



## The Meaning of Political Rights of Former Prisoners in the Perspective of Pancasila Democracy

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### **Abstract**

This paper analyzes the issue of the rights of former prisoners in general elections in Indonesia. General Election Commission Regulation Number 20 of 2018 concerning the nomination of members of the People's Representative Council, Provincial DPRD, and Regency/City Regional People's Representative Council which is related to the provisions of Article 4 paragraph (3) and Article 7 letter (g) of the PKPU which emphasizes the necessity in the selection of prospective legislative candidates does not include former convicts of corruption, drug dealers, and sexual crimes. This research is a type of normative legal research. The approach taken is a statutory approach and a case approach, with analytical prescriptive legal analysis techniques. The meaning of the political rights of former prisoners in the perspective of Pancasila democracy is to withdraw the rights that have been given by the State, namely the right to be elected and to vote in the general election of a former prisoners solely to guarantee the recognition and respect for human rights and basic freedoms others, decency, public order, and the interests of the nation.

**Keywords:** *Political Rights; Former Prisoners; Pancasila; Democracy*

### **Introduction**

Indonesia is a unitary state in the form of a republic and sovereignty is in the hands of the people. The meaning of "sovereignty is in the hands of the people" which means that the people have sovereignty, responsibilities, rights, and obligations to democratically elect leaders who will form a government to manage and serve all levels of society, and elect representatives of the people to oversee the running of the government. The consequence is the voice of the people who hold the highest power in Indonesia through representatives elected by the people. Or in other words, Indonesia is a democratic country.

The word "democracy" comes from two words, namely "*demos*" which means the people, and "*kratos/cratein*" which means government. Democracy itself according to Hans Kelsen means that the

"will" expressed in the state legal order is identical to the will of the legal subjects (Kelsen, H., 2006). In a democratic country, there are five main characteristics, namely the existence of law as commander in chief, control over the government, guarantees for the basic rights of citizens, the principle of majority, and free general elections (hereinafter referred to as elections) (Suseno, FM, 1997). In a democracy, general elections are essential.

In the Indonesian constitutional system, power is divided into three powers consisting of the Legislative, Executive, and Judicial. The third one is usually called the *Trias Politica*. Legislative bodies are institutions that legislate or make laws. Its members are considered to represent the People, therefore this institution is called the People's Representative Council (hereinafter referred to as the DPR). Another name that is often used is parliament (Budiarjo, M., 2004). In the constitutional system, the legislative body includes the People's Consultative Assembly (hereinafter referred to as the MPR), the DPR, and the Regional Representative Council (hereinafter referred to as the DPD). All of which have their respective duties, authorities, and functions. They have a role that aims to carry out the functions of representation, legislation, and supervision.

Elections are part of the people's process of choosing the leader of the country. In addition to electing the head of state as the executive body, the DPR also elects the DPR as the legislative body and the regional head as the regional executive. The political system has changed how the general elections for members of the legislature and executive were originally represented by representatives but were finally conducted directly. This means that Indonesia has implemented democratization. To be included in the election, you must nominate yourself to the General Elections Commission (KPU) with the conditions or criteria determined by law.

In the 2009 election, many candidates were excluded from the electoral list, because one of the conditions that were not met was the requirement that they have never been sentenced to imprisonment based on a court decision that has permanent legal force for committing a crime punishable by imprisonment of five years or more. And in the 2019 election, the issue of candidates for members of the DPR and the Provincial and Regency/City Regional Representatives Council promoted by political parties is not ex-convicts of criminal cases of corruption, narcotics crimes, or crimes of sexual violence against children.

This polemic arose with the enactment of General Election Commission Regulation Number 20 of 2018 concerning the nomination of members of the People's Representative Council, Provincial DPRD, and Regency/City Regional People's Representative Council (hereinafter abbreviated as PKPU), which is related to the provisions of Article 4 paragraph (3) and Article 7 letter (g) of the PKPU which emphasizes the necessity in the selection of prospective legislative candidates does not include former convicts of corruption, drug dealers, and sexual crimes (Faisal, 2018).

Provisions that prohibit former convicts of corruption cases, drug dealers, and cases of sexual crimes against children from becoming candidates in the legislative elections (Helmi, HH, & Erliyana, A., 2018) sparked debate among the public (Herawati, R., Sukma, NM, & Hananto, UD, 2018), the action of the General Elections Commission (hereinafter referred to as KPU) in issuing the PKPU is considered very good and should be appreciated to create a parliament that is free from corruption, drugs, and pedophilia. However, some question that the PKPU must be supported by a strong juridical basis.

The justification from the side that supports PKPU emphasizes that as an election management institution, the KPU has a national, permanent, and independent or independent character as confirmed in the provisions of Article 22 letter e paragraph (5) of the 1945 Constitution of the Republic of Indonesia which will be further regulated by a State Law. Republic of Indonesia Number 15 of 2011 concerning General Election Organizers (Pratidina, A., & Michael, T., 2019).

In addition, in the perspective of Indonesian human rights, every citizen has the right to do anything, but must also pay attention to the human rights of others which should not be violated (Aryani, N. M., & Hermanto, B., 2018). That is, one person's human rights are limited by the rights of others. Corruption, drugs, and child sexual crimes (Hermanto, B., & Yusa, IG, 2018) are extraordinary crimes that have harmed citizens (Hadiprayitno, II, 2010), and in this case, extraordinary steps are needed by the state to protect, guarantee and respect the human rights of these vulnerable groups (Yuliandri, 2011).

Other parties in observing the Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections, in particular, Article 240 paragraph (1) letter g, in particular, relating to an former prisoners who has served a sentence of five years or more may nominate himself as long as the person concerned announces had the status of a prisoner to the public (Hapsari, H., 2018). An in-depth study is needed to ensure there is continuity between efforts to maintain the constitutional rights of citizens and the normalization of the rights of prisoners to run for legislative members. Based on the description of the problems above, this paper analyzes the issue of the rights of former prisoners in general elections in Indonesia.

### **Methods**

This research is a type of normative legal research. Normative research is a process to find the rule of law, legal principles, and legal doctrines to answer the legal issues faced (Wibowo, A. M, Sukarmi, S. & Hamidah, S., 2019). The approach taken is a statutory approach and a case approach, with analytical prescriptive legal analysis techniques, namely studying objectives, values of justice, the validity of the rule of law, legal concepts, and legal norms. The writing of this paper includes normative legal research, namely legal research conducted by examining legal materials (library studies) or secondary data. According to Soerjono Soekanto and Sri Mamudji, normative legal research includes research on legal principles, research on legal systematics, research on levels of vertical and horizontal synchronization, legal comparisons, and legal history (Soekanto, S. & Mamudji, S., 1995).

### **Research Result and Discussion**

Indonesia is a democratic country according to Aristoteles, democracy is freedom or the principle of democracy is freedom because only through freedom can every citizen share power within his country. Aristoteles also said that if a person lives without the freedom to choose his way of life, then he is like a slave. A flawed state is a state that only cares about the interests and desires of political rulers. It can take various forms, from monarchy to military totalitarianism.

A democratic state, according to Aristotle, is exactly the opposite of such a model. In this case, the author chooses the opinion of Aristotle compared to the opinions of other experts because according to the author a democratic state is a community of free people, whose rulers serve the interests of the people, not because God ordered it, but because he knows, such a pattern is also good for him.

Aristoteles's central argument, namely democracy as a community of free people. In other words, freedom is a prerequisite for democracy. As long as people still bind themselves with mythological stupidities, during that time, a democratic mentality will not be created, even though the system has been built, so that it is by the views and opinions of the author in conducting this thesis research.

Democracy is etymologically derived from the Greek "*demos*" which means people and "*kratos/cratein*" which means government. Especially in Athens, the word "*demos*" usually refers to the whole people but sometimes also means people in general or only the poor, the word democracy was originally sometimes used by aristocrats as a satire to demean the common people (Latif, Y., 2011). From

this understanding of democracy, it can be concluded that the substance of democracy itself is the power of the Judiciary, Executive and Legislative comes from the people as the holder of the highest power in government.

These substances form the structure in democracy, namely the existence of infrastructure and superstructure that results in decisions and capabilities. Democracy is the concentration of power in the hands of the people. According to Cholisin, democracy in Indonesia holds the principle of Democratic Theory where all decisions and policies are fully regulated for the benefit of the people but do not violate God's rules (Cholisin, 2013). This is the basic difference of a typical democracy in Indonesia compared to a democracy in other countries.

With this democracy, it is hoped that a strong government will be realized because this government was created by the people themselves. A strong government is not a government created in the form of an authoritarian government that can direct its will to the people, but a strong government that is fully supported by the people and is not carried by the needs of other parties.

Community Organizations and Political Parties/Political Parties are active actors who implement democracy. Community organizations often convey their aspirations if they do not agree with the policies taken by the government. Although sometimes the delivery of aspirations is not done by proper ethics, in this way aspirations are often considered by the government. The aspirations of political parties that are not from the ruling or opposition political parties are highly expected in the creation of democracy so that they can provide limits to the ruling political parties if they make policies that harm the interests of the community. Freedom in expressing opinions is what is often done in countries that adhere to democracy.

This needs to be done, often by mass organizations or political parties in order to create democracy as expected together. This policy limitation is the task of political parties or mass organizations in terms of democratic oversight. Another task of mass organizations or political parties in a democracy is to disseminate the results of policies made by the government to the wider community. This election result is expected by many people, because this election gives people freedom to choose. Freedom in choosing keeps people away from pressure both physically (money and violence) and emotional pressure (conscience) in choosing leaders.

Political representatives, both DPR and MPR, are the spearheads directly or indirectly in charge of conveying the aspirations of the people. Members of the DPR are the result of a general election from the community so that it is hoped that the results of policies that become joint decisions are truly from the community, for the community and by the community without any rides that benefit themselves or their groups. The responsible government in a democratic country is that in terms of making decisions or policies together, the government must weigh the advantages and disadvantages. Is the decision more detrimental to the community or more beneficial to the community? Losses resulting from a decision or policy must be borne by the community and can be accounted for in front of the wider community.

The judicial system is one of the results that can be seen in a democratic government. In its implementation, the judicial system must be sharp and indiscriminate for anyone who is wrong. So far, in Indonesia, the judicial system is very sharp for the people at the bottom and dull for the people at the top. The judicial system like this is an unfair justice system and can be detrimental to society. In fact, one of the goals of a democratic state must be the welfare of its people. The expected judicial system is an independent judicial system where this system is free from all forms of pressure and can be fair to all Indonesian people. The press and mass media strongly support the creation of democracy in a country. The press and mass media have the task of providing information to the public on the latest news so that the public can assess and take action. Once the importance of the task carried out by the press or mass

media is so important, it is hoped that they will be able to make real news as it is without being made up or exaggerating.

The democratic values above are a form of democratic values in general. In particular, democratic values are the opposite of existing authoritarian values. These democratic values gave birth to a form of political culture called democratic culture, these values are:

- a. Egalitarian as compared to Feudal;
- b. Pluralism compared to Homogeneous;
- c. Open as compared to Closed;
- d. Dialogical compared to Dogmatic;
- e. Persuasive versus Repressive;
- f. Distribution of Power compared to Accumulated Power;
- g. Curative sensors compared to Preventive Sensors;
- h. Elections compared to Appointments (Cholisin, 2013)

Political democracy can be seen in the family which is a small community. The fate of children in the family is often determined by adults or their parents. Within the scope of a class or school, the fate of students is determined by the teacher or the principal concerned. This lack of distribution of power among individuals is what often happens in political democracies.

Political democracy which is part of Pancasila Democracy must be able to reflect the values of Pancasila Democracy itself. For example, the recognition of existing rights and obligations. Pancasila democracy recognizes and respects the rights and obligations of each individual, especially in determining the fate of the individual himself.

A small scope, such as in a welfare guarantee school institution, can be seen with the facilities and infrastructure that can be used during the learning process. Facilities and infrastructure can ensure the welfare of students in the process of growth. Often schools have provided facilities and infrastructure to students but are inadequate in the existing locations. Talking about political rights is one of the clusters of human rights as stipulated in Article 25 of the International Covenant on Civil and Political Rights. The revocation of political rights, especially the right to be elected as public officials, is a form of punishment because the person concerned is not trustworthy in holding public office and so that he can no longer abuse his authority.

In Article 73 of Law Number 39 of 1999 concerning Human Rights, it is stated that the restriction or revocation of human rights is only permitted by law. The goal is to guarantee the recognition and respect for human rights and the basic freedoms of others, morality, public order, and the interests of the nation.

Then former prisoners are people who have served a criminal sentence based on a court decision that has obtained permanent legal force. While the convict is someone who is convicted based on a court decision that has obtained permanent legal force. It can be concluded that an former prisoners is someone who has violated legal norms or norms that exist in society because of his actions so that he is subject to sanctions in the form of punishment by a court decision that has permanent legal force and has been detained in a correctional institution or detention house and has completed his sentence.

Democracy is an idea that presupposes that power is from, by, and for the people. In a more participatory sense, democracy is even referred to as the concept of power from, by, for, and with the



people. This means that power is recognized as coming from the people, and because of that, it is the people who determine and give direction and carry out state life (Asshiddiqie, J., 2006).

Pancasila is the noble value of the Indonesian nation that is universal and always live in every breath for any group and the customs and traditions of the Indonesian nation which are the values of unity and integrity that should be implemented consistently. Therefore, the reflection of Pancasila values for the life of the nation and state is important to be applied in everyday life, one of which is democracy.

Democracy which is a reflection of Pancasila can be seen in the general election which is the current method of choice. This departs from several countries that consider their country democratic to bridge the election of people's representatives who reflect a picture of the people, by the people, and for the people (democracy). Of course, the vision used is through the eyes of Pancasila, precisely in the implementation of the values of the 4th Pancasila, which reads that "People are led by the wisdom of wisdom in representative deliberation".

Election democracy based on Pancasila today needs to be re-examined because it should be well realized that democracy is one of the issues that emerged after the fall of the New Order regime. Since the decline of the New Order regime, the issue that during the New Order regime was considered undemocratic both in elections and in every appointment of public officials, and no less important was that in every policy-making carried out by the government it was considered undemocratic. So that this condition became the spirit of the reform order to promote democracy as the foundation of this country's government so that the implementation of democracy in the state system could no longer be contained.

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However, in its implementation, whether we realize it or not, the democracy that is applied in its journey is still far from what is the substance of democracy itself. This is evident and evident in the general election system which is a representation of democracy, there are many kinds of games that injure the purity and sanctity of democracy. This happens because there are many potential illegal actions for the sake of a victory, such as a voter manipulation (demographic manipulation, loss of the right to vote, splitting opposition support); Intimidation; Buying and selling votes; Misleading information; Manipulation of ballot papers; Double ballot; Manipulation in recapitulation; Use of the pseudo selector; Damaging the ballot paper; Information technology system piracy in voting; Voting piracy.

An example of a real case occurring is the manipulation of the results of the vote recapitulation which is the destruction of democratic values itself (Erviyanto, 2017). In addition, according to Mulyadi, the Expert Staff of Bawaslu found the fact that the potential problems in the implementation of elections and local elections whose substance was chosen were money politics, black campaigns, intimidation, use

of state facilities, involvement of children during open campaigns, mobilization of civil servants, use of public facilities. education and worship for campaigns, as well as out-of-schedule campaigns (Ervianto, 2017).

These things are the reality of real conditions. The general election conditions as a whole do not reflect the value of democracy in general elections to regional head elections which of course are part of the chain that contributes to the quality of leading figures and poor performance. Because it does not rule out the possibility of misappropriation of actions during the general election, especially related to money politics, then of course they will try to make profits when leading the government to cover expenses.

So that this will be the cause of a lot of abuse of power by unscrupulous leaders at the central, provincial, and district, and city levels. This situation then becomes a reason to re-consider and study constructively dialogue related to the general election. The reorientation of the view of Pancasila is the only option for implementing direct democracy to date. So that the above conditions can aim to re-actualize the concept of general elections that reflect democracy.

This departs from problems related to how the concept of general elections in the democratic system from the perspective of Pancasila, the 4th principle, which is the embodiment of a reflection of noble values that live and develop that grows and is attached to become a national identity that can realize substantive democracy until it is achieved by the state. sovereign, just and prosperous.

### **Conclusion**

The meaning of the political rights of former prisoners in the perspective of Pancasila democracy is to withdraw the rights that have been given by the State, namely the right to be elected and to vote in the general election of a former prisoners solely to guarantee the recognition and respect for human rights and basic freedoms others, decency, public order, and the interests of the nation. Guarantee the recognition and respect for human rights and the basic freedoms of others, morality, public order, and the interests of the nation in the perspective of the Pancasila democracy prevailing in Indonesia.

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