that is maintained (Fariz, 2020).

Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia states; "In exercising his rights and freedoms, everyone is obliged to comply with the restrictions established by law for the sole purpose of guaranteeing the recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with considerations of morals, religious values, security and public order in a democratic society". From this article, we can see that the bottom line is that there are no absolute rights for citizens that cannot be reduced for certain reasons, meaning that the law can be used as a basis for reducing a person's rights in certain matters, such as

Pilkada (Soemantri, 2015).

The principle of limitation can be interpreted that the state can interfere with the limitation of these rights for reasons that can be accounted for by legal mechanisms in accordance with the laws and regulations. To carry out its obligations as a protector of human rights, the Government is obliged to protect the rights of its citizens who have the potential to be violated by unscrupulous state officials and civil society who intend to take these rights (Handayani & Darmianti, 2017).

The constitutional mandate obliges the state to protect, respect and fulfill human rights, but in certain situations the state is forced to make certain restrictions so that the human rights under its guarantee can be protected, respected and fulfilled. According to some experts, restrictions on human rights are allowed as long as it is only necessary in a democratic society, namely if the rights are still granted contrary to social norms that exist in society and have the potential to cause polemics in the future (Astomo, 2014).

According to Januz Symonides, there are three conditions that can be done to limit human rights, including political rights. First; regulated in the rule of law, second; carried out solely to achieve goals in a democratic society; third; really needed and proportionate to the needs of the community. The concept of limiting human rights is increasingly gaining a place in the context that individual rights, which are referred to as human rights, cannot be separated from the social environment in which they live, namely the community. Where, in society, human rights are developed (Padli, 2021).

The reality of society, both at the national and international levels, which have various characteristics with each different from one another, must have their own consequences, in which they are forced to meet different social and cultural standards. In principle, certain restrictions on voting rights in the context of realizing elections that are honest, fair and with integrity can be justified. This is reinforced by the provisions of Article 25 of the International Covenant on Civil and Political Rights which states that; every citizen has the right and opportunity, without the distinctions referred to in Article 2 and without unreasonable restrictions, to: vote and be elected in general elections (Yudhistira, 2020).

Likewise with the provisions of Article 28J of the 1945 Constitution of the Republic of Indonesia which confirms that certain restrictions on human rights are very possible as long as they guarantee the recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with moral considerations, religious values, security, and public order in a democratic society (EE et al., 2016).

Limitation of the right to run as a proportional Regional Head Candidate is very necessary in order to create honest and fair Pilkada with results with integrity. Due to the restrictions contained in Article 7 paragraph 2 letter g of the Constitutional Court Decision No. 56/PUU-XVII/2019, it still provides opportunities for former corrupt convicts to run in the next Pilkada, making the Pilkada a free contestation without limits, even though we will choose a leader who will lead an area, who is competent and who certainly does not have a track record as a former corrupt convict. The Constitutional Court's decision made the Pilkada accepting candidates for Regional Heads from former corrupt convicts contradict the principle of justice.

The acceptance of the concept of universal limitation of political rights, then one form of its implementation is contained in a number of decisions of the Constitutional Court which provide a time limit of 5 (five) years after the former convict has finished serving his prison sentence based on a court decision that has permanent legal force to be re-nominated as a candidate for re-election, candidate for regional head (Sinaga, 2018).

Of course, this hiatus also applies to former convicts in corruption cases. This decision is very contrary to the purpose of the law itself, the state does not seem to have learned from the past, allowing someone who has a track record of corruption to be given access to lead an area. The limitation of rights regulated in Article 7 paragraph 2 letter g Constitutional Court Decision No. 56/PUU-XVII/2019 contradicts the legal objectives, namely; does not make the law a deterrent effect and does not make punishment for corruption cases the *ultimum remedium*.

4. CONCLUSION

After the enactment of new rules for ex-corruption convicts to provide the opportunity to

run again as a candidate for Regional Head through Constitutional Court Decision No. 56/PUU-XVII/2019, placing the law as a political tool by the political elite themselves. The state does not seem to have learned from the past, by still giving political rights to ex-corruption convicts, not making it a lesson for the future and a deterrent effect for others, but providing legal facilities to ex-corruptor convicts.

The 5-year time lag after the convict serves his sentence is a decision that is far from morality. The teachings of morality emphasize the compatibility between attitude and behavior. Regional heads who are legally proven to have committed acts of corruption through court decisions are behaviorally former public officials who do not have the integrity to lead a region, but in their attitude they still want to run again as candidates for regional heads and this is given facilities by the state. Limiting one's rights is not a violation of human rights, because the state has the right to limit the rights of its citizens in order to create harmony in the state between the people and the government. The Constitutional Court's decision should provide a total limitation of political rights, by no longer giving political rights to former corrupt convicts. The aim is to create a deterrent effect and the law to return to its dignity, namely as an *ultimum remidium*.

REFERENCES

- Astomo, P. (2014). *Constitutional Law Theory and Practice*. Yogyakarta: Thafa Media.
- EE, F. E., Indra, M., & Junaidi, J. (2016). *Comparison of Termination of Presidents in Indonesia and the United States*. Riau University.
- Fariz, D. (2020). Restrictions on the Rights of Former Corruption Convicts to Become Regional Head Candidates. *Journal of the Constitution*, 17(2), 309.
- Handayani, R. I., & Darmianti, Y. (2017). Selection of Suppliers of Building Materials Using the Analytical Hierarchy Process (AHP) Method at PT. Cipta Nuance Prima Tangerang. *Techno Nusa Mandiri: Journal of Computing and Information Technology*, 14(1), 1–8.
- Khaerunnailla, W. O. F. (2018). *The Urgency of Restricting the Period of Members of the House of Representatives in an Effort to Prevent Abuse of Power*. Brawijaya University.
- Manan, B. (2000). *Constitutional theory and politics*. Directorate General of Higher Education,

Ministry of National Education.

- McKie, K. (2019). Presidential term limit convention: Abolish, extend, fail, or respect? *Comparative Political Studies*, 52(10), 1500–1534.
- Nazriyah, R. (2015). Arrangements for the implementation of simultaneous regional head elections. *Journal of Law Ius Quia Iustum*, 22(1), 116–141.
- Padli, H. (2021). Arrangement Of The Presidential Term Of Office Is An Effort To Uphold The Principles Of Constitutionalism In Indonesia. *Kertha Semaya: Journal of Legal Studies*, 9(10), 1796–1808.
- Ruslinawati, N. W., & Sudantra, I. K. (2016). The position of the Village Consultative Body in the Implementation of Village Administration according to Law Number 6 of 2014 concerning Villages. *Journal of Law*, 1(1), 5.
- Sinaga, P. (2018). Regional Head Elections in the Construction of the 1945 Constitution of the Republic of Indonesia. *Binamulia Hukum*, 7(1), 17–25.
- Soemantri, S. (2015). *Indonesian Constitutional Law (Thoughts and Views)*, PT. Rosdakarya Youth, Bandung.
- Yudhistira, E. (2020). Restrictions on the President's Term of Office as an Effort to Avoid the Occurrence of Abuse of Power. *Al-Ishlah: Scientific Journal of Law*, 23(2), 132–154.