



POLICY BRIEF

Recommendation for Amendment to General
Election Commission Regulation (PKPU) in
Following Up on the Constitutional Court
Decision Number 56 / PUU-XVII / 2019

I. Background

As one of the biggest democratic country in the world (Christian Wulld: 2011), Indonesia simultaneously facing a big problem: corruption. Conceptually, in a democratic country, corruption supposed to increasing in minimum level. However, the carried out democracy has in fact strayed a lot, because it has resulted to a type of political corruption.

Basically, actors of political corruption are policy makers who are elected through elections, or officials through political appointments. Formally, these positions include the President with his ministry structure, Members of the parliament, up to regional heads including the Governor, Regent and Mayor.

Even so, these political corruptor are not limited only to those who are appointed through elections. It can involve a non-public officials such as political party members. In the context of the corruption of political officials in Indonesia, the party elites have huge power to trigger political corruption due to their power. Party elites easily trade their influence (trading in influence) to political officials because of their party's power relations.

Lately, the oligarchic party system has increasingly enriched the occurrence of political corruption in the context of parties in Indonesia. This is strongly reflected from the various corruption cases that have been convicted by the Corruption Crimes Court, that show the party's relationship with political officials in corruption cases such as the case of bribery Imports of Cattle, Barriers, and E-KTP (electronic ID)s which shows the intersection between the party and corruption.

In the election contestation, the party really determine the nomination of political actors. So there are a lot of political candidates trade or political dowry. As a result, there is politicization of bureaucracy to facilitate the return of political capital. Some of them also trade bureaucratic positions to get money. Business and political cronies also in fact intimidate and pressure the bureaucracy to get projects and concessions. The money from corruption practices will eventually return to the party elite and the ruling politicians. Thus, this practice continues to be in in the vicious circle of political corruption.

To reduce the potential problem of political corruption, legal instruments are needed in the electoral area. More specifically, the regulation is aimed at the area of candidacy.

Provisions in Law Number 10 of 2016 on the Election of Governors, Regents and Mayors in Article 7 paragraph (2) sub-paragraph g regulates the requirements, one of which is **“[the candidate] has never been convicted by court decision that has obtained permanent legal force [or that] former convicted persons must have openly and honestly announced to the public about their status as an ex-convict.”**

This norm eventually gave the former corruption convicts an opportunity to return to becoming the regional head without further qualifications. Such as the restriction in the form of waiting period for the former convicts to advance to become the regional head. As a result, democratic contestation has again become an oligarchic party elite control by making limited choices for the public, even if the person concerned is a former convict.

II. Amendment to the Nomination Requirements Post Constitutional Court Ruling Regarding the Restrictions on the Rights of Former Convicts

In the previous Constitutional Court Decision Number 4 / PUU-VII / 2009, the Court stated that the provisions prohibiting convicts from being candidates for regional head were declared unconstitutional, but there were four conditions that had to be fulfilled. The four conditions that apply cumulatively are as follows:

- 1) Applies not for elected officials as long as there is no additional crime in the form of revocation of the right to vote by a court decision which already has a permanent law;
- 2) Limited apply for a period of 5 (five) years after the former convict finished undergoing imprisonment under a court decision which already has permanent legal force;
- 3) Honesty or openness regarding his background as a former convict;
- 4) Not registered as a perpetrator of repeated crimes.

The ruling was strengthened in Decision Number 56 / PUU-XVII / 2019 with the Indonesian Corruption Watch (ICW) Petitioner and the Association for Elections and Democracy (Perludem). That ruling returns the cumulative requirement for nominating former convicts as the regional head in the Regional Head Election Law. Some

considerations of the Constitutional Court include seeing the reality that when they are referenced again by the Court's decision that removes the cumulative requirement as stipulated in the ruling of the Constitutional Court Decree Number 4 / PUU-VII / 2009, will makes it as an alternative requirement so that the requirements become loose with consideration to return to the public as voters who has sovereignty to determine their choice. However, after careful observation of the empirical facts that have taken place, it also turns out that efforts to return to the sovereignty of voters cannot fully present a clean, honest and integrated leaders. A number of empirical facts prove that among elected regional heads who have served a criminal period as candidates for a regional head, only by taking alternative to announce honestly and openly to the public that the person concerned is a former convict has apparently repeated the crime.

In the Constitutional Court's verdict that reads:

Stating Article 7 paragraph (2) letter g of Law Number 10 Year 2016 concerning Second Amendment to Law Number 1 Year 2015 concerning Establishment of Government Regulation in Lieu of Law Number 1 Year 2014 concerning Election of Governors, Regents , And the Mayor Becomes the Law (State Gazette of the Republic of Indonesia Year 2016 Number 130, Supplement to the State Gazette of the Republic of Indonesia Number 5898) contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted to *have passed the term of 5 (five) years after the former convict has finished serving a prison sentence based on a court decision that has permanent legal force*; so Article 7 paragraph (2) letter g of Law Number 10 Year 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Establishment of Government Regulation in Lieu of Law Number 1 of 2014 concerning Election of Governors, Regents and Mayors Become Acts The Law (State Gazette of the Republic of Indonesia Year 2016 Number 130, Supplement to the State Gazette of the Republic of Indonesia Number 5898) reads in full:

Candidates for Governor and Candidates for Deputy Governor, Candidates for Regent and Candidates for Deputy Regent, and Candidates for Mayor and Candidates for Deputy Mayor as referred to in paragraph (1) must meet the following requirements:

g. (i) have never been a convict based on a court decision that has obtained permanent legal force due to a criminal act that is given a penalty with imprisonment of 5 (five) years or more, except for those convicted of committing criminal negligence and political criminal offenses in the sense of an act declared as a criminal offense in positive law only because the executant have political views that are different from the regime in power; (ii) for ex-convicts, has passed a period of 5 (five) years after the former convicted has finished serving a prison sentence based on a court decision that has permanent legal force and has honestly or publicly announced his background as a former convict; and (iii) not as a criminal of recurrent crimes;

I. Recommendations to the General Election Commission (KPU)

1. To follow up on the decision of the Constitutional Court, the KPU needs to revise PKPU in accordance with the ruling of the Constitutional Court Number 56/PUU-XVII/2019 by applying cumulative conditions in the form of:

(i) never being convicted based on court decision who have obtained permanent legal force due to a criminal offense threatened with imprisonment for 5 (five) years or more, except for those convicted of committing criminal negligence and political criminal offenses in the sense of an act declared as a criminal offense in positive law only because the executant has a different political view from the regime in power;

(ii) for ex-convicts, has passed a period of 5 (five) years after the former convicted has finished serving a prison sentence based on a court decision that has permanent legal force and has honestly or publicly announced his background as a former convict; and

(iii) not registered as a executant of recurrent crimes;

2. Provisions have passed a period of 5 (five) years after a former convict has finished serving a prison sentence based on a court ruling interpreted after being completely free from the main sentence and additional punishment in the form of revocation of

political rights if indeed the person concerned is also subjected to revocation of political rights.

3. Ex-convicts need to attach a copy of the Court's Decision and certificate of completion of criminal conduct from the Directorate General of Corrections of the Ministry of Justice and Human Rights of the Republic of Indonesia in his nomination to the Regional Election Commission.
