

Implementation Of Article 240 Paragraph (1) Letters G Act No. 7 Of 2017 In The Making Of Combating Corruption Crime In Legislative Institutions (Case Study in KPU of Central Java)

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Abstract. This study aims to: 1) identify and explain the implementation of Article 240 paragraph (1) letter g of Act No. 7 of 2017 by the Election Commission of Central Java, and 2) to assess and analyze the implementation of Article 240 paragraph (1) letter g of Act No. 7 of 2017 can realize eradication of corruption.

The study used socio-juridical approach method to examine and discuss the issues that was raised, followed by conducting research and interviews in person at the Election Commission of Central Java, Semarang Corruption Court, Academician, Member of Party Politics and Society. As well as the author uses the theory of utilitarianism, to analyze the problem.

The results showed: 1) ex-convict corruption are not allowed to run for legislative candidates in accordance with the regulations of PKPU No. 20 of 2018. 2) In Article 240 paragraph (1) letter g Electoral Act No. 7 of 2017 on the content of the article is general in nature so that the sentence can not be accommodated on the eradication of corruption because in the article does not explicitly include the prohibition of ex-convict corruption to be nominated again as legislative candidates.

Keywords: Election; Legislative Candidate; Corruption Crime.

1. Introduction

As a form of realization of the people's sovereignty within the framework of democratization is hold on Election (Election) regularly with the principle of direct, public, free, confidential, honest and fair. Election is the mandate of the constitution which must be implemented by the government, in this case ensure and protect the exercise of popular sovereignty in extending political rights in the election. Election as one of the ongoing practice of power and governance should be based on the principles of law with justice and the values of expediency. One of the basic principles of a democratic legal state is a guarantee of justice for the people to express their sovereignty.

The existence of a general election is recognized by adherents of the principle state sovereignty, and the political level held well in all types of democracies, authoritarian and totalitarian. By democracies, elections are considered as a symbol and also the yardstick of a democratic system. General elections were held in Indonesia is a means for establishing a democratic government through free and fair mechanism.³

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In this modern era of the world experienced the shock of values and norms that is strong enough. The crisis of moral and ethical life of a nation, especially a crisis of values in the political aspects so pronounced. Deviations private ethics and public ethics in the state had increased and chaos the norm seemed to continue in the state management practices so that the atmosphere of our globalization giddy deal with it, with a responsive attitude.⁴

In the General Election Act No. 7 of 2017, precisely in the Article 240 Paragraph (1) Letter g which reads "never sentenced to imprisonment by a court decision which has obtained permanent legal force for committing a criminal offense punishable by imprisonment of five (5) years or more, except. openly and honestly told the public that concerned the former convict ".⁵

Enactment PKPU No. 20 of 2018 on Nomination of Members of the House of Representatives, Regional Representatives Council, Provincial and House of Representatives District / City, the provisions on the prohibition of ex-convict corruption enroll as a legislative candidate can already be applied at the time of registration of the selection of candidates in future. It becomes a debate in many circles, but the Supreme Court has revoked Article 4 Paragraph (3) Commission Regulation (PKPU) No. 20 of 2018 and Article 60 point (j) PKPU No. 26 of 2018 on Nominations DPD, which means MA annul Article which prohibits former criminals, drug dealers, and sexual offense cases become legislative candidates.⁶

Rejection occurs because the Commission considered in violation of the Law of the Republic of Indonesia Number 7 of 2017 concerning the General Election. In this law, an ex-con who is already serving a sentence of five years or more may run as long as the relevant legislative announce themselves to the public regarding the legal case never entrap. In addition to the ban by the Commission in the above is considered contrary to Article 28 of the Constitution NRI letter D 1945. Former prisoners of corruption cases considered to have the same political rights with other citizens, a right guaranteed by the constitution.

General Election Commission (KPU) has published the Commission Regulation (PKPU) No. 20 of 2018 on Nomination of Members of Parliament, Provincial DPRD and Regency / City Election PKPU 2019. This will guide the Commission carry out the stages of the nomination of the DPR, Provincial DPRD and District / Municipal Election 2019. one of the points in PKPU was set on the prohibition against ex-convict corruption ran for the legislature. The rule contained in Article 7 paragraph (1) letter h, which reads "Not a former convicted drug dealers, sexual crimes against children, or corruption". Besides corruption legislation banning former convicts to run for legislative candidates who issued the Commission, make Act No. 28 of 1999 as a reference to draw up a ban for former inmates of corruption registered as candidates for parliament. The law

⁴Jimly Asshiddiqie, *Menegakkan Etika Penyelenggara Pemilu*, Raja Grafindo, Jakarta, 2013, p. 22-30

⁵ Act No. 7 of 2017 on General Election

⁶ https://instagram.com/komikrukii?utm_source=ig_profile-share&igshid=6bc5p38f0li2, Accessed on 1-04-2019 At 10:08 pm)

regulates the state administration is clean and free from corruption, collusion and nepotism.⁷

Based on the foregoing, the authors are interested to raise the discussion on this subject in the form of research thesis titled "Implementation of Article 240 Paragraph 1 Letter G Act No. 7 of 2017 on Corruption Eradication Realizing in the Legislature".

Based on the background described above, the issues raised in this research include: How the Implementation of Article 240 paragraph 1 letter g of Act No. 7 of 2017 by the Election Commission of Central Java? Does Implementation of Article 240 paragraph 1 letter g of Act No. 7 of 2017 can realize eradication of Corruption Act in the Provincial Legislature?

Research Methodology

The research method uses the approach used in this study is a sociological juridical approach to study and discuss the problems raised, namely by linking the law in an attempt to achieve goals and meet the needs in the community. In this case what has been stipulated in the Act relating to Elections, continued to conduct research and interviews in person at the Election Commission of Central Java, Semarang Corruption Court, Academician, Member of Party Politics and Society.

2. Discussion

2.1. Implementation of Article 240 paragraph (1) letter g of Act No. 7 of 2017 by the Election Commission of Central Java

In the dimension order (Coding in the articles of the 1945 Constitution), as a result misleading the idea is understandable, either in the preamble or in the body of the 1945 Constitution, except in the explanation of the 1945 Constitution which defined it in a sentence winged full of doubts "Indonesia is a country that is based above the law (*rechtsstaat*), not based on power alone (*machtsstaat*)."⁸ This formula can be interpreted to mean that Indonesia was actually "*machtsstaat*" (primary), but also "*rechtsstaat*" (secondary). This is different from RIS Constitution of 1949 and Provisional Constitution of 1950 explicitly stated in the preamble to the Constitution in Article 1 (1) the body of the Constitution formulated that Indonesia is a democratic constitutional state.⁸

Affirmation of Indonesia is a state law that has been set in the explanation of the 1945, the 1945 changes have been lifted in the 1945 Constitution Article 1 (3), reads as follows: "Indonesia is a country of law". The consequence of this provision is that every gesture, policies, and behavior of the state apparatus and the population must be based on and in accordance with the law. Simultaneously this provision to prevent arbitrariness and arrogance of power, whether committed by state and locals.

⁷Hanum Hapsari, *Dilema Pelarangan Mantan Narapidana Korupsi Mendaftarkan Diri Sebagai Calon Legislatif*, in Jurnal Ilmiah, Vol. 4 Nomor 2 Tahun 2018, p. 144-145

⁸A Mukthie Fadjjar, *Reformasi Konstitusi dalam Masa Transisi Paradigmatik*, In-Trans, Malang, 2003, p. 5

In a state of law, is the law that holds the highest command in the administration of the state. The real lead in administering the state is the law itself in accordance with the principle of "the Rule of Law, And not of Man", which is in line with the notion of "*nomocratie*", which is run by the rule of law, "*nomos*".

In the idea of such a state of law, must be held guarantees that the law itself was built and enforced in accordance with democratic principles. Because the principle of the rule of law and the rule of law itself is essentially derived from the sovereignty of the people. Therefore, the rule of law let built and developed according to the principles of democracy or sovereignty of the people (*demokratische rechtsstaat*). Therefore, it should be stressed also that sovereignty rests with the people who carried out according to the Constitution (constitutional democracy) were offset by the assertion that Indonesia is a constitutional state sovereignty of the people or democratic (*demokratische rechtsstaat*).⁹

But in practice, it is not easy to compromise the principle of popular sovereignty and the rule of law in the institutional scheme that really balanced. In 1945 for this system, the highest state institutions actually embodied in the MPR agency more to do with the principle of popular sovereignty. However, after the amendments to the Constitution with regard to it, the institution of judicial power that includes two courts (Supreme Court and Constitutional Court) it should also be placed in an equal position with the Assembly consisting of DPR and DPD. Now both the doctrine of popular sovereignty and the rule of law was developed simultaneously and are in an equal relationship,¹⁰

According to Sri Soemantri M., footing regarding fundamental election is Pancasila democracy spirit and letter found in the Preamble of the 1945 Constitution, the fourth paragraph.¹¹ Fourth of Pancasila stated, "Democracy, led by the inner wisdom of deliberations representation." Constitutional provisions in the Pancasila, the Preamble and Articles 1945 to signal the process or mechanism of national activities 5 (five) yearly. In the cycle of national activities 5 (five) annual elections is one of the activities or programs should be implemented, however the high price of the Election.¹²

Modern democratic system requires not only elections held as a mere ritual leadership. Moreover, elections are expected actually become actualization and manifestation of popular sovereignty. In order to uphold the people's sovereignty, elections should be based on the principle of free and fair election (free and fair). The principle of free and fair election has become a guide modern democracies in elections last decades.¹³

In the General Election Act No. 7 of 2017 paragraph (1) letter g stating that "never sentenced to imprisonment by a court decision which has obtained permanent legal force for committing a criminal offense punishable by imprisonment of five (5) years or

⁹Jimly Asshiddiqie, *Konstitusi & Konstitusionalisme Indonesia*, Konstitusi Press, Jakarta, 2005, p. 70.

¹⁰Jimly Asshiddiqie, *Format Kelembagaan Negara dan Pergeseran Kekuasaan dalam UUD 1945*, FH UII Press, Yogyakarta, 2004, p. 83-84.

¹¹Sri Soemantri M., *Sistem Pemilu Dalam Ketatanegaraan Indonesia*", in PERSAHI Magazine, Number Three, January 1900.

¹²Dahlan Thalib, "*Pemilu Ditinjau dari Landasan Konstitusional UUD 1945*", p. 6.

¹³Guy S. Goodwin-Gill, *Free and Fair Elections: International Law and Practice*, (Geneva: Inter-Parliamentary Union, 1994)

more, except for openly and honestly told the public that concerned the former convict¹⁴. "Whereas in Regulation Commission (PKPU) No. 20 of 2018 on the submission of candidates for the DPR, Provincial DPRD, and Regency / City in article 4, paragraph (3) states that "In the selection of candidates in a democratic and open as referred to in paragraph (2), does not include the former convicted drug dealers, sexual crimes against children, and corruption. "in paragraph (2) states" Each Political Parties selecting candidates for members of DPR, Provincial DPRD, and Regency / City in a democratic and open in accordance with the Constitution and, and / or internal rules of each political party."¹⁵

Based on research by author, that the implementation of article 240 paragraph (1) letter g Electoral Act No. 7 of 2017 by the Election Commission of Central Java can I pull the red thread at the time of the interview with the legal department KPU Central Java, Mrs. Kiki said " when the papers came in and registration of political parties, after registering a political party in Central Java KPU verify administration where in the administrative verification documents of candidates in terms of verification or examined, researched, in examine whether the terms listed in the enactment legislation, especially in the Commission's regulations are met. If there is a shortage of records can be made by the Commission of Central Java, all the shortcomings which should be equipped at the time of repair. When there is a document that says that he is a former convicted drug dealers, sexual crimes against children, and the corruption it will check whether his sentence of 5 years later, it is no legally fixed already solve the problem sentence later whether prisoners corruption or criteria contained in chapter 4 paragraph (3) is an ex-convict drug dealers, sex crimes, and corruption. If before there is a judicial review of the Electoral Act No.7 of 2017 Article 240 paragraph (1) letter g "never been sentenced to imprisonment by a court decision that has obtained permanent legal force for committing a criminal offense punishable by imprisonment of five (5) years or more, except. openly and honestly told the public that concerned the former convict. "Of course, following the Commission regulation No. 20 2018 Article 4 (3) "In the selection of candidates in a democratic and open as referred to in paragraph (2), does not include the former convicted drug dealers, sexual crimes against children, and corruption." KPU Central Java do not accept, reject them legislative candidates are ex-convict drug dealers, sex crimes, and corruption. Apart from it if it is not of an ex-convict drug dealers, sex crimes, and corruption, the Commission will forward to the verification process, if there are improvements that do not directly enter into the list of candidates while (DCS) but through meetings of pleno KPU start of the party number 1 until 16. and corruption. "Central Java KPU does not accept, reject those legislative candidates are ex-convict drug dealers, sex crimes, and corruption. Apart from it if it is not of an ex-convict drug dealers, sex crimes, and corruption, the Commission will forward to the verification process, if there are improvements that do not directly enter into the list of candidates while (DCS) but through meetings of pleno KPU start of the party number 1 until 16. and corruption.

¹⁴ Act No. 7 of 2017 on General Election

¹⁵ Regulation of KPU No. 20 of 2018

"Central Java KPU does not accept, reject those legislative candidates are ex-convict drug dealers, sex crimes, and corruption. Apart from it if it is not of an ex-convict drug dealers, sex crimes, and corruption, the Commission will forward to the verification process, if there are improvements that do not directly enter into the list of candidates while (DCS) but through meetings of pleno KPU start of the party number 1 until 16.¹⁶ Based on this insight, the author analyzes the Supreme Court Decision against PKPU progressive distancing of law. The Supreme Court ruling that canceled Article 4, paragraph (3) of Regulation Commission (PKPU) No. 20 of 2018 shows that the legal system in Indonesia over the law a procedural nature. Article regulates forbidden former prisoner of corruption cases become legislative candidates. Trisakti University legal expert Fickar Hajar said, "No one did, but obviously we are increasingly distanced themselves from legal progressive." In the review of a philosophical perspective, the Supreme Court decision has been banging the principle of legal certainty and the principles of justice and expediency. It shows that the Supreme Court judges who decide the judicial PKPU favor of the procedure rather than a sense of justice in society. "With no intention idolize someone, I'm sure the judge Artidjo Alkostar not yet retired and was appointed as the head of the panel that handles this case, with all its influence will surely cut off and sided with the sense of justice in society and benefits to a democracy that is clean," if only the Supreme Court did not PKPU cancel, then this will strengthen PKPU not give an opportunity to the parties that destroyer public confidence in democracy. However the Supreme Court decision already out, like it or not the decision should be run by the organizers of the election. Going forward, the decision is in the hands of the people to elect representatives figure. Rice has become porridge, the ball is now in the public voters. Some percentage-candidate election in the former corrupt candidates later in the announcement of legislative election results, will illustrate clearly the face and pragmatism Indonesian community in millineal times. In its decision, the Court declared that the prohibition of ex-convict corruption becomes a candidate opposed to the Electoral Act No. 7 of 2017. Such decision resulted in the change of status Ineligible (TMS) candidates will be Eligible ex-criminals (MS). That is, the former prisoner of corruption are allowed to run as candidates. *Bawaslu* previously passed the former corrupt as prospective candidates 2019. Upon registration, they declared ineligible (TMS) by the Commission. The former was then filed a dispute corrupt registration to the Election Supervisory Body and the local Supervisory Committee. Results dispute entirely eligible states (MS). *Bawaslu* referring to the Electoral Act No. 7 Of 2017 does not prohibit former criminals to register as candidates. While the Commission, in the work adhering to the Commission Regulation (PKPU) No. 20 of 2018 which includes a ban on former criminals become incumbent legislators.¹⁷

¹⁶ Based on research conducted Writer in Central Java Election Commission, Kiki Rizka Ning, Sub Law, on July 18, 2019

¹⁷ <https://nasional.kompas.com/read/2018/09/15/11482971/pakar-putusan-ma-terhadap-pkpu-menjauhkan-dari-hukum-progresif?page=2> accessed on August 2, 2019 At 19:30

2.2. Implementation of Article 240 paragraph (1) letter g of Act No. 7 of 2017 did not realize the eradication of Corruption Act in the Provincial Legislature

In the article 240 paragraph (1) letter g Electoral Act No. 7 of 2017 states that "never sentenced to imprisonment by a court decision which has obtained permanent legal force for committing a criminal offense punishable by imprisonment of five (5) years or more except. Openly and honestly told the public that concerned the former convict. "After the authors conducted interviews with law section KPU Central Java, Mrs. Kiki Rizka Ning argue about it" if its lay in Act No. 7 of 2017 Section 240 subsection (1) g filter out candidates who have criminal records for the law, but to convict corruption was not listed in article 240 paragraph (1) letter g of Act No. 7 of 2017 concerning the election. Because it does not explicitly include an ex-convict corruption, sexual abuse, and drug dealers. In the article 240 paragraph (1) letter g shrimp Act No. 7 of 2017 concerning elections seen only a time or penalties are five years but no mention as an ex-convict anything, so this is of a general nature that is peculiarly that corruption has not been accommodated in article 240 paragraph (1) of Act No. 7 of 2017 concerning the election but that in general yes. In the article 240 paragraph (1) letter g has not been listed for the eradication of corruption but that's the nature of crime in general with the number of 5-year jail term was already listed. In the article 240 paragraph (1) letter g Electoral Act No. 17 of 2017 because of a general nature should be for any case, but if corruption that's special nature such as the police, prosecutors of corruption influx Specific Criminal not Common Criminal. Does that mean this year's 5 Specific Criminal not Common Criminal. I think this sentence is general in nature, so that to realize the eradication of corruption specifically herein that are not there, yet can be accommodated by Act No. 7 of 2017 concerning the election, because the Act No. 7 of 2017 concerning the election itself that causes candidate member of the Central Java province turned out to be an ex-convict who had escaped corruption included in the DCT (List of candidates) if PKPU No. 20 of 2018 do not allow ex-convict corruption stand as legislators. because of the weakness of the seal the document is issued the Commission is contrary to the Election Act No. 7 Of 2017 we are not to blame, because that's result of the people's representatives but if PKPU No. 8 2018 already exists faith for eradicating corruption by making legislation banning former criminals to run for legislative candidates. But, if for Act No. 7 Of 2017 concerning Election Article 240 paragraph (1) letter g itself has not specifically realize the eradication of corruption because of the threat of a general nature 5 years.¹⁸

Based on this insight, the author analyzes the political influence of the law. If the reforms rather spectacular history was traced will appear clearly that in fact when it there is confidence that the Indonesian legal mistake of decades of its history due to the political system is not democratic. That's why an important step to be taken when it is to change the political structure of moving towards a more democratic, arguing that it impossible to enforce the law in a democratic political system.

¹⁸ Interviews with the legal part of KPU's Central Java Mrs. Kiki Rizka Ning On the date July 18, 2019

Studies on the legal and political relationship has been concluded, and even spawned the thesis that the only political system that can generate legal democratic responsive and encourage the establishment of the rule of law. Whereas nondemocratic political system will only give birth orthodox laws both in its construction and in its enforcement. This became necessary because in reality the law is a political product. Thus, the law better reflect the will of the configuration of political power. If the configuration of the legal democratic politics will also be responsive, whereas if authoritarian political configuration will then ruling conservatives.¹⁹

According to the author's view regarding the nomination of candidates from the former corruption, seen from the theory of utilitarianism is the theory which gives emphasis on the purpose of human life, whether in the form of action, activity, interaction, and life itself. If it is associated with the law, the theory of utilitarianism is the theory put expediency as the main purpose of the law. Expediency is defined by happiness (happiness). Good bad or fair or not a law depends on whether the law gives happiness to man or not, or how much the law can provide for human happiness. Good and fair law is a law that gives happiness for as many people in the community or nation (the greatest happiness for the greatest number of the people). The law in question here is the positive law

3. Closing

3.1. Conclusion

- Implementation of Article 240 paragraph (1) letter g of Act No. 7 of 2017 by Central Java Election Commission, that in the article there is no restriction for candidates or ban former drug dealers, sexual crimes against children, and corruption to register themselves as candidates of legislative members for openly and honestly told the public that the connected with ex-convict. With the existence of these regulations Central Java Election Commission issued a decision No. 35 / HK.03.
- Implementation of Article 240 paragraph (1) letter g Electoral Act No. 7 Of 2017 can not yet realize the eradication of corruption, this is because in the article there are no restrictions on ex-convict corruption to be a prospective member of the legislature if it meets the requirements specified in the clauses of the article which states: "openly and honestly told the public that the concerned the former convict".

3.2. Suggestion

To determine the political direction of law in Indonesia regarding corruption rule banning nominate former convicts back as a legislative candidate. Prohibition of ex-convict corruption enroll as legislative candidates set out in Article 7 paragraph (1)

¹⁹ The term 'responsive' and 'orthodox' is taken, among others, from John Henry Marrymann, *The Civil Law Tradition* (California: Stanford University Press, 1969). Also see Moh. Mahfud MD, "Perkembangan Politik Hukum, Studi tentang Pengaruh Konfigurasi Politik terhadap Karakter Produk Hukum," doctoral dissertation at the Post-Graduate University of Gadjah Mada, Yogyakarta, in June 1993, also see in Moh. Mahfud MD, *Politik Hukum di Indonesia*, LP3ES ed. I, 1998, Jakarta.

letter h Commission Regulation (PKPU) for the nomination of members of the DPR, Provincial DPRD, and Regency / City. But the rules of the Commission is contrary to Article 240 paragraph (1) letter g Electoral Act No. 7 of 2017, where an ex-convict who has been serving his sentence for five years or more, may nominate back during the corresponding proposed to the public. In this case the Commission must make laws that are no longer opposed to the law that already exists, may be considerations or a strong legal basis to legislate in banning former prisoner of corruption to run again as a candidate for the legislature. It also must be the development of legal culture, the issue of legal culture is what has long been considered not conducive to the development of law in Indonesia. Regarding this issue the lack of legal awareness among the public caused by solid legal culture or at least a legal culture has not received attention in the overall mosaic of legal development.

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