

## **From Conviction to Candidacy: A Juridical and Siyasa Analysis of the Waiting Period for Former Corruptors under the Election Law**

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### **Abstrak**

The problem in this study departs from the KPU in its PKPU authorizing regulations regarding the pause period for ex-convicts not having to wait five years in the elections held in 2024. So that it produces two problem formulations, namely: 1) How is the Political Right to the Pause Period for Ex-Corruption Prisoners to Participate in Legislative Candidacy in the Perspective of Law (UU) Number 07 of 2017 concerning General Elections (Election) and General Election Commission Regulations (PKPU) Number 10 and 11 of 2023?, and 2) How is the Political Rights of Ex-Corruption Convicts to Participate in Legislative Candidacy in Siyasa Perspective? The research methodology used by the author is a type of normative law research, with a research approach using legal issues with the method of statue approach, case approach, and analytical approach. Based on the results of the author's research, it can be concluded that: 1) The Election Law, which is strengthened by the latest Constitutional Court Decision in 2023, explains that there is a pause period for ex-corruption convicts who want to run for the legislature to wait five years. Meanwhile, the PKPU 2023 does not. So that PKPU 2023 and the Election Law overlap, if PKPU 2023 was born to improve the Law as well as the Constitutional Court Decision, it should be in line. Regarding the hierarchy of legislation, PKPU is also under the Law, and this disharmonization occurs which is contrary to the coherent principles, one of which is certainty and harmony in regulations, and 2) That in Siyasa Dusturiyah it is explained that ex-corruption convicts are people who used to commit criminal acts, in Islam this person is considered a person who has a moral defect so that his rights cannot be fully obtained anymore, unless he really repents not only said but also implements through actions, of course with full self-awareness again of what has been done, it should be able to provide opportunities for others who still have integrity, because Islam recommends that it is better to choose and be chosen, namely choose the best people.

*[Permasalahan dalam penelitian ini berangkat dari KPU di PKPU-nya mengesahkan peraturan tentang masa jeda eks-narapidana tidak harus menunggu lima tahun pada Pemilu yang diselenggarakan tahun 2024 lalu. Sehingga menghasilkan dua rumusan masalah yaitu: 1) Bagaimanakah Hak Politik Terhadap Masa Jeda Pada Eks-Narapidana Korupsi Mengikuti Pencalonan Legislatif Perspektif Undang-undang (UU) Nomor 07 Tahun 2017 Tentang Pemilihan Umum (Pemilu) dan Peraturan Komisi Pemilihan Umum (PKPU) Nomor 10 dan 11 Tahun 2023?, dan 2) Bagaimanakah Hak Politik Pada Eks-Narapidana Korupsi Mengikuti*

*Pencalonan Legislatif Perspektif Siyasah?. Metodologi penelitian yang dipergunakan penulis adalah berjenis normative law research, dengan pendekatan penelitian menggunakan legal issue dengan metode statue approach, case approach, dan analytical approach. Berdasarkan hasil penelitian penulis dapat disimpulkan, bahwasanya: 1) Bahwa pada UU Pemilu yang dikuatkan oleh amar Putusan MK tahun 2023 terbaru dijelaskan terdapat masa jeda eks-narapidana korupsi yang hendak akan mencalonkan diri menjadi anggota legislatif harus menunggu lima tahun. Sedangkan PKPU Tahun 2023 tidak. Sehingga PKPU 2023 dan UU Pemilu terjadi tumpang tindih, semestinya apabila PKPU 2023 lahir untuk penyempurnaan dari UU juga Putusan MK seharusnya sejalan. Terkait hierarki perundang-undangan pun PKPU ini berada dibawah UU, dan ini terjadi disharmonisasi yang berlawanan dengan asas koheren salah satunya kepastian dan keselerasan dalam peraturan, dan 2) Bahwa dalam Siyasah Dusturiyah dijelaskan eks-narapidana korupsi ini adalah orang yang dulunya berbuat tindakan kriminal, dalam Islam orang ini dianggap orang yang telah cacat moral sehingga hak-haknya tidak bisa diperoleh penuh lagi, kecuali benar-benar bertaubat tidak hanya diucapkan saja namun juga mengimplementasikan lewat perbuatan, tentunya dengan penuh kesadaran diri lagi terhadap apa yang sudah diperbuat, seyogyanya bisa memberikan kesempatan kepada orang lain yang masih berintegritas, karena Islam mengajurkan sebaiknya untuk memilih maupun dipilih yaitu pilihlah orang-orang yang terbaik.]*

**Keywords:** Ex-Corruptors, Pause Period, Siyasah, and Law.

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## INTRODUCTION

This study explores the issue of political rights during the transitional period for former corruption convicts in relation to their eligibility to run for legislative office, analyzed from the perspective of Law Number 7 of 2017 on General Elections and the concept of siyasah (Islamic political governance). Leadership in public life is recognized as one of the most vital religious responsibilities. Neither religious nor worldly affairs can be upheld without it (Al-Uthaymeen, 2017). General elections serve as a mechanism through which public sovereignty is exercised, allowing individuals to either vote or be elected (Handrawan, 2019). However, a new General Election Commission Regulation (PKPU) issued in 2023 sparked controversy in the 2024 elections, particularly regarding the eligibility of former convicts to run for public office. In preparation for the 2024 election, the General Election Commission (KPU) officially issued the regulations and procedures for registering legislative candidates.

This regulation also covers the registration system for former convicts who wish to participate in general elections. One of the key requirements is that a candidate must not currently be serving a prison sentence. This applies to individuals convicted of crimes carrying a prison term of five years or more, based on a final and binding court decision. Former convicts, moreover, are required to undergo a five-year waiting period after serving their sentence before becoming eligible to run for office. They must also publicly and transparently declare their status as former convicts, provided they are not repeat offenders. However, those convicted of political crimes due to ideological differences with the ruling government are not subject to this rule. Furthermore, regional heads, deputy heads, civil servants, military personnel, police officers, directors, commissioners,

supervisory board members, and employees of state- or region-owned enterprises involved in political crimes are required to resign.

The procedures and requirements for legislative candidates were officially announced by the Indonesian General Election Commission (KPU) (Pikiran Rakyat, 2023). In addition, new provisions were introduced through the 2023 amendment of two regulations: PKPU No. 10 of 2023 concerning the nomination of candidates for the House of Representatives (DPR), Provincial and District/City Regional Representative Councils (DPRD), and PKPU No. 11 of 2023, the second amendment to PKPU No. 10 of 2022 concerning the nomination of individual candidates for the Regional Representative Council (DPD). These articles have been criticized for potentially facilitating the return of former corruption convicts into legislative office. In effect, these changes allow former convicts sentenced to more than five years for corruption to bypass the political sanction period stipulated in Law No. 7 of 2017, thereby enabling them to immediately contest in elections.

Researcher Kurnia Ramadhana from Indonesia Corruption Watch (ICW) reported that 15 former corruption convicts were nominated as legislative candidates in the 2024 election. He criticized the KPU's decision not to disclose the names of these candidates, arguing that it demonstrated a lack of commitment to anti-corruption efforts. According to Kurnia, this failure undermines the transparency and accountability of the electoral process. ICW urged the KPU to release the names of candidates with criminal records, including those running for DPRD at the city, district, and provincial levels, as well as the DPR and DPD at the national level. By November 2023, ICW had identified at least 56 former corruption convicts listed as candidates for the 2024 election. This number represents a sharp increase compared to the 2019 election and reflects a troubling trend of political leniency toward individuals convicted of what is categorized as an extraordinary crime.

Corruption in Indonesia often stems from individuals holding positions of power or those within political circles who, driven by dynastic ambitions, justify any means to maintain their status. This aligns with Montesquieu's theory in *The Spirit of the Laws*, which asserts that people in power exhibit three tendencies: to maintain their power, to expand it, and to exploit it (Nawawi et al., 2019). In Islamic law, a criminal offense (*jarimah*) is defined as an act that causes harm to others—be it physical, economic, social, reputational, or moral—especially when it violates the established norms and sanctities of society.

Thus, corruption is classified as a *jarimah* due to the harm it causes to others. A former convict is an individual who has previously engaged in immoral or criminal behavior (Pebriani, 2022). In Islam, maintaining personal integrity (*murū'ah*) is of utmost importance, particularly to avoid falling into grave sins. Corruption is considered a major sin for public officials, as it involves the misuse of entrusted authority and public wealth for personal, familial, or group interests. Islam strictly prohibits such conduct, which is known in Islamic terminology as *risyah* (bribery) or *ghulūl* (misappropriation of public gifts) (Harahap, 2018).

Imam Al-Munawi, in *Fayd al-Qadīr*, explains that *risyah* refers to any action aimed at nullifying justice. For example, if a court has convicted someone of a crime, and a bribe is given to reverse or obstruct that judgment, such an act is classified as *risyah*. During the Prophet's time, *ghulūl* referred to taking more than one's rightful share from public spoils (*ghanimah*). While taking from war spoils was permitted, taking more than what was allotted constituted *ghulūl* (Sari, 2022). Even after the Prophet's companions were appointed to govern various regions, cases of *ghulūl* persisted. The Prophet then emphasized that any gift to a public official is considered *ghulūl* and is categorically prohibited. Therefore, Islam unequivocally condemns corrupt practices.

Accordingly, if a former convict is guilty of corruption, he has violated one of the core principles of Islamic law—*ḥifẓ al-māl* (the protection of wealth)—which seeks to prevent the misuse of property. Public office is a trust (*amānah*), and corruption represents a serious betrayal of that trust. In Islamic teachings, a former convict is someone who has committed a wrongful act or grave sin and has served the appropriate punishment. Islam mandates that sanctions be imposed on those who violate divine commands, and these punishments must align with the severity of the offense, without exceeding the bounds of justice. Consequently, justice is a fundamental requirement for any individual seeking public office (Andriko & Tarihoran, 2018).

## METHOD

This study adopts a normative legal research approach, commonly known as doctrinal or library-based research. This method is grounded in the analysis of legal norms and relies heavily on literature and secondary data as its primary sources. As explained by Soerjono Soekanto, normative legal research is conducted through the examination of statutory regulations, legal doctrines, and scholarly writings relevant to the issue under investigation. In this context, literature serves as the foundation of the research and is classified as secondary data.

The primary focus of this study is to conduct a juridical analysis of the political rights and transitional restrictions imposed on former corruption convicts who intend to run for legislative office. The research is based on Law No. 7 of 2017 concerning General Elections and the concept of *siyasaḥ* in Islamic governance, and it critically examines the provisions of General Election Commission Regulations (PKPU) No. 10 and No. 11 of 2023 as applied in the 2024 general elections.

The research is carried out through the systematic collection, categorization, and analysis of relevant literature using a library research method. It also includes a normative case study approach, which views legal norms and judicial decisions as behavioral products that reflect the functioning of law in society. Legal norms are treated as guiding principles for individual and collective conduct, and thus, the research focuses on the inventory of positive law, legal doctrines and principles, legal systematics, synchronization between norms, comparative analysis, and the historical development of laws.

To explore the legal issues comprehensively, this study employs several specific methodological approaches. The statute approach is used to examine all relevant legislative instruments that relate to the problem at hand. This involves a detailed analysis of applicable laws and regulations, forming the basis for legal reasoning and argumentation. The case approach is applied by reviewing court decisions that have reached final and binding status, with particular attention to judicial reasoning, which serves as a reference in addressing the legal problem. Additionally, the analytical approach, as introduced by Peter Mahmud Marzuki, is employed to examine the contextual meaning of legal terms within statutory texts and their practical application in legal decisions. This approach aims to clarify definitions and interpretations to avoid ambiguities in understanding the legal issues being studied.

Furthermore, the research draws upon three types of legal sources: primary, secondary, and tertiary materials. Primary sources consist of binding legal instruments such as statutes and regulations. Secondary materials include academic writings, such as journal articles, books, theses, and dissertations, which support and elaborate upon the primary sources. Tertiary sources, including legal dictionaries, newspapers, legal periodicals, and digital media, provide additional context and updated information relevant to the topic.



These legal sources collectively serve as reference points for analyzing and interpreting the legal facts and issues central to this study.

## RESULTS AND DISCUSSION

### Analysis of Political Rights and Candidacy Restrictions for Former Corruption Convicts under Law No. 7 of 2017 and PKPU Regulations No. 10 and 11 of 2023

In the Indonesian legal hierarchy, the General Election Commission Regulations (*Peraturan Komisi Pemilihan Umum* or PKPU) do not occupy a formal position within the statutory framework. Although their legal existence is acknowledged, PKPU regulations derive authority only insofar as they are mandated by or consistent with higher legal instruments. Their legal standing remains a subject of debate, particularly regarding whether PKPU should be positioned subordinate to or on par with national statutes (laws).

Legal scholars, such as Hilyatul Asfia, argue that PKPU holds a status subordinate to statutory law. This is evidenced by the mechanism of judicial review, wherein PKPU provisions that contradict statutory norms may be challenged before the Supreme Court—an institution constitutionally authorized to review regulations beneath the level of statute. From this perspective, PKPU exists primarily as an instrument of legal implementation mandated by the parent legislation. Nevertheless, there are opposing views asserting that PKPU should be considered equal in authority to statutes, particularly when their content derives directly from Constitutional Court rulings, such as Decision No. 53/PUU-XV/2017, which mandated the equal treatment of political parties in the 2019 elections.

Due to its position outside the formal legislative hierarchy, PKPU functions as a special regulatory instrument, binding so long as it operates within its legal mandate. Scholars categorize PKPU under *regulations outside the legislative hierarchy* (*aturan perundang-undangan di luar hierarki*), and its validity is measured through the principle of legality and coherence with superior norms. Foundational legal principles governing Indonesia's statutory system include non-retroactivity, irrefutability, legal certainty, and harmonization. Notably, the doctrine of *lex superior derogat legi inferiori* (a higher norm overrides a lower one) reinforces the precedence of statutes over administrative regulations such as PKPU.

The principle of legal coherence (*asas koheren*) is pivotal in understanding the legal conflict at hand. This principle demands consistency, harmony, and interconnection among legal norms. A coherent legal system ensures that regulations do not contradict each other and function as a unified whole. In the context of election law, this coherence is crucial to guarantee the integrity and transparency of the electoral process and to maintain public trust in democratic institutions.

Despite the Constitutional Court's affirmation in 2022 and 2023 of a mandatory five-year transitional period (cooling-off period) for former corruption convicts before being eligible for candidacy, PKPU No. 10 and 11 of 2023 failed to include this provision in their regulatory framework. Specifically, Article 11(5) and (6) of PKPU No. 10 of 2023, and Article 18(1) and (2) of PKPU No. 11 of 2023, do not impose the five-year waiting period post-sentence as required by Law No. 7 of 2017 and reinforced by Constitutional Court rulings No. 87/PUU-XX/2022 and No. 12/PUU-XXI/2023.

The Constitutional Court has explicitly ruled that former convicts, particularly those who served sentences for crimes punishable by five years or more—such as corruption—must wait at least five years after completing their sentence before they may run for office. These rulings are based on moral, rational, and empirical grounds, arguing that such a period is essential for reintegration, rehabilitation, and public accountability. The waiting period ensures that candidates demonstrate genuine reformation and regain public trust. Additionally, this rule is aligned with the electoral cycle, which occurs every five years.

The decisions also affirm that such individuals must publicly disclose their status as former convicts and prove they are not repeat offenders. Notably, exceptions are made only for political offenses committed under regimes that criminalized opposition activity. The failure of the 2023 PKPU regulations to reflect these constitutional mandates has led to concerns regarding legal coherence and the potential invalidity of the regulations *ipso jure* (by operation of law).

From a philosophical standpoint, the imposition of a waiting period is grounded in the necessity of ensuring that public office is occupied by individuals of integrity, especially in light of the far-reaching damage caused by corruption. Sociologically, corruption undermines democratic institutions, weakens the rule of law, and jeopardizes public welfare and national development. Therefore, strict eligibility requirements for former convicts are essential not only for preventing recidivism but also for protecting the credibility of the electoral process.

In conclusion, based on the supremacy of law, legal coherence, and the binding nature of Constitutional Court decisions, PKPU No. 10 and 11 of 2023 are deemed legally problematic. Their failure to incorporate the five-year transitional requirement contradicts higher legal norms and threatens the integrity of democratic governance. Upholding statutory and constitutional principles requires aligning subordinate regulations with foundational legal instruments to ensure justice, accountability, and public trust in Indonesia's electoral system.

### **An Analysis of Political Rights and Transitional Restrictions for Former Corruption Convicts in Legislative Candidacy: A Siyasaḥ Perspective**

From the perspective of *siyasaḥ sharʿiyyah*, the appointment of public officials, including legislative candidates, must adhere to principles derived from the Qur'an and Sunnah. These sources emphasize integrity, justice, and moral uprightness as essential qualities for leadership. The Qur'an explicitly warns against appointing leaders who compromise religious and ethical values, as stated in Surah al-Mā'idah (5:57), urging believers not to place authority in the hands of those who undermine the faith. Such guidance forms the foundation of Islamic political ethics.

According to Abdul Manan, in his work *Politik Hukum*, Islamic political theory outlines several qualifications for public office: (1) *ʿAdālah* (justice)—a universal moral integrity encompassing the requirements for reliable witness testimony in Islamic law, including being Muslim, rational, mature, not openly sinful (*fāsiq*), and having a good public reputation; (2) intellectual integrity and statesmanship—demonstrating wisdom, vision, and a commitment to the public good; (3) leadership capacity—being an influential role model within the community; and (4) sincerity and a sense of responsibility—expressed through constructive contributions to society and governance.

These criteria reflect the broader Islamic worldview that leadership is a moral trust (*amānah*) that must not be compromised by past criminal behavior or moral lapses. Thus, former corruption convicts—unless demonstrably reformed—are morally and politically disqualified from holding public office. Islamic jurisprudence regards corruption as a major sin, likened to *ghulūl* (misappropriation of public wealth), which in classical jurisprudence may even warrant corporal punishment such as *ḥadd* penalties.

Furthermore, scholars like al-Riḍā and Ibn Taimiyyah emphasize the primacy of justice and moral uprightness. In his seminal work *As-Siyasaḥ ash-Sharʿiyyah fī Iṣlāḥ ar-Rāʾi wa ar-Raʿiyyah*, Ibn Taimiyyah argues that rulers must be the best among their people, selected not based on lineage or favoritism but on competence and trustworthiness. Leadership, he asserts, must be grounded in two essential pillars: *qunwah* (strength or

capability) and *amānah* (trust). This doctrine remains relevant today in the context of democratic systems where public office must be held by individuals of unquestionable integrity.

Although Islam acknowledges the possibility of repentance (*tawbah*) for past wrongdoings, such repentance must be sincere, visible through consistent righteous conduct, and accepted by the community. Therefore, the mere completion of a prison sentence does not, in itself, restore an individual's full moral and political standing. Public trust and moral credibility are indispensable components in Islamic leadership.

From the perspective of *siyāṣah dustūriyyah* (constitutional politics in Islam), the state is responsible for ensuring that all its regulations serve the public interest (*maṣlaḥah*). Islamic governance must guarantee the protection and rights of all citizens, irrespective of social or economic status, in accordance with the Shariah's objectives (*maqāṣid al-sharī'ah*). The purpose of law, therefore, is to achieve social welfare and moral order.

This aligns with the well-established juristic maxim: "*Governmental policies must be based on the public interest.*"

This principle underscores that any state policy, including electoral laws and eligibility criteria for public office, must reflect the collective aspirations and moral conscience of the people. When citizens widely oppose the candidacy of former corruption convicts—as has been observed in Indonesia—it is a signal that their participation in elections undermines public confidence and the perceived legitimacy of governance.

Furthermore, the right to vote or be elected (*ḥaqq al-tarashshuh*) is not absolute in Islamic law. It is conditional upon moral eligibility and social responsibility. Individuals who have severely violated the public trust, such as through acts of corruption, cannot automatically reclaim such rights unless their reformation is evident and recognized by both legal institutions and the society they wish to serve.

Therefore, from a *siyāṣah* perspective, the imposition of a mandatory transitional period (e.g., a five-year waiting period) for former corruption convicts before they are eligible for public office is not only legally sound but theologically and ethically justified. It is a manifestation of *siyāṣah shar'īyyah*, which seeks to preserve the credibility of governance, protect societal welfare, and uphold the integrity of public institutions.

## CONCLUSION

The legal-political rights of former corruption convicts to run for legislative office reveal a complex intersection between legal norms and ethical considerations. Law Number 07 of 2017 on General Elections, as reinforced by the Constitutional Court's decisions, explicitly establishes a five-year waiting period after serving a sentence before former corruption offenders may seek public office. This waiting period is not merely an administrative regulation but serves as a normative tool to ensure the reintegration of former convicts and to restore public trust through demonstrated moral rehabilitation.

The General Election Commission Regulations (PKPU) Numbers 10 and 11 of 2023 omit this mandatory waiting period, creating a contradiction with higher legal norms. Such inconsistency reflects a clear disharmony in the regulatory framework. The absence of coherence violates the principle of legal hierarchy, where subordinate regulations must align with higher statutory provisions and judicial decisions. PKPU, as a form of delegated legislation, must conform to the mandates of existing laws and the binding rulings of the Constitutional Court.

From the perspective of *siyasaḥ*, particularly *siyasaḥ dusturiyah*, leadership is inseparable from moral integrity and public trust. Islamic political thought emphasizes that leadership must be entrusted to individuals who are just, virtuous, and trustworthy. Former

corruption convicts are considered to have breached the moral standard expected of public officials. Their eligibility may be restored only through sincere repentance and demonstrable ethical conduct over time. The five-year waiting period aligns with the Islamic requirement for moral purification and reestablishment of social credibility before holding public office.

Harmonizing statutory law with Islamic political ethics strengthens electoral integrity and ensures that political authority is exercised by individuals of proven character. The state bears the responsibility not only to rehabilitate former offenders but also to protect public institutions from individuals whose past actions have compromised the public interest. Upholding this principle contributes to democratic accountability, legal certainty, and moral governance.

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