

# Requirements for Political Rights of Former Convicts to Become Regional Representative Council Member Candidates from the Perspective of *Fiqh Siyāsah* (Study of Constitutional Court Decision Number 12/PUU-XXI/2023)

Sellin Fathinah Qonitah  
[sellinqonita655@gmail.com](mailto:sellinqonita655@gmail.com)  
UIN Sunan Ampel Surabaya

Achmad Safiudin R  
[safiudin@uinsa.ac.id](mailto:safiudin@uinsa.ac.id)  
UIN Sunan Ampel Surabaya

Garnetta Liya Widyanti  
[liyanetta124@gmail.com](mailto:liyanetta124@gmail.com)  
UIN Sunan Ampel Surabaya

## Abstract:

Following the enactment of Constitutional Court Decision Number 12/PUU-XXI/2023, which allows a former prisoner to nominate to become a member of the DPD, and the addition of the phrase to norm 182 letter g, the Constitutional Court has indirectly acted as a positive legislator. This research presents two distinct problem formulations. The first is a legal study of the Constitutional Court's ruling Number 12/PUU-XXI/2023, which addresses the prerequisites for ex-offenders to apply to join the DPD. Second is the *fiqh siyāsah dusturiyāh* analysis of the Constitutional Court decision Number 12/PUU-XXI/2023 concerning the requirements for former convicts to nominate to become members of the DPD. This research uses a normative legal writing method through library research. The findings of this research presented that, although it conflicts with the 1945 Constitution and constitutional rights, the granting of the request for a judicial review of the requirements for ex-convicts to nominate themselves as members of the DPD in Article 182 letter g is by the principles of *siyāsah dusturiyāh*, which address human rights as well as openness, justice, and conformity with prior rulings.

**Keywords:** Constitutional Court, Former Convicts, DPD

## Introduction

The Republic of Indonesia is the world's largest legal state (rechtsstaat), and it uses the Trias Politica theory. A philosopher from England named John Locke put forward the Trias Politica theory, and this

idea was continued by the French philosopher Montesquieu. In principle, a country's Constitution is a record (registration). This power shows that the government has different legislative, executive, and judicial functions, or what we know as Trias Politica.<sup>1</sup>

The Trias Politica concept is a separation of powers that aims to establish balance and prevent abuse of power in a democratic country by dividing power into three parts, namely: first, legislative power or statutory power, often called the rule-making function; secondly, executive power or the power to implement law frequently referred to as the application function; and third, judicial power or the power to adjudicate if there is a violation of the law is often referred to as the rule adjudication function.<sup>2</sup>

The legislative institution is an institution tasked with formulating laws. This legislative institution consists of three institutions, namely the People's Consultative Assembly of the Republic of Indonesia (MPR), the House of Representatives of the Republic of Indonesia (DPR), and the Regional Representative Council of Indonesia (DPD). The Regional Representative Council is a state institution that was born after the third amendment to the 1945 Constitution. This institution emerged as a new face that initially appeared as a regional representative in the representative system in Indonesia. The change in the title from Regional Representative to Regional Representative Council aims to be more democratic and increase regional participation in implementing state and government practices. The birth of the Regional Representative Council is an effort towards a more democratic, participatory, and aspirational approach that involves the people in contributing to fighting for regional aspirations at the national level.

The election of members of the Regional Representative Council (DPD) is also used as a channel for people's aspirations in selecting legislative candidates. Participants in the DPD member election can register themselves with several requirements. The conditions for political rights to become a DPD member are regulated following the

---

<sup>1</sup> Efi Yulistyowati, Endah Pujiastuti, and Tri Mulyani, "Penerapan Konsep Trias Politica Dalam Sistem Pemerintahan Republik Indonesia : Studi Komparatif Atas Undang-Undang Dasar Tahun 1945 Sebelum Dan Sesudah Amandemen," *Jurnal Dinamika Sosial Budaya* 18, no. 2 (August 9, 2017): 330

<sup>2</sup> *ibid*, 331.

latest Election Law, namely in Article 182 letter g of Law Number 7 of 2017 concerning General Elections, which states:<sup>3</sup>

*“Never be sentenced to prison based on a court decision that has permanent legal force for committing a criminal offense that is punishable by imprisonment for five (five) years or more, **unless** openly and honestly stating to the public that the person concerned is a former convict.”*

Political rights, including the right of citizens to vote and be elected in general elections, are constitutional rights as stated in Article 27 (1) of the 1945 Constitution, which states that, *“All citizens uphold the law and government without exception.”*<sup>4</sup> Also, when considered collectively, the International Covenant on Civil and Political Rights the International Covenant on Civil and Political Rights in Article 25 states that the rights of every citizen are protected to take part in the implementation of public affairs, the right to vote and be elected, and the right to access public services.<sup>5</sup>

In other words, these articles state that every Indonesian citizen has the right to human rights, such as participating in government and voting or being elected in general elections. One of the fundamental rights of every citizen is their political right to appear directly or through their representatives to participate in the government of their country. According to Haris Munandar, the primary purpose of political rights is to protect individual interests from abuse of power by those in power. Therefore, the political rights mentioned above protect citizens from arbitrary power by involving citizens directly or indirectly in decision-making.

Judicial Review is the authority of the Constitutional Court to carry out a legal review of the 1945 Constitution. In Law Number 24 of 2003 concerning the Constitutional Court, Article 10 states that *“The Constitutional Court has the authority to adjudicate at the first and final level whose decision is final to review laws against the Constitution (UUD 1945).”*<sup>6</sup> As the Constitution Article 24C paragraph (1) states, *“The*

<sup>3</sup> Article 182 Letter g Law No. 7 of 2017 concerning General Elections.

<sup>4</sup> Rahman Yasin, “Hak Konstitusional Warga Negara Dalam Pemilu,” *Jurnal Bawaslu Provinsi Kepulauan Riau* 4 (December, 2022): 196.

<sup>5</sup> International Covenant on Civil and Political Rights Article No. 25 as ratified by Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights).

<sup>6</sup> Article 10 Law No. 24 of 2003 concerning the Constitutional Court.

*Constitutional Court has the authority to adjudicate at the first and final level whose decisions are final to review laws against the Constitution.”<sup>7</sup>*

Review of laws: To the Constitutional Court to review the material in Article 182 letter g Number 7 of 2017, it states that the constitutional basis used in the Constitutional Court decision Number 12/PUU-XXI/2023 mentions several articles, namely: Article 1 paragraph (2) of the 1945 Constitution, Article 1 paragraph (3) of the 1945 Constitution, Article 22E paragraph (1) of the 1945 Constitution, and Article 28D paragraph (1) of the 1945 Constitution. Referring to Article 28D paragraph (1) of the 1945 Constitution, "Everyone has the right to recognition, guarantee, fair legal protection and certainty, and equal treatment before the law." Every Indonesian citizen has the same basic rights as other general citizens in nominating themselves as legislative candidates in the general election. Equality of political rights does not look at the status a person has, with that, society uses its power to voice and fight for people's rights to create prosperity.

Siyasah dusturiyyah is a part of siyasah fiqh that deals with legislation and human rights issues to create order and benefit. The word "dusturi" comes from Persian. Initially, it meant someone who had authority in both political and religious circles. After being absorbed into Arabic, the word "dusturi" became a fundamental principle/development, whereas according to the term dusturi, it is a collection of rules that regulate the basis and have a cooperative relationship between members of society in good governance.<sup>8</sup>

According to Islamic law, the requirements for nominating members of the Regional Representative Council lead to siyasah fiqh, using the term "amir" to describe regional rulers. The term ahl al-Halli wa al-'aqdi first appeared in the books of commentators and ushul fiqh experts after the arrival of the Prophet Muhammad. They act as representatives of the people to voice their emotions. One of his responsibilities was directly electing the imam and caliph, the head of state.

Islamic law has the same function as the Regional Representative Council and Ahl Al-Halli wa Al-Aqdi. This institution is given the authority to decide and determine things on behalf of its people (citizens). Even

---

<sup>7</sup> Article 24 C Paragraph (1) of the 1945 Constitution of The State of the Republic Indonesia.

<sup>8</sup> Muhammad Iqbal, *Fiqh Siyasah : Kontekstualisasi Doktrin Politik Islam*, Cetakan 1 (Jakarta: Kencana, 2016).

though the term *Ahl al-Hall wa Al-aqd* did not exist at the time of Rasulullah SAW, in practice, the Prophet carried out deliberations with events and images taking place, thereby committing the rulers in Islam to deliberation with the deliberative council. This council, namely *Ahl al-Hall wa Al-aqdi*, has members from its friends and channels the voices or aspirations of the community, so it is also called the representative council.<sup>9</sup>

The comparison between the Indonesian Islamic government system and the concept of Islam is somewhat different. However, global thinking has influenced the development of this system from ancient times to the present, so the pattern of the Indonesian government is almost similar to that of the Islamic government. Still, shifts in government in Indonesia have influenced changes in government.<sup>10</sup>

If we look at recent events, even when dealing with the dynamics of the upcoming 2024 election, the Constitutional Court has reviewed Law Number 7 of 2017, as stated in Constitutional Court Decision Number 12/PUU-XXI/2023, which relates to the requirements for election participants for candidates for Regional Representative Council. The Constitutional Court partially granted the applicant's request in decision Number 12/PUU-XXI/2023. In its decision, it was decided that Article 182 letter g of Law Number 7 of 2017 concerning General Elections violates the 1945 Constitution and does not have conditionally binding legal force as long as it is not interpreted as follows:<sup>11</sup>

*g. (i) have never been convicted based on a court decision that has obtained permanent legal force for committing a criminal act that is punishable by imprisonment for 5 (five) years or more, except for criminal acts of negligence and political crimes in the sense of an act that declared a criminal offense 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 completed serving a prison sentence based on a court decision that has permanent legal force*

<sup>9</sup> Andriko Andriko and Adlan Sanur, "Filsafat Politik Islam Tentang Kedudukan Mantan Narapidana Menjadi Anggota Legislatif," *ALHURRIYAH: Jurnal Hukum Islam (ALHURRIYAH JOURNAL OF ISLAMIC LAW)* 3, no. 1 (June 22, 2018): 69..

<sup>10</sup> Musyafiatun Musyafiatun, "Pencalonan Mantan Narapidana sebagai Anggota Legislatif Perspektif Fikih Siyasah," *al-Daulah: Jurnal Hukum dan Perundangan Islam* 4, no. 02 (October 1 2015): 561–87.

<sup>11</sup> Judicial Review of Law Number 12 of 2023 concerning Requirements for Convicts to Nominate Regional Representative Council Members.

*and has honestly or openly stated the background of his identity as a former convict; and (iii) not be a repeat offender.*

By considering the provisions above, the author believes that the technical arrangement is deemed to be more effective in terms of efforts to announce to the public that he is a former convict and still prioritizes the constitutional right to be elected and vote; this is important to address the issue of candidacy for former convicts. Many candidates fail at the election stage because one of the conditions is not fulfilled, namely that they have never been sentenced to prison based on a court decision that has permanent legal force for committing a criminal offense that is punishable by a prison sentence of five years or more, by stating that they are a former convict. This will make it easier for a candidate who wants to be nominated to become a member of the Regional Representative Council.

Thus, this issue is exciting if discussed in more depth and detail regarding the candidacy of former convicts as members of the Regional Representative Council, according to the author, whether there is a lack of harmony regarding existing legal regulations or whether there is harmony if combined from the perspective of Fiqh Siyasa Dusturiyyah. This research uses normative legal research, qualitative research, which examines legal norms and rules for reviewing legislation that applies in society. The nature of this normative legal research is found in descriptive-analytical research, in which the author analyzes data obtained from literature studies related to the requirements for ex-convicts to nominate members of the Regional Representative Council.

## **Mechanism for Nominating the Regional Representative Council**

The presence of the Regional Representative Council in Indonesia as part of the legislative power was formed based on the third amendment to the 1945 Constitution to strengthen the regional government system<sup>12</sup>. The Regional Representative Council is formed using general elections in which each DPD member candidate is required

---

<sup>12</sup> Suparto, "The Existence of Indonesian Regional Representatives Council as The State Institution on Carrier the Regional Aspirations," in *Proceedings of the 3rd International Conference on Globalization of Law and Local Wisdom (ICGLOW 2019)* (Proceedings of the 3rd International Conference on Globalization of Law and Local Wisdom (ICGLOW 2019), Surakarta, Indonesia: Atlantis Press, 2019), 377.

to fulfill the requirements to become an individual election participant like other election participants, whether political parties or presidential and vice presidential candidate pairs.

Individual election participants for Regional Representative Council candidates are different from other election participants in that they have several principles, nomination stages, and requirements as stated in General Election Commission Regulation Number 10 of 2022 concerning the Nomination of Individual Participants in the General Election for Regional Representative Council Members. Chapter II explains the related principles. In Article 2, individual nominations for election participants for DPD members are guided by the principles: a) independent, b) honest, c) fair, d) legal certainty, e) orderly, f) open, g) proportional, h) professional, i) accountable, j) effective, k) efficient, and l) accessible.

Registration for prospective DPD member candidates will open earlier, on 12-18 December 2022, for the support verification process. Hasyim said that before registering candidates for DPD members, support requirements must be met and submitted to the Provincial KPU. Once the support requirements are met, candidates can register to become DPD members in May 2023.

The requirements for prospective DPD members, especially the minimum support requirements, must be submitted to the KPU and proven by a photo of KTP/KK as stated in Article 183, Paragraph 1, of Law Number 7 of 2017.<sup>13</sup> Apart from that, there are requirements for the nomination of DPD members for former convicts, which are regulated in KPU Regulation Number 10 of 2022, Article 15, paragraph (1) letter g, and paragraph (2) letter a, which reads: *“has never been sentenced to prison based on a court decision that has obtained permanent legal force for committing a crime punishable by imprisonment for 5 (five) years or more, unless openly and honestly stating to the public that the person concerned is a former convict. And not as a repeat offender.”*

Based on the election stages determined in KPU Regulation Number 3 of 2022 concerning Stages and Schedule for the 2024 Election for DPD Member Candidates starting on December 6, 2022, by submitting minimum support via the Silon application until December 28, 2022, at

---

<sup>13</sup> Lalu Suparman Ambakti, “Ini Tahapan Penyerahan Dukungan Bakal Calon Anggota DPD RI Pemilu 2024”, metrontb, accessed July 22, 2022, <https://www.metrontb.com/politik/pr-8186081194/ini-tahapan-penyerahan-dukungan-bakal-calon-anggota-dpd-ri-pemilu-2024>.

23.59 WIB. According to the schedule and stages, prospective DPD members can input support data into the digital application systems (named by silon) by first requesting access to the silon from the General Election Commissions (KPU).<sup>14</sup>

### **Rights of Former Prisoners**

In the Big Indonesian Dictionary (KBBI), a convict is a person serving a sentence for a criminal offense. Article 7 of Law Number 12 of 1995 concerning Corrections states, "*Convicts are convicts who are serving the sentence of losing their 'freedom in prison'.*" Meanwhile, Article 6 explains that a convict is someone who has been punished because of a court decision whose law remains in force.

According to Yudobusono, former prisoners are people who have violated norms and have received punishment or sanctions that have been imposed on them. On the other hand, Azani believes that a former convict is someone who was once sentenced and served his sentence in a penitentiary but has now completed his sentence there.<sup>15</sup>

The relationship between humans and their creator can be traced theologically in the concept of human rights (HAM). Only God Almighty is genuinely higher than all humans. Each right is determined objectively or subjectively. Objective rights are rights given to someone simply because they belong to them. Subjective means determining whether he has the right to relate to what he has. He is the master of what he has. Determination of these rights is also related to legal and state matters. Rights are determined objectively because natural law is a manifestation of justice and are determined subjectively as a consequence of the determination of natural law.<sup>16</sup>

According to Law Number 39 of 1999 in part 1 Article 1 (1), Human Rights (HAM) are defined as a group of rights inherent in the nature and existence of humans as creations of God Almighty, which must be respected, protected, and upheld by all individuals to maintain honor and protect human dignity.

---

<sup>14</sup> Mahyudin, "Mekanisme Pencalonan Dewan Perwakilan Daerah Pada Pemilu 2024 Dan Penyelesaian Sengketa Proses," *Jurnal Pengawasan Pemilu* 8, no. 2 (June 13, 2023): 111.

<sup>15</sup> R. Achmad et al., *Sistim Pemasarakatan Di Indonesia* (Jakarta: Bandung Bina Cipta, 1979), 17.

<sup>16</sup> E. Sumaryono, *Etika Hukum, Relevansi Teori Hukum Kodrat Thomas Aquinas* (Yogyakarta: Kanisius, 2002).

Human Rights Convention No. 39 of 1999 consists of 106 articles and divides the right to life, family rights, self-development rights, rights to justice, rights to personal freedom, rights to security, welfare rights, rights to participate in government, women's rights, children's rights, obligations human basics, government obligations and responsibilities, as well as restrictions and prohibitions.<sup>17</sup>

General elections, also known as general elections, are democratic celebrations intended to increase the people's sovereignty. The public must elect their deputy leaders democratically for the welfare of Indonesia. Article 23E paragraph (1) of the 1945 Constitution guarantees that election efforts can be better by involving broad public participation in the principles of direct, general, free, secret, honest, and fair democracy.

In a democratic country, elections are held to place legislative and executive positions. As the most open position, the political office can be contested by every citizen without considering their qualifications. Therefore, the only way he can occupy this political position is by getting his political support, be it from higher bureaucrats or people's representatives.

Apart from that, we must pay attention to the fact that upholding human rights, especially political rights for former convicts, is not limited to human interests in the narrow sense. What is more important is recognizing and respecting the human dignity of every person without distinction of social status, politics, ethnicity, religion, political beliefs, culture, race, or other groups.<sup>18</sup>

In this way, every citizen who has served a sentence (imprisonment) based on a court decision that has legal force remains the same as other citizens who were born clean, free, worthy, dignified, and equal in the eyes of the law.<sup>19</sup>

## **Juridical Analysis of Constitutional Court Decision Number 12/PUU-XXI/2023 Concerning Requirements for Former Convicts to Nominate to Become DPD Members**

---

<sup>17</sup> Law No. 39 of 1999 concerning Human Rights.

<sup>18</sup> Yeni Handayani, "Hak Mantan Narapidana Sebagai Pejabat Publik Dalam Perspektif Hak Asasi Manusia," *Jurnal Rechtsvinding Online, Media Pembinaan Hukum Nasional*, Oktober 2014, 4.

<sup>19</sup> Akhmad Nikhrawi Hamdi, "Hak Eks Narapidana Menjadi Anggota Legislatif," *Fisip. Jurnal as-Siyasah Universitas Islam Kalimantan MAB* 1, no. 1 (2016): 31.

Indonesia, as a country based on law, faces various complex legal problems. Therefore, legal institutions are expected to be able to implement the rules necessary to resolve various legal problems. One of the institutions of the Constitutional Court, which has the authority to examine legal compliance with the 1945 Constitution. In addition, the Constitutional Court plays a role in protecting and supervising constitutional rights, including human and legal rights.<sup>20</sup>

The Constitutional Court Number 12/PUU-XXI/2023 on February 28, 2023, has decided the request for judicial review submitted by the Association for Elections and Democracy (PERLUDEM) regarding the requirements for former convicts to nominate themselves as members of the legislature (DPD), which was decided by nine judges of the Constitution at that time. Among them are chairman Anwar Usman, Saldi Isra, Wahiduddin Adams, Suhartoyo, Arief Hidayat, Daniel Yusmic P. Foek, Enny Nurbaningsih, Manahan M.P. Sitompul, and M. Guntur Hamzah, signed by the substitute registrar, namely Syukri Asy'ari. In the decision, there is an additional phrase in Article 182 letter g, which initially reads:

*“Never be sentenced to prison based on a court decision that has permanent legal force for committing a criminal offense that is punishable by imprisonment for five (five) years or more, unless openly and honestly stating to the public that the person concerned is a former convict..”*

Become :

**Firstly**, *except for convicts who commit criminal acts of negligence and political crimes in the sense of an act that is declared a criminal act in positive law simply because the perpetrator has a different political view from the regime in power;*

**Second**, *for former convicts, a period of 5 (five) years has passed after the former convict has completed serving a prison sentence based on a court decision that has permanent legal force and honestly or openly announces the background of his identity as a former convict;*

**Third**, *not as a repeat offender.*

Through Decision Number 12/PUU-XXI/2023, the Court granted conditionally constitutional status, regarding Article 182 letter g of the

---

<sup>20</sup> Fantika Setya Putri and Gayatri Dyah Suprobowati, “Eksistensi Mahkamah Konstitusi Republik Indonesia Terhadap Pengukuhan Hak Konstitusi Warga Negara,” *Sovereignty: Jurnal Demokrasi dan Ketahanan Nasional* 1, no. 4 (December 16, 2022): 632.

Law on General Elections. It is intended that this article is intended to avoid a legal vacuum by establishing terms or conditions so that it can be said that there is a new norm in the law that has been decided. The Constitutional Court has positively stated that legislators have set additional requirements for legislative member candidates (DPD) who have ex-convict backgrounds.

The creation of new norms in the Constitutional Court's decisions certainly pays attention to justice above the law and has shown the creativity and intelligence of the judges. Rule-breaking is not necessarily carried out as a mere legal breakthrough but to realize humanitarian goals and public benefits.<sup>21</sup>

If we look closely at the efforts made by the Constitutional Court's decision, this is a good step, especially for a former prisoner, because first, there is recognition of human rights, which this decision is considered as recognition of the human rights of former prisoners to participate in the political process, in line with the spirit of Article 28D paragraph (1) of the 1945 Constitution; Second, openness and justice: the affirmation of the requirement to wait a period of 5 years after the former convict has finished serving his prison sentence based on a court decision that has legal force is still considered a fair and transparent step; Third, conformity with previous decisions, where this decision is considered as a step to align the requirements for DPD member candidates with previous decisions such as the Constitutional Court decision No. 56/PUU-XVII/2019 and the Constitutional Court decision No. 87/PUU-XX/2022. Realizing the losses that have been felt by Khoirunnisa Nur Agustyati as applicant I, representative of (PERLUDEM), the Constitutional Court then attached a set of rulings that contained positive legislative content (finding new and regulatory norms) as outlined in ruling Number 12/PUU-XXI/2023.

The material review carried out in Article 182 letter g of Law Number 7 of 2017 regarding elections is not the first. Constitutional Court Decision Number 56/PUU-XVII/2019 concerning requirements for the election of governors, mayors, and regents, as well as Constitutional Court Decision Number 87/PUU-XX/2022 concerning the election of legislative members excluding only DPD (DPR and DPRD), are examples

---

<sup>21</sup> Fitria Esfandari, Jazim Hamidi, and Moh. Fadli, "Positive Legislature Mahkamah Konstitusi Di Indonesia," *Brawijaya Law Student Journal*, 1, no. 1 (December 9, 2014): 4.

from previous material tests. The decision did not provide further explanation regarding the demands of DPD candidate members against former legislative convicts. This is a natural concern because the differences in requirements to become a DPD candidate for ex-convicts and legislative members directly elected by the people could result in violations of citizens' constitutional rights based on Article 28D paragraph (1) of the 1945 Constitution.

Regarding former convicts who are running for legislative membership (DPD), someone who has made a mistake will not make a mistake again. If the public view assumes that a former prisoner is always a criminal, that includes stigmatizing the former prisoner. By prohibiting ex-convicts from nominating DPD members, there is a stigma that an ex-convict cannot change for the better. Likewise, former convicts who have not completed their sentence are considered useless because if they have served their sentence, they are still considered not good.<sup>22</sup>

Former prisoners have the same rights as other members of society with positive legal conditions in Indonesia. As in Law No. 39 of 1999, Chapter I, general provisions in Article 1 paragraph (1) state that the meaning of human rights is a set of rights inherent in the existence and nature of humans as creatures of the Almighty God and their gifts, which must be protected, respected, and upheld by the rule of law. and every person for the sake of honor and protection of human dignity and worth.

Based on several basic considerations based on the petitioner's arguments, documentary evidence, expert statements submitted, statements from the government, and related parties. In the end, the Constitutional Court found that the quo article was contrary to the 1945 Constitution. However, if a person has served in detention, he still cannot be equated with someone who has never been imprisoned, which in the Indonesian penal system is considered a failure. This means that the correctional process carried out by the state so far has not succeeded in restoring the position of former prisoners as normal members of society. With conditional constitutional status regarding Article 182 letter g of Law No. 7 of 2017 concerning general elections, former prisoners still have the right to participate in the general election of legislative member

---

<sup>22</sup> Nova Situmeang et al., "Pembatasan Hak Perseorangan Dalam Pencalonan Kembali Mantan Terpidana Korupsi Menjadi Anggota Legislatif 2024" 1, no. 2 (2024): 168.

candidates (DPD) democratically. However, there are additional requirements that must be fulfilled to be able to take part in the contest.

The status of each legal test has experienced quite significant developments. After the decision has been granted, it cannot be accepted, and the application in part or in whole, as stated in Article 56 paragraph (3) and Article 57 paragraph (1) of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning Constitutional Court (UU MK).<sup>23</sup> In this case, the Constitutional Court has created several other types of decisions, namely conditional constitutional and conditional unconstitutional. According to Jimly Asshiddiqie, conditionally constitutional states that a provision of a law does not conflict with the constitution by giving several requirements to state institutions in implementing a provision of law to pay attention to the Constitutional Court's interpretation of the constitutionality status of the provisions of the law that have been reviewed.<sup>24</sup>

### **Siyasah Dusturiyah Fiqh Analysis of the Constitutional Court Decision Number 12/PUU-XXI/2023 Concerning Requirements for Former Convicts to Nominate to Become DPD Members**

The Qur'an is the main source of Islamic law; the Sunnah and Hadith serve as the basis for Islamic law; and the Qur'an and Hadith also provide the basis for several problems in life. One of them is regarding the nomination of former convicts as members of the legislature (DPD), which is still being debated by the public. In Constitutional Court decision No. 12/PUU-XXI/2023, the judge determined that it is permissible for former prisoners to nominate themselves as members of the legislature based on the values of justice and to protect the constitutional rights of former prisoners. However, the public's view of the Constitutional Court decision no. 12/PUU-XXI/2023 is certainly considered detrimental. Society sees ex-convicts as imperfect labels because they believe that they have acted unethically and are synonymous with moral violations. This

---

<sup>23</sup> Article 56 Paragraph 3 and Article 57 Paragraph 1 Law No. 24 of 2003 concerning the Constitutional Court.

<sup>24</sup> Nurul Aini Octavia, "Mengenal Amar Putusan Konstitusional Bersyarat dan Inkonstitusional Bersyarat yang Dianut Mahkamah Konstitusi dalam Pengujian Perundang-undangan: Kesalahan Teoritik dalam Putusan Mahkamah Konstitusi No. 91/PUU-XVIII/2020," *Ijtihad: Jurnal Hukum dan Ekonomi Islam* 16, no. 2 (December 17, 2022): 175.

deviation may occur because someone is given a stamp or label by society, which then makes them tend to continue carrying out actions that are considered deviant. This kind of stigma often hinders the development of a person's thinking. So it is difficult for them to understand how this action can be avoided with certain conditions so that ex-convicts do not reoffend. According to this perspective, society must learn to align itself with general scientific and religious frameworks so that the process of giving labels or labels to former prisoners does not become a paradigm error.

In this way, the author explains the suitability of this topic with the ideas of *Siyasah Dusturiyyah*, which is part of *Fiqh Dusturiyyah*, which discusses state laws following sharia principles. The purpose of making laws is to ensure that people behave in an orderly manner and fulfill their wishes. Including other government rights, such as the right of former prisoners to obtain protection. Therefore, the law must be applied fairly according to constitutional principles, and as a basis for religious politics, Islam commands this in Surah an-Nisa. 58, which means:

*“Indeed, Allah commands you to return trusts to their rightful owners; and when you judge between people, judge with fairness. What a noble commandment from Allah to you! Surely Allah is All-Hearing, All-Seeing.”*

The explanation of the verse above shows that Allah ordered to give a comprehensive mandate. This includes mandates relating to Allah's rights over His servants, such as prayer, zakat, and fasting, as well as mandates relating to humans. In addition, Allah commands his servants to apply the law between people, both those who have disputes and others without disputes. If you make decisions fairly under what Allah SWT teaches, namely not taking sides except for objections and not imposing sanctions except on those who violate them, you will not judge them even if they are contrary to your opinion, and you will not take sides with anyone. This means that the command to do justice is given to all humans. Therefore, both justice and trust must be implemented and upheld without considering the context. To achieve this, *Ahl-al-Halli wal-'Aqdhi* members must fulfill the requirements set by the *Siyasah Fiqh Ulama*. These requirements are:

- a. Fairness, means being equal in deciding issues, especially related to the appointment of leaders.
- b. Amanah, means that an official must be truly trustworthy in carrying out the responsibilities given by the people well.

- c. Knowledgeable, means knowing, such as religious knowledge and social science, as a reference for analyzing existing problems.
- d. Not unjust, which is where a leader has good qualities so that civil regulations do not violate Allah's provisions in the Qur'an and Al-Hadith.
- e. Having a good physique, means being healthy physically (five senses) and spiritually.

In the Islamic perspective regarding ex-convicts, it is explained that an ex-convict is someone who previously committed a crime or sin and has served a criminal sentence. In Islamic teachings, it is emphasized that sanctions must be given to those who violate the provisions of Allah SWT. Therefore, these sanctions must be under God's law. Punishment or sanctions are imposed on people who commit injustice, and the punishment must be proportional to the violation committed, not more or less. Crimes can be forgiven if a person truly repents and does not repeat them. In this context, the good that is done can erase the sins that have been committed previously. As in Surah an-Nisa verse 110, which means: *"Whoever commits evil and wrongs himself, then asks Allah, he will surely find Allah Most Forgiving, Most Merciful."*

The explanation of this verse describes His glory and mercy so that everyone who repents will be freed from any sin. Thus, it is clear that a government official who has made a mistake or violated the law can repent and promise not to do the same thing again. To restore the credibility or fairness of a legislative candidate (DPD), he or she must implement and comply with the necessary policies. It is not enough just to repent, he must also take time to show his repentance and try to be better until he is worthy of being nominated as a member of the Regional Representative Council. In the Sunnah of the Prophet SAW, we find hadiths that invite us to repent, explain the virtues, and encourage us to do so in various ways. Rasulullah SAW said:

*"O all people, repent to Allah SWT, for indeed I repent to Allah SWT a hundred times in one day."*

Prophet Adam As, was the first servant created by Allah and sent as caliph and leader of all creatures on earth. Even though he was expelled from heaven due to the mistake of consuming the forbidden fruit, Prophet Adam did not blame his fate. Instead, he asked for forgiveness and repented to Allah, showing humility and firmness of faith. Repentance or feeling sorry is a process in which a person admits a mistake and tries to improve himself. Prophet Adam As showed how to overcome mistakes

made by admitting mistakes without blaming people or situations, asking Allah for forgiveness sincerely and persistently, promising not to repeat mistakes, remaining grateful, and showing patience in facing life's trials.

No human being is free from mistakes. Whether done intentionally or not. As in the saying, "only a donkey falls into the same hole twice." This proverb is an expression of the stupidity of someone who does not want to learn from the same mistake. It is unnatural for a believer to make the same mistakes over and over again. That is why the Prophet reminded in his words, as narrated from Abu Hurairah, that the Messenger of Allah said: "*A believer cannot fall into one hole twice.*"

This hadith contains the message that, as a Muslim, you must learn from the mistakes you have made. Because mistakes that occurred in the past can be used as lessons for the future, by making mistakes that you have experienced, there are at least two benefits, namely: first, you will not repeat the same mistakes; and second, you will have the ability to make better decisions in the future. Because if someone makes the same mistake, it shows that they have not learned from the mistakes they made. Therefore, the Prophet Muhammad SAW ordered all Muslims to always be careful, vigilant, thorough, and not negligent.

From the explanation above, the author can conclude that the Constitutional Court decision No. 12/PUU-XXI/2023, allowing former prisoners to become members of the legislature (DPD) with certain conditions, has restored their people's rights, including their right to participate in politics with equal rights before the law. On the other hand, if he has repented and accepted the consequences of all his mistakes, he will receive a prison sentence. The purpose of punishment is to liberate prisoners mentally and spiritually. By being released, prisoners seem to experience a mental and spiritual transition, letting go of all the habits, ways of thinking, and lifestyles they had before. Restoration of these rights indicates that the person who has served a sentence seeks to participate in progress and live in a manner worthy of being. Thus, a former prisoner may nominate if he has repented and has fulfilled the requirements as determined by the Constitutional Court:

1. Never as a convict who has been given permanent legal force by a court decision for committing a criminal offense that is punishable by a prison sentence of 5 (five) years or more, except for convicts who commit criminal acts of negligence and political crimes simply because they have political opinions that are different from the regime;

2. For former convicts who have served prison sentences based on court decisions that have permanent legal force, 5 (five) years have passed since they were released from prison. They must honestly or openly announce their background as former convicts;
3. Not as a repeat offender.

## Conclusion

After reviewing various issues related to the Constitutional Court Decision Number 12/PUU-XXI/2023 concerning the requirements for former convicts to nominate themselves as members of the Regional Representative Council, it can be concluded as follows:

The Constitutional Court, as a judicial institution whose authority is to review laws against the Constitution, has the consequence of reviewing (judicial review) election laws that are deemed to conflict with the 1945 Constitution. Juridical analysis of the Constitutional Court decision Number 12/PUU-XXI/2023 considers that the petitioner's petition is constitutionally conditional as long as it has passed a period of five (five) years after the former convict has served a prison sentence based on a court decision that has permanent legal force and honestly or openly announces his identity background as a former convict and not a perpetrator of a crime over and over again.

Therefore, the addition of the phrase to norm 182 letter g implies that the Constitutional Court has acted as a positive legislator. Thus, the efforts made by the Constitutional Court's decision are a good step, especially for a former prisoner, because first, there is recognition of human rights; Second, openness and fairness, and third, conformity with previous decisions.

Based on Fiqh Siyasah Dusturiyyah's analysis of Constitutional Court Decision Number 12/PUU-XXI/2023, which allows former prisoners to nominate themselves as members of the Regional Representative Council, this is in line with the principles of Siyasah Dusturiyyah, which discusses human rights. This justification comes from the understanding that former prisoners, after serving their sentence in prison, have the same rights as other citizens. Therefore, former prisoners are allowed to run for office as long as they have repented and fulfilled the requirements set by the Constitutional Court.

## Bibliography

- Akhmad Nikhrawi Hamdi. "Hak Eks Narapidana Menjadi Anggota Legislatif." *Fisip. Jurnal as-Siyasah Universitas Islam Kalimantan MAB* 1, no. 1 (2016): 31. <http://dx.doi.org/10.31602/as.v1i1.588>.
- Andriko, Andriko, and Adlan Sanur. "Filsafat Politik Islam Tentang Kedudukan Mantan Narapidana Menjadi Anggota Legislatif." *ALHURRIYAH: Jurnal Hukum Islam (ALHURRIYAH JOURNAL OF ISLAMIC LAW)* 3, no. 1 (June 22, 2018): 69. <https://doi.org/10.30983/alhurriyah.v3i1.556>.
- E. Sumaryono. *Etika Hukum, Relevansi Teori Hukum Kodrat Thomas Aquinas*. Yogyakarta: Kanisius, 2002.
- Handayani, Yeni. "Hak Mantan Narapidana Sebagai Pejabat Publik Dalam Perspektif Hak Asasi Manusia." *Jurnal Rechtsvinding Online, Media Pembinaan Hukum Nasional*, Oktober 2014, 4.
- Mahyudin. "Mekanisme Pencalonan Dewan Perwakilan Daerah Pada Pemilu 2024 Dan Penyelesaian Sengketa Proses." *Jurnal Pengawasan Pemilu* 8, no. 2 (June 13, 2023): 111.
- Muhammad Iqbal. *Fiqh Siyasah : Kontekstualisasi Doktrin Politik Islam*. Cetakan 1. Jakarta: Kencana, 2016.
- Musyafiatun, Musyafiatun. "Pencalonan Mantan Narapidana sebagai Anggota Legislatif Perspektif Fikih Siyasah." *al-Daulah: Jurnal Hukum dan Perundangan Islam* 4, no. 2 (October 1, 2015): 561-87. <https://doi.org/10.15642/ad.2014.4.02.561-587>.
- Nurul Aini Octavia. "Mengenal Amar Putusan Konstitusional Bersyarat dan Inkonstitusional Bersyarat yang Dianut Mahkamah Konstitusi dalam Pengujian Perundang-undangan: Kesalahan Teoritik dalam Putusan Mahkamah Konstitusi No. 91/PUU-XVIII/2020." *Ijtihad: Jurnal Hukum dan Ekonomi Islam* 16, no. 2 (December 17, 2022): 175. <https://doi.org/10.21111/ijtihad.v16i2.8765>.
- Putri, Fantika Setya, and Gayatri Dyah Suprobowati. "Eksistensi Mahkamah Konstitusi Republik Indonesia Terhadap Pengukuhan Hak Konstitusi Warga Negara." *Sovereignty: Jurnal Demokrasi dan Ketahanan Nasional* 1, no. 4 (December 16, 2022): 632.
- R. Achmad, S. Soemadipradja, Romli Atmasasmita, and Badan Pembinaan Hukum Nasional. *Sistim Pemasarakatan Di Indonesia*. Jakarta: Bandung Bina Cipta, 1979.
- Situmeang, Nova, Mega Intan, Ayu Efrita Dewi, and Heni Widiyani. "Pembatasan Hak Perseorangan Dalam Pencalonan Kembali Mantan Terpidana Korupsi Menjadi Anggota Legislatif 2024" 1,

- no. 2 (2024): 168.
- Suparto. "The Existence of Indonesian Regional Representatives Council as The State Institution on Carrier the Regional Aspirations." In *Proceedings of the 3rd International Conference on Globalization of Law and Local Wisdom (ICGLOW 2019)*, 377. Surakarta, Indonesia: Atlantis Press, 2019. <https://doi.org/10.2991/icglow-19.2019.91>.
- Yasin, Rahman. "Hak Konstitusional Warga Negara Dalam Pemilu." *Jurnal Bawaslu Provinsi Kepulauan Riau* 4 (Desember 2022): 196.
- Yulistyowati, Efi, Endah Pujiastuti, and Tri Mulyani. "Penerapan Konsep Trias Politica Dalam Sistem Pemerintahan Republik Indonesia : Studi Komparatif Atas Undang-Undang Dasar Tahun 1945 Sebelum Dan Sesudah Amandemen." *Jurnal Dinamika Sosial Budaya* 18, no. 2 (August 9, 2017): 330. <https://doi.org/10.26623/jdsb.v18i2.580>.