

Giving the Right to Former Prisoners to be Leaders in the Study of the Philosophy of Islamic Law

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Abstract: This research is qualitative, using data from library sources. Former convicts are people who have previously committed crimes or criminal acts and have served their sentences. In Islam, a leader must be fair, honest, trustworthy, and have high integrity. Law No. 8 of 2012 concerning Elections allows former convicts to become members of the legislature, but it has received many responses of rejection from the public. This is based on the perception that former convicts are morally compromised and no longer trusted by society. To build a legislature that is credible and can be trusted by the people, its members should have moral integrity, be intelligent (competent), and be statesmen, especially since legislative members represent the people as the holders of sovereignty. In the Quran and Hadith, there are hardly any explicit requirements mentioned for legislative members, let alone the status of former convicts. This study aims to determine the capability of former convicts to become leaders within the framework of Islamic legal philosophy. The results of the study show that, philosophically, Islamic law requires a leader to be just and their sense of justice to be unimpaired, thus it is makruh (discouraged) to grant former convicts the right to become leaders and to be at the level of tahsiniyah.

Keywords: Former Convicts; Islamic Law; Philosophy; Political Rights

1. Introduction

Giving the right to former prisoners to become leaders according to the law applicable in Indonesia is still allowed if they have passed their sentence,¹ However, in Islam abilities do not allow it, because among the requirements to become a leader are to be fair and have high integrity.² The difference between the laws that apply in Indonesia and Islamic law makes people pros and cons in carrying out the existing rules. Based on this, it is not uncommon to find divisions in the midst of society. On the one hand, there are demands to comply with the legitimate government and the rules that apply in Indonesia, but on the other hand, sometimes the regulations made by the government must be fought because they are not in accordance with the guidance of Islamic religious teachings.³

Research on giving former inmates the right to become leaders has been carried out by several researchers before. The previous studies can be grouped into two categories: the first category is research on judges' decisions that grant political rights to former prisoners. Such as research

¹ Mirriam Budiardjo, *Dasar-Dasar Ilmu Politik* (Jakarta: Gramedia Pustaka, 2009), hal. 52.

² Adlan Sanur Tarihoran and Andriko, "Filsafat Politik Islam Tentang Kedudukan Mantan Narapidana Menjadi Anggota Legislatif," *Alhurriyah : Jurnal Hukum Islam* 03., No. 01., Januari-Juni 2018 (2018): hal. 3.

³ Dahlan Thaib, *Implementasi Sistem Ketatanegaraan Menurut UUD 1945* (Yogyakarta: Liberty, 1993), hal. 94.

conducted by Muhammad Lutfi Hardiyanto,⁴ Mery Herlina,⁵ dan Istiqomah Fadillah. Second, research on the Prohibition of Providing Political Rights to Former Corruption Convicts. As written by Ratna Sari, Tio Fernando, dan Muzayanah.⁶ Of the two categories of research above, research on the philosophical study of Islamic law in the issue of granting political rights to former prisoners has not been written by previous researchers and at the same time this is the difference between the author and others.

This study aims to explain the philosophical study of Islamic law on giving political rights to former prisoners to become leaders. To achieve this goal, the author raises the question of how the study of Islamic law philosophy in giving the right to former narapina to become leaders. This question will lead the author to look for appropriate data to produce the above goals. This study uses a literature review (field research) with the main data coming from journals, books, and the internet. Data collection is carried out by reading, taking notes, grouping according to the theme discussed, then analyzed using descriptive, inductive, and deductive theories. This research is important to be carried out with the argument that in some countries there is a dubious situation for Muslims between obeying government rules or not because in Islam there is no access to become leaders for former prisoners. On the other hand, there is uncertainty between carrying out Allah's commands and the rules in a country for Muslims.

2. Method

This normative legal research delves deeply into the complex issue of granting political rights, particularly leadership roles, to former prisoners, within the framework of Islamic legal philosophy.⁷ Drawing primarily on legislative texts and proposed laws as primary sources, supplemented by secondary sources like academic literature, journal articles, and media reports, this study employs rigorous library research methods. The systematic collection of data involves meticulous reading and categorization of information pertinent to the research topic, facilitating a comprehensive exploration of the subject from multiple perspectives.⁸ The qualitative analysis adopted in this study commences with a meticulous description of the collected data, followed by a rigorous comparative analysis vis-à-vis existing scholarly discourse and legal frameworks. Special emphasis is placed on content analysis, specifically examining the philosophical underpinnings of Islamic law concerning justice, ethics, and governance. The central objective is to uncover and critically evaluate the ethical and moral dimensions surrounding the potential inclusion of former prisoners in leadership roles under Islamic legal principles. By scrutinizing these principles, the research seeks to elucidate whether Islamic legal philosophy advocates for or opposes the notion of former prisoners assuming positions of authority. This research aims to contribute significantly to ongoing debates on justice, morality, and governance in Islamic societies. By shedding light on how Islamic legal philosophy addresses contemporary challenges related to criminal justice and societal reintegration, the study offers insights into the broader implications of Islamic principles on the rights and responsibilities of individuals with criminal backgrounds in political and public life.

⁴ Muhammad Lutfi Hardiyanto and Shalahudin Serba Bagus, "Hak Politik Mantan Narapidana Untuk Mencalonkan Diri Sebagai Calon Kepala Daerah (Analisis Terhadap Putusan Mk. No. 42/Puu-Xiii/2015)," *Mimbar Yustitia* Vol. 1 No.2 Desember 2017 .

⁵ Mery Herlina, "Implikasi Ratio Decidendi Hakim Mahkamah Konstitusi Dalam Putusan Nomor 2/Puu-Xx/2022 Terhadap Hak Politik Mantan Narapidana Psikotropika," *Jurnal Ilmiah Galuh Justisi* 10, no. 2 (September 17, 2022): 265, <https://doi.org/10.25157/justisi.v10i2.8669>.

⁶ Muzayanah and Arikha Saputra, "Kajian Yuridis Terhadap Hak Politik Mantan Narapidana Korupsi Untuk Mencalonkan Diri Pada Pemilihan Kepala Daerah," *Jurnal Komunikasi Hukum* Vol. 6 No. 2 Agustus 2020 (August 2020).

⁷ Suharsimi Arikunto, *Rosedur Penelitian Suatu Pendekatan Praktek* (Jakarta: Rineka Cipta, 1988), hal. 24.

⁸ Muhammad Nasir, *Metodologi Research* (Jakarta: Ghalia Indonesia, 1988), hal. 58.

3. Analysis or Discussion

3.1. Political Rights of Ex-Convicts to Become Leaders

Constitutionally, the political rights of every citizen have been constitutionally determined in the 1945 Constitution.⁹ Including for former inmates in general and former inmates of corruption cases in particular. For former inmates with corruption cases based on court decisions that have the force of law, they have given a verdict to the convict with a sentence based on the judge's confidence in deciding the case. Given that every citizen has passive rights and active rights as citizens that can be used in general elections, both elections to elect Regional Heads and elections and elections as members of the House of Representatives (DPR),¹⁰ both for Members of the Provincial Regional People's Representative Council (DPRD) and the Regency/City DPRD, which can be used passive voting rights, namely to run for office and be elected in the election.¹¹

The Active Rights of citizens can be used in order to elect both members of the House of Representatives, Regional Head Elections and Precedent and Vice President Elections. Meanwhile, the Passive Voting Rights can be used by citizens in order to be elected as Legislative Members, members of the House of Representatives, both Central and Regional People's Representative Councils, both provinces and districts/cities, and elected in the election of Presidential and Vice Presidential Candidates in the implementation of general elections and the election of regional heads.¹² A former convict who has been convicted of a general criminal case, as well as a special crime in this case is a corruption crime, of course has the desire to run for the regional head election. However, the conditions for being able to run as a candidate for regional head have been determined, as stipulated in the conditions for candidacy in the election of regional heads in the provisions of the existing Law.¹³ Some court decisions that decide cases for former inmates of general criminal cases and special criminal cases, in this case corruption cases, can be discussed as follows:

PKPU Number 18 of 2019 concerning Candidacy for the Election of Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor. General Election Commission Regulation (PKPU) Number 18 of 2019 is a regulation concerning the Second Amendment to General Election Commission Regulation Number 3 of 2017 concerning Candidacy for the Election of Governor and Deputy Governor, Regent and Deputy Regent and/or Mayor and Deputy Mayor. General Election Commission Regulation Number 3 of 2017 concerning Candidacy for Election of Governor and Deputy Governor, Regent and Deputy Regent, and/or Mayor and Deputy Mayor (State Gazette of the Republic of Indonesia Number 826 of 2017), as amended by General Election Commission Regulation Number 15 of 2017 concerning Amendments to General Election Commission Regulation Number 3 of 2017 concerning Candidacy for Governor and Deputy Governor Elections, Regent and Deputy Regent, and/or Mayor and Deputy Mayor.¹⁴

In the provisions of Article I, it is stated that: Several provisions in the General Election Commission Regulation Number 3 of 2017 concerning Candidacy for the Election of Governor and Deputy Governor, Regent and Deputy Regent, and/or Mayor and Deputy Mayor (State

⁹ Muhammad Lutfi Hardiyanto and Shalahudin Serba Bagus, "Hak Politik Mantan Narapidana Untuk Mencalonkan Diri Sebagai Calon Kepala Daerah (Analisis Terhadap Putusan Mk. No. 42/Puu-Xiii/2015)," *Mimbar Yustitia* Vol. 1 No.2 Desember 2017 : hal. 106.

¹⁰ Muhammad Iqbal, *Fiqh Siyasah Kontekstualisasi Doktrin Politik Islam* (Jakarta: Pranamedia Group, 2014), hal. 139.

¹¹ Adlan Sanur Tarihoran and Andriko, "Filsafat Politik Islam Tentang Kedudukan Mantan Narapidana Menjadi Anggota Legislatif," *Alhurriyah : Jurnal Hukum Islam* Vol.03., No. 01., Januari-Juni 2018 (2018): hal. 74.

¹² C.S.T. Kansil, *Sistem Pemerintahan Indonesia* (Jakarta: Aksara Baru, 1985), hal. 255.

¹³ Kansil, *Pengantar Ilmu Hukum Dan Tata Hukum Indonesia* (Jakarta: Balai Pustaka, 1989), hal. 69.

¹⁴ Moh Mahfud MD, *Demokrasi Dan Konstitusi Di Indonesia* (Jakarta: Rineka Cipta, 2000), hal. 110.

Gazette of the Republic of Indonesia Year 2017 Number 826), as amended by General Election Commission Regulation Number 15 of 2017 concerning Amendments to General Election Commission Regulation Number 3 of 2017 concerning Candidacy for Governor Election and Deputy Governors, Regents and Deputy Regents, and/or Mayors and Deputy Mayors (State Gazette of the Republic of Indonesia Year 2017 Number 1586).¹⁵

According to the provisions of Article 4, Indonesian citizens can be candidates for Governor and Deputy Governor, Regent and Deputy Regent, or Mayor and Deputy Mayor by fulfilling specific criteria. They must demonstrate a fear of God Almighty and loyalty to Pancasila, the 1945 Constitution of the Republic of Indonesia, the ideals of the Proclamation of Independence on August 17, 1945, and the Unitary State of the Republic of Indonesia. Candidates must also have at least an upper secondary education or its equivalent. The minimum age requirement is 30 years for Governor and Deputy Governor candidates and 25 years for Regent and Deputy Regent candidates or Mayor and Deputy Mayor candidates at the time of their candidacy. Additionally, candidates must be physically and mentally fit and free from narcotics abuse, as verified by a comprehensive health examination conducted by a team of doctors, psychologists, and the National Narcotics Agency (BNN). They should have no criminal convictions with permanent legal force. However, convicts who are not currently serving their sentences in prison must publicly disclose their status and must have been convicted for negligence or political reasons. Those who have completed their sentences must transparently and honestly present themselves to the public as non-criminals. Finally, candidates must not have had their voting rights revoked by a court decision that has permanent legal force.

PKPU Number 18 of 2019 has required for prospective participants in the Regional Head election, that a former convict is allowed to participate in running as a candidate for regional head in the regional head election. This means that a former inmate after completing his sentence for his criminal acts, the former inmate can run as a candidate for regional head in the regional head election as long as his political rights are not revoked.¹⁶ A person's right to vote can be revoked due to the punishment decided in the court session on the judge's decision in a corruption criminal case. Therefore, if the judge's decision on the sentence against the defendant is coupled with the sentence with the revocation of the political rights of a convict, then this former prisoner loses his political rights, so he cannot use his political rights to participate in running as a candidate for regional head in the regional head election. For former prisoners who are not deprived of their political rights, then they can use their political rights like society in general, because the former prisoners have returned to society and live like society in general.

The political rights of former corruption convicts are still owned by them as well as other rights as citizens which are constitutionally regulated by the 1945 Constitution. This is of course because a former inmate is a person who has served a criminal sentence due to a corruption crime so that the former inmate has completed his sentence. Therefore, for former inmates who have completed their sentences due to corruption crimes, the former inmates have returned as ordinary people in general like other communities¹⁷. When a former prisoner returns to public life, his rights as a citizen are still owned by him as stipulated in the laws and regulations unless the court decision that decides the convict's sentence has revoked the political rights of the former convict in a corruption case or other rights owned by the former prisoner.

¹⁵ Muzayanah and Saputra, "Kajian Yuridis Terhadap Hak Politik Mantan Narapidana Korupsi Untuk Mencalonkan Diri Pada Pemilihan Kepala Daerah," hal. 519.

¹⁶ Abul A'la Al-Maududi, *Hukum Dan Konstitusi, Sistem Politik Islam* (Bandung: Mizan, 1990), hal. 245.

¹⁷ Djazuli, *Edisi Revisi Fiqh Siyasah Implementasi Kemaslahatan Umat Dalam Rambu- Rambu Syariah* (Jakarta: Kencana Prenada Media Group, 2003), hal. 178.

3.2. Philosophy of Islamic Law

The philosophy of Islamic law is a science about the essence and causes of the establishment of Islamic law which is carried out seriously by the mujtahid to the limit of his ability.¹⁸ The philosophy of Islamic law, as conveyed by Mustafa Abdul Raziq, is the science of ushul fiqh. This is because the science of ushul fiqh has elements of philosophical thinking and has a clear epistemology, a clear ontology, and a directed axiology. The science of ushul fiqh brings a person to think scientifically, systematically, and responsibly. On the other hand, the philosophy of Islamic law can also be interpreted as knowledge about the essence of something, its secrets, and the essential purpose of Islamic law, so that a mujtahid must realize the essential purpose, namely the benefit. Amir Syarifuddin said that the process of forming Islamic law is also a step of philosophical thinking in Islamic law.

The word philosophy is also synonymous with wisdom, which is sometimes referred to by experts as a deep understanding of religion. Wisdom can only be understood by people who want to use reason such as the wisdom of marriage is in order to realize peace of life and practice compassion. The emergence of the study of Islamic legal philosophy is because with the study of philosophy, Islamic law can be better understood as a rational and just law. The study of philosophy can prove that the law revealed by Allah SWT and explained by His Messenger is different from the law made by humans. The difference lies in the goal of the law which not only wants to realize the benefits of the world, but also wants to achieve the benefits of the hereafter, and this is also one of the things that distinguishes the philosophy of Islamic law from other scientific philosophies. Philosophical study of Islamic law will encourage a person to do something that has become a provision in Islamic law.¹⁹

The philosophy of Islamic law can be divided into two groups, namely the philosophy of tasyri' and the philosophy of sharia. The philosophy of tasyri' is the study of the process of realizing Islamic law, in this case it is the study of the processes and methods of determining laws. This is what scholars write in the books of ushul fiqh. The methods studied here can be grouped into two parts, namely the luhawiyah (language) method, and the ma'nawiyah method (maqashid al-shari'ah).²⁰ The scope of discussion of Islamic philosophy can actually be summarized in three categories, namely ontology, which is the discussion of the essence of existence (universal), including the study of the origin or source of Islamic law, the process of forming Islamic law, and the purpose of establishing Islamic law; Epistemology, which is the study of the sources of knowledge and the tools used to obtain that knowledge, such as the Lugawiyah (Linguistic) method and the Ma'nawiyah method (Maqashid al-Shari'ah).²¹

In this form of epistemology, studies on the method of interpreting the word will be found, both in the form of the words al-amr, al-nahy, al-'am, al-khas, al-muthlaq, al-muqayyad, al-musyarakat, al-muradif, al-hakiki, al-majazi, al-kinayah, al-mantuq, al-mafhum, al-'ibarah, al-isyarah, al-dilalah, al-iqtidha', and so on.²² Included in this epistemological study is the source and postulates of Islamic law, such as al-Qur'an, al-Sunnah, al-qiyas, al-ijma', al-istihsan, maslahah al-mursalah, al-'urf, sad al-dzari'ah, al-istishab, and so on,²³ and the field of axiology, which is a discussion of the norms used

¹⁸ Busyro, *Dasar-Dasar Filosofis Hukum Islam* (Jakarta: CV. Wade Group, 2016), hal. 37.

¹⁹ Eva Muzlifah, "Maqashid Syariah Sebagai Paradigma Dasar Ekonomi Islam," *Economic: Jurnal Ekonomi dan Hukum Islam* 3, no. 2 (2013): hal. 78.

²⁰ Zainil Ghulam, "Implementasi Maqashid Syariah Dalam Koperasi Syariah," *Iqtishoduna* Vol. 5 No. 1 (April 2016): hal. 95.

²¹ Sandy Rizki Febriadi, "Aplikasi Maqashid Syariah Dalam Bidang Perbankan Syariah," *Amwaluna: Jurnal Ekonomi dan Keuangan Syariah* 1, no. 2 (July 31, 2017): hal. 233, <https://doi.org/10.29313/amwaluna.v1i2.2585>.

²² Prima Dwi Priyatno, Lili Puspita Sari, and Isti Nuzulul Atiah, "Penerapan Maqashid Syariah pada Mekanisme Asuransi Syariah," *Journal of Islamic Economics and Finance Studies* 1, no. 1 (August 12, 2020): hal. 9, <https://doi.org/10.47700/jiefes.v1i1.1927>.

²³ Azmi Sirajuddin, "Model Penemuan Hukum Dengan Metode Maqashid Syariah Sebagai Jiwa Fleksibilitas Hukum Islam," *Jurnal Hukum* 13 (2016): hal. 33.

to measure the right and wrong of a person's thoughts and behavior. These three categories ultimately enter the parts related to Islamic law.

4. Political Rights and Rehabilitation of Former Prisoners into Public Office

The philosophy of Islamic law is an approach in studying the basics and objectives of Islamic law. The philosophy of Islamic law is also one of the attempts to think to understand the secret purposes of God's law in a deeper and more radical way by not doubting the substance of the law as it has been thought out deeply from the philosophical side. The philosophy of Islamic law here seeks to reveal moral and universal values such as justice, equality and so on that are in positive legal theory. Therefore, it is very important in the process of seeking a law that can absorb the values of justice and benefit in law enforcement, especially the meaning and interpretation of positive law in Indonesia, including the law on the human rights of former prisoners. The philosophy of Islamic law at a certain level can be said to be a reflection or translation of the study of the rules of maqasidiyah Islamic law material discussing the same thing as the object of study of qawaidul maqashidiyah, so he discusses philosophy or the secrets of sharia in the history of Islamic law. This philosophy of Islamic law is very urgent in the study of Islamic law, especially when a mujtahid conducts legal excavation, with this philosophy of Islamic law the mujtahid can learn the wisdom behind the search for Islamic law.²⁴

Hammedi believes that what is meant by maqashid is the wisdom that is intended by the giver of the Shari'ah in all Shari'ah. According to him, God must have a certain "purpose" in each of His creations. Maqashid as-Shari'ah referred to in *sisni* is the intention of Allah swt. What makes shari'a, not the goal of human beings.²⁵ Ash-Syatibi emphasized that the main purpose of the shari'a command is to take *mashlahat*, either in this world, in the hereafter, or both. While the basic purpose of prohibition is absolute to reject *mafsadah* and the danger of this benefit is then used as the basis for the determination of maqashid.²⁶ The division of Maqashid al-Shari'ah Maqashid or *maslahat*, in the view of as-Syatibi is divided into three parts, namely: 1) al-Mashalih al-dharuriyyah, 2). al-Mashalih al-Hajiyyah, 3). al-Mashalih attahsiniyah. The first *maslahat* or al-Mashalih al-dharuriyyah contains parts, namely: maintaining religion (*hifz ad-din*), maintaining the soul (*hifz an-nafs*), maintaining the intellect (*hifz aql*), maintaining offspring (*hifz annasl*), and maintaining wealth (*hifz al-mal*). These five al-mashlahat are hereinafter called al-kulliyat al-khamsah.²⁷ Maqashid ad-Daruriyyah is something that absolutely exists for the survival of human beings.

Islam commands that in establishing laws among human beings, justice must be upheld because the principle of fairness serves as both a constitutional principle and a religious political axis. This verse serves as a clear directive from Allah, highlighting the critical importance of justice in societal governance and personal conduct. The principle of fairness in Islam is not just a legal obligation but a moral and ethical duty that permeates every aspect of a Muslim's life. It reflects the core values of Islam, which emphasize the dignity, rights, and responsibilities of every individual. Upholding justice ensures the protection of these rights and the maintenance of social harmony and peace. The concept of justice in Islam extends beyond mere legalistic interpretations. It encompasses a broader spectrum of ethical considerations, including honesty, transparency, accountability, and compassion. Islamic teachings advocate for the establishment of a just society where the weak and vulnerable are protected, the rights of all individuals are respected, and

²⁴ Ahmad Jalili, "Teori Maqashid Syariah Dalam Hukum Islam," *TERAJU* 3, no. 02 (September 27, 2021): hal. 74, <https://doi.org/10.35961/teraju.v3i02.294>.

²⁵ Ahmad Sanusi, *Ushul Fiqih* (Jakarta: Rajawali Pers, 2017), hal. 79.

²⁶ Abu Ishaq asy-Syatibi, *Al-Muwafaqat Fi Ushul Asy-Syari'ah* (Mesir: al-Maktabah atTijariyyah al-Kubra, 2000), hal. 25.

²⁷ Muhammad Said Ramadhan al-Buthi, *Dhawabith Al-Mashlahah Al-Syari'ah Al-Islamiyyah* (Beirut: Muassasah ar-Risalah, 1977), hal. 38.

disputes are resolved with fairness and equity. The command to judge with justice also implies a rejection of biases, prejudices, and personal interests that can distort the truth and lead to injustice. It calls for leaders, judges, and individuals in positions of authority to rise above personal inclinations and base their decisions on truth and righteousness.

In practical terms, this principle is reflected in various aspects of Islamic governance and jurisprudence. Islamic legal systems, or Sharia, are built upon the foundation of justice, ensuring that laws and regulations are fair, equitable, and just for all members of society. This is achieved through a comprehensive legal framework that includes mechanisms for accountability, checks and balances, and the protection of individual rights. The emphasis on justice in Islam aligns with contemporary human rights principles, advocating for the fair treatment of all individuals, regardless of their background, status, or affiliation. This alignment further highlights the timeless relevance and universality of Islamic principles in promoting justice and equity in modern societies. In summary, the command to uphold justice in Islamic law is a fundamental tenet that serves as a guiding principle for personal conduct, societal governance, and legal frameworks.

It underscores the importance of fairness, equity, and moral integrity in all aspects of life, as mandated by divine guidance. The above verse explains that Allah commands to fulfill the mandate perfectly and to be fulfilled to the owner or who is entitled to receive it, both the mandate that concerns Allah's rights to his servants such as prayer, zakat, fasting, and so on, as well as the mandate of humans. In addition, Allah tells you when you establish laws among people, whether they are in disagreement with other people or without disputes. So if you determine the verdict fairly in accordance with what Allah SWT teaches, namely not taking sides except for objections and not imposing sanctions except for those who violate,²⁸ do not judge it even if it is contrary and not in your favor. This means that the commandment to do justice is addressed to humanity as a whole. Thus, both trust and justice must be fulfilled and upheld without discriminating between religion, descent, race or position in society.

Islam does not differentiate in terms of position, race, religion or social status in society, so that former prisoners and non-former prisoners have the same rights in the view of Islam if they have truly repented. When a person who has committed a crime and then repents earnestly, that is, by not repeating the evil he has done in the past, then indeed the good can erase the sin. As in Surah An-Nisa' verse 110 and Surah Ali Imran verses 135-136 mentioned above. In order to restore credibility or fairness to a person who is worthy of being a member of the legislature, he must carry out all the acts that are a condition of justice for himself,²⁹ It is not enough just to repent and abandon the tyranny but after he carries out the punishment or sanction he received, he is given time to show his repentance and show efforts to improve himself until he is worthy of being nominated as a legislative member. has restored the rights of the people, namely the right of a former prisoner to participate in politics and the same rights before the law. Because he has repented and has paid for all his past mistakes, namely by being sentenced to prison.³⁰

Thus, a former inmate can become a member of the DPR, DPD and DPRD if he has repented as required by Article 12 letter g and Article 51 paragraph 1 letter g of Law No. 8 of 2012, which applies to elected officials, valid for a limited period of only 5 (five) years from the time the convict has completed serving his sentence, exempted for former convicts who openly and honestly state to the public that the person concerned ex-convicts, and not as repeat offenders. The question is whether all former prisoners can run for office, for example prisoners who have stumbled on cases of corruption, drugs, robbery, and others that have damaged and harmed the community and the state, can they be nominated or run for office in this legislative election. Of course, there are also opportunities for former criminal prisoners to compete for public positions, but not necessarily all former criminal prisoners can freely nominate or be nominated as public officials, especially people's representatives. Former prisoners seeking reintegration into public life must adhere to several additional provisions outlined by the law. Firstly, they are barred from holding elected office,

²⁸ Ahmad Ad Da'ur, *Hukum Pembuktian Dalam Islam* (Jakarta: Pustaka Thariqul Izzah, 1999), hal. 167.

²⁹ Jimly Asshidiqie, *Pengantar Ilmu Hukum Tata Negara* (Jakarta: Rajawali Pers, 2011), hal. 343.

³⁰ Mexsasai Indra, *Dinamika Hukum Tata Negara Indonesia* (Bandung: Refika Aditama, 2011), hal. 167.

reflecting concerns over their suitability for positions of public trust immediately following their incarceration. Secondly, their eligibility is restricted to a limited period of 5 years from the completion of their sentence, underscoring a transitional phase where their rehabilitation and societal reintegration are closely monitored. Thirdly, ex-convicts may qualify for exemption if they openly and honestly disclose their criminal history to the public, provided they are not repeat offenders. These provisions aim to balance the principles of accountability and rehabilitation, ensuring that former prisoners can gradually rebuild their lives while upholding transparency and maintaining public confidence in governance and leadership roles.

In simpler language, the provision states that the former prisoners obtained are not recidivists, have been free for 5 years as candidates for the DPD, DPR, DPRD. Regarding the attitude towards former prisoners who will become leaders, or be elected as people's representatives, they are former corruption prisoners (corruptors). Regarding the guarantee that there will be no more corruption, of course there are those who agree and disagree. For those who agree, in addition to constitutional and human rights reasons, there are certainly aspects of humanity that should be pondered, including that in humans there are bad/evil and good traits, human behavior can change from bad to good or vice versa. In humans, they also have a sense of regret for deeds that are considered evil and deterred from repeating them which are then replaced with good deeds.³¹ Many former prisoners have turned into good people, have deterred evil and finally are much more useful to society compared to those who are not former prisoners. The proof is that there are former prisoners who became Ustadz, anti-drug activists, businessmen and others. In the history of Wali Sanga, the famous Sunan Kalijaga was a criminal/robber in his youth.

Then in the history of the kingdom in Java, Ken Arok as the King of Tumapel in his youth was a brandalan, a thief, a gambler, a drunkard, a thug and was raised by a family of gamblers. So, it is not always the evil behavior of humans that will always be evil. Moreover, the crime or criminal act committed is not intentional or intended to do evil, perhaps for the sake of honor and self-defense, forced to do evil, for example, to kill. For example, because they are poor and hungry in order to maintain their lives, they are forced to steal, and so on. So, for those former prisoners whose morals and deeds have been tested to be good and bring good benefits to society and there is a moral guarantee that they will not repeat it again, then they can legitimately be nominated or run for public office.

Thus from the legal, political and humanitarian rights, former prisoners can be accepted as candidates for public office. In addition, public officials are leaders, and leaders are role models for the people who are led. Leaders must be able to be an example and example both in their words and actions.³² Being a public official is an honor so that what is at stake is good name and honor. The people's leader is sought after who can be respected by the people sincerely because his behavior deserves respect. The people's respect for moral and moral leaders is generally sincere and truly from the bottom of their hearts, not just small talk. But if the leader is a former prisoner, if the people give homat because it is more about protocol and formality and because it has authority/power. Another negative influence if former prisoners can be elected as public officials is that public officials who are in power and the public will not be afraid to commit crimes because there is a guarantee that they can still become public officials if they have been out of prison for five years. In short, situations like this can stimulate or inspire public officials to be more daring to commit corruption and criminal groups feel increasingly given the opportunity to commit crimes and later can also become public officials.³³

³¹ Hardiyanto and Bagus, "Hak Politik Mantan Narapidana Untuk Mencalonkan Diri Sebagai Calon Kepala Daerah (Analisis Terhadap Putusan Mk. No. 42/Puu-Xiii/2015)," Vol. 1 No.2 Desember 2017.hal. 107.

³² Fathor Rahman and Muhammad Saiful Anam, "Hak Asasi Manusia Mantan Narapidana Korupsi Dalam Peraturan Komisi Pemilihan Umum Nomor 20 Tahun 2018 Perspektif Maqashid Syariah Jasser Auda," *Volksgeist* Vol. 3 No. 2 Desember 2020 (December 28, 2020): hal. 67, <https://doi.org/10.24090/volksgeist.v3i2.3905>.

³³ Muzayanah and Saputra, "Kajian Yuridis Terhadap Hak Politik Mantan Narapidana Korupsi Untuk Mencalonkan Diri Pada Pemilihan Kepala Daerah," hal. 525.

For this reason, if the people still have morality, faith and integrity and do not want to have leaders and representatives of the people with the predicate of ex-prisoners, then the attitude of the people is to let them ex-prisoners compete in the legislative and executive elections, because they are not prohibited by law, but do not be elected. We also do not need to support the political party that carries the former prisoner. Only such political punishment can be carried out by the people to prevent former prisoners from becoming formal leaders. There are many candidates for people's representatives who are not former prisoners, and there are still many ordinary people who are willing to dedicate themselves to the nation and state sincerely. For former prisoners who want to prove this, of course this is not easy and the land is not only in the political arena.

The Supreme Court's Decision on the Political Right of Former Prisoners to Run for Regional Head Election follows the decision of the Constitutional Court (MK),³⁴ by canceling the KPU regulation (PKPU) which prohibits former corruption convicts/corruptors from running for regional head elections. The Supreme Court asked the KPU to coordinate PKPU with the results of the Constitutional Court's decision. The Supreme Court (MA) stated that the rules on the candidacy requirements in any general election must be harmonized with the norms/rules formed by the Constitutional Court Decision Number: 59/PUU-XVII/2019. The Supreme Court's decision stipulates that former inmates in corruption cases/corruptors are prohibited from entering the regional head election market/legislative member election with a waiting period of 5 (five) years since he is released from the detention cell.

According to the Supreme Court, the implementation of fair and integrity general elections as the spirit of PKPU (General Election Commission Regulation) Number: 18 of 2019 concerning the Election of Regional Heads which is the object of the Material Test at the Constitutional Court, is a necessity/necessity. Ideally, candidates for Regional Heads who run for the election of regional heads must be clean, honest and not reprehensible in special criminal acts of corruption and have no track record in legal matters and integrity defects. However, the regulation on the interpretation of citizens' political rights must be included in the law, not regulated in the laws and regulations below. The law in this case is incas General Election Commission Regulation (PKPU) Number: 18 of 2019.

Thus, if there is a provision for every citizen who runs as a candidate for regional head in the election of regional head, if he is a former prisoner who is not allowed to participate in the candidacy for the election of the regional head, then this provision must be contained in the Law.³⁵ Not in the form of laws and regulations that are hierarchically under the Law. If this provision will be enforced for a prohibition for former inmates who will run for regional head elections in the future, then this KPU Regulation must be proposed to be included in the Regional Head Election Law. Therefore, the political rights of citizens must be respected, because constitutionally it has been regulated in the 1945 Constitution. If it is to negate the political rights of former prisoners, then the revocation of political rights must be an additional punishment in the court decision that decides the criminal punishment for former prisoners, so that the person concerned with the deprivation of his political rights cannot advance to participate in the regional head election exchange.

5. Conclusion

Every citizen in the Republic of Indonesia is entitled to political rights under the provisions of the 1945 Constitution, which serves as the foundational legal document of the nation. This includes the right to participate in elections, whether as candidates or voters, thereby exercising their democratic privileges. Former inmates, including those convicted of corruption, retain these

³⁴ Mohammad Aldy Firdaus, "Implikasi Yuridis Putusan Mahkamah Konstitusi Terhadap Mantan Narapidana Yang Menjadi Calon Kepala Daerah," *Jurnal Novum* Vol. 1 No. 2, 2016 : hal. 9.

³⁵ Achmadudin Rajab, "Tinjauan Hukum Eksistensi Dari Undang-Undang Nomor 8 Tahun 2015 Setelah 25 Kali Pengujian Undang-Undang Di Mahkamah Konstitusi Pada Tahun 2015," *Jurnal Hukum Dan Pembangunan* Vol. 46 No. 03, 2016 (n.d.): hal. 355.

political rights unless specifically revoked by a court decision as part of their punishment. This constitutional guarantee ensures that individuals, once they have completed their sentences and any additional legal obligations, can reintegrate into society and engage in civic responsibilities, such as running for regional head elections. According to Indonesian law, former corruption convicts must wait for a period of five years after completing their prison sentences, subject to a court decision with binding legal force, before being eligible to participate in such elections. This stipulation aims to balance the principles of justice and rehabilitation, allowing individuals the opportunity to demonstrate their reformed character and commitment to societal reintegration.

Islamic legal philosophy presents a nuanced perspective on the eligibility of former prisoners to assume leadership roles. Central to Islamic governance principles is the requirement that leaders must exemplify fairness, integrity, and moral rectitude. These qualities are seen as essential for upholding justice and ensuring the welfare of the community under Islamic teachings. From this perspective, granting leadership positions to former inmates, including those who have been convicted of corruption, is viewed as problematic. Islamic scholars argue that such individuals may not meet the high ethical standards demanded of leaders in Islamic societies. This viewpoint aligns with the concept of *tahsiniyah* in Islamic jurisprudence, which denotes actions or decisions that are praiseworthy but not obligatory. Therefore, according to Islamic legal philosophy, while repentance and rehabilitation are valued, former inmates may not be deemed suitable candidates for leadership roles due to concerns over their moral and ethical standing.

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