

**RECONCEPTUAL OF THE REQUIREMENTS FOR EX- PRISONERS AS
LEGISLATIVE CANDIDATES WITH INTEGRITY STUDY OF MK
DECISION NO 87/PUU/2022 PERSPECTIVE OF MASLAHAH AL-
GHAZALI**

THESIS

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2024

STATEMENT OF THE AUTHENTICITY

In the name of Allah,

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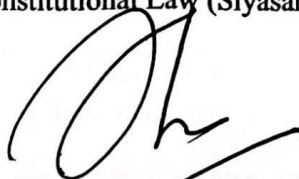
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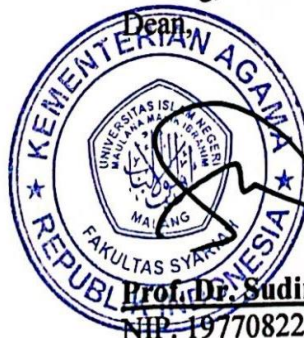
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MOTTO

إِذَا كَانَ ثَلَاثَةٌ فِي سَفَرٍ فَلْيُؤَمِّرُوا أَحَدَهُمْ

“If there are three people traveling, they should appoint one of them as leader.”
(HR Abu Dawud)

Politiaie legius non leges politii adoptandae

“Politics must be subordinate to the law, not the other way around”

TRANSLITERATION GUIDENCE

A. General

Transliter is shifter the transfer of Arabic writing into Indonesian writing or Latin writing, no translation Arabic to Indonesian . Included in this category are: Arabic name of Arabs , meanwhile Arabic name of nation other than written Arabic as spelling Language national , or as written in the book become reference . Writing title books in footnotes and bibliography , fixed use this transliter .

Many choices and conditions transliter that can used in writing scientific papers , both standard ones international , national or special provisions used publisher certain . The transliteration used by the Sharia Faculty of the State Islamic University (UIN) Maulana Malik Ibrahim Malang uses EYD plus, namely based transliter on the Joint Decree (SKB) of the Minister of Religion and the Minister of Education and Culture Republic of Indonesia , January 22 1987 No. 158/1987 and 0543.b/U/1987, as per stated in the book Guidelines Arabic Transliteration A Guide Arabic Transliteration.

B. Consonant

List of letters Arabic and its transliteration into Latin letters can seen on the following page :

Letter Arab	Name	Letter Latin	Name
ا	Alif	No symbolized	No symbolized
ب	Ba	B	Be
ت	Ta	Q	Te
ث	S a	S	Ice (with point on)
ج	Jim	J	Je
ح	H{ a	H{	Ha (with point on)
خ	Kha	Kh	Ka And Ha
د	Dal	D	De
ذ	Z al	Z	Zet (with point on)
ر	Ra	R	Er
ز	Zai	Z	Zet
س	Syn	S	Ice
سین	Syin	Sy	Ice And Ye
ص	S{ ad	S{	Ice (with point below)
صا	D}ad	D{	De (with point below)
ط	T{ a	T{	Te (with point below)
ظ	Z}a	Z{	Zet (with point in lower)
ع	„Ain	„_____	apostrophe backwards

غ	Gains	G	Ge
ف	Fa	F	Eph
ق	Qof	Q	Qi
ك	Kaf	K	Ka
ل	Lam	L	El
م	Meme	M	Em
ن	Nun	N	En
و	Kite	W	We
هـ	Ha	H	Ha
أ/ء	Hamza	_____”	Apostrophe
ي	Yes	Y	Ye

Hamzah (Á) which is located at the beginning of the word follows the vocals without given sign whatever . If he located in the middle or at the end , then written with sign (”).

C. Vowels, Lengths and Diphthongs

Every writing Arabic in the form of vocal fathah written with “a”, kasrah with “ i ”, dlommah with “u”, whereas reading each length written with following way :

Long vowel (a) = â for example قال become qâla

Vowel (i) length = i for example قيل become qila

Long vowel (û) = û for example دون become dûna

Special For reading yes ” nisbat , then No can replaced with “ i ”, rather still written with “ iy ” to get it describe yeah ” relative at the end . Likewise for voice diphthongs , wawu and ya ” after fafhah written with “aw” and “ay”. Take note example following :

Diphthong (aw) = و for example قول become qawlun

Diphthong (ay) = ي for example خير become khayru

D. Ta'marbûthah (ة)

Ta“marbûthah transliterated with the “t” in the middle sentence , but if ta'marbuthah the is at at the end sentence , then transliterated with using “h” for example الرسالة للمدرسة to be al- risalat li al- mudarrisah , or if is in the middle middle sentence consists from arrangement mudlaf and mudlaf ilayh , then transliterated using a connected "t". with sentence next , for example في رحمة هلا to be fi rahmatillâh .

E. Articles and Lafadz al - jalâlah

Article in the form “al” () is written with letter small , except located at the beginning sentence , while "al" is in pronunciation it's the one in the middle middle the sentence relied on (idhafah) then removed . Take note example example the following :

1. Al- Imâm Al- Bukhariy say ...
2. Al- Bukhâriy in the muqaddimah his book explain ...
3. Mashaâ ” Allah kana wâ lam yasya ” lam yakun .

4. Billah,, Azza wa jalla .

F Indonesianized Arabic Names and Words

In principle every word that comes from from Arabic is a must written with use system transliteration . If that word is Arabic names of Indonesians or Arabic already Indonesianized , no need written with use system transliteration . Take note example following :

“...Abdurahman Wahid, former fourth Indonesian president , and Amin Rais, former chairman of the MPR at the same time, has do agreement For abolish nepotism , collusion and corruption from advance Indonesian land , with one The method through intensification of prayers in various places office government , however ...”

Take note writing the names "Abdurahman Wahid", "Amin Rais" and the word "salat" were written with using procedures writing adapted Indonesian with writing his name . Words the though originate from Arabic , however He form Name from Indonesians and has Indonesianized , for That written with the way “Abd al-Rahman Wahid”, “Amin Rais" and the word "salat" are written with using procedures writing adapted Indonesian with writing his name . Words the though originate from Arabic , however He form Name from Indonesians and has Indonesianized , for That written with the way “Abd al-Rahman Wahid”, “Amin Rais”, and not written "shalât"

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Malang, March 14 2024

Writer,



Rizka Putri Amalia

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ABSTRAK

Rizka Putri Amalia. 200203110040, 2024. Rekonseptual Persyaratan Mantan Narapidana Sebagai Caleg Berintegritas Studi Putusan MK No 87/PUU/2022 Perspektif *Maslahah Al-Ghazali*, Skripsi, Jurusan Hukum Tata Negara (Siyasah), Fakultas Syariah, Universitas Islam Negeri (UIN) Maulana Malik Ibrahim Malang, Pembimbing: Dr. Mustafa Lutfi, S. Pd., S.H., M.H.

Kata Kunci: Mantan Narapidana, Mahkamah Konstitusi, Pemilu Legislatif

Integritas seorang pemimpin menjadi tolak ukur bahwa pemimpin tersebut layak memimpin atau tidak. PMK No 87/PUU-XX/2022 menjadi salah satu perisai demi terjaganya integritas pemimpin ditengah pembolehan mantan narapidana menacondkan diri dalam pemilu. Fokus penelitian ini membahas antara lain yaitu 1) *Ratio Decidendi* Mahkamah Konstitusi dalam memutus Putusan Mahkamah Konstitusi No 87/PUU-XX/2022 berdasarkan teori penafsiran konstitusi; 2) Penambahan pemotongan hak politik pada Pasal 11 ayat (6) PKPU No 10 Tahun 2023 sebagai bentuk keringanan persyaratan mantan narapidana pada P MK No 87/PUU-XX/2022 yang bersifat kumulatif; 3) Desain Rekonseptualisasi Implikasi Hukum Pasca PMK No 87/PUU-XX/2022 terhadap pemilu legislatif 2024 perspektif teori *masalah al-Ghazali*.

Metode Penelitian yang digunakan adalah yuridis normatif, dengan 5 (lima) pendekatan yaitu *statue approach*, *conceptual approach*, *historical approach*, *case approach*. Jenis dan sumber bahan hukum yang digunakan yaitu primer, sekunder, dan tersier. Penelitian ini dianalisis menggunakan metode analisis yuridis kualitatif.

Hasil dan temuan dari penelitian ini yaitu 1) Pada PMK No 87/PUU-XX/2022 majelis konstitusi menggunakan beberapa penafsiran diantaranya penafsiran komparatif, struktural dan sosiologis. Hakim Konstitusi mengabulkan sebagian permohonan dengan melakukan penyamaan norma pasal sehingga persyaratan mantan narapidana sebagai calon anggota legislatif bersifat kumulatif; 2) KPU mengambil *obiter dicta* (pertimbangan hukum lain) yang dianggap bertentangan dengan amar putusan PMK No 87/PUU-XX/2022, tidak sesuai dengan teori jenjang norma bahwa PKPU sebagai aturan pelaksana PMK; 3) Dari kesuaian, PMK No 87/PUU-XX/2022 sesuai berdasarkan tingkatan *masalah hajiyyat*, bahwa penyamaan norma pasal yang dilakukan hakim sebagai pelengkap pembolehan Pasal 240 ayat (1) huruf UU No 7 Tahun 2017. Berdasarkan *ratio decidendi*, PMK No 87/PUU-XX/2022 sesuai berdasarkan *masalah hajiyyat* dan *masalah ghalibah*. 87/PUU-XX/2022 sesuai berdasarkan *masalah hajiyyat* dan *masalah ghalibah*. Desain rekonseptualisasi persyaratan mantan narapidana sebagai caleg berintegritas berfokus pada KPU harus memilah kembali Daftar Calon Tetap (DCT) calon legislatif setelah pencabutan Pasal 11 ayat (6) PKPU No 10 Tahun 2023, KPU hanya meloloskan calon legislatif sesuai dengan amar putusan PMK No 87/PUU-XX/2022 tanpa adanya pemotongan hak politik sehingga meringankan masa tunggu 5 tahun, sehingga terciptanya pemilu legislatif 2024 yang berintegritas.

ABSTRACT

Rizka Putri Amalia. 200203110040, 2024. Reconceptual Of The Requirements For Ex-Prisoners As Legislative Candidates With Integrity Study Of MK Decision No 87/PUU/2022 Perspektif Of *Maslahah* Al-Ghazali, Thesis , Department of Constitutional Law (*Siyasah*), Faculty of Sharia, State Islamic University (UIN) Maulana Malik Ibrahim Malang, Supervisor: Dr. Mustafa Lutfi, S. Pd., SH, MH .

Keywords: Former Convicts, Constitutional Court, Legislative Election

The integrity of a leader is a benchmark for whether the leader is worthy of leading or not. Constitutional Court Decision No. 87/PUU-XX/2022 is one of the shields for maintaining the integrity of leaders in the midst of allowing former prisoners to run for election. The focus of this research discusses, among other things, 1) the *Decidendi Ratio* of the Constitutional Court in deciding the Constitutional Court Decision No. 87/PUU-XX/2022 based on the theory of constitutional interpretation; 2) Addition of cuts to political rights in Article 11 paragraph (6) PKPU No. 10 of 2023 as a form of easing the requirements for former convicts in Constitutional Court Decision No. 87/PUU-XX/2022 which is cumulative; 3) Reconceptualization Design of Legal Implications Post Constitutional Court Decision No. 87/PUU-XX/2022 regarding the 2024 legislative election from the perspective of al-Ghazali's *maslahah* theory.

The research method used is normative judicial, with 5 (five) approaches, namely statue approach, conceptual approach, historical approach, case approach, comparative approach. The types and sources of legal materials used are primary, secondary and tertiary. This research was analyzed using qualitative juridical analysis methods.

The results and findings of this research are 1) In PMK No. 87/PUU-XX/2022 the constitutional assembly used several interpretations, including comparative, structural and sociological interpretations. The Constitutional Justice partially granted the request by equalizing the article norms so that the requirements for ex-convicts as legislative candidates are cumulative; 2) The KPU takes *obiter dicta* (other legal considerations) which are deemed to be contrary to PMK decision No. 87/PUU-XX/2022, not in accordance with the norm level theory that PKPU is the implementing regulation for PMK; 3) From suitability, PMK No. 87/PUU-XX/2022 is appropriate based on the level of *maslahah hajiyyat*, that the judge's equalization of article norms is a complement to the permissibility of Article 240 paragraph (1) letter of Law No. 7 of 2017. Based on the *ratio decidendi*, PMK No 87/PUU-XX/2022 is appropriate based on *maslahah hajiyyat* and *maslahah ghalibah*. The design of the reconceptualization of the requirements for ex-convicts as legislative candidates with integrity focuses on the KPU having to re-sort the Permanent Candidate List (DCT) of legislative candidates after the revocation of Article 11 paragraph (6) PKPU No. 10 of 2023, the KPU only passes legislative candidates in accordance with the ruling of PMK No. 87/PUU -XX/2022 without any cuts to political rights, thereby easing the 5 year waiting period, thereby creating a 2024 legislative election with integrity.

ملخص البحث

ملخص ريزكا بوتري أماليا. 200203110040، 2024. إعادة صياغة المفهوم حالة ترشيح السابق السجناء في الانتخابات الهيئة التشريعية لعام 2024 كجهد لتعزيز المؤسسات التمثيلية الشعبية بنزاهة مرتكز على منظور مصلحة الغزالي ، رسالة جامعية /PUU-XX/2022/قرار المحكمة الدستورية رقم 87. مولانا مالك (UIN) قسم القانون الدستوري (السياسة)، كلية الشريعة، الجامعة الإسلامية الحكومية S. Pd., SH, MH، إبراهيم مالانج، المشرف : د. مصطفى لطفى

الكلمات المفتاحية : السابق سجين ، محكمة الدستور ، الانتخابات التشريعية

إنه مستيقظ نزاهة من أ قائد يصبح يرفض قياس الذي - التي قائد ال ذو قيمة يقود أو لا .قرار محكمة هو أحدها درع للحماية نزاهة قائد في المنتصف جواز السابق- أسير /PUU-XX/ 2022 والدستور رقم 87 ميناكون نفسه في الانتخابات .ركز يناقش هذا البحث من بين أمور أخرى ، وهي 1 (نسبة قرارات المحكمة الدستور نظرية تفسير دستور ؛ 2 (الإضافة قطع /PUU-XX/2022/في القرار قرار محكمة يستند على الدستور رقم 87 رقم 10 لسنة 2023 كما استمارة إرتياح حالة السابق- المدان في PKPU يمين السياسة في المادة 11 فقرة 6) وهو تراكمي 3 (تصميم إعادة التصور الآثار القانونية بعد /PUU-XX/2022/قرار المحكمة الدستورية رقم 87 ضد انتخاب المنظور التشريعي 2024 نظرية مصلحة الغزالي /PUU-XX/2022/قرار المحكمة الدستورية رقم 87 ، طريقة البحث المستخدمة هي الطريقة القضائية المعيارية، وذلك ب 5) خمسة (مناهج) وهي المنهج التمثالي /PUU-XX/ المنهج المفاهيمي، المنهج التاريخي، المنهج القضائي، المنهج المقارن، مقارنة قرار المحكمة الدستورية رقم 87 مع قرار المحكمة الدستورية حول هذا الموضوع. نفسه. أنواع ومصادر المواد القانونية المستخدمة هي /PUU-XX/2022 الأولى والثانية والثالثة. وقد تم تحليل هذا البحث باستخدام أساليب التحليل القانوني النوعي /PUU-XX/2022/رقم 87 PMK النتائج والاستنتاجات من هذا البحث 1 (في قرار الجمعية العامة رقم دستور يستخدم عدد من تفسير فيما بينها تفسير المقارنة والهيكلي والاجتماعية .العدالة الدستورية /PUU-XX/2022 DPRR، منحة جزء طلب مع يفعل معادلة معايير المادة لهذا السبب .حالة السابق- أسير مثل مُرَشَّح أعضاء يتم أخذ الإملاء) الاعتبار القانونية KPU تراكمي 2 (يأخذ DPRD الإقليمي ، ريجنسي /مدينة DPRD هذا ليس وفقا ./PUU-XX/2022/الأخرى (بعين الاعتبار متناقض مع عمار قرار محكمة الدستور رقم 87 من الملاءمة والقرار محكمة الدستور رقم 3) ; PMK كما قاعدة منفذ PKPU مع نظرية مستوى المعايير التي مناسب مرتكز على مستوى شكراً لك الحجيات ، ذلك معادلة معايير المادة التي يقوم /PUU-XX/2022/87 بما القضاة إطرء جواز ش يسمح بذلك ترشيح السابق- أسير .مرتكز على نسبة القرار ، الحكم محكمة الدستور رقم مناسب مرتكز على شكراً لك الحجيات والمصالحة غالبية .تشكيل تصميم إعادة التصور /PUU-XX/2022/87 PKPU رقم 10 لسنة 2023 أسباب عدم توافق PKPU عاقبة من قطع يمين السياسة في المادة 11 فقرة 6) /PUU-XX/2022/رقم 87 PMK رقم 10 لعام 2023 مع

CHAPTER I

INTRODUCTION

A. Research Background

Draft sovereignty is in the hands of the people base from principle democracy . According to Joseph A. Schemer democracy is something plan obtain the people's vote competitive between individuals in institutions .¹Article 1 paragraph (2) of the 1945 Constitution states that sovereignty is in the hands of the people and implemented according to provisions of the 1945 Constitution.²

In Article 1 paragraph (3) of the 1945 Constitution it is stated that Indonesia is a rule of law country. This confirms that Indonesia is a democratic country based on law.³ System democracy , people's sovereignty is realized through election general elections , referendums, and popular participation in the political process . The people have right For elect their representatives and influence them making decision government through participation active . The state is obliged ensure election free public without except . Context election general legally as form right basic man .⁴

¹ Andrew Heywood, *Politics* (Yogyakarta: Student Library, 2014, 357.

² Jimly Asshiddiqie, *The Idea of Popular Sovereignty in the Constitution and Its Implementation in Indonesia* (Jakarta: PT Ichtiar Baru Van Hoeve, 1994), 59-105.

³ Taufiqurrohman Syahuri, *Interpretation of the Constitution on Various Legal Aspects* (Jakarta: Kencana, 2011). 175.

⁴ Rahayu, *Human Rights Law* , Revised Edition (Semarang: Diponegoro University Publishing Agency, 2015). 5-7.

Appearance principle equal before the law can sued with equality without exists difference .⁵

System democracy , the people own right For electing leaders , such as president , chief area , member legislature , and officials government other , via election general . Election media In general , the people choose who will represent them and take decision on Name they . Elected leader get mandate from the people to carry not quite enough answer government.⁶ The people's representatives who have must be elected by the people carry out their duties in accordance with the interests and will of their people represent .⁷

The people's representatives should be represent the people's voice in the council instead harming the people with actions breaking the law. Violation the can form follow criminal corruption , exploitation power in a way excessive for the sake of the group certain and so on . Actions the in a way significant smear integrity institution representatives of the people and reduce people's sense of trust .⁸

It's walking time start Lots from unscrupulous people's representatives who have ever been stumble several criminal cases after undergo punishment criminal a number of person ex- prisoner the want to

⁵ Muhammad Anwar Tanjung and Retno Saraswati, "Democracy and Legality of Former Convicts in Regional Head Elections and General Elections," *Ius Quia Iustum Law Journal* Vol. 25, no. 2 (2018): 379–99, <https://doi.org/https://doi.org/10.20885/iustum.vol25.iss2.art9>.

⁶ Busroh Abu Daud, *State Science* (Jakarta: Bumi Aksara, 2015), 151.

⁷ Siswanto Sunarno, *Regional Government Law in Indonesia* (Jakarta: Sinar Graphics, 2008), 67.

⁸ Dian Astiti, "The level of public trust in the DPR is low, is it possible that political parties have lost their important role?," *Kompasiana* , 15 July 2023, accessed 10 November 2023, <https://www.kompasiana.com/marwahanyelir7212/64b24d7be1a1671e0d75dd82/angkat-kebelian-community-pada-dpr-dunia-maykah-parpol-has-lost-its-peran-important>

nominate self back in the election . Phenomenon nomination ex- prisoner as candidate legislative DPR , Provincial DPRD , district / city and DPD in elections general . Commission General Election as institution organizer election general reveal there are 67 names ex- prisoner related various case types , incl case registered corruption become candidate legislative . The future candidate This legislature consists of out of 52 candidates DPR candidates and 15 candidates candidate DPD members .⁹

Phenomenon nomination ex- convicts at the election This general is inviting controversy and submission *judicial review* by parties who feel disadvantaged with nomination ex- prisoner as candidate legislature in elections general . Court Constitution formed as the competent authority for testing something Constitution to The 1945 Constitution as the highest state constitution , accepts judicial review as form right constitutional aggrieved citizens .¹⁰

A number of Year final there is decision Court Constitution on submission *judicial review*¹¹ to nomination ex- prisoner in election general nor election head area . *Judicial review* submitted by the applicant as party

⁹ Andri Saubani, "KPU Reveals 67 Ex-Convicts, Including Corruption Convicts, to Become Legislative Candidates, Here's the List," *Republika* , 27 August 2023, accessed 17 October 2023, <https://news.republika.co.id/berita/s01q6f409/kpu-besar-67-ex-convicts-including-convicts-in-corruption-cases-are-the-list-candidates>.

¹⁰ Jazim Hamidi and Mustafa Lutfi, "Constitutional Question (Between Political Reality and Legal Implementation)," *Constitutional Journal* Vol. 7, no. 1 (2010): 713, <https://doi.org/10.31078/jk713>.

¹¹ *Judicial review* is one of the monitoring mechanisms (*check and balance*) in the separation of powers, where the judicial power monitors the actions of the legislative and executive powers when both exceed the authority given to them. Although the principles of judicial review may vary across jurisdictions, the procedures and scope can differ from country to country and even within countries themselves. Quoted by Cholidin Nasir, "Judicial Review in the United States, Germany and Indonesia," *Progressive Law Journal* Vol. 8, no. 1 (2020): 67–80.; <https://doi.org/10.14710/hp.8.1.67-80>.

ex- prisoners who feel right his politics disadvantaged with restrictions nomination ex- convicts in elections general as well as submission of a material test also submitted by the applicant as party voters who feel that nomination ex- convicts in elections general cause creation democracy and leaders who do not have integrity . Leonardo Siahaan, SH, as applicant submit lawsuit material to Court Constitution on Article 240 paragraph (10) letter g of the Law Number 7 of 2017 concerning General elections . In the tree his request the phrase “... *in a way open and honest put forward to public that in question ex- convict* ” no exists something evaluation reject clear measurement of the norms of Article 240 paragraph (1) letter g of Law No. 7 of 2017 concerning General Election , resulting applicant experience worries , because something moment No There is candidate legislature that does not integrity , so can said phrase the Already No adequate , yes results in *abuse of power* ¹², which is meaning is action taken official For interest certain , fine For interest self yourself , someone else, or corporation .¹³

The panel of judges on improvements introduction consider that reason application applicant in the case number 87/PUU-XX/2022 no draw , because of that applicant problematic the phrase “ ... *in a way open and honest put forward to public that in question ex- convict* ” as condition

¹² *Abuse of power* refers to actions or behavior that occur when a person or group of people who have power, authority, or authority use it for their personal or group interests, often in violation of ethical principles, legal regulations, or applicable social norms. Abuse of power occurs when an individual or entity in a position of power uses that authority for purposes that are inappropriate or even exceed reasonable limits. Quoted by Raden Imam Al Hafis and Moris Adidi Yogya, "Abuse of Power: A Review of Abuse of Power by Public Officials in Indonesia," *PUBLIKA* Vol. 3, no. 1 (2019): 80–88, <https://journal.uir.ac.id/index.php/JIAP/article/view/3494>.

¹³ Constitutional Court Decision Number 87/PUU-XX/2022.

candidate members of the DPR, Provincial / Regency / City DPRD. Judge Suhartoyo consider applicant No fair For plead phrase “ ... *in a way open and honest put forward to public that in question ex- convict* ” was omitted so that become obstacle for ex- prisoner For nominate self as members of the DPR, Provincial / Regency / City DPRD meanwhile For ex- head area allowed nominate self become head area in accordance with amar PMK decision no. 56/PUU-XVII/2019.¹⁴

Testing of norms of Article 240 paragraph (1) letter g of previous Law No. 7 of 2017 Once done testing through application PMK testing no. 81/PUU-XVI/2018 ¹⁵and PMK No. 83/PUU-XVI/2018 ¹⁶, apparently PMK 81/PUU-XVI/2018 uses base testing Article 28D paragraph (1) and Article 28J paragraph (2) of the 1945 Constitution, while PMK 83/PUU-XVI/2018 uses base review of Article 1 paragraph (3), Article 27 paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution . Meanwhile that's a request *a quo* use base testing of Article 28J paragraph (1) of the 1945

¹⁴Minutes of Case Hearing Number 87/PUU-XX/2022, Constitutional Court , 15.

¹⁵Look Case Number 81/PUU-XVI/2018 with amar decision rejected overall , applicant want that the phrase “ except in a way open and honest put forward to public that in question ex- convict ”in Article 240 paragraph (1) letter g Law 7/2017 no is interpreted as " covering. " ex- convict corruption ”.

¹⁶Look Case Number 83/PUU-XVI/2018 with amar decision rejected overall , applicant want that candidate Members of the DPR, Provincial DPRD, and Regency /City DPRD though Once convicted prison but not convict who because do crime corruption , crime drugs , crime sexual to children , and crime terrorist based on decision the court has obtain permanent legal force .

Constitution, so testing material norms of Article 240 paragraph (1) letter g of Law 7/2017 can be implemented returned ¹⁷by the Court Constitution .¹⁸

Testing effort material about nomination ex- prisoners and in the election general as legal remedies for each party who feels that right constitutional¹⁹ disadvantaged . Second split party the that is ex- prisoners who wish nominate self as legislative nor head area with reason want to build the area but hindered restrictions nomination ex- convicts in elections general and election head region , as well as from party voters who feel worry will emergence democracy is not integrity and emergence *abuse of power* carried out by individuals officials for interests his group .

Every Year political time for the people to channel his voice in voting leader , polemic nomination ex- prisoner Keep going happen until Now .²⁰ Reflect from case principal Leonardo Siahaan's request regarding worries nomination ex- convicts in elections general will happen democracy

¹⁷Article 60 of the Constitutional Court Law states :

- (1) Against material load verses , chapters , and/ or part of the law that has been tested , no can requested return .
- (2) Conditions as referred to in paragraph (1) can excluded If material content in the 1945 Constitution that was adopted base testing different or there is reason different requests .

Article 78 PMK 2/2021 states :

- (1) Against material contents , paragraphs , articles , and/ or part of the law or Perpu that has been tested , no can requested testing return .
- (2) Conditions as referred to in paragraph (1) can excluded If material content in the 1945 Constitution which was enacted base testing different or there is reason different requests .

¹⁸ Constitutional Court Decision Number 87/PUU-XX/2022.

¹⁹Constitutional Rights in question is the same in government (rights elected and elected) as stated in the Constitution of the Republic of Indonesia Article 27 paragraph 1 reads , " Every citizens at the same time its position in law and government ,,, " .

²⁰ Valentina Mariama Sadeadema, "Elections and Corruption (Dilemma of Contesting Legislative Candidates Former Corruption Convicts in the 2019 Legislative Elections)," *Transformative Journal* Vol. 5, No. 2 (2019): 52–72: <https://doi.org/https://doi.org/10.21776/ub.transformative.2019.005.02.4>.

is not integrity and *abuse of power* . Cause emergence confusion understanding about The Constitutional Court's decision allows it nomination ex- prisoner with a number of condition provision .

Meaning constitutional by the judges of the Court Constitution has give rise to debate about justice for right constitutional ex- prisoners and rights constitutional other Indonesian citizens as voter . Meaning constitutional by the Court constitution about nomination ex- prisoner considered impose on the people in question his integrity because Once become ex- prisoner For chosen in the election general .²¹ Based on the decision of the constitutional judge as stated in MK Decision No. 87/PUU-XX/2022 with amar decision partially grant that No fair if the applicant in the judicial review requests that the former prisoner No can nominate self as candidate legislature in elections general coming with reason applicant afraid will No exists candidate legislative with integrity and occurrence *abuse of power* though If based on the previous Constitutional Court decision namely in Constitutional Court Decision No. 56/PUU-XVII/ 2019 allowed ex- prisoner nominate self as head area with conditions that have been described in amar the verdict . Constitutional judges grant part application *judicial review* with equalization of the status of legal norms article 240 paragraph (1) letter g Law No. 7 of 2017 concerning General Election with the norms of Article 7 paragraph (2) letter g of Law No. 10 of 2016 concerning equal waiting period of 5 years for

²¹ Vitorio Mantalean and Diamanty Meiliana, "MK Decision: Newly Free Ex-Convicts Prohibited from Running as Legislative Candidates, Must Wait 5 Years," *Kompas.com* , accessed 5 December 2022, https://nasional.kompas.com/read/2022/11/30_/18543861/bangunan-mk-ex-convict-baru-free-prohibited-from-running-candidates-must-wait-5-Years.

ex- ind prisoner nominate self as candidate legislature in elections general upcoming .²²

It's published KPU Regulation no. 10 of 2023 Article 11 Paragraph (6) which reads :

" provision as referred to in paragraph (5) no applies If otherwise determined by the decision the court has get permanent legal force For criminal addition revocation right politics .”

This KPU regulation is considered loosen provisions that have been listed in PMK No. 87/PUU-XX/2022 concerning a 5 year cooling off period for ex- already convicted served his sentence . Revocation right political ex- this convict explained through simulation by KPU Chairman Hasyim Asyari that Ex convict curbed corruption criminal with 5 year threat or more , and criminal addition revocation right politics 3 Years . Someone concerned free pure (status ex- convict) on January 1, 2020. Based on the ruling MK decision number 87/PUU-XX/2022, then pause time For can chosen must past 5 years , so falls on January 1 , 2025.²³

Consequence its publication This KPU regulation and the Constitutional Court's decision caused this polemic middle public Because assessed contradictory with amar MK decision Number 87/PUU-XX/2022 which requires for ex- convict must past the 5 (five) year waiting period after undergo criminal prison . Provision KPU regulations are considered open gap for ex- convict corruption For advance in

²² Constitutional Court Decision Number 87/PUU-XX/2022, 32-35.

²³ Mario Christian Sumampow, "Community Coalition Proposes PKPU Material Test Regarding Regulations on Former Convicts May Go to the Supreme Court," *Tribun News* , accessed September 14, 2023, <https://www.tribunnews.com/nasional/2023/06/12/koalisi-society-submits-pkpu-material-trial-on-the-rules-former-convicts-may-take-legislative-to-MA>.

the contest election legislative without past the hiatus five years after undergo criminal prison .²⁴

Probematics increase when middle stages election 2024 legislature in progress candidacy will be tested on April 24 2023 – November 25 2023 Article 11 paragraph (6) PKPU No. 10 of 2023 at the Supreme Court the incompatibility with amar *a quo* ²⁵Constitutional Court decision . On September 29, 2023 the Court Agung granted the material review of Article 11 paragraph (6) PKPU No. 10 of 2023 and stated in his ruling the verdict that the KPU must revoke Article 11 paragraph (6) because contradictory with amar Decision Court Constitution No 87/PUU-XX/2022. ²⁶KPU only accept on he took it out Decision Mahakamh Agung

²⁴ Yusron Munawir, "Disharmonization of Restrictions on the Political Rights of Former Convicts to Become Candidates for Legislative Members in the 2024 General Election," *Legacy: Journal of Law and Legislation* Vol. 3, no. 2 (2023): 117–37.

²⁵ The history of the constitution according to the Indonesian constitutional system regarding judicial power/judicial function (*judicial*) before the amendment to the 1945 Constitution, there was only a court body that pivoted on the Supreme Court. Bearing in mind the principle of *independence of judiciary* , the position of the Supreme Court is recognized for its independence in that there should be no intervention and influence from other branches of power. Likewise, before the formation of the Constitutional Court (MK) in 1998, the function of reviewing the constitutionality of laws was transferred to the Supreme Court, which tested the compatibility of lower legal norms with higher legal norms. The Supreme Court also has the authority to examine the direction of laws regarding the Constitution of the Republic of Indonesia (UUD NRI), which is the constitution of the archipelago. In reviewing laws, the Supreme Court uses different techniques, such as material testing (which relates to the material contained in paragraphs, articles and/or parts of the Law or Perppu) and formal testing (which relates to the process of forming the Law or Perppu). . Material testing has no time limit for submitting an application, while formal testing has a time limit of 45 days. Apart from that, the Supreme Court also has the authority to stop ongoing legal testing if special circumstances arise. Review of laws in the Supreme Court takes place with regular and systematic practices, which help in guaranteeing the sovereignty of the people through the constitution . Quoted by Mustafa Lutfi, *Regional Election Dispute Law in Indonesia: Ideas for Expanding the Constitutional Authority of the Constitutional Court* (Yogyakarta: UII Press, 2010), 3.

²⁶ Andrian Pratama Taher, "MA Grants PKPU ICW Material Test Regarding Requirements for Nyaleg Ex-Corruptors," *tirto.id* , 30 September 2023, accessed 17 March 2024, <https://tirto.id/ma-kabulkan-uji-materi-pkpu-icw-question-requirements-ex-corruptor-nyaleg-gQyw> .

No 28 P/HUM/2023 that submission of a material test the violates the norms of Article 76 paragraph (3) of Law no. 7 of 2023 which reads :²⁷

“ Application testing as referred to in paragraph (2) is submitted to Supreme Court no later than 30 (three twenty) days Work since KPU regulations promulgated .”

Obscurity The KPU's response was no illustrate exists attitude untuk improve Article 11 paragraph (6) PKPU No. 10 of 2023, as well as candidate data still members of the DPR, Provincial DPRD, Regency /City DPRD are possible a number of candidate No in accordance with Article 11 paragraph (5) PKPU No. 10 of 2023 in accordance with PMK No. 87/PUU-XX/2022. Should There is confirm related amendment to Article 11 paragraph (6) PKPU No. 10 of 2023 and also improve the list of candidates still members of the DPR, Provincial DPRD, Regency /City DPRD .

Based on description above , consequences allowed nomination ex- prisoners based on the legal basis of PMK No. 87/PUU-XX/2022 caused the PMK become chance for exes prisoner For do follow pidana repeated so that become because emergence democracy is not integrity and *abuse of power* . And there is disharmonization of PMK No. 87/PUU-XX/2022 and PKPU No. 10 of 2023 which causes discrepancies in the process stages election legislature 2024, then than That writer mean For do study scientific related on **“RECONCEPTUAL OF THE REQUIREMENTS FOR EX- PRISONERS AS LEGISLATIVE**

²⁷Article 76 paragraph (3) Law no. 7 of 2023 concerning Determination Regulation Government Replacement Constitution Number 1 of 2022 Concerning Changes to the Law Number 7 of 2017 Concerning General Elections Become Law.

CANDIDATES WITH INTEGRITY STUDY OF MK DECISION NO 87/PUU/2022 PERSPECTIVE OF MASLAHAH AL-GHAZALI"

B. Statement of Problem

Based on description background behind in this research the author decide For write a number of summary it's a problem related , namely :

1. How *Ratio Decidendi* Constitutional Court Decision No. 87/PUU-XX/2022 based on the Theory of Legal Interpretation ?
2. How review addition cutting right politics in KPU Regulation no. 10 of 2023 Article 11 paragraph (6) as form relief requirements in a way accumulative in Constitutional Court Decision No. 87/PUU-XX/2022?
3. How to design the reconceptualization of legal implications after Constitutional Court Decision No. 87/PUU-XX/2022 regarding the 2024 legislative elections based on Al-Ghazali's Maslahah Theory?

C. Research Purposes

Based on formulation problem above , the desired goal achieved namely :

1. For examine and describe the basis judge's decision from Decision Court Constitution Number 87/PUU-XX/2022 in grant part allow ex- prisoner For candidacy legislature in the 2024 elections based on Constitutional Interpretation Theory .
2. For examine and describe , additions cutting right politics in KPU Regulation no. 10 of 2023 article 11 paragraph (6) as form relief

requirements accumulative in Constitutional Court Decision No. 87/PUU-XX/2022 .

3. To compile and describe a design for the reconceptualization of legal implications after Constitutional Court Decision No. 87/PUU-XX/2022 regarding the 2024 legislative elections based on Al-Ghazali's Maslahah Theory Perspective.

D. Benefits of Research

1. Theoretical Benefits

The results of this research are expected can give donation scientific and references to research the following is related with decision Court Constitution and expected this research can give information as literature nor possible references made reference For study furthermore .

2. Practical Benefits

a. For researchers

This research is chance for writer For study more deeply related Legal implications of the Decision Court Constitution no. 87/PUU-XX/2022 against nomination ex- prisoners in the 2024 General Election .

b. For readers

It is hoped that this research will contribute as material reading from results thinking writer for public lay with big hope that public lay can know in a way more about analysis from writer to

Implications Decision Court Constitution no. 87/PUU-XX/2022 against 2024 general election .

c. Share Knowledge Knowledge

The results of this research are expected add treasure science and study literature within the institution education tall especially in treasures field of constitutional law .

E. Research methods

Methodology study is something business pursuit something truth obtained from consideration logical .²⁸ Soerjono Soekanto opinion , legal research viz something activity study scientific who have systematic For analyze existing legal phenomena .²⁹

1. Types of research

The type of research used in this research is type study juridical normative that is research that examines the law of in terms of internal legal norms .³⁰ Researched normative legal research is material References or secondary data. Because of the , method The research used is method study normative that is reviewed research through legal aspects and regulations . Temporary characteristic from this research is descriptive analytical . Study descriptive analytical used For disclose

²⁸ Moh. Nazir, *Research Methods* , (Bogor: Ghalia Indonesia, 2014), 26.

²⁹ Soejono Soekanto, *Introduction to Legal Research* , (Jakarta: UI Press, 1981), 43.

³⁰ I Made Pasek Diantha, *Normative Legal Research Methodology in Justifying Legal Theory*, (Jakarta: Prenada Media, 2017), 12.

regulation Related legislation with existing legal theories object study .

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This research examines about legal implications of the Decision Mahkamah Constitution no. 87/PUU-XX/2022 concerning nomination ex- prisoner to integrity leaders in the 2024 election are persuasive thank you sorry .

2. Research Approach

Approach study customized formulation problem , kind study as well as research purposes . This research uses approaches , including :

a. Statue Approach

This research has used approach study Approach legislation that is understanding base Decision Court Constitution No. 87/PUU-XX/ 2022 hierarchy constitution very important principles regulations Article 240 paragraph 1 letter g of the Law Number 7 of 2017 concerning General elections . Problem studied through regulations and concepts legal science explained in a way detailed .

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b. Case Approach

The case approach used researcher is case- caused approach researcher must understand ratio decidendi ie the legal bases used by judges in making decisions matter . According to Goodheart the

³¹ Zainudin Ali, *Legal Research Methods* (Jakarta: Sinar Graphics, 2009). 105.

³² Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2017), 137.

decidendi ratio is used For consider fact material . Material facts consists from people, places , times , and everything aynag accompany him provided proven on the contrary .³³ Use case approach in this research .

c. Conceptual Approach

This research approach is conceptual approach , approach draft intended For analyze legal material so can is known the meaning contained in legal terms . That matter done as business For obtain new meanings contained in the terms studied , or test these legal terms in theory and practice .³⁴

d. Historical Approach

Approach history can interpreted in two ways : first , as interpretation based on legal history ; second , as interpretation based on history formation regulation legislation . Use approach history possible researcher For get deeper understanding of legal system or institution as well as certain legal regulations . This can helps in reducing error understanding related institution or certain legal provisions .³⁵

³³ Peter Mahmud Marzuki, *Legal Research* , 158.

³⁴ Hajar M, *Approach Models in Legal and Fiqh Research* (Pekanbaru: UIN Suska Riau, 2015), 41.

³⁵ Kusumadi Pudjosewojo, *Indonesian Legal Procedure Study Guide* (Jakarta: Aksara Baru, 1976), 64.

3. Legal Materials

In this research it was used three type legal materials , namely primary legal materials , primary legal materials and tertiary legal materials as explained detailed following :

a. Primary legal materials

Primary legal materials are the main legal materials used in the research. Primary legal materials have the highest level of content regulation legislation , note official or treatise in formation Constitution or in a decision judge.³⁶ Following is primary legal materials used among others:

- 1) Article 240 paragraph 1 letter g of the Law Number 7 of 2017 concerning General elections .
- 2) Decision Court Constitution No 87/PUU-XX/2022.
- 3) Treatise Hearing Court Constitution Case No 87/PUU-XX/2022.
- 4) Regulation Commission General Election Number 10 of 2023.

b. Secondary Legal Materials

Secondary legal materials is supplementary legal materials form studies literature in nature explainer from other legal assistance such as law books , journals and expert opinions on decision court .³⁷

³⁶ Peter Mahmud Marzuki, *Legal Research* , 181.

³⁷ Peter Mahmud Marzuki, *Legal Research* , 182.

c. Tertiary legal materials

Tertiary legal materials is legal material in nature as complement from primary and tertiary legal materials . Researcher use Big Indonesian Dictionary (KBBI).

4. Methods for Collecting Legal Materials

Collection method legal materials via method identify regulation legislation invitations , grouping and arrangement sitemassi appropriate legal materials with the level Agara legal materials used completely valid.³⁸

5. Processing Method Data

Processing legal materials are carried out with normative legal method, with organize written legal materials so that they are systematic. Systematic will make deflection or classification become easy and more constructed .³⁹

Based on legal materials and according to use , processing legal materials in this research were carried out through a number of stage that is :

³⁸Hajar M, *Approach Models in Legal and Fiqh Research* , 39.

³⁹ Soerrjono Soekanto and Sri Mamudji, *Normative Legal Research* (Jakarta: Raja Grafindo, 2009).

a. checking (*editing*)

Before managing data, the data edited first , with repair data quality and consistency .⁴⁰

b. Classification (*classifying*)

Classification is separation of the data obtained based on qualifications .

c. Verification

Verification is activity For make sure truth from a data obtained .

d. Analysis

Analysis carried out researcher form shucking to object study with adjust with methods and approaches used.

Analysis used with do study to Decision Court Constitution that has legally binding that is Decision Court Constitution no. 87/PUU-XX/2022. Based on Decision that researcher do analysis use considered theory in accordance ie with use theory :

1) Theory of Constitutional Interpretation

2) Hans Kelsen's Theory of Norms

3) Benefit from Decision Court Constitution no. 87/PUU-XX/2022 Perspective Maslahah Al-Ghazali.

e. Conclusion

Withdrawal similar conclusion stages end this research researchers concluded the ingredients that have been collected and analyzed ,

⁴⁰ Nazir, *Research Methods* , 304.

this is useful For make it easier explanation. Withdrawal conclusions are also purposeful For answer background background and formulation It's a shame that has happened explained.

All data obtained from research, either primary data or secondary data will collected and move on will analyzed theory masalah murlah, theory of constitutional interpretation and theory of levels of norms.

In doing analysis legal materials are carried out with method analysis juridical qualitative that is explain and describe data in form sentence according to guide to get it the answer has been formulated.⁴¹ Next with editing, classifying, analyzing, to obtain A results from satisfactory assessment .

F. Previous Research

A number of study previously has try explore the same topic, but this research has significant difference good at focusing the discussion as well as in the topics handled. Primarily, this research tries lift issue reconstruction with method analyze something regulation legislation, with use theory thank you murlah, constitutional interpretation theory and theory expected level of norms that this research will bring contribution valuable innovation. Writer with firm state that this research is work original without plagiarism from other people's

⁴¹ Diantha, *Normative Legal Research Methodology in Justifying Legal Theory* . 152.

work . The following is a number of study previous ones that have been identified in various literature :

Table 1.1
Study Previous

No	Name/ Agency / Title / Year	Formulation of the problem	Findings Writer	Difference	Novelty
1	Muhammad Anwar Tanjung and Retno Saraswati ⁴² /Faculty of Law, Diponegoro University /“Democracy and Legality Ex Prisoners in Elections Regional Heads and General Elections”/2018	1. How understand legality ex-convicts in elections head regions and elections general following efforts made post decision Court Constitution in framework build democracy in Indonesia?	The results of this study conclude that first , one ex-prisoner own right constitutional as candidates in elections who do not can reduced with reason whatever except by decision the court has legally binding . Building efforts democracy done with emit the rules spell out in a way technical decision Court Constitution for ex- prisoners who will join in as well as in	Focus study The research carried out by Muhammad Anwar Tanjung is decision Court Constitution Number 4/PUU-VII/2009 and decision number 14-17/PUU-V/2007 which legitimizes it ex-prisoner as candidate head regions and candidates legislative . The aim of this study For analyze legality ex-prisoner For join in as well as in following efforts	There is Decision Court Constitution Number 87/PUU-XX/2022 concerning addition condition candidate legislative for candidate ex-prisoners are allowed nominate yourself in the election general legislature and its impact on integrity leader

⁴²Research conducted by Muhammad Anwar Tanjung and Retno method study normative with approach legislation and concepts , viz analyze legislation related with topic study the . The results of this study conclude that first , one ex- prisoner own right constitutional as candidates in elections who do not can reduced with reason whatever except by decision the court has legally binding . Quoted by Muhammad Anwar Tanjung and Saraswati, "Democracy and Legality of Former Convicts in Regional Head Elections and General Elections." *Ius Quia Iustum Law Journal* Vol. 25 , no. 2 (2018): 279-399, : <https://doi.org/10.20885/iustum.vol25.iss2.art9>

			elections accompanied with penalty heavy for the offender as well as involve supervision institution organizer election during the nomination process the .	made post decision Court Constitution in framework build democracy in Indonesia.	
2	Ignatius Indra Satyawasana and Adriana Grahani Firdausy ⁴³ /"ANALYSIS OF THE CONSEQUENCES OF THE RULING OF THE CONSTITUTIONAL COURT NUMBER 71/PUU-XIV/2016 CONCERNING THE NOMINATION OF REGIONAL HEADS OF FORMER	1. What the matters underlying the Constitutional Court Judge in handing down Decision Number 71/PUU-XIV/2016 concerning Constitutional Rights Nomination Former Regional Head Prisoner ? 2. What consequence from decision the	Research result is known that consequence Decision Court Constitution Number 71/PUU-XIV/2016 is related nomination head area ex- convict can injure democracy public local Because No capable shift potential candidates do crime as well as do violation of law in competition regional elections .	This research focuses on analysis Decision Court Constitution Number 71/PUU-XIV/2016 has an impact on local community democracy only.	There is Decision Court Constitution Number 87/PUU-XX/2022 which updates the norms accordingly with decision MK No. 56/PUU-XVII/2019 which influences integrity democracy national election in 2024.

⁴³ The research conducted by Indra Satyawasana and Adriana Grahani Firdausy used normative research methods with a statutory approach, conceptual approach and case approach, namely analyzing legal and statutory materials related to the research topic. The results of this study conclude that the consequences of Constitutional Court Decision Number 71/PUU-XIV/2016 regarding the nomination of regional heads of former convicts could harm local community democracy because they are unable to remove candidates who have the potential to commit crimes and violate the law in regional election competitions. Quoted by Ignatius Indra Satyawasana and Adriana Grahani Firdausy, "Analysis of the Consequences of the Constitutional Court Decision Number 71/PUU-XIV/2016 concerning the Nomination of Regional Heads of Former Convicts on the Implementation of Democratic Elections," *Res Publica* Vol. 3, no. 3 (2019): 255–64, : <https://doi.org/10.20961/respublika.v3i3.45657>.

	CONSTITUTIONS ON THE ORGANIZATION OF DEMOCRATIC ELECTIONS"/ UNS Faculty of Law Student /2019	to system maintenance democratic elections Consequence Analysis Decision Court Constitution Number 71/Puu- Xiv /2016 concerning Nomination Former Regional Head Prisoner to Maintenance Democratic Elections .			
3	Aghoffar , Effendi Hasan MA, Noviyanti ⁴⁴ ”I INTEGRITY OF POLITICAL PARTIES IN THE NOMINATION OF FORMER CORRUPTION PRISONERS IN THE 2019	1. How the symptoms that arise consequence from implementation on something legal provisions regarding integrity party politics in candidacy ex- prisoner corruption in elections	Research result mention that 1) Management party politics in recruitment candidate former legal representative (candidate). prisoner corruption in elections In 2019 in Aceh province it was carried out through internal	This research focuses more on influence integrity party carrying politics ex- prisoner as cadres in the election throughout 2019 in Aceh Province .	There is Decision Court Constitution Number 87/PUU- XX/2022 concerning addition condition accumulative on the former prisoner For nominate self as candidate legislature in

⁴⁴ Research conducted by Aghoffar and Effendi Hasan and Noviyanti used empirical research methods with a qualitative approach. The results of this study conclude that firstly, political party management in recruiting legislative candidates (candidates) for former corruption convicts in the 2019 elections in Aceh province was carried out through internal and external parties. Second, there are several effects of nominating legislative candidates who are ex-corruption convicts on the integrity of the supporting political parties, namely that political parties lack integrity, worsening the image of political parties, reducing public trust in political parties, and eroding the morality of political parties. Quoted by Aghoffar, Effendi Hasan and Noviyanti, "Integrity of Political Parties in the Nomination of Corruption Convicts in the 2019 Simultaneous Elections in Aceh," *Student Scientific Journal of the Faculty of Social and Political Sciences* Vol. 6, no. 2 (2021): 1–19.

	SIMULTANEOUS ELECTIONS IN ACEH” / Faculty of Science UNSYIAH Social and Political Affairs /2021	2019 in Aceh? 2. How its influence nomination ex-prisoner corruption in elections simultaneously 2019 against integrity party politics in candidacy ex-prisoner corruption in elections 2019 in Aceh?	and external party . 2) There are several influence nomination legislative candidate ex-prisoner corruption to integrity party political bearer that is party political become No integrity , worsen image party politics , lowering trust public to party politics , and its erosion morality party politics .		the 2024 elections accordingly with principles of constitutional judges For produce quality leader without remove right its constitutionality , which affects the integrity of representative institutions That Alone as a forum for the people's representatives elected in elections .
4	Dina Ulliyana ^{45/} “IMPLICATIONS OF THE RULING OF THE CONSTITUTIONAL COURT NUMBER 30/PUU-XVI/2018 IN THE 2019 REGIONAL	1. What is the legal ratio ? Decision court Constitution no. 30/ PUU-xvi/2018 and Decision Supreme Court No 65P/HUM/2018? 2. How implications	1. Legislative Ratio of Decision Court Constitution No. 30/PUU-XVI/2018 concerning formation institution state institution DPD as embodiment representative area level	The focus of this research is on analysis implications from emergence difference judicial review decisions issued by the MK and Supreme Court. Annoying the decision used give rise to uncertainty for	Analyze Decision Court Constitution Number 87/PUU-XX/2022 from aspect ratio decidendi for reconstruct condition nomination ex-prisoners

⁴⁵The research conducted by Dina Ulliyana used normative juridical research methods using legislation and a case approach. The results of this study conclude that the implications caused by the dissimilarity of Constitutional Court Decision No. 30/PUU-XVI/2018 and Supreme Court Decision No. 65P/HUM/2018 cause legal uncertainty for Regional Representative Council Candidates. Quoted by Dina Ulliyana, "Implications of Constitutional Court Decision Number 30/PUU-XVI/2018 in the 2019 Regional Representative Council Legislative Election" (Undergraduate thesis, Maulana Malik Ibrahim University Malang, 2020), : <http://etheses.uin-malang.ac.id/21375/>

	<p>REPRESENTATIVE COUNCIL LEGISLATIVE ELECTION”/S haria Faculty, Maulana Malik Ibrahim State Islamic University Malang/ 2020</p>	<p>Decision Constitution No. 30/PUU/XVI/2018 against General Election to the House of Representatives area 2019 ?</p> <p>3. How comparison the Regional Representative Council Institution system in Indonesia with the Shura Majlis Perspective Abu A'la Al Maududi ?</p>	<p>government center . Ratio legis from Decision supreme court no. 65P/HUM/2018 concerning KPU authority to revise PKP No. 26 of 2018 assessed No effective Because change rule must set with obligations at the time stages and programs.</p> <p>2. Implications caused by inequality second Decision institution supreme in this judiciary gives rise to no legal certainty for candidate member of the 2019 Regional Representative Council .</p> <p>3. Representative Council and Assembly institutions Shura if compared so will determined a number of similarities and</p>	<p>candidate DPD members .</p>	<p>in the 2024 election</p>
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			differences. among them the naming its members is representative from various area as well as No is representative party or certain groups . Whereas The difference ie member Assembly . Shura must submit and obey the Qur'an and Sunnah .		
5	Siti Pebrianti ^{46/} " POLITICAL RIGHTS OF FORMER CORRUPTION PRISONERS FROM THE PERSPECTIVE OF POSITIVE LAW AND ISLAMIC	1. How right political ex-prisoner Corruption in Positive Law ? 2. How right political ex-prisoner corruption in Islamic law?	1. Political rights ex-prisoner corruption positive legal perspective No limited by the 1945 Constitution as well as in law protection of human rights. Although person or somebody has entangled follow corruption ,	Difference lies in the law used , namely Article 43 paragraph (1) of the Law Number 39 of 1999.	There is a Decision Court Constitution Number 87/PUU-XX/2022 analyzed from in terms of ratio decidendi and benefits based on Al-

⁴⁶ Research conducted by Dina Ulliyana used normative research methods with a qualitative approach. The results of this study conclude that the political rights of former corruption convicts from a positive legal perspective are not limited by the 1945 Constitution as well as the Human Rights Protection Law. Even though an individual or person has been caught in an act of corruption, when they have completed their sentence, they are allowed to run for office again in the general election. There are no restrictions on the political rights of ex-convicts from the perspective of Islamic law in the Qur'an, where human rights are equal before Allah SWT, so every human being who commits a crime such as corruption, after truly repenting and receiving punishment, is expected to change his life. better. Basically, Islamic law also regulates equality of rights before the law and this is the basis that everyone has the right to participate in government. Quoted by Siti Pebrianti, "Political Rights of Former Corruption Convicts in the Perspective of Positive Law and Islamic Law" (Undergraduate thesis, Fatmawato Sukarno State Islamic University Bengkulu, 2022), <http://repository.iainbengkulu.ac.id/8661/>.

	LAW"/ Faculty of Sharia, Fatmawati Sukarno State Islamic University Berkulu , /2022		<p>when has finish the punishment is over set so allowed again to nominate self return in election general .</p> <p>2. Political rights ex- nor do prisoners from the perspective of Islamic law There is restrictions in the Qur'an where right man it's the same before Allah SWT, then every man if do crime like corruption so after repent with really and get punishment expected can change his life more Good . Basically Islamic law is also regulated about equality rights before the law and this becomes base that everyone has the right For join in as well as in government .</p>		Ghazali's perspective
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Writer concluded from explanation table on that focus this research is on the underlying *ratio decidendi* Decision Court Number 87/PUU-XX/2022 concerning condition nomination ex- prisoners in the running legislative election general with equalization of article norms , as well reconstruct with analysis MK Decision No 87/PUU-XX/2022 guarantees

right constitutional ex- prisoner from facet interpretation constitution and levels of regulatory norms below it with perspective *Maslahah* Al-Ghazali

G. Systematics writing

PIG: Introduction

Introductory chapter this includes a number component important . This includes explanation background back , formulation problem , goal research , methods research , review literature previous , and also structure writing . Further , in Sect method research , there is several detailed sub - chapters type research , approach research , types of data used , methods data collection , as well how the data is processed .

CHAPTER II: Literature Review

This literature review chapter describes about analysis literature used as reference in this research with objective For reach valid results . Reviewed literature containing ideas and concepts used as base theoretical For investigate as well as analyze the issues that will raised by researchers . This chapter also discusses framework theory and framework relevant conceptual with topic study .

CHAPTER III: Research Results and Discussion

This chapter contains results from this study , which originates from analysis of the data that has been done collected and processed , and later used For answer question proposed research .

CHAPTER IV: Conclusion

Final part this chapter covers summary and recommendations .
Summary based on the findings in the discussion , while
recommendation based on the suggestions given regarding
research results

CHAPTER II

LITERATURE REVIEW

A. Definition Conceptual

Definition operational used For clarify several related variables title research , so reader easy to understand description big from a study. As for the content from definition operational , namely:

1. Reconceptualization

Understanding reconceptualization is a review process repeat or study to the basic idea of certain laws For Then built better concept . In a legal context , reconceptualization can applied For analyze or change existing legal concepts There is For repair or enrich draft the .⁴⁷

2. Decision Court Constitution

Decision Court Constitution is authority Court constitution as legal considerations that have been agreed from competent judges as answer from petitum that has been given by the party final and permanent applicant .⁴⁸ It means Court Constitution is court level first and last so that No there are other legal remedies after exists decision Court Constitution .⁴⁹

⁴⁷ Education Language Center, Department of National Education, *Big Indonesian Dictionary* (Jakarta: Department of National Education, 2008), 748.

⁴⁸ Taufiqurrohman Syahuri, *Interpretation of the Constitution on Various Legal Aspects*, 216.

⁴⁹Taufiqurrohman Syahuri, 217.

Decision is legal considerations that have been agreed from competent judges as answer from petition that has been given by the party applicant.⁵⁰ Authority Court Constitution has regulated in the amended 1945 Constitution The three parts of Article 24C paragraph (1) are :⁵¹

- (1) Test Constitution to Invite 1945 Constitution ;
- (2) Ending dispute over state institutions whose authority Already defined and mentioned in the 1945 Constitution ;
- (3) Disconnected dissolution party politics ;
- (4) Decided dispute results election general .

Decision Court constitution nature still . Decision Court Constitution own legal consequences for everything parties involved in the decision , this makes a difference decision Court Constitution with decision Justice general ones only tie litigants . Everyone is obliged comply and implement broke up Court Constitution .⁵²

3. Integrity

Integrity interpreted as quality , nature or revealing conditions something unity whole that causes own reflecting opportunities and abilities authority and honesty.⁵³

⁵⁰ Syarif Mappiase, *Legal Logic of Considering Judges' Decisions* (Jakarta: Kencana, 2015), 46.

⁵¹ Taufiqurrohman Syahuri, *Interpretation of the Constitution, Various Legal Aspects* , 215-216.

⁵² Taufiqurrohman Syahuri, *Interpretation of the Constitution on Various Legal Aspects*, 216.

⁵³ Indonesia Dictionary .

4. Legislative General Election

Election legislative is election held publicly For choose members of the People's Representative Council (DPR), Regional Representative Council (DPD), Provincial Regional People's Representative Council (DPRD) , and Regency /City Regional People's Representative Council (DPRD) .⁵⁴

5. People's Representative Institution

On its history institution People's representatives formed in Greece in the XVIII century arose something system new democracy , that is (*indirect democracy*) or democracy representative . And here it is democracy That get the real sense , in the sense that the rulers That elected by the people through their representatives who sit in representative bodies . Then later , democracy in a similar form here 's little by little widespread to almost all modern countries including Indonesia. ⁵⁵is an Institution (DPR, Provincial DPRD , Regency /City, and DPD) whose aim is For accommodate and distribute aspirations and interests of the people in the region within the framework forming something order life in accordance with life democracy based on Pancasila.

⁵⁴Andrew Heywood, *Politics* , 375.

⁵⁵ Kurde H. Nuktoh Arfawie, *Democratic Theory* (Jakarta: PT. Alumni, 2001), 74-76.

6. *Maslahah* Al-Ghazali

Maslahah is maintenance from Meaning legal objectives consisting of five things that is maintenance of religion, soul , mind , offspring and property . Everyone who is pregnant effort look after fifth principle (*ushul*) this is called *maslahah* and every one who removes it fifth principle the called *repent* and reject it .⁵⁶

B. Theoretical framework

1. *Maslahah* Al-Ghazali's perspective

According to language , said *maslahah* originate from Arabic and has standardized into Indonesian into the word *maslahah* , which means bring kind or who brings expediency and objection damage .⁵⁷ According to Language The original word is *maslahah* originate from the words *wrong* , *yasluhu* , *wrong* It means something good , appropriate , and ⁵⁸useful . While the word *murlah* It means regardless free , no bound with proposition religion (al-Qur'an and al- Hadith) that allows it or who prohibits it .⁵⁹

Imam al-Ghazali, stated *maslahah al- murlah* is what 's not There is proposition for him from *shara* ' in form *Nash* certain ones cancel it and don't someone noticed it.⁶⁰ According to Imam Al-Ghazali in principle

⁵⁶ Abu Hamid bin Muhammad bin Muhammad Al-Ghazali, *Al-Mustasfa Min 'Ilmi Ushul* , Juz I-II (Beirut: Dar al-Fikr, 1983), 286.

⁵⁷ Munawar Kholil, *Returning to the Koran and Sunnah* (Semarang: Bulan Bintang, 1955), 43.

⁵⁸ Muhammad Yunus, *Indonesian Arabic Dictionary* (Jakarta: Foundation for Translators and Interpreters of the Qur'an, 1973), 219.

⁵⁹ Kholil, *Returning to the Koran and Sunnah* , 219.

⁶⁰ Abu Hamid al Ghazali, *Al-Mustasfa Fi 'Ilmi Al-Ushul* (Beirut: Dar al-Kutub al 'Ilmiyah, 1983, 286.

thank you is take benefits and rejects failure in order look after goals *shara'*. Imam al-Ghazali looked on that something benefit must in line with objective *shara'*, though contradictory with goals human , because benefit man No forever based to will *shara'*, but often based to will weather lust . The aim of *shara'* is a must maintained According to al Ghazali , there are five forms namely: maintaining religion, soul, mind, offspring and property. If somebody do something the core action For look after fifth aspect objective *shara'* above, then named thank you. On the other hand, effort For reject all form related losses with fifth aspect objective *shara'* the , also named thank you .⁶¹

Reviewed from importance and quality Maslahah , expert ushul fiqh share Maslahah into 3 levels , namely :⁶²

a. *Al- Maslahah al- Dharuriyyat*

Maslahah Dharuriyat refer to related interests with need principal man both in this world and in the afterlife . This interest has very crucial role in life human , because its incompleteness can result destruction , disaster , and damage to life man . This issue includes aspects like maintenance of religion, existence self , reason , offspring , and wealth . Example concrete from

⁶¹ Nasrun Haroen, *Ushul Fiqh* , Volume I (Jakarta: Logos Wacana Ilmu, 2011), 114.

⁶² Wahbah Az-Zuhaily, *Ushul Al-Fiqh Al-Islamiy* , Juz 2 (Dimasyq: Dar al-Fikr, 2005), 35-36 .

maintenance descendants and wealth can found in activities muamalah like interaction social with fellow man .

b. *Al-Maslahah al-Hajiyat*

Maslahah Hajiyat is complementary interests interest principal as well as overcome difficulty faced man . This is legal principles that provide lightness in life man . In context Muamalat , this relief is reflected in the permit For do transaction sell buy greetings , as well cooperation in the field Agriculture and farming .

c. *Al-Maslahah al-Tahsiniyat*

Maslahah tahsiniyat is nature of interest as complement . The goal is For improve morals and morals . When these interests are not fulfilled in life humans , no will give rise to significant damage . For example , in the context of worship, necessity guard cleanliness , closing private parts , and use decent clothes .

Al-Ghazali divided thank you based on shara ' , there are 3 maslahah , namely .⁶³

- 1) *al-maslahat al-mu'tabarah* , recognized *benefits* shara ' as *benefit*
- 2) *al-maslahat al-mulghah* , the *benefit* that is rejected shara ' as *benefit*
- 3) *al-maslahat al-gharibah* , *benefits* that are not acknowledged or not rejected shara ' as *benefit* will but No contradictory with *nash* .

⁶³ Abu Hamid bin Muhammad bin Muhammad Al-Ghazali, *Al-Mustasfa Min 'Ilm Al-Usûl* , Vol. 1 (Beirut: Mu'assasat al-Risala, 1997), 141.

In the Book of *Shifa' al- Ghalil* al-Ghazali said :⁶⁴

وَتُنَسَّمُ قِسْمَةٌ أُخْرَى بِالْإِضَافَةِ إِلَى مَرَاتِبِهَا فِي الْوُضُوحِ وَالْحَقَائِدِ، فَمِنْهَا مَا
يَتَعَلَّقُ بِمَصْلَحَةِ الْأَعْلَبِ وَمِنْهَا يَتَعَلَّقُ بِمَصْلَحَةِ شَخْصٍ مُعَيَّنٍ فِي وَاقِعَةٍ
نَادِرَةٍ، وَتَتَفَاوَتْ هَذِهِ الْمَرَاتِبُ بِتَفَاوُتِ مَصَالِحِهَا فِي الظُّهُورِ، وَكَذَلِكَ
حُجَّةٌ بِشَرْطِ أَلَّا يُصَادِمَ نَصًّا وَلَا يَتَعَرَّضَ لَهُ بِالتَّغْيِيرِ

Meaning : "In other divisions , based on clear and vague Benefits , there are related benefits with benefit the majority and some are related with the benefit of certain people on rare occasions . These Level Differences are based on difference he explained benefit that and all assessed as proposition with condition benefit the not very strange , no contradictory with nash and cannot change . "

Al-Ghazali grouped distribution benefit become three category

based on level clarity and rarity The benefits are :

- 1) Maslahat ' *ammah* , which refers to related benefits with well-being man in a way general , no For group or individual certain ;
- 2) *The benefit of ghalibah* , which is related with well-being majority human , without notice well-being general or interest individual certain ;
- 3) *Special benefits nadirah* , related with individual certain rare occurrences happen .

In terms of operational al- maslahat al- murlah according to Imam

al-Ghazali which could be The argument for establishing Islamic law must

be: fulfil a number of condition : ⁶⁵

- a. That benefit has covers maqosidussyariah the must be in accordance with Meaning on Islamic law , namely guarding religion, guarding soul , guard resourceful , guarded property and guard descendants or honor .

⁶⁴ Abu Hamid bin Muhammad bin Muhammad Al-Ghazali, *Shifa' Al-Ghalil Fi Bayan Al-Shahabi Wa Al-Mukhayya' Wa Masalil Al- Ta'lil* (Baghdad: Matba'ah al-Irshad, 1971).

⁶⁵ M. Najich Syamsuddini, "The Concept of Al-Maslahat Al-Murlah According to Imam Al-Ghazali and Imam Malik (Exclusive and Inclusive Studies)," *Al Yasini: Islamic, Social, Legal and Educational Journal* Vol. 7, no. 1 (2022): 107, <https://doi.org/10.55102/alyasini.v7i2.4691> .

- b. That benefit No hit with texts of the Qur'an, texts of the Sunnah and ijma'.
- c. These benefits are in daruriyah (primary) areas or hajiyyah (secondary) level daruriyah .
- d. category benefit the qat'i or Zanny approached qat'i .
- e. In every case it has fulfil conditions , which have been nature qat'iyah , daruriyah, and kulliyah .

Based on from explanation above operational *al- maslahat al- murlah* from Imam al-Ghazali to base method istinbath (digging/determining) the law, it must be fulfil condition as well as No free from the Koran, as-Sunnah and ijma'. so that ca n't get off and stand up Alone.

2. Interpretation of Constitution Theory

Interpretation terms constitution originated from the words "interpretation" and "constitution ". Interpretation interpreted as Interaction oral or movement communication between two people or more who have background behind different languages.⁶⁶ Whereas constitution⁶⁷ own meaning gathering principles, norms, rules, and values the main thing that regulates and organizes order government a country. Constitution role as the highest law in the country and establishes framework Work For system politics, structure government , rights citizens , as well connection between

⁶⁶ Ministry of Education and Culture, "Big Indonesian Dictionary" (Jakarta: Balai Pustaka, 1990), 870.

⁶⁷The term ' Constitution ' was first known in France and originated from the word language French ' Constituer , ' which means is a formation process . In this context , ' formation ' refers to formation a country. This term appeared Because France became one of the first countries to develop it theory constitution as discipline science driven by change social . This is not surprising Because France often faced with problems constitution . Until 4th Republic (1946), France has recognize 12 types constitution different . In lots context , French even nicknamed as *Laboratory of constitution making* .

government and people. The Constitution can too explained as the basic law that serves as guide in running state government .⁶⁸

According to Albert HY Chen, a professor at the University of Hong Kong Faculty of Law, term interpretation constitution (interpretation constitution) used For differentiate it from interpretation regulation . Interpretation constitution , or *constitutional interpretation* , is the process of interpretation to provisions contained in the constitution or Constitution basic , which is also known as interpretation from the Basic Law.⁶⁹

Satjipto Rahardjo stated that although legislation or written law own characteristic authoritative in formulations the rules , but the writing or *litera scripta* only is form from business For convey ideas or thought . Idea or the mind wants be delivered the often mentioned as the ' spirit ' of something regulation . Efforts to dig this spirit becomes part important from obligations inherent in statutory law in nature written . This process is carried out by power court in form interpretation or construction . Interpretation or This construction is a process carried out by the court For obtain clarity about meaning from statutory law .⁷⁰

According to Jimmy Asshiddiqie , interpretation is the process in which the court look for clarity about provision specified in the law . This is effort through court For clarify Meaning actually what the creator intended Constitution . Other consider that interpretation involve business

⁶⁸ Astim Riyanto, *Constitutional Theory* (Bandung: Yapemdo, 2000), 17.

⁶⁹ Albert HY Chen, *The Interpretation of the Basic Law--Common Law and Mainland Chinese Perspectives* (Hong Kong: Hong Kong Journal, 2000), 1.

⁷⁰ Satjipto Rahardjo, *Legal Studies* (Bandung: Citra Aditya Bakti, 2014), 93-94.

For reveal meaning, significance , or objective from something concept , word, or term certain with objective make it more clear or more clear in context .⁷¹

Court Procedure Law Book Constitution mention that method interpretation constitution shared into 6 (six) types method interpretation constitution , namely :⁷²

- 1) Interpretation Grammatical⁷³
- 2) Interpretation Teleological or Sociological⁷⁴
- 3) Interpretation Systematic or Logical⁷⁵
- 4) Interpretation Historical⁷⁶
- 5) Interpretation Comparative or Comparison⁷⁷
- 6) Interpretation Futuristic⁷⁸
- 7) Interpretation Textual⁷⁹

⁷¹ Jimly Asshiddiqie, *Theories and Schools of Interpretation of Constitutional Law* (Jakarta: InHilco, 1998), 175.

⁷² Drafting Team, *Procedural Law of the Constitutional Court* (Jakarta: Secretary General and Registrar of the MKR, 2010), 74-76.

⁷³ This interpretation is an approach to understanding the constitution that involves giving meaning to the words contained in documents or texts created by legislative institutions. Quoted by Sudikno Mertokusumo and A. Pitlo, *Chapters on Legal Discovery* (Bandung: PT. Citra Aditya Bakti, 1993), 14-15.

⁷⁴ Teleological or sociological interpretation determines the meaning of laws based on the goals to be achieved in society. With this approach, laws that are still in force but are outdated or no longer relevant are applied according to current events, relationships, needs and interests, without regard to whether all of this was taken into account when the law was enacted. In this case, legal rules are adapted to new social situations and conditions. In other words, existing legal regulations are adapted to new realities, so that they become relevant. Quoted by Pitlo, *Chapters on the Discovery of Law*, 15-16 .

⁷⁵ Systematic or logical interpretation is interpreting a law as part of a whole legislative system by connecting it with other laws. Quoted by Pitlo, *Chapters on the Discovery of Law* , 17-18.

⁷⁶ Historical interpretation, which is also known as original interpretation, is a form of constitutional interpretation method that is based on the historical development of constitutions or laws. This approach relies on the process of discussing, forming, ratifying and ratifying the document by the drafters or signature by policy makers who have authority. Quoted by Sudikno Mertokusumo and A. Pitlo, *Chapters on Legal Discovery* , 17-18.

⁷⁷ Comparative interpretation or comparison is a way of legal interpretation that involves a comparison between several legal rules. The judge's aim in making this comparison is to achieve clarity regarding the meaning of a statutory provision. Quoted by P itlo, *Chapters on the Discovery of Law*, 19 .

⁷⁸ Futuristic interpretation or anticipatory legal discovery method is the process of explaining statutory provisions that do not yet have legal force. Quoted by Pitlo, *Chapters on the Discovery of Law*, 19.

⁷⁹ This textual interpretation is a form or method of interpreting the constitution which is carried out by giving meaning to the meaning of the words in the document or text created by the legislative

- 8) Interpretation Dontrinal⁸⁰
- 9) Interpretation Prudential⁸¹
- 10) Interpretation Structural⁸²
- 11) Interpretation Ethical⁸³

3. Tier Theory Norm

That theory gets attention in context regulation legislation is one of them is general theory known with called the Pyramid Theory Legislation , which was first put forward by Hans Kelsen. According to Hans Kelsen:

" Every legal structure is Suite from rules (*stufenbau des rechts*) , where at the top this structure exists rule the basis of which is Foundation from national legal system . Rule this basis is known as *grundnorm* or *ursprungnorm* . *Grundnorm* is legal principles in nature conceptual , universal, and theoretical , then move to general norms , *which* are next applied become concrete , measurable norms (*concrettenorm*) ."⁸⁴

Hans Kelsen's theory of the hierarchy of legal norms was inspired by the thoughts of Hans Nawiasky , one of them his student , who put it

institution. Thus, this interpretation emphasizes understanding or comprehension of the words stated in the constitution or law as is generally done by most people. Quoted by the Team for Drafting the Constitutional Court's Procedural Law, *Constitutional Court's Procedural Law, Secretariat General of the Constitutional Court* (Jakarta: Secretariat General and Registrar of the Constitutional Court of the Republic of Indonesia, 2010), 74.

⁸⁰ This interpretation method is an approach to understanding statutory regulations by referring to the use of previous decisions as a reference in deciding future cases or judicial practice. This approach is generally heavily influenced by the common law tradition as the basis for its approach. Quoted James A. Holland and Julian S. Webb, *Learning Legal Rules* (Great Britain: Blackstone Limited, 1991), 8.

⁸¹ Prudential interpretation is an interpretation method that seeks a balance between the costs incurred and the benefits obtained as a result of ratifying a statutory regulation. Quoted by the Team for Drafting the Constitutional Court's Procedural Law, *Constitutional Court's Procedural Law, Secretariat General of the Constitutional Court* (Jakarta: Secretariat General and Registrar of the Constitutional Court of the Republic of Indonesia, 2010), 75.

⁸² This method of interpretation involves connecting statutory regulations with the constitution which regulates the basic structure and functions of a country. Quoted by the Team for Drafting the Constitutional Court's Procedural Law, *Constitutional Court's Procedural Law, Secretariat General of the Constitutional Court* , 75.

⁸³ This interpretation is an approach to interpreting the law by taking the moral and ethical principles contained in the constitution as a basis. Quoted by James A. Holland and Julian S. Webb, *Learning Legal Rules* , 15-16.

⁸⁴ I Gde Pantja Astawa, *Dynamics of Law and Legislative Science in Indonesia* (Bandung: PT. Alumni, 1990), 36.

forward that legal norms are arranged in a structure tiered and layered . This means that norms are at a higher level low applies based on more norms tall . More norms height also relies on more norms higher again, and so on , until reaching the highest norm that is not can outlined furthermore , nature nature hypothetical and fictitious , known as Basic Norms (*Grundnorm*).⁸⁵

Theory taught by Hans Kelsen later expanded by his student , Hans Nawiasky , in his theory which is known as " *die lehre vom dem stufenaufbau der Rechtsordnung* " or " *die stufenordnung der Rechtsnormen* ." According to Hans Nawiasky , legal norms in a country are always structured in a hierarchy such as the following:⁸⁶

- 1) State fundamental norms (*staatsfundamentalnorm*);
- 2) Rules basic state/ rules state principal (*stat grundgesetz*);
- 3) (formal) law (*formalgesetz*);
- 4) Regulation implementation as well as Regulation autonomous (*verordnung & autonomy satzung*).⁸⁷

Staatsfundamentalnorm is the norm base For formation constitution or The Constitution (*staatsverfassung*) of a country. Legal position of *Staatsfundamentalnorm* is as mandatory requirements fulfilled so that a constitution can applies . *Staatsfundamentalnorm* present before exists constitution a country. According to Nawiasky, the highest norm that Hans Kelsen calls as a basic norm (*basic norm*) in a country should be called as

⁸⁵ Maria Farida Indrati Soeprapto, *Legislative Science (I) (Types, Functions, Content)* (Jakarta: Kanisius, 2007), 41.

⁸⁶I Gde Astawa, Astawa , Dynamics of Law and Science Legislation in Indonesia, 38.

⁸⁷ Jimly Asshiddiqie, *Hans Kelsen's Theory of Law* (Jakarta: General Secretariat and Registrar of the Constitutional Court of the Republic of Indonesia, 2006), 170.

Staatsfundamentalnorm, or fundamental state norms, no as *staatsgrundnorm*. *Grundnorm* basically still No change, while the highest norm can change, for example through cout d'etat or revolution. Under *Staatsfundamentalnorm*, there is rule the basis of the state (*staats grundgesetz*), which is usual contained in the Constitution or constitution . Under *staats grundgesetz*, there are more norms concrete, that is *formallegezetz* (law formal), while the norms are below *formallegezetz* is *verordnung* and *autonomy satzung* (rules executor or regulation autonomy).⁸⁸

Impact from hierarchy in the structure of legal norms causes enforceability a more legal norm low level is very dependent on the norms at the level above it . the norm works as base or base for the application of more norms low . The provisions described by the norms are more tall become guidelines for formation of more norms low . Therefore that is , legal norms that are at a higher level low in a way automatic will No apply again or uprooted if the norm is above it , it becomes basis and sources the enactment of these norms , is revoked or deleted . In other words, legal norms are in place more low No can contradictory with existing legal norms the level more tall and functional as base or source the application of these norms .⁸⁹

⁸⁸I Gede Pantja Astawa, *Dynamics of Law and Legislative Science in Indonesia*, 37.

⁸⁹ Taufiqurrohman Syahuri, *Constitutional Law: Process and Procedures for Amendments to the Constitution in Indonesia 1945-2002 and Comparison with Constitutions of Other Countries in the World*, 41

CHAPTER III

RESULTS AND DISCUSSION

A. Overview *Ratio Decidendi* for Constitutional Judges in Making Decisions Decision Court Constitution Number 87/PUU-XX/2022 According to Interpretation Theory Constitution

Analysis *ratio decidendi* is the process for know and analyze legal reasons used by the judge in deciding something matter . *Ratio decidendi* or The judge's considerations are the arguments/ reasons the judge uses as legal considerations that arise basis for deciding a case. In this analysis , note material facts which constitute base judge's considerations , as well legal principles and rules used in decisions . The purpose of this analysis is For know how the judge decides something things and how legal reasons used relate with material facts that occurred in the case .⁹⁰

1. Highlights of the Decision Court Constitution No 87/PUU-XX/2022

Indonesia uses system bicameral , that is system divided legislature into two rooms namely the House of Representatives and the House of Representatives . Although in practice bicameral systems do

⁹⁰ Puji Lestari, "Ratio Decidendi Decision of Blitar District Court Judge Regarding Fair Land Sale and Purchase Agreement," *Journal of Islamic Business Law* 4, no. 3 (2020): 3, <http://urj.uin-malang.ac.id/index.php/jibl>.

not fully walk Because limited the authority of the Regional Representative Council as a legislative institution .⁹¹

Basically , the People's Representative Council and the Regional Representative Council the function is the same for represent the people's voice in parliament . Difference both legislative institutions the only on terms nomination members of the People's Representative Council and members of the Regional People's Representative Council . Nomination member internal legislature election general Already regulated in Law No. 7 of 2017 concerning General Election Article 240 Paragraph (1) for condition candidate members of the DPR, Provincial DPRD , Regency /City and Article 182 for condition candidate DPD members .⁹²

Problems faced to condition candidate legislative specifically candidate Members of the DPR, Provincial DPR , Regency /City as stated in Article 240 Paragraph (1) specifically in Article 240 Paragraph (1) letter g of Law No. 7 of 2017 concerning General elections . The phrase “ ... *in a way open and honest put forward to public that in question ex- convict* ” considered No Enough as reject measure norms Article 240 paragraph (1) letter g Law No. 7 of 2017 concerning General Election in filtering candidate legislature with integrity so that scared

⁹¹ Djatmiko Anom Husodo, *Regional Representative Council and the Future of Indonesian Bicameralism, In the Idea of Amendments to the 1945 Constitution, a Recommendation* (Jakarta: National Law Commission of the Republic of Indonesia, 2008), 250.

⁹² I Gusti Ngurah Raka Wedatama et al, "Analysis of the Requirements for Nominating Members of the DPR and DPRD Regulated by KPU Regulations and Election Laws," *Journal of Legal Analogy* Vol. 1, No. 2 (2019): 197–201, <https://doi.org/https://doi.org/10.22225/ah.1.2.1755.197-201>.

resulting in *abuse of power* in government .⁹³ This is the problem that causes he submitted *judicial review* to Court Constitution regarding Article 240 paragraph (1) letter g of Law No. 7 of 2017 concerning General Election , next principal Decision Court Constitution No 87/PUU-XX/2022:⁹⁴

a. Petitioner's argument

Judicial review carried out by the applicant regarding Article 240 paragraph (1) letter g of Law No. 7 of 2017 concerning The General Election against the 1945 Constitution postulates that :⁹⁵

Explanation of Article 240 paragraph (1) letter g
" No Once convicted prison based on decision the court has obtain permanent legal force Because do follow threatened punishment with criminal prison 5 (five) years or more , except . in a way open and honest put forward to public that in question ex- convict ”

As for article in the 1945 Law that was made base testing is Article 28J of the 1945 Law , which states that :⁹⁶

Article 28J paragraph (1) of the 1945 Constitution
“ Everyone is obliged honor right basic other people in order life society , nation and state ”
Article 28J paragraph (2) of the 1945 Constitution
"In running rights and freedoms , everyone is obliged submit to specified restrictions with Constitution with Meaning Solely For ensure confession as well as respect on the rights and freedoms of others and to fulfil fair demands in accordance with moral considerations , religious values , security and order common in a public democratic ”

⁹³ Susana Rita Kumalasanti, "MK Decision: 5 Year Pause for Ex-Convicts to Become Legislative Candidates," *Kompas* , 30 November 2022, accessed 8 January 2024, <https://www.kompas.id/baca/polhuk/2022/11/30/5-Year-gap-for-ex-convicts-to-be-candidates>.

⁹⁴ Look reason Application , Decision Court Constitution No 87/PUU-XX/2022, 13.

⁹⁵ Article 240 paragraph (1) letter g Law No. 7 of 2017 concerning General Election , Petitioner's Argument Decision Court Constitution No 87/PUU-XX/2022, 9.

⁹⁶ State Gazette of the 1945 Constitution Article 28J paragraph (1) and paragraph (2).

b. Applicant's Reasons

Applicant problematic The phrase “ *...in a way open and honest put forward to public that in question ex- convict* ” in Article 240 paragraph (1) letter g of Law No. 7 of 2017 concerning General elections . Phrase the considered No Enough clear describes the norms of Article 240 paragraph (1) letter g so that There is concern about Article 240 paragraph (1) letter g of Law No. 7 of 2017.⁹⁷

Law No. 7 of 2017 concerning General Election says about condition nomination executive and nomination legislature in elections commonly mentioned in some chapter.⁹⁸ Within reason application Decision Court Constitution No 87/PUU-XX/2022 is mentioned a number of reason he submitted *judicial review*. Among them, namely:⁹⁹

- 1) Caused No exists candidate legislature with integrity.

Based on the data presented by the applicant in the form of data from results survey conducted by the Central Statistics Agency Throughout 2021 which explains

⁹⁷ Ambiguity in legal norms can cause abuse power , because create legal uncertainty . This situation is possible appear moment happen conflict between legal norms, which then give rise to confusion in the application of the law. As example , in context testing Law , shortcomings clarity in the criteria used can give rise to legal uncertainty and potential abuse power . Therefore it , has clear and consistent legal framework becomes very important For prevent abuse power consequence ambiguity in legal norms. Syarifuddin Usman, "Polemic on the Appointment of Acting Regional Heads (Case Study of the Application for Temporary Acting Regional Heads of PulauMorotai Regency)," *Journal of Science, Social and Humanities (Jssh)* Vol. 2, no. 1 (2022): 63–73, <https://doi.org/https://doi.org/10.52046/jssh.v2i2.1144> .

⁹⁸ State Gazette Law No. 7 of the Year About General elections .

⁹⁹ Look reason Application , Decision Court Constitution No 87/PUU-XX/2022, 9-16.

enhancement number about Index Drafted Anti - Corruption Behavior based on two dimensions, viz Dimensions Perception and Dimensions Experience.¹⁰⁰

2) Resulting exists potential *abuse of power*

Absence reject clear measurement of Article 240 paragraph (1) letter g of the Law Number 7 of 2017 concerning Related General Elections phrase " *except in a way open and honest put forward to public that in question ex- convict*" and so to speak phrase the Already No adequate, yes caused exists *abuse of power*.

Appearance *abuse of power* caused by giving authority as tool for carry out duties, which are considered as power personal.¹⁰¹ Therefore that 's authority the can utilized for personal interests. As a result, the occupying country position important feel entitled For use institution

¹⁰⁰ Devy Setiyowati et al, "2015 Anti-Corruption Behavior Index" (Jakarta, 2021), 1-7, 8 September 2021, Accessed on 12 January 2024, from <https://www.bps.go.id/id/publikation/2021/09/08/c3e5f87d94f30ff43e848d5c/index-perilaku-anti-corruption-2021.html>

¹⁰¹ Power has a tendency to act dominantly, control and influence so that power is solid. Power tends to strengthen and maintain power. Therefore, law functions to limit the power that exists in the state. In this context, the Constitutional Court limits the constitutional rights of former prisoners as legislative candidates by applying cumulative requirements. Quoted by Wa Ode Fatihatul Khaerunnailla, uggul Ansari SN, and Abdul Madjid, "The Urgency of Term Limitations for Members of the People's Representative Council in Efforts to Prevent Abuse of Power," *Scientific Journal of Pancasila and Citizenship Education* Vol. 4, no. 1 (2019): 177, <https://doi.org/10.17977/um019v4i1p176-185>.

related in a way free. The more tall his position, increasingly big his authority¹⁰²

- 3) There is a Decision The Supreme Court can used as weapon ex- corrupt in postulating entitled For nominate self as candidate legislative.¹⁰³

PKPU No 31 of 2018 Article 45 paragraphs (1) and (2) which was canceled by the Decision Supreme Court No. 46p/HUM/2018 was utilized as form support from the phrase “except in a way open and honest put forward to public that in question ex- convict” no deleted in Article 240 paragraph (1) letter g of Law No. 7 of 2017 about general elections.

Contents of the Decision Supreme Court No 46p/HUM/2018.¹⁰⁴

"Declaring Article 4 paragraph (3), Article 11 paragraph (1) letter d, and Attachment Model B.3 Regulations Commission General Election of the Republic of Indonesia Number 20 of 2018 dated July 2 2018 concerning Nomination Member of the

¹⁰² Ira Ardila et al., "Abuse of Power in Corrupt Actions on Social Assistance by Public Officials from Max Weber's Perspective," *Reform* Vol. 13, no. 2 (2023): 222–234, <https://doi.org/https://doi.org/10.33366/rfr.v13i2.4029>.

¹⁰³ Through the General Election Commission Regulation (PKPU) Number 20 of 2018, the General Election Commission (KPU) has prohibited former corruptors from participating in legislative elections in the 2019 Election. In Article 4 of the PKPU it is stated that political parties may not include former convicted drug dealers, sexual crimes against children, and corruption as legislative candidates. After the regulation came into force, there were 13 applications for judicial review received by the Supreme Court (MA) to overturn the regulation. Some of these lawsuits were filed by former corruptors who wanted to become members of the DPR. Quoted by Irfan Kamil and Icha Rastika, "Ex-Corruptors Can Become Legislative Candidates in the 2024 Election," *Kompas.com*, 28 August 2022, accessed 13 March 2024, <https://nasional.kompas.com/read/2022/08/26/07451191/ex-corruptor-could-be-a-legislative-candidate-in-2024-election>.

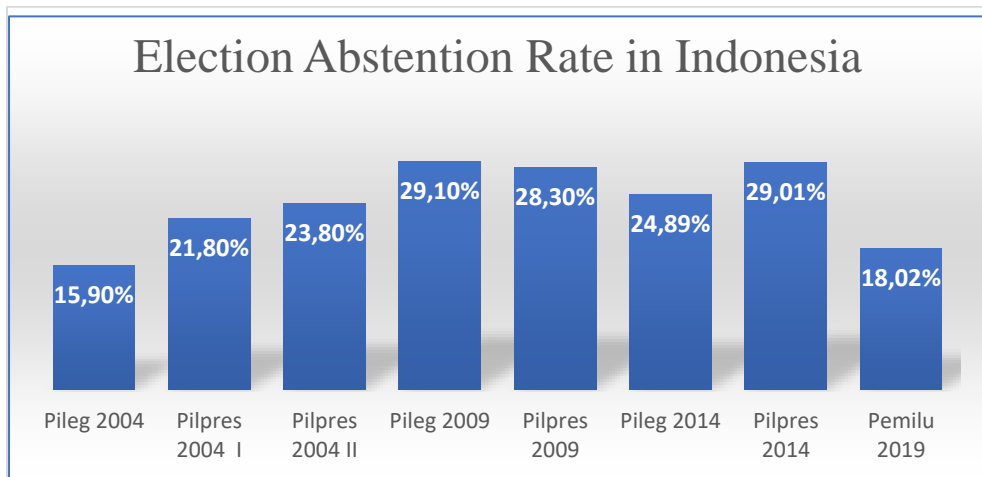
¹⁰⁴ Decision Supreme Court No 46p/HUM/2018, 73-74.

People's Representative Council , Provincial Regional People's Representative Council , Regency /City Regional People's Representative Council (State Gazette of the Republic of Indonesia of 2018 Number 834) throughout the phrase "ex-convict corruption" is contradictory with regulation more legislation high, that is with Constitution Number 7 of 2017 concerning Junto General Election Constitution Number 12 of 2011 concerning Formation Regulation Legislation invitation, hence No have legal force is binding and not applies general."

4) Resulting many abstention

KPU report included in the research entitled “Design for Community Participation in Monitoring Election” says:

Figure 3.1
Abstention Rate Elections in Indonesia for the 2004-2019 period



Source : 2015 KPU report and 2019 BPS statistical data

Participation figures political the 2004 election , that is down up to 84.10% and amount abstention increase up to 15.90%. At the election President round First level participation political voters reached 78.2% and total

abstention was 21.80%, while in the election President round second level participation political voters reached 76.6% and the amount abstentions 23.40%. At the election legislative 2009 level participation political voters the more decreasing, i.e only reached 70.9% and amount abstention the more increase namely 29.10%. Meanwhile during the election President, level participation political voters reached 71.70% and amount abstention reached 28.30%. Last time in the election 2014 legislature, figures participation voters touch figure 75.11%.¹⁰⁵ Meanwhile during the election President 2014, total participation voters it's at 70 %. The average abstention rate reaches 25-30%. Based on data from the Central Statistics Agency (BPS), in the 2019 election level participation political reached 81.97%, figure abstention decreased at 18.02 %.¹⁰⁶

c. Court's Legal Considerations Constitution

1) Authority bro Court Constitution

Stick to authority Court The constitution mentioned in article 24 paragraph (1) *in conjunction with* Article 10 of Law

¹⁰⁵ Fadli Ramadhani et al, *Design for Community Participation in Election Monitoring , Partnership for Governance Reform in Indonesia* (Jakarta: Partnership for Governance Reform in Indonesia, 2015), 4.

¹⁰⁶ Sarnita Sadya, "Data on Voter Participation Levels in the Presidential Election, Highest in 2019," *DataIndonesia.id* , December 12 2022, accessed March 17 2024, <https://dataindonesia.id/varia/detail/data-level-partisipasi-peoleh-dalam- 2019 presidential election>

No. 24 of 2003, stipulates that within the jurisdiction court , there is level Justice first and last , which is the decision is final in judging suitability Constitution with Constitution and have authority high in the corridor .¹⁰⁷ Testing material is testing of legal norms in Article 240 paragraph (1) letter g of Law No. 7 of 2017 concerning General elections . Promulgated on August 16 2017 , the Court Constitution authorized For judge and send the applicant 's application .

2) Position (*Legal Standing*) of the Applicant

Application applicant can accepted if his request covers explanation below this:

- a) Qualification applicant in accordance with those specified in Article 51 of the Law Court Constitution .
- b) Constitution result disappearance right or authority constitutional .

Applicant is Indonesian citizens who own right For state opinions and rights For vote in the election general .¹⁰⁸

Applicant believes exists potency loss , fine directly or indirect , and worried happen practice buy and sell candidate member

¹⁰⁷ Benito Asdhie and Eza Ista, "The Authority of the Constitutional Court in Protecting Citizens' Constitutional Rights Through Constitutional Complaints," *De Lega Lata Journal of Legal Sciences* Vol. 4, no. 2 (2019): 160–174, <https://doi.org/https://doi.org/10.30596/dll.v4i2.3174> .

¹⁰⁸ Protection of Indonesian citizens' constitutional rights is not only human rights freedoms guaranteed by the highest constitution, namely the 1945 Constitution of the Republic of Indonesia, including the right to vote and be elected (the right to participate in government). In this context, the applicant requests a judicial review as a form of constitutional loss as a voter. The Petitioner feels that his constitutional rights have been impaired because the phrase contained in Article 240 paragraph (1) letter g is not a sufficient article norm to screen leaders with integrity. Quoted by Herdi Munte and Christo Sumurung Tua Sagala, "Protection of Constitutional Rights in Indonesia," *Journal of Law Enforcement* Vol. 8, no. 2 (2021): 185, <https://doi.org/10.31289/jiph.v8i2.4791> .

legislative consequence from announcement open and honest from " ex prisoner " who openly state himself as ex- ever convicted person punished prison . This issue is regulated in the Law Number 7 of 2017 concerning General elections .¹⁰⁹

d. Announcement of Decision

The decision made by the judge in the imi case is as following :

- 1) Granted part application applicant
- 2) Stating the norms of Article 240 paragraph (1) letter g of the Law Number 7 of 2017 concerning General Election (State Gazette of the Republic of Indonesia 2017 Number 182 , Supplement State Gazette of the Republic of Indonesia Number 6109) is contradictory with 1945 Constitution and no have binding legal force in a way conditional throughout No interpreted as if formulated in full reads :

“(1) Prospective candidate Members of the DPR, provincial DPRD , and district / city DPRD are Indonesian citizens and must be fulfil condition :¹¹⁰

...

g. (i) no Once as convict based on decision the court has obtain permanent legal force Because do follow threatened punishment with criminal prison 5 (five) years or more , except to the convict did it follow criminal negligence and action criminal politics in the sense something stated act as follow criminal law in positive law only Because the culprit have view different politics with moderate regime powerful ; (ii) divide ex- convict , has pass period 5 (five) years after ex- convict finished undergo criminal prison based on decision the court has have permanent and permanent legal force Honest or open announce about

¹⁰⁹ Dianita Putri Oktavia Damayanti, "Analysis of Constitutional Court Decision Number 87/PUU-XX/2022 as an Implementation of the Judicial Activism Approach Regarding Ex-Corruptors Running for Legislative Membership," in *Webinar on the Right to Judicial Review: University Conference 17 August 1945 Surabaya*, (Surabaya, 2023), 1-6, accessed 14 January 2024, <https://conference.untag-sby.ac.id/index.php/whum/article/download/2044/1086>

¹¹⁰ See Judgment Order , Judgment Court Constitution No 87/PUU-XX/2022, 36.

- background behind teak himself as ex- convict ; and
 (iii) not as perpetrator repeated crimes ; "
- 5) Instruct loading This decision is in the State Gazette of the Republic of Indonesia as follows it should
 - 6) Reject application Applicant For apart from and beyond

Based on provision on has explain in a way detailed and able understood that nomination ex- prisoner as candidate legislature in elections general must pass a number of condition in accordance with decision that has been made issued by the Court Constitution . Court Decision Constitutional Court Decisions Constitution have final and binding legal force after the judge decides in an open plenary session whether or not There is Other legal remedies that can be taken (final and binding).¹¹¹ Based on all over legal considerations , Court Constitution concluded that happen differences in norms between Article 240 paragraph (1) letter g of Law No. 7 of 2017 and Article 7 paragraph (2) letter g of Law No. 10 of 2016. Article 240 paragraph (1) letter g of Law No. 7 of 2017 does not load requirements that are not fair for ex- inmates who nominate self as candidate legislative , which Article 240 (1) letter g does not load waiting period requirements for ex- convicts who have just completed their criminal term and want to nominate self return as candidate legislative . Meanwhile , position head regions (governors , regents , mayors) and members legislative bodies (DPR,

¹¹¹ Johansyah, "The Constitutional Court's Decision is Final and Binding," *Journal of the Faculty of Law, University of Palembang* Vol. 19, no. 2 (2021): 165–82, <https://doi.org/https://doi.org/10.36546/Solusi.v19i2.359> .

Provincial DPRD , Regency /City, and DPD) are included in the family elected position (*elected official*)¹¹² in the election generally by society . So the judges decide For do equalization of norms in Article 240 paragraph (1) letter g of Law No. 7 of 2017 concerning General Elections and Article 7 paragraph (2) letter g Law No. 10 of 2016 concerning Change Second on the Law Number 1 of 2015 Concerning Determination Regulation Government Replacement Constitution Number 1 of 2014 Concerning Election Governor, Regent , and Mayor Become Constitution .¹¹³

2. Study *Ratio Decidendi* Decision Court Constitution No 87/PUU-XX/2022 According to Interpretation Theory Constitution

Court Constitution as one of the institution judiciary The highest authority in Indonesia has duties and authority For decide something matter. Referring to Article 10 paragraph (1) of Law No. 8 of 2011 concerning Change on Law No. 24 of 2003 concerning Court Constitution, reads that:

“Verdict Court Constitution is final, that is decision Court The Constitution immediately obtained permanent legal force since spoken and not There is possible legal remedies taken. The final nature of the decision Court” The

¹¹² Position political can grouped into 2 categories , namely *political appointee* and *elected official* . *Political appointee* placed in office through appointment or determination by officials political selected like President and Regional Heads . Temporary that is , *elected official* occupy his position through a selection process general . Positions *elected official* covers President and Vice President , members of the DPR RI and DPRD, members of DPD, Governors , Regents and Mayors . Rahmazani Rahmazani, "The Problems of Appointment Acting Officer of Regional Head in the Transition Period Before the Election of 2024," *Journal of the Constitution* Vol. 20, no. 2 (2023): 196–215, <https://doi.org/https://doi.org/10.31078/jk2022>.

¹¹³ Treatise Hearing Case Decision Court Constitution No 87 PUU-XX/2022, 45.

Constitution in this Law also -includes binding legal force (final *and binding*)"¹¹⁴

Something the judge's decision must be contain argumentation as base consideration and form transparency a judge decides matter.¹¹⁵ Article 53 paragraph (2) of Law No. 48 of 2009 is related power judiciary, mentions that:¹¹⁶

“Determination and Decision as referred to in paragraph (1) must load the judge's legal considerations are based on appropriate and correct legal reasons and foundations ”

Based on Article 50 paragraph (1) Law No. 48 of 2009 concerning Power Justice, mentions that :¹¹⁷

“Verdict Court besides must load reasons and grounds The decision also contains certain articles from regulation relevant legislation or source of unwritten law that is used base for judge ”

Article 45 number (3) Law No. 24 of 2003 concerning Court Constitution state that:¹¹⁸

“Verdict Court Constitution must load the facts revealed in the trial and the legal considerations that arise base verdict ”

Based on provisions in the articles mentioned previously, a judge had to include there are legal reasons base legal considerations in the decision finish something matter.¹¹⁹ Context fill *Ratio*

¹¹⁴ State Gazette Article 10 paragraph (1) Law No. 8 of 2011 concerning Change on Law No. 24 of 2003 concerning Court Constitution .

¹¹⁵ Puji Lestari, "Ratio Decidendi Blitar District Court Judge's Decision Regarding Fair Land Sale and Purchase Agreements," *Journal of Islamic Business Law* Vol. 3, no. 2 (2020): 258, <https://doi.org/http://urj.uin-malang.ac.id/index.php/jibl/article/view/462/344> .

¹¹⁶ State Gazette Article 53 paragraph (2) Law No. 48 of 2009 concerning Power Justice .

¹¹⁷ State Gazette Article 50 paragraph (1) Law No. 48 of 2009 concerning Power Justice .

¹¹⁸ State Gazette Article 45 paragraph (3) Law No. 24 of 2003 concerning Court Constitution .

¹¹⁹ Rizki Tutut Gladis Sintya, "Analysis of the Constitutional Court Decision Number 106/PU-XVIII/2020 Concerning Material Review of Law Number 35 of 2009 Concerning Narcotics Against

Decidendi , the judge considered principle the philosophical essence of material related lessons with fundamental legal provisions . The judge's duties involve support to law enforcement and provision justice to the parties involved in the case .¹²⁰ *Ratio Decidendi* used as tool For convey opinion about something situation with method research information related law problem .¹²¹

Decision Court Constitution No 97/PUU-XX/2022 , namely about testing norms of Article 240 paragraph (1) letter g of Law No. 7 of 2017 concerning General Election , the matter disputed by the applicant Because considered harm right constitutional applicant as Indonesian citizens . Elucidation of Article 240 paragraph (1) letter g states that :

" No Once convicted prison based on decision the court has obtain permanent legal force Because do follow threatened punishment with criminal prison 5 (five) years or more , except . in a way open and honest put forward to public that in question ex- convict ”

Article above interpreted that's it No all ex- prisoner can nominate self as candidate members of the DPR, Provincial DPRD, Regency /City DPRD in the election general . Just the ex inmates who comply a number of requirements that have been stipulated in

the 1945 Constitution Maslahah Murlah Perspective" (Undergraduate thesis, Maulana Malik Ibarahim State Islamic University Malang, 2023), 58, <http://etheses.uin-malang.ac.id/56218/> .

¹²⁰ Endra Wijaya, "The Role of Court Decisions in the Terrorism Eradication Program in Indonesia," *Judicial Journal* Vol. 3, no. 2 (2010): 109–21, <https://jurnal.komisiyudisial.go.id/index.php/jy/article/viewFile/225/182> .

¹²¹ Sintya, "Analysis of Constitutional Court Decision Number 106/PU-XVIII/2020 Concerning Material Review of Law Number 35 of 2009 concerning Narcotics Against the 1945 Constitution from Maslahah Murlah Perspective." 58.

Article 240 paragraph (1) letter g to be able to nominate self back in the election general .

Court constitution as bodyguard constitution (*The Guardian Of Constitution*) is on duty For uphold law and justice in a way common in court .¹²² By meaning , Court Constitution must consider mark fairness in reviewing Constitution on proposed application for material review citizens who feel disadvantaged right constitutional . As a result , the Court Constitution must consider a number of factors in deciding thing that has impact wide .¹²³When the judge does review to something legislation , concept activism judicial considered . This concept governs How a judge interprets constitution or effort legal discovery .¹²⁴

Apart from using method interpretation , activities legal discoveries are also known through method construction . This approach is used when the judge confronts emptiness or his absence rule For finish something problem concrete . Legal discovery general understood as response to situations that give rise legal problems . The goal is give solution to something issues and

¹²² Mustafa Lutfi, "Legal Politics of Implementing Statesmanship Requirements in the Selection Process for Candidates for Constitutional Judges" (Doctor thesis, Indonesian Islamic University Yogyakarta, 2023), 4, <https://dspace.uii.ac.id/handle/123456789/47577> .

¹²³ Saifullah, Mustafa Lutfi, and Abdul Azis, "Transformation of Islamic Legal Values in the Jurisprudence of Constitutional Court Decisions from an Integrative Legal Theory Perspective," *De Jure* 12, no. 1 (2020): 1, <https://doi.org/10.18860/j-fsh.v12i1.8579> .

¹²⁴ Muhammad Reza Winata, "Judicial Restraint and Constitutional Interpretation Regarding Competence in Adjudicating Structured, Systematic and Massive General Election Violations," *Indonesian Legislation Journal* Vol. 17, no. 423–436 (2020), <https://doi.org/https://doi.org/10.54629/jli.v17i4> .

discover solution dispute in a way concrete .¹²⁵ There is difference opinion among legal expert regarding method construction , where some looked at him as entity separated from legal interpretation , while others consider it as part from method legal interpretation .¹²⁶

Constitution about election general has experience a number of changes , There are 3 laws experience revoke status enforceability since ratified Law No. 7 of 2017 concerning General Elections , including :¹²⁷

- 1) Law No. 42 of 2008 concerning General Election of President and Vice President
- 2) Law No. 15 of 2011 concerning Maintenance General elections
- 3) Law No. 8 of 2012 concerning General Election of Members of the DPR, DPR and DPRD

Law No. 7 of 2017 concerning General Election is used as base implementation election general implementation in 2019 in a way simultaneously between election President and Vice President , Members of the Republic of Indonesia DPR, Provincial DPRD , Regency /City, and DPD. ¹²⁸Law No. 7 of 2017 concerning The General Election is a combination of 3 (three) governing laws about election legislative , election president and administration election .

¹²⁵ JA Pontier, *Legal Discovery* (Bandung: Law Lab, Faculty of Law, Parahyangan Catholic University, 2001), 1.

¹²⁶ Jimly Asshiddiqie, *Introduction to Constitutional Law Volume I* (Depok: Rajawali, 2017), 306.

¹²⁷JDIH BPK, "Regulation Database," *BPK Regulations*, 2017, accessed January 22, 2024, <https://peraturan.bpk.go.id/Details/37644/uu-no-7- Tahun-2017>.

¹²⁸ Sholehudin Zuhri, "Political Process in Forming Election Regulations: Analysis of Power Contests in the Formation of Law Number 7 of 2017 concerning Elections," *Journal of Political Discourse* Vol. 3, no. 2 (2018): 92–107, <https://doi.org/https://doi.org/10.24198/jwp.v3i2.17670> .

The purpose of its formation and validation is necessary arrangement election general as form system constitutional and democracy and integrity to guarantee consistency and legal certainty as well election generally effective and efficient .¹²⁹

Every Indonesian citizen has right For join in and in government , this right is guaranteed by the 1945 Constitution of the Republic of Indonesia in Article 27 paragraph (1) which reads :¹³⁰

“ All citizens together its position in law and government and is mandatory uphold the law and government That with No There is except . ”

Article 28C paragraph (2) states :¹³¹

“ Everyone has the right advance himself in fighting for it his rights in a way collective For build society , nation and country . ”

Article 28D paragraph (3) states :¹³²

“ guarantee equal rights to participate as well as in government . ”

These articles show that protection right constitutional for every Indonesian citizen for join in as well as in government through nomination executive nor legislative . But in this case every Indonesian citizen wants to nominate yourself in the election general

¹²⁹ Henri Wijaya, "Measuring the Degree of Legal Certainty in Elections in Law Number 7 of 2017," *Scientific Journal of Social Dynamics* Vol. 4, no. 1 (2020): 87, <https://doi.org/https://doi.org/10.38043/jids.v4i1.2276>.

¹³⁰ State Gazette Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

¹³¹ State Gazette Article 28C paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

¹³² State Gazette Article 28D paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

must fulfil requirements set out in Law No. 7 of 2017 concerning General elections .¹³³

Submission *judicial review* Article 240 paragraph (1) letter g Law No. 7 of 2017 concerning General elections . This article contains condition nomination ex- prisoner as member legislative . In the phrase “ ... *in a way open and honest put forward to public that in question ex- convict* ” for applicant considered No Enough meet the norms of Constitution so that can cause *abuse of power* for candidates legislative from ex- prisoner .

About permissibility nomination for ex- convicts in elections general , one party as form guarantee basic human , however on the other hand, permissibility ex- convicts in running for office self return as candidate legislative worried give rise to because candidate legislature that does not have integrity . Success application and interrelationships between factor law enforcement , facilities and infrastructure , society and culture , as well as elements of the law Alone influenced by each other.¹³⁴

¹³³ Ulfa Astin et al., "Controversy on Educational Requirements for Candidates for Legislative Members in Article 240 of Law Number 7 of 2017, *Siyasah Dusturiyyah Fiqh Perspective*," *Al Ushuly Sharia and Law Student Journal* Vol. 1, No. 2 (2022): 14–25, <https://doi.org/http://dx.doi.org/10.31958/alushuliy.v1i2.8350>.

¹³⁴ Soejono Soekanto, *Factors that Influence Law Enforcement* (Jakarta: PT Rajawali, 1983).

Based on evaluation on evidence and law, Court The Constitution judges application *judicial review* based on that applicant has fulfil condition application , so testing material granted .¹³⁵

On Tuesday , November 8 2022, constitutional judge has decide case related review of Article 240 paragraph (1) letter g of Law No. 7 of 2017 and open plenary session For general on Wednesday 30 November 2022 at 12.28 WIB.¹³⁶

Panel of judges of the Court The Constitution decides and judges case application testing material Constitution the stated in amar the verdict that Assembly Constitution grant part application applicant and perform equalization of the norms of Article 240 paragraph (1) letter g of Law No. 7 of 2017 with Article 7 paragraph (2) letter g of Law No. 10 of 2016, so that condition ex- prisoner as candidate member legislative become nature cumulative . Added requirements namely a 5 year waiting period abgi ex- convict who wants to nominate self as members of the DPR, Provincial DPRD, Regency /City DPRD .¹³⁷

Based on meeting deliberation panel of judges of the Court Constitution at the plenary session , including Anwar Usman as chairman concurrently members , Aswanto , Suhartoyo , Wahiduddin Adams, Enny Nurbaningsih , Arief Hidayat, Daniel Yusmic P. Foekh

¹³⁵Article 30, Article 31 paragraph (1), and Article 51 paragraph (1) of Law No. 24 of 2003 concerning Court Constitution .

¹³⁶ Treatise Hearing Case Decision Court Constitution No 87/PUU-XX/2022, 48-49.

¹³⁷ See Judgment Order , Judgment Court Constitution No 87/PUU-XX/2022, 36.

, Manahan MP Sitompul , and Saldi Isra. They all assisted by Wilma Silalahi as Clerk Substitute , with attended by the Petitioner , the House of Representatives or their representative , and the President or representing .¹³⁸

Decision Court Involving Constitution interpretation constitution or Legal conclusions are based on readings constitution by judges, sometimes known as activism judicial¹³⁹ or judge's method of making legal discovery . In this case , Law No. 7 of 2017 concerning General Election Article 240 paragraph (1) letter g shows constitutional . But Court Constitution claim that need done equalization of article norms with add requirements in article that , so conditions tested in line with constitution Indonesia's highest , the 1945 Constitution.

Ratio decidendi as the judge's consideration becomes reason The judge is the main judge in making the decision something matter , however previously there is legal considerations that arise wrong or factors in deciding factors included in the consideration panel [3.13] on Decision Court Constitution No 87/PUU-XX/2022 based on

¹³⁸ Treatise Hearing Case Decision Court Constitution No 87/PUU-XX/2022, 48-49.

¹³⁹ The presence of the Constitutional Court as a constitutional justice institution which has the authority to review laws has given rise to debate about the role of judges in the process of reviewing the constitutionality of laws. In a context where judges are involved in making legal rules through the process of reviewing the constitutionality of laws, a view of judicial activism arises. This view refers to the way judges interpret the constitution or the way in which judges discover the law. Quoted by Bening Setara Bulan, Abu Tamrin, and Sodikin Sodikin, "Living Values in Society (Living Constitution) in the Decision of the Constitutional Court in the Review Case of Law No. 7 of 2004 concerning Water Resources," *Staatrecht Journal* Vol. 3, no. 1 (2019): 81, <https://doi.org/10.15408/siclj.v3i1.13835>.

method interpretation constitution , author explained analysis form table as following :

Table 3. 1
Analysis Ratio decidendi PMK No 87/PUU-XX/2022 Based on Appraisal Theory Constitution

No	Contents of the Judge's Consideration	Types of Interpretation Methods	Information
1	<p>Paragraph 1¹⁴⁰ <i>“ Considering that with referring to the description legal considerations as described above , and after also looking closely quote legal considerations in decisions that , because fact empirical show that will candidate ever member of the DPR, provincial DPRD , and district / city DPRD undergo criminal with threat criminal prison 5 (five) years or more , except in a way open and honest put forward to public that in question ex- convict as regulated in the norms of Article 240 paragraph (1) letter g of Law 7/2017 it turns out No in line with the spirit that exists in the requirements For become candidate head area as regulated in the norms of Article 7 paragraph (2)</i></p>	Comparative ¹⁴¹	<p>Metide interpretation comparative is method interpretation Where the judge compares between a number of other legal regulations . Purposeful For clarity about the meaning contained in the provisions Constitution . Phrase “... as regulated in the norms of Article 240 paragraph (1) letter g of Law 7/2017 it turns out No in line with the spirit that exists in the requirements For become candidate head area as regulated in the norms of Article 7 paragraph (2) letter g Law 10/2016 as follows has done meaning in a way constitutional conditional by the Court , even though both of them is one of formal requirements for occupy</p>

¹⁴⁰ Look legal considerations [3.13] paragraph 1, Decision Court Constitution No 87/PUU-XX/2022, 32-33.

¹⁴¹ Comparative or comparative interpretation is an approach to interpreting law that involves comparisons between several legal regulations. Judges carry out this comparison with the aim of obtaining clarity regarding the meaning of a statutory provision. Quoted by the Drafting Team, *Procedural Law of the Constitutional Court* (Jakarta: Secretary General and Registrar of the Constitutional Court of the Republic of Indonesia, 2010), 73.

	<p>letter g Law 10/2016 as follows has done meaning in a way constitutional conditional by the Court , even though both of them is one of formal requirements for occupy grove elected positions (elected officials) , then such a distinction caused exists disharmonization will implementation of these norms to real legal subject have the same goal , namely that they are both chosen in the election . Therefore that's a distinction on condition For become candidate members of the DPR, provincial DPRD , and district / city DPRD with candidate head area that is candidate Governor /Deputy Governor , Regent /Deputy Regent , and Mayor /Deputy Mayor for ex- convict as considered mentioned above , yes caused the violation right constitutional citizens as arranged in Article 28J paragraph (1) of the 1945 Constitution."</p>		<p>grove elected positions (elected officials) , then such a distinction caused exists disharmonization will implementation of these norms to real legal subject have the same goal , namely that they are both chosen in the election ." Phrase The judge compared the norms of Article 240 paragraph (1) letter g of Law No. 7 of 2017 with the norm of Article 7 paragraph (2) letter g of Law No. 10 of 2016 has inequality that causes disharmonization of article norms , even though Actually that second chapter the arrange about an elected official position that should be have similarity oersyartan for ex-prisoners who wish nominate self as candidate legislature and kepka area . So the judge needs to do adjustment of article norms .</p>
2	<p>Paragraph 2¹⁴² " With Thus , based on description legal considerations , the Court opinion to the norm</p>	Structural ¹⁴³	<p>Interpretation structural is approach interpretive in testing linking laws provisions in the law with principles stated in</p>

¹⁴² Look legal considerations [3.13] paragraph 2, Decision Court Constitution No 87/PUU-XX/2022, 32-33.

¹⁴³ Structural interpretation is an interpretive approach that connects provisions in laws with the principles set out in the constitution or Basic Law which establishes the state's structural framework. Quoted by Muchamad Ali Safaat and Aan Eko Widiarto and Fajar Laksono Suroso, "Pattern of Constitutional Interpretation in Constitutional Court Decisions The Pattern of Constitutional Interpretation on The Constitutional Court Decisions in the Period," *Journal of the Constitution* Vol. 14, no. 2 (2017): 234–61, <https://doi.org/10.31078/jk1421>.

<p>provisions of Article 240 paragraph (1) letter g of Law 7/2017 are necessary done alignment with applies also to waited 46 terms 5 (five) years after ex- convict finished undergo criminal prison based on decision the court has have permanent legal force and existence honesty or openness about background behind teak himself as ex- convict as condition candidate members of the DPR, Provincial DPRD, and Regency /City DPRD , in addition Other conditions were also added as meaning constitutional in a way conditions contained in Article 7 paragraph (2) letter g of Law 10/2016. Because , as has cited in the legal considerations of decisions Previously the waiting period was 5 (five) years after convict serving the criminal term is viewed time Enough For do introspection yourself and adapt with public the environment for candidate head regions , including in this case candidates members of the DPR, provincial DPRD, and district / city DPRD . Thereby case condition exists must explain in a way open to public about teak himself and not cover background behind his life is in order give material consideration for candidate</p>		<p>the constitution or The Constitution stipulates framework fundamental work of the state. Referring to the phrase "... Court opinion to the norm provisions of Article 240 paragraph (1) letter g of Law 7/2017 are necessary done alignment with applies also to waited 46 terms 5 (five) years ...". Court make a decision with do alignment of article norms in order to eliminate disharmonization legal certainty in nominations ex- prisoner as candidate members of the DPR, Provincial DPR , Regency /City DPR.</p>
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	<p><i>selective in judging or determine his choice . Because , related with This is it , voters can in a way critical evaluate candidate who will he chose as choice good who has lack nor excess For known by the public general (notoir feiten). Therefore That's it , this matter comes home to public or the people as voters For give his voice to candidate who is a ex-convict or No give his voice to candidate the . Additionally , for charging position through elections (elected officials), at the end society that has sovereignty highest that will be determine choice ;"</i></p>		
3	<p>Paragraph 3¹⁴⁴ <i>" That Next , related with condition No as perpetrator follow criminal in a way over and over again important for Court For confirm return Because fact empirical show that there is a number of candidate head area ever undergo criminal or not given enough time For adapt and prove self has in a way factual immersed in society it turns out trapped back in behavior No commendable</i></p>	Theological or sociological ¹⁴⁵	<p>Interpretation sociological is the judge's interpretation of laws with adapt condition social Society. The phrase “ <i>Because That's for protection more interest big , that is , in this case it is of interest public will a leader who is clean , has integrity and is capable give service good public as well as presenting well-being for the society he leads ,</i>” pointed out</p>

¹⁴⁴ Look legal considerations [3.13] paragraph 3, Decision Court Constitution No 87/PUU-XX/2022, 33.

¹⁴⁵ Sociological interpretation is an interpretation that follows the social context and conditions of society. This means that sociological interpretation adapts legal understanding to the social reality that exists in society, with the aim that the application of law can achieve the justice expected by society and provide legal certainty in accordance with the principles of justice. Quoted by Enju Juanda, "Legal Construction and Legal Interpretation Methods," *Galuh Justisi Scientific Journal* Vol. 4, no. 2 (2017): 168, <https://doi.org/10.25157/jigj.v4i2.322>.

<p><i>, even repeat return follow the same penalty (in casu in a way factual specifically follow criminal corruption), so increasingly Far from objective presenting a leader who is clean , honest and has integrity . Therefore That's for protection more interest big , that is , in this case it is of interest public will a leader who is clean , has integrity and is capable give service good public as well as presenting well-being for the community he leads , the Court No find any other way except enforce condition cumulative as contained in the legal considerations of the decisions Court Constitution that has quoted above and last confirmed in the ruling Decision Court Constitution Number 56/PUU-XVII/2019. Additionally , step this is also seen important by the Court for the sake of providing legal certainty as well return meaning essential from election candidate members of the DPR, provincial DPRD , and district / city DPRD , namely produce people who have quality and integrity For become official public and at the same time not remove right political ever citizen become convict For still</i></p>		<p>that the judge decides a quo matter with put forward interest public wide with realization a leader with integrity and creativity service to good society .</p>
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	<i>join in participate in government .”</i>		
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Source : Analysis writer from various source 2024

Based on exposure on can concluded that reason judge's consideration [3.13] Decision Court Constitution No 87/PUU-XX/2022 can analysis based on a number of method interpretation that is comparative , structural , and sociological . The judge compares the norms between chapter For find oddity problem , then the judge looks at it Constitution previously as reference equalization article and the judge tried put forward interests of the wider community with increase the waiting period for ex- prisoner with objective ex- inmates get adapt self with society and society own time For consider worthy candidate For chosen .

3. Comparison Decision Court Constitution about Nomination Ex Prisoners in General Elections

Problematic nomination ex- convicts in elections general Keep going happen . This matter is proven with many material tests articles related permissibility ex- convicts in elections general . Entry these things of course become the judge's consideration in making his decision case with the same issues are related right constitutional ex- inmates who nominate himself in the election . Some party can feel disadvantaged right its constitutional so that exists business testing material articles considered unconstitutional to Court Constitution as

institution the judiciary has right test law on The 1945 Constitution of the Republic of Indonesia.¹⁴⁶

Changes in settings restrictions right political for ex- convict who wishes become candidate legislative or candidate head area has experience dynamics through action legislative , decision Court Constitution (MK), and regulations Commission General Election (KPU).¹⁴⁷ Since MK was founded , it has been there are 14 related decisions with restrictions right political ex- convict . Decisions the covers Decision No. 14-17/PUU-V/2007, No. 15/PUU-VI/2008, No. 4/PUU-VII/2009, No. 120/PUU-VII/2009, No. 18/PUU-XII/2010, No. 44/PUU-VII/2010, No. 79/PUU-X/2012, No. 29/PUU-XII/2014, No. 42/PUU-XIII/2015, No. 80/PUU-XIII/2015, No. 71/PUU-XIV/2016, No. 56/PUU-XVII/2019, No. 87/PUU-XX/2022, and No. 12/PUU-XXI/2023. Within scope this research , focus focused on Decision No. 87/PUU-XX/2022 and No. 12/PUU-XXI/2023. These two decisions contain related new norms restrictions right political ex- convict who wishes nominate self as member legislature in the 2024 General¹⁴⁸Election .

¹⁴⁶ Syafik Didin, "The Urgency of Unifying the Authority to Review Legislative Regulations by Judicial Review Institutions in Indonesia," *Rechtide Journal* Vol. 11, no. 2 (2016): 215, <https://doi.org/10.21107/ri.v11i2.2159.g2076>.

¹⁴⁷ Jumriani Nawawi, Irfan Amir, and Muljan Muljan, "Problematics of the Idea of Prohibiting Former Corruption Convicts from Becoming Candidates for Legislative Members," *Al-Adalah: Journal of Islamic Law and Politics* Vol. 3, no. 2 (2019): 141–55, <https://doi.org/10.35673/ajmpi.v3i2.196>.

¹⁴⁸ Yusron Munawir, "Disharmonization of Restrictions on the Political Rights of Former Convicts to Become Legislative Candidates for the 2024 General Election," *Legacy: Journal of Law and Legislation* Vol. 3, no. 2 (2023): 121-122, <https://doi.org/10.35796/les.v3i10.10335>.

Material review of Article 240 paragraph (1) letter g of Law No. 87/PUU-XX/2022 with reason applicant that the phrase “ ... *in a way open and honest put forward to public that in question ex- convict* ” considered No fulfill legal norms as filter candidate legislative with integrity and potential *abuse of power* by groups certain .¹⁴⁹

Meanwhile, the material review of Article 7 paragraph (2) letter g of Law No. 10 of 2016 with reason application that the applicants beg your ex prisoners who wish nominate self as head area must undergo a waiting period referring to the Decision Court Number 4/PUU-VII/2009 , apart from That applicant think that this waiting period is pause when ex- prisoner the nominate self in a way in a row . According to applicant position head area can took office for 2 periods , then than that's the waiting period worn according to his term of office maximum for 10 years.¹⁵⁰

Consideration the assembly decides Decision Court Constitution No 87/PUU-XX/2022 that must done equalization of norms of Article 240 paragraph (1) letter g of Law No. 7 of 2017 which refers to the norms of Article 7 paragraph (2) letter g of Law No. 10 of 2016 which has been interpreted in a way constitution by the assembly in the Decision Court Constitution No 56/PUU-XVII/2019. Equalization the form addition 5 year waiting period requirement for ex- prisoner as

¹⁴⁹ Look reason Application , Decision Court Constitution No 87/PUU-XX/2022, 13.

¹⁵⁰ Look principal case , decision Court Constitution No 56/PUU-XVII/2019, 47.

candidate members of the DPR, Provincial DPR , Regency /City DPR.

So that condition the nature cumulative .¹⁵¹

Assembly Constitution disconnect Decision Court Constitution No 56/PUU-XVII/2019 must enforce return fourth condition cumulative referring to the Decision Court Constitution Number 4/PUU-VII/2009 must enforce return fourth condition cumulative .¹⁵² The panel of judges agreed enforcement fourth condition cumulative the with reason For Community interests in realizing a leader who is clean and has integrity so that capable give service good public so that presenting prosperity for the society he leads .¹⁵³

Table 3.2
Analysis Comparison Decision Court Constitution No 87/PUU-XX/2022
with Decision Court Constitution No 56/PUU-XVII/2019

No	Indicator Comparison	Decision Court Constitution No 87/PUU-XX/2022	Decision Court Constitution No 56/PUU-XVII/2019	Information
1	Article being tested	Article 240 paragraph (1) letter g Law No. 7 of 2017	Article 7 paragraph (2) letter g Law No. 10 of 2016	Article 240 paragraph (1) letter g Law No. 7 of 2017 regulates about conditions ex-inmates who nominate self as members of the DPR, Provincial DPR , Regency /City DPR.

¹⁵¹ Look legal considerations [3.13], Decision Court Constitution No 87/PUU-XX/2022, 32-34.

¹⁵² Fourth condition the i.e. (i) no Once as convict based on decision the court has obtain permanent legal force Because do follow threatened punishment with criminal prison 5 (five) years or more , except to the convict did it follow criminal negligence and action criminal politics in the sense something stated act as follow criminal law in positive law only Because the culprit have view different politics with moderate regime powerful ; (ii) divide ex- convict , has pass period 5 (five) years after ex- convict finished undergo criminal prison based on decision the court has have permanent and permanent legal force Honest or open announce about background behind teak himself as ex- convict ; and (iii) not as perpetrator repeated crimes .

¹⁵³ Look legal considerations , decisions Court Constitution No 56/PUU-XVII/2019, 60.

				<p>Meanwhile, Article 7 paragraph (2) letter g of Law No. 10 of 2016 regulates about advice nomination ex-prisoner as head area .</p> <p>Assembly think that member legislature and head area is elected position through election by the people, so necessity equalization of article norms between second chapter the .</p>
2	The applicant's reasons	<p>In this decision the applicant assume the phrase " ... <i>in a way open and honest put forward to public that in question ex-convict</i> " No has article norms sufficient as barrier candidate legislature with integrity and concern applicant happen <i>abuse of power</i> by candidates legislature that does not have integrity . So than That that tree in the treatise hearing Decision Court Constitution No 87/PUU-XX/2022 considers reason applicant must corrected at trial repair introduction II.</p>	<p>In this decision the applicant considers Article 7 paragraph (2) of Law No. 10 of 2016 open opportunity for ex-prisoner corrupt For nominate self as head region in regional elections coming without must past the waiting period , so can interpreted that ex-which prisoner as head area can nominate directly self as head area after be open and honest to record the trace .¹⁵⁴</p>	<p>Basically reason applicant in the second decision the with the same objective as the norms of each article that submits a material review No fulfill legal norms as barrier right political ex- the inmate who nominated him self as candidate legislative nor candidate head area .</p>
3	Legal considerations	<p>considerations in this decision were not can remove fully right</p>	<p>actions in this decision did implementation fourth conditions</p>	<p>Terms applied for ex-convicts in the second this ruling has</p>

¹⁵⁴ Ranga Pandu Asmara Jingga, "MK Decision Affirms Opportunities for Former Corruptors to Compete in Regional Elections," *Antara* , 26 December 2019, accessed 26 February 2024, <https://www.antaraneews.com/berita/1224335/angkatanan-mk-tegaskan-peluang-former-corruptor-competing-in-election>.

	political ex- inmates ato nominate self as candidate members of the DPR, Provincial DPR , Regency /City DPR as appropriate reason applicant . However , assembly only own road For do equalization of the norms of Article 240 paragraph (1) letter g of Law No. 7 of 2017 with the norms of Article 7 paragraph (2) letter g of Law No. 10 of 2016.	contained in the Decision Court . Constitution No. 4/PUU-VII/2009 that ex- the inmate who nominates self must pass some [a condition that is No Once sentenced to 5 years or more based on decision competent , open and honest court to public on teak himself , and not perpetrator crime repetitive .	similarity completely
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Source : Analysis writer from various source 2024

Based on explanation on can concluded that between second decision the Actually No own significant difference except for the article being tested . On reason the applicant was found similarity on dissatisfaction applicant to governing article requirements nomination ex- prisoner as candidate members of the DPR, Provincial DPRD , Regency / City DPRD and candidates head area . The judge also has considerations similarity that the judge referred to the verdict beforehand and apply requirements that have been stated in the decision court constitution previously .

Second decision the own enough influence significant in the election upcoming . Ex prisoner No can nominate directly self after rope criminal prison . However , with exists second decision the No all ex-prisoner can nominate himself in the election Because must pass a number of condition cumulative that has been stipulated in the decision

court constitution . Ex prisoner must pass amsa Wait as an adjustment period while open and honest with the public on teak himself as ex-prisoner .

B. Overview Addition Withholding of Political Rights in KPU Regulation No. 10 of 2023 Article 11 paragraph (6) as Form Relief Condition Nomination Ex Prisoners in Constitutional Court Decision No. 87/PUU-XX/2022 which have the character of Accumulative

1. Annotation disharmonization Withholding of Political Rights in KPU Regulation No. 10 of 2023 Article 11 paragraph (6) as Form Relaxation in Constitutional Court Decision No. 87/PUU-XX/2022 According to Norm Level Theory

Regulation Indonesian legislation has defining hierarchy level the strength and validity of each regulation . Hierarchy regulation laws and regulations in Indonesia are regulated in Article 7 paragraph (1) of Law No. 12 of 2011 concerning Formation Regulation Legislation .¹⁵⁵

Article 7 paragraph (1) Law No. 12 of 2011:

- (1) Types and hierarchies Regulation Legislation consists on :
- a. 1945 Constitution of the Republic of Indonesia ; b. Decree Assembly People's Consultative Assembly ; c. Laws / Regulations Government Replacement Constitution ; d. Regulation Government ; e. Regulation President ; f. Provincial Regional Regulations ; and g. Regency /City Regional Regulations ."¹⁵⁶

¹⁵⁵ Retno Saraswati, "Legal Problems of Law No. 12 of 2011 concerning the Formation of Legislative Regulations," *Yustisia* Vol. 2, no. 3 (2013): 97, <https://doi.org/doi.org/10.20961/yustisia.v2i3.10164>.

¹⁵⁶ State Gazette Article 7 paragraph (1) Law No. 12 of 2011.

Restrictions right political for ex- prisoners who wish nominate yourself in the election general has arranged in several Decision Court Constitution , namely :

Table 3.3
Tabulation MK Decision Concerning Restrictions on Political Rights Ex Prisoners in Elections

No	Decision	Tree Case	Status
1	Decision No 4/PUU-VII/2009	Testing General Election of Members of the People's Representative Council , Regional Representative Council , and Regional People's Representative Council and Laws Number 12 of 2008 concerning Change Second on the Law Number 32 of 2004 concerning Regional Government	Granted part
2	Decision No. 42/PUU-XIII/2015	Testing Constitution Number 8 of 2015 concerning Changes to the Law Number 1 of 2015 concerning Determination Regulation Government Replacement Constitution Number 1 of 2014 concerning Election Governor , Regent , and Mayor Become Constitution to The 1945 Constitution of the Republic of Indonesia	Granted part
3	Decision No. 71/PUU-XIV/2016	Testing Constitution Number 10 of 2016 concerning Change Second on the Law Number 1 of 2015 concerning Determination Regulation Government Replacement Constitution	Granted part

		Number 1 of 2014 concerning Election Governor , Regent , and Mayor Become Constitution to The 1945 Constitution of the Republic of Indonesia	
4	Decision No. 56/PUU-XVII/2019	Testing Constitution Number 10 of 2016 concerning Change Second on the Law Number 1 of 2015 concerning Determination Regulation Government Replacement Constitution Number 1 of 2014 concerning Election Governor , Regent , and Mayor Become Constitution	Granted part
5	Decision No. 87/PUU-XX/2022	Testing Material Constitution Number 7 of 2017 concerning General Election against The 1945 Constitution of the Republic of Indonesia	Granted part

Source : Analysis writer from various source 2024

Based on context This discussion refers to the Decision Court Constitution No. 87/PUU-XX/2022 which contains in para the verdict mention condition nomination self for ex- prisoner as candidate members of the Republic of Indonesia DPR, members of the Provincial, Regency /City DPR in the election general 2024.¹⁵⁷

Decision Court constitution No87/PUU-XX/2022 declares the norm of Article 240 paragraph (1) letter g unconstitutional against the

¹⁵⁷ Look amar verdict , Verdict Court Constitution No 87/PUU-XX/2022.

1945 Constitution and not own legal force during No interpreted according to what has been done described in amar Decision Court Constitution No 87/PUU-XX/2022.

No further Decision Court Constitution through formation or amendment laws and regulations executor laws , like Regulation Government , Regulations President , Ministerial Regulations , Regulations area nor regulation implementation other from related agencies like Regulation Commission General Elections and Supervisory Body Regulations Election .¹⁵⁸ Decision Court Constitution own comparable legal force with law , and no need modification through amendment Constitution when part certain considered contradictory with the 1945 Constitution. The Constitutional Court's decision stated as an applicable legal norm , without need do change through the amendment process legislation , esp If There is parts certain things are considered No in accordance with constitution .¹⁵⁹ Decision Court Constitution nature binding and final, meaning The Constitutional Court's decision has permanent legal force since announced or not There is possible legal remedies done

¹⁵⁸ Mohammad Mahrus Ali, et al. "Follow-up to the Constitutional Court Decision which is Constitutionally Conditional and Contains New Norms," *Journal of the Constitution* Vol. 12, no. 3 (2015): 631–632, <https://doi.org/10.31078/jk12310>.

¹⁵⁹ Amrizal J. Prang Ilmu, "Legal Implications of the Constitutional Court Decision," *Kanun: Journal of Legal Sciences* Vol. 13, no. 1 (2011): 87, <https://jurnal.usk.ac.id/kanun/article/view/6233>

afterwards . The final nature of the Constitutional Court's decision also includes: legal force in nature binding (*final and binding*).¹⁶⁰

KPU as agency in charge organize election general must hasten about no further decision Court Constitution No 87/PUU-XX/2022 in Related KPU regulations condition nomination ex- prisoner as member legislature in elections general . Remember that election general 2024 will be implemented on February 14 2024. On April 18 2023 two KPU Regulations were promulgated at once , namely KPU Regulation No. 10 of 2023 and KPU Regulation No. 11 of 2023. However , there are controversy in one provisions , namely related condition nomination ex-prisoner as members of the Republic of Indonesia DPR, Provincial DPR , and Regency /City DPRD in Article 11 paragraph (5) and paragraph (6) of KPU Regulation No. 10 of 2023.

Article 11 paragraph (5) reads :¹⁶¹

" Condition has pass period 5 (five) years after ex- convict finished undergo criminal prison based on decision the court has obtain permanent legal force as referred to in paragraph (1) letter g, calculated since date finished serving his sentence so that No have connection in a way technical and administrative with the organizing ministry affairs governance in the field of law and rights basic human , and uncountable until with day the last period for submitting prospective candidates."

Article 11 paragraph (6) reads :¹⁶²

" Provision as referred to in paragraph (5) no applies If otherwise determined by the decision the court has obtain permanent legal force For criminal addition revocation right politics ."

¹⁶⁰ Johansyah, "The Constitutional Court's decision is final and binding." 166.

¹⁶¹Article 11 paragraph (5) PKPU No. 10 of 2023 is taken from legal considerations [3.13] and amar Decision Court Constitution No 87/PUU-XX/2022. See Article 11 paragraph (5) PKPU No. 10 of 2023.

¹⁶²Article 11 paragraph (6) PKPU No. 10 of 2023 is taken from legal considerations [3.12.2] which is the obiter dicta of Decision Court Constitution No 87/PUU-XX/2022.

Constitutional panel of judges has mention and emphasize the verdict is in amar Decision Court Constitution No 87/PUU-XX/2022 that for ex- prisoners who wish nominate self as member legislative must through the waiting period for 5 (five) years after serving a criminal term in accordance decision court authorized . However , Article 11 paragraph (6) of KPU Regulation No. 10 of 2023 regulates provisions referred to in amar Decision Court Constitution No 87/PUU-XX/2022, no applies If other provisions by the decision the court has obtain permanent legal force For criminal addition revocation right politics . Based on statement assembly constitution the can interpreted that KPU regulations expand legal norms in the form of: exclusion of one conditions in the order the Constitutional Court's decision , namely must ex- prisoner must past the 5 (five) year waiting period after finished serving a criminal term , excluded If otherwise determined by the decision the court has obtain permanent law For criminal addition revocation right politics .

According to Indonesia Corruption Watch (ICW) records in 2021 , there were 55 defendants from cluster political faced punishment , of which 31 of them experience revocation right political with an average duration of 3 years 5 months .¹⁶³ With exists this KPU provision , can

¹⁶³ Indonesia Corruption Watch, "Indonesia Corruption Questions the Smuggling of Articles by the KPU Concerning the Requirements for Nominating Former Corruption Convicts as Members of the DPR, DPRD and DPD RI," *antikokerja.org* , 22 May 2023, accessed 31 January 2024, <https://antikoburu.org/id/questioning-smuggling-articles-by-kpu-regarding-conditions-for-nomination-of-former-corruption-convicts-as-members> .

predicted that time wait 5 years for ex- the convict who received it criminal addition revocation right political can reduce . Legal consequences of this provision shows nonconformity with objective from amar decision Court Constitution previously .

Optimally , legal norms are regulated in more regulations low should in line with more regulations tall . Principle hierarchy or arrangement set that every type Regulation Legislation must based on principles that more regulations low No can contradictory with more regulations tall .¹⁶⁴ According to Adolf Merkl's opinion , a legal norm has two dimensions ; to direction above , ia sourced and derived from more norms high , but to direction down , he also became source and basis for the legal norms below .¹⁶⁵ So because That is , structured legal norms tiered in a hierarchy , where norms are more low subject to , sourced from , and based on more norms high , while the norm is more higher is also subject to , sourced from , and based on higher norms higher again, and so on , until reach a highest norm called the basic norm or *grundnorm* .¹⁶⁶

legal norm system in Indonesia forms structure pyramid , where legal norms apply organized in a hierarchical , layered , and divided into groups certain . According to Nawiasky , legal norms in this

¹⁶⁴ Taufiqurrohman Syahuri, *Constitutional Law: Process and Procedures for Amendments to the Constitution in Indonesia 1945-2002 and Comparison with Constitutions of Other Countries in the World* (Bogor: Ghalia Indonesia, 2004), 41.

¹⁶⁵ Maria Farida Indrati Soepranto, *Legislative Science (I) (Types, Functions, Content* (Jakarta: Kanisius, 2007), 41-42.

¹⁶⁶ Maria Farida Indrati Soepranto, *Legislative Science (I) (Types, Functions, Content*, 21-22.

country can be categorized as become four group big who has level different hierarchies and layers , viz first , *Staatsfundamentalnorm* (fundamental state norms); second , *Staatsgrundgesetz* (rules base or rule state principal); third , *Formell Gesetz* (formal law); and fourth , *Verordnung & Autonome Satzung* (rules implementers and rules autonomous).¹⁶⁷ Based on Article 249 paragraph (3) Law No. 7 of 201, it is regulated that details more information about the verification process will candidate members of the DPR, Provincial DPR , and Regency / City DPRD regulated in KPU Regulations . Therefore that , kind of KPU regulations are included in the group fourth , viz rule executor from Law No. 7 of 2017. Temporary That , the Constitutional Court's decision , is one of them mandatory legal material arranged through laws , are in groups third , equal with Constitution or *Formell Gesetz* .¹⁶⁸

Thus , that type and level KPU regulations are under Law or Constitutional Court Decision . Expected KPU Regulation No. 10 of 2023 and KPU Regulation 11/2023 can in line with amar MK decision no. 87/PUU-XX/2022 and amar MK decision no. 12/PUU-XXI/2023. Because that is necessary alignment in restrictions right political ex-convict who wishes become candidate member legislative . If there is

¹⁶⁷ Hans Nawiasky, *Allgemeine Rechtslehre Als System Der Rechtlichen Grundbegriffe* (Zurich: Benziger, 1948), 44-45.

¹⁶⁸ Taufiqurrahman Syahuri, *Constitutional Law: Process and Procedures for Amendments to the Constitution in Indonesia 1945-2002 and Comparison with Constitutions of Other Countries in the World* , 56.

conjecture nonconformity between KPU regulations and Law No. 7 of 2017, testing carried out by the Supreme Court .¹⁶⁹This is very essential For ensure right constitutional top citizen fair legal certainty for public .

2. Draft Accumulative Contained in the Requirements Nominations for Former People Prisoner

According to the Big Indonesian Dictionary , the word accumulative originate from the word cumulative which has the meaning of something collected , piled up , accumulated .¹⁷⁰In the context discussed is an accumulative word in legal science . There are some implications and applications in a legal context , one of which is criminal law There is punishment meaningful cumulative giving more from One punishment with characteristic addition or hoard , meaning A punishment That order as well as must run by convicts in a way full .¹⁷¹ Can understood that draft addition This punishment occurs in a ongoing trial take care of A matter .

Draft This accumulative is also applied in the requirements nomination member legislative for ex- prisoner . It has been mentioned

¹⁶⁹ Herman and Firman Muin, "Systematization of Types and Hierarchy of Legislative Regulations in Indonesia," *Journal of Legal Communication* Vol. 4, no. 2 (2018): 91, <https://doi.org/10.23887/jkh.v4i2.15445> .

¹⁷⁰ Department of National Education, *Big Indonesian Dictionary* , Fourth (Jakarta: PT. Gramedia Pustaka Utama, 2012), 316.

¹⁷¹ Milda Yanti and Ainal Hadi, "Conditional Sentencing for Crimes that are Punishable Cumulatively in Cases of Management of Hazardous and Toxic Waste (B3) Without Permits (A Research in the Legal Area of the Meulaboh District Court)," *Student Scientific Journal in the Field of Criminal Law* Vol. 6, no. 3 (2022): 283–92, <https://jim.usk.ac.id/pidana/article/view/22899> .

in the Decision Court Constitution No 87/PUU-XX/2022 that giving nature of conditions This cumulative view is considered important for the panel of judges to give legal certainty and essentials from election candidate members of the Republic of Indonesia DPR, Provincial DPR, Regency /City DPR .¹⁷²

Before submission of a material review of Article 240 paragraph (1) of Law No. 7 of 2017 concerning General Election , no load the same conditions as Article 7 paragraph (2) letter g of Law No. 10 of 2016, each article the reads :

Article 240 paragraph (1) letter g Law No. 7 of 2017 contains condition ex- prisoner as candidate members of the DPR, Provincial DPR , Regency /City DPR.¹⁷³

" No Once convicted prison based on decision the court has obtain permanent legal force Because do follow threatened punishment with criminal prison 5 (five) years or more , except . in a way open and honest put forward to public that in question ex- convict ;"

Material Test Results of Article 240 paragraph (1) letter g of Law No. 7 of 2017 through Decision Court Constitution No 87/PUU-XX/2022 in amar the verdict mentions :¹⁷⁴

“1) Granted Application Applicant for Part; 2) State the norms of Article 240 paragraph (1) letter g of the Law Number 7 of 2017 concerning General Election (Gazette Republic of Indonesia Year 2017 Number 182, Supplement State Gazette of the Republic of Indonesia Number 6109) is contradictory

¹⁷² Explained that This reason also refers to the norm of Article 7 paragraph (2) letter g of Law No. 10 of 2016 which contains legal consideration of the 5 year waiting period for ex- prisoners who wish nominate self as head area . Decision Court Constitution No 87/PUU-XX/2022, 33-34.

¹⁷³ Article 240 paragraph (1) letter g Law No. 7 of 2017 concerning general elections .

¹⁷⁴ See Judgment Order , Judgment Constitutional Court No 87/PUU-XX/2022, 36.

with 1945 Constitution and no have binding legal force in a way conditional throughout No interpreted as if formulated in full reads : (1) Prospective candidate Members of the DPR, provincial DPRD , and district / city DPRD are Indonesian citizens and must be fulfil requirements : ... g. (i) no Once as convict based on decision the court has obtain permanent legal force Because do follow threatened punishment with criminal prison 5 (five) years or more , except to the convict did it follow criminal negligence and action criminal politics in the sense something stated act as follow criminal law in positive law only Because the culprit have view different politics with moderate regime powerful ; (ii) divide ex- convict , has pass period 5 (five) years after ex- convict finished undergo criminal prison based on decision the court has have permanent and permanent legal force Honest or open announce about background behind teak himself as ex- convict ; and (iii) not as perpetrator repeated crimes ; 3) Order loading this decision is in the State Gazette of the Republic of Indonesia; 4) Refuse application For besides and what's more ."

Article 7 paragraph (2) letter g of Law No. 7 of 2016 contains condition for ex- prisoners who wish nominate self as head area :¹⁷⁵

" No Once as convict based on decision the court has obtain permanent legal force or for ex- convict has in a way open and honest put forward to public that in question ex- convict ;"

Material Test Results Article 7 paragraph (2) letter g Law No. 10 of 2016 through Decision Court Constitution No 56/PUU-XVII/2019 in amar the verdict mentions :¹⁷⁶

"1) Granted petition of the Petitioners For part ; 2) State Article 7 paragraph (2) letter g of the Law Number 10 of 2016 concerning Change Second on the Law Number 1 of 2015 concerning Determination Regulation Government Replacement Constitution Number 1 of 2014 concerning Election Governor , Regent , and Mayor Become Law (State

¹⁷⁵Article 7 paragraph (2) letter g Law No. 10 of 2016 concerning Law (UU) Number 10 of 2016 concerning Change Second on the Law Number 1 of 2015 Concerning Determination Regulation Government Replacement Constitution Number 1 of 2014 Concerning Election Governor , Regent , and Mayor Become Constitution .

¹⁷⁶ See Judgment Order , Judgment Court Constitution No 56/PUU-XVII/2019, 64-65.

Gazette of the Republic of Indonesia of 2016 Number 130, Supplement State Gazette of the Republic of Indonesia Number 5898) is contradictory with 1945 Constitution and no have binding legal force in a way conditional throughout No interpreted has pass period 5 (five) years after ex- convict finished undergo criminal prison based on decision the court has have permanent legal force ; so that Article 7 paragraph (2) letter g of the Law Number 10 of 2016 concerning Change Second on the Law Number 1 of 2015 concerning Determination Regulation Government Replacement Constitution Number 1 of 2014 concerning Election Governor , Regent , and Mayor Become Law (State Gazette of the Republic of Indonesia of 2016 Number 130, Supplement State Gazette of the Republic of Indonesia Number 5898) in full reads : Candidates for Governor and Candidates for Deputy Governor , Candidates for Regent and Candidates for Deputy Regent , as well as Candidates for Mayor and Candidates for Deputy Mayor as referred to in paragraph (1) must fulfil condition as following : ... g. (i) no Once as convict based on decision the court has obtain permanent legal force Because do follow threatened punishment with criminal prison 5 (five) years or more , except to the convict did it follow criminal negligence and action criminal politics in the sense something stated act as follow criminal law in positive law only Because the culprit have view different politics with moderate regime powerful ; (ii) divide ex- convict , has pass period 5 (five) years after ex- convict finished undergo criminal prison based on decision the court has have permanent and permanent legal force Honest or open announce about background behind teak himself as ex- convict ; and (iii) not as perpetrator repeated crimes ; 3) Refuse petition of the Petitioners For besides and what's more ."

Review more addition element cumulative in terms nomination members of the DPR, Provincial DPR , Regency /City DPR in Article 240 based on The judge's considerations look at the decision Previously that is Decision Court Constitution No 56/PUU-XVII/2019, can seen

through legal considerations [3.13] Decision Court Constitution No. 87/PUU-XX/2022 which reads :¹⁷⁷

“[3.13]... With Thus , based on description legal considerations , the Court opinion to the norm provisions of Article 240 paragraph (1) letter g of Law 7/2017 are necessary done alignment with applies also to wait period 5 (five) years after ex- convict finished undergo criminal prison based on decision the court has have permanent legal force and existence honesty or openness about background behind teak himself as ex- convict as condition candidate members of the DPR, Provincial DPRD, and Regency /City DPRD , in addition Other conditions were also added as meaning constitutional in a way conditions contained in Article 7 paragraph (2) letter g of Law 10/2016.”

Consideration court constitution [3.13] Judgment Court Constitution No. 87/PUU-XX/2022 with clear explain reason substance behind decision Court Constitution that implements a waiting period for five years after ex- convict finished undergo criminal prison in accordance with decision the court has legally binding . Reason for apply This provision is based on differences condition between candidate member legislature in Article 240 paragraph (1) letter g of Law No. 7 of 2017, where they No required undergo a five year waiting period after undergo criminal prison , meanwhile candidate head regions in Article 7 paragraph (2) letter g of Law No. 10 of 2016 ,¹⁷⁸ required undergo a five year waiting period after undergo criminal prison . This difference causes disharmony in the application of these

¹⁷⁷ Look Legal Considerations , Decisions Court Constitution No 87/PUU-XX/2022, 33-34.

¹⁷⁸Law No. 10 of 2016 concerning Law (UU) Number 10 of 2016 concerning Change Second on the Law Number 1 of 2015 Concerning Determination Regulation Government Replacement Constitution Number 1 of 2014 Concerning Election Governor , Regent , and Mayor Become Constitution .

norms to legal subject who owns the same goal , viz For selected in the election . This can result violation to right constitutional citizens as regulated in Article 28J paragraph (1) of the 1945 Constitution.

Considerations Section Court Number [3.13] is base or decisive reason For formation something decision described in one chapter verdict , which has binding legal force , which is known as part consideration of *ratio decidendi*. These legal considerations are also used as basis for formation decision The Court in formulating decision Court Constitution Number 12/PUU-XXI/2022. Important For understand part consideration The Court in the Constitutional Court's decision became *ratio decidendi* , as well part the judge's considerations include *obiter dictum*.¹⁷⁹ According to Siahaan, *Ratio decidendi* is part considerations to be made base or reason determination the decision formulated in the ruling verdict . Consideration section *ratio decidendi* No can separated from chapter verdict and have binding legal force that can considered as legal principles . Temporary that , *obiter dictum* is part considerations that are not directly related to chapter verdict . This consideration is frequent used as illustration or analogy in preparation legal arguments and not own binding legal force .¹⁸⁰

¹⁷⁹ Miftakhul Huda, "Law Dictionary, Ratio Decidendi," *Constitutional Magazine* , No. 48, (January 2011): 84.

¹⁸⁰ Maruarar Siahaan, *Procedural Law of the Constitutional Court* (Jakarta: Sinar Grafa, 2012), 211.

In this context , no everything written in the legal considerations in the Constitutional Court Decision can made rule or legal basis for making KPU regulations . Can said lengthy legal considerations wide in the verdict That No everything is *ratio decidendi* , but need accuracy For find *ratio decidendi* from decision the .¹⁸¹ Legal considerations for the Constitutional Court's decision made legal basis and have binding legal force just containing considerations substance consideration *ratio decidendi* or considerations in the form of an order , concern , or suggestion directly related to amar decision under consideration MK decision .

Rights and obligations for ex- prisoners who wish nominate self as member legislature is also necessary discussed . Basically every Indonesian citizen has right For nominate himself in the election general . This activity can including things guaranteed by the constitution where Indonesian citizens have right For as well as in government .¹⁸²

other than rights of Indonesian citizens want to nominate self as candidate member legislature in elections general must fulfill requirements that have been determined by law¹⁸³ related about legal

¹⁸¹ Miftakhul Huda, "Law Dictionary, Ratio Decidendi." , 84.

¹⁸²This is regulated in Article 27 paragraph (1) which reads : "All citizens together its position in law and government and is mandatory uphold the law and government That with No There is except .", and Article 28D paragraph (3) states : " guarantee equal rights to participate as well as in government ."

¹⁸³ State Gazette Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

status, such as ever status convicted or No Once convicted .¹⁸⁴For someone who wants to nominate self as candidate legislative Must pass the following conditions has specified in Article 240 paragraph (1) paragraph g of Law No. 7 of 2017 concerning General elections .

Application addition condition for ex- prisoners who wish nominate self as candidate legislative consequence from the material review of Article 240 paragraph (1) letter g of Law No. 7 of 2017 concerning Enough general elections effect on restrictions freedom ex-prisoners who wish nominate self as member legislative. 5 Year waiting period considered by the panel of judges in their considerations the law enough time for exes prisoners who wish nominate self adjust self with public.¹⁸⁵

This is a waiting period of course No let go become legislative candidates ex- prisoner For can build image they're again with build trust society to them.¹⁸⁶ Ex status prisoner build a bad stigma for

¹⁸⁴ A number of member Commission II DPR RI feels that condition letter information No Once convicted with 5 year threat more considered troublesome , especially For get letter information No Once convicted from court must Attach SKCK from the person concerned as well. Meanwhile, in Article 240 paragraph (1) letter g Law No. 7 of 2017 concerning General Election requirements legislative candidates who can register is the one that doesn't convicted more from 5 Years in accordance decision competent court , may interpreted that ex- inmates darling the sentence under 5 years in accordance with decision court entitled register self become legislative candidates in the election . Look Vitorio Mantalean and Icha Rastika, "Protesting Conditions for Court Letters Never Sentenced for Legislative Candidates," *Kompas.com* , 12 April 2023, accessed 10 February 2023, <https://nasional.kompas.com/read/2023/04/12/20341001/protest-requirements-of-court-never-convicted-for-candidates-members-of-dpr>.

¹⁸⁵ Fitria Chusna Farisa, "Reasons for the Constitutional Court to Set a 5 Year Pause Period for Ex-Convicts to Become Legislative Candidates," *Kompas.com* , 30 November 2022, accessed 11 February 2024, <https://nasional.kompas.com/read/2022/11/30/18301831/alasan-mk-set-a-5-year-gap-for-ex-convict-to-be-a-legislative-candidate>.

¹⁸⁶ Valentina Mariama Sadeadema, "Elections and Corruption (Dilemma of Contesting Legislative Candidates Former Corruption Convicts in the 2019 Legislative Election)," *Transformative Journal* Vol. 5, no. 2 (2019): 52–72, <https://doi.org/10.21776/ub.transformative.2019.005.02.4>.

candidate member legislative. Although has undergo punishment and possession the same rights as other citizens, former prisoner often Still facing stigma and discrimination in societ. This can difficult they for recognized and accepted as candidate legislative potential by voters and parties related.¹⁸⁷

In accordance with the judge's consideration is that granting and enactment condition cumulative on the former prisoners who wish nominate self as candidate member legislative aim create democracy with integrity without rule out right basic from ex- prisoner. It has been stated in the legal considerations in the Decision Court Constitution No. 87/PUU-XX/2022 which is silent, namely:¹⁸⁸

"... Therefore That's for protection more interest big , that is , in this case it is of interest public will a leader who is clean , has integrity and is capable give service good public as well as presenting well-being for the community he leads , the Court No find any other way except enforce condition cumulative as contained in the legal considerations of the decisions Court Constitution that has quoted above and last confirmed in the ruling Decision Court Constitution Number 56/PUUXVII/2019. Additionally , step this is also seen important by the Court for the sake of providing legal certainty as well return meaning essential from election candidate members of the DPR, provincial DPRD , and district / city DPRD , namely produce people who have quality and integrity For become official public and at the same time not remove right political ever citizen become convict For still join in participate in government ."

¹⁸⁷ Aufa Dianto, "Negative Stigma Against Ex-Convicts," *Kompasiana* , 11 December 2020, accessed 11 February 2024, <https://www.kompasiana.com/aufadianto/5fd33307d541df709d6210f2/stigma-negatif-terhadap-mantan-narapidana>.

¹⁸⁸ Look Legal considerations , Decision court Constitution No 87/PUU-XX/2022, 34.

The judge's considerations were adjusted with principle democracy and participation public .¹⁸⁹ That the panel of judges explained that one application the applicant is under repair Introduction I that ex- prisoner No can nominate self as member legislative because Article 240 paragraph (1) letter g of Law No. 7 of 2017 does not contains sufficient legal norms For prevent candidates who don't integrity and occurrence *abuse of power*, though deep decision previously ex- prisoner Already allowed nominate self as head area , so the judge considers reason applicant the No fair .¹⁹⁰

Because it's under consideration the law the panel of judges gave reason additional waiting period of 5 years so that the public can consider it candidate the worthy chosen or no, in the legal considerations the panel of judges explained as follows:¹⁹¹

"... Thereby case condition exists must explain in a way open to public about teak himself and not cover background behind his life is in order give material consideration for candidate selective in judging or determine his choice. Because, related with This is it, voters can in a way critical evaluate candidate who will he chose as choice good who has lack nor excess for known by the public general (*notoir feiten*). Therefore That's it, this matter comes home to public or the people as voters for give his voice to candidate who is a ex- convict or No give his voice to candidate the. Additionally, for charging position through elections (*elected officials*), at the end society that has sovereignty highest that will be determine choice;"

¹⁸⁹ Satriya Nugraha, "Community Participation for Regional Government in the Democratic System in Indonesia," *Moarality Journal of Legal Sciences* Vol. 6, no. 1 (2020): 20, <https://jurnal.upgriplk.ac.id/index.php/morality/article/view/167>.

¹⁹⁰ Look statement Chairman Suhartoyo [37.57], Treatise Hearing Case No 87/PUU-XX/2022 Examination Procedure Introduction (I), 13-14.

¹⁹¹ Look legal considerations , decisions court Constitution No 87/PUU-XX/2022, 34.

Based on exposure on that's it draft cumulative on requirements nomination ex- inmates as candidate legislative with consideration right human rights and godliness presenting candidate with integrity darling capable give service good public for well-being the society he leads.

3. Addition Studies Withholding of Political Rights in Article 11 paragraph (6) PKPU No. 10 of 2023

Formation KPU regulations are one of them authority attributive Commission General Election as the organizing institution election general. KPU regulations can positioned as rule executor from herarkie rule above, incl into it is Decision Court Constitution.¹⁹² Decision Court Constitution Court results from each material test Indonesian citizens are guaranteed its *legal standing*.¹⁹³

Court Constitution has publish decision related condition right political ex- prisoners who wish nominate yourself in the election general. Simultaneously with will implemented it election general in 2024, the KPU will issue KPU Regulation No. 10 of 2023. KPU Regulation No. 10 of 2023 invites controversy for legal observers who judge this rule does not in accordance If positioned as rule executor

¹⁹² Dedi Sumanto and Salahuddin Nggilu, "The Position of General Election Commission (PKPU) Regulations in the Legislation of the Republic of Indonesia," *Datuk Sulaiman Law Review* Vol. 1, No. 1 (2020): 42-43, <https://ejournal.iainpalopo.ac.id/index.php/dalrev/article/view/1594>.

¹⁹³ Article 51 paragraph (1) Law No. 24 of 2003 concerning court Constitution .

Decision Court Constitution No 87/PUU-XX/2022 concerning right political ex- prisoner deep election legislative ¹⁹⁴

By hierarchically, KPU regulations are at the bottom Decision Court Constitution (MK), which must compatible or not contradictory with MK decision. On the issues discussed The KPU regulations should be become implementation from MK decision, no conforming and violating fill the Constitutional Court's decision has been made explained previously.¹⁹⁵

Regulation No. 10 of 2023 is related condition candidates for DPR, Provincial DPR, Regency /City DPR, Article 11 paragraph (5) and paragraph (6) reads:

Article 11 paragraph (5):¹⁹⁶

" Condition has pass period 5 (five) years after ex- convict finished undergo criminal prison based on decision the court has obtain permanent legal force as referred to in paragraph (1) letter g, calculated since date finished serving his sentence so that No have connection in a way technical and administrative with the organizing ministry affairs governance in the field of law and rights basic human, and uncountable until with day the last period for submitting prospective candidates."

Article 11 paragraph (6):¹⁹⁷

" Provision as referred to in paragraph (5) no applies if otherwise determined by the decision the court has obtain

¹⁹⁴ Fath Putra Mulya, "Civil Society Coalition Submits PKPU 10 and 11 2023 Material Test to the Supreme Court," *Antara*, 12 June 2022, accessed 15 February 2024, <https://www.antaraneews.com/berita/3584043/koalisi-community-sipil-submit-pkpu-10-and-11-2023-material-test-to-MA>.

¹⁹⁵ Maria Farida I., *Legislative Science: Process and Techniques for Its Formation* (Yogyakarta: Kanisius, 2007), 2.

¹⁹⁶Article 11 paragraph (5) PKPU No. 10 of 2023 is taken from legal considerations [3.13] and amar Decision Court Constitution No 87/PUU-XX/2022. See Article 11 paragraph (5) PKPU No. 10 of 2023.

¹⁹⁷Article 11 paragraph (6) PKPU No. 10 of 2023 is taken from legal considerations [3.12.2] which is the obiter dicta of Decision Court Constitution No 87/PUU-XX/2022.

permanent legal force for criminal addition revocation right politics.

The provisions in the KPU Regulations which state " if otherwise determined " regarding revocation right politics. This provision requires determination duration revocation right political when defendant charged criminal prison with range time certain, have explained with detailed in accordance with Article 38 paragraph (1) number 3 of the Criminal Code which reads:

Article 38 paragraph (1) number 3:¹⁹⁸

"in matter criminal fine, duration revocation for a minimum of two years and a maximum of five years."

According to Chairman of the KPU Hasyim Asy'ri provision the exception in Article 11 paragraph (6) arises based on Decision Court Constitution No. 87/PUU-XX/2022 ¹⁹⁹in the legal considerations of the panel of judges is precisely based on legal considerations [3.12.2] which reads:²⁰⁰

"...Court opinion that the legal norm which states " no Once sentenced criminal prison based on decision the court has have permanent legal force Because do follow threatened punishment criminal prison 5 (five) years or "more" as stated in Article 12 letter g and Article 50 paragraph (1) letter g of Law No. 10 of 2008 and Article 58 letter f of Law No. 12 of 2008 are unconstitutional legal norms conditional (*conditionally unconstitutional*). These legal norms is unconstitutional if No fulfilled terms as

¹⁹⁸Article 38 paragraph (1) number 3 of the Law Code Criminal .

¹⁹⁹ Vitorio Mantalean and Icha Rastika, "KPU Denies ICW Regarding Smuggled Articles That Make It Easier for Ex-Corruptors to Nyaleg," *Kompas* , 23 May 2023, accessed 15 February 2024, <https://nasional.kompas.com/read/2023/05/23/22225941/kpu-bantah-icw-about-smuggled-articles-which-make-it-easier-for-ex-corruptors-legislation>.

²⁰⁰ Can seen in points the second one which reads " Applicable limited For period 5 (five) years after ex- convict finished undergo criminal prison based on decision the court has have permanent legal force ". Look Legal considerations 3.12.2, Decision Court Constitution No 87/PUU-XX/2022, 29.

follows: 1. Applicable No For positions elected public (*elected* officials) throughout No sentenced criminal addition form revocation right choose by verdict the court has have permanent legal force ; 2. Apply limited For period 5 (five) years after ex- convict finished undergo criminal prison based on decision the court has have permanent legal force ; 3. Honesty or openness about background behind teak himself as ex- convict ; 4. No as perpetrator repeated crimes . ”

considerations [3.12.2] in the Decision Court Constitution No. 87/PUU-XX/2022 is intended is only For give explanation addition to previous MK decision ie Decision Court Constitution Number 4/PUU-VII/2009. These considerations are just that works as explanation informational and not become base from fill the Constitutional Court's decision, which is called as part from consideration *obiter dictum*. *Black's Law Dictionary*, *obiter dicta (obiter dictum)* defined as relevant judge's statement with view or his considerations to a case or matter , which can be covers view to rule , principle , or application of the law, or Possible is answer on questions that don't directly related to the essence of the matter . The purpose of use of *obiter dicta* in decisions is For clarify principles and rules the law will used by the judge in his considerations,²⁰¹ but *obiter dicta* No own binding legal force like fill verdict. There are legal considerations binding (*ratio decidendi*) if directly related to fill verdict.²⁰²

²⁰¹ Henry Campbell Black, *Black's Law Dictionary* (Minnesota: West Publishing, 1968), 241. See in Larengam , “ The Urgency of Obiter Dicta in Case Judge Decisions Civil Law ,” *Lex et Societatis* Vol. 3, no. 10, (2015): 96. <https://doi.org/10.35796/les.v3i10.10335>.

²⁰² Basuki Rekso Wibowo, "Legal Reform with the Face of Justice," *Varia Judicial: Legal Magazine* Vol. 27, no. 313 (December 2011): 106.

Generally in the Indonesian legal system, *obiter dicta* only applied in civil cases if the core of the problem No revealed in a way clear although has through a long process of proof,²⁰³ but different case with considerations in the Constitutional Court's decision Number 87/PUU-XX/2022 in the case of reviewing the law, where are the reasons substantial from fill The Constitutional Court's decision has been made explained with clear, that is, under consideration Court Number [3.13]. Basic consideration from fill decision Court Constitution is condition that ex- convict must wait for 5 years after finished undergo punishment prison, which is found on pages 33-34 of the *a quo* Constitutional Court decision.²⁰⁴

Based on description above can be interpreted that the KPU added reasons cutting right political as 5 year waiting period for ex-prisoners who wish nominate self as members of the DPR, Provincial DPR, Regency /City DPR after intertwine criminal period in accordance decision competent court is legal considerations of the assembly precisely on legal considerations [3.12.2] Decision Court Constitution No 87/PUU-XX/2022. Legal considerations [3.12.2] are considered as *obiter dictum* that is the judge's statement is in the form of opinion or statement given by the judge in the decision a court that is not is part from *decidendi ratio*, ie reason or main legal basis For

²⁰³ Masni Larengam, "The Urgency of Obiter Dicta in Judges' Decisions in Civil Cases," *Lex et Soietatis* Vol. 3, no. 10 (2015): 97, <https://doi.org/10.35796/les.v3i10.10335>.

²⁰⁴ Look Legal considerations , Decision Court Constitution No 87/PUU-XX/2022, 33-34.

decision the. *Obiter dictum* often is nature of opinion speculative , views private , or explanation additions that don't essential For case resolution .

C. Reconceptual Design Legal Implications After Constitutional Court Decision No. 87/PUU-XX/2022 Against Election 2024 Legislature Based on Maslahah Theory Al-Ghazali's perspective

1. Analysis Suitability Decision Court Constitution No 87/PUU-XX/2022 Based on *Maslahah* Al-Ghazali's Theory

On Wednesday, November 11 2022 Mahkamah Constitution decide For grant part application for material review submitted by applicant Leonardo Siahaan regarding Article 240 paragraph (1) letter g of Law No. 7 of 2017. The essence of the application submitted applicant that Article 240 paragraph (1) letter g of Law N0 7 of 2017 , especially in the phrase " ... *in general open and honest put forward to public that in question ex- convict* " is considered No has strong legal norms in dealing with and selecting candidate legislature that does not interaction as well as worries exists *abuse of power* by groups certain

.²⁰⁵

On the legal considerations of the assembly mention that based on must done equalization of existing article norms addition condition for ex- inmates who wish nominate self as member legislative .

²⁰⁵ Tri Meilana Ameliya, "ICW Appreciates the Constitutional Court's Decision Regarding the Prohibition of Former Convicts from Becoming Legislative Candidates," *Antara* , 1 December 2022, accessed 17 February 2024, <https://www.antaranews.com/berita/3280031/icw-apresiasi-bangunan-mk-related-to-the-prohibition-on-ex-convicts-becoming-legislative-candidates>.

Condition the nature cumulative referring to the norms of Article 7 paragraph (2) letter g of Law No. 10 of 2016 which requires ex-inmates yng reliable nominate self as candidate legislative must past the 5 year waiting period For adapt yourself in society .²⁰⁶

Decision Court Constitution No. 87/PUU-XX/2022 which is still valid allow nomination ex- prisoners in elections legislative with pass a number of condition certain Still Lots searching party from side its benefits . Especially in Indonesia, which is the majority various Muslims. Although No arranged directly in *the text* regarding nomination law ex- prisoners in elections legislative , but in responding Decision Court Constitution that Islam has knowledge ushul fiqh contained therein There is a *Maslahah* Theory in responding a law of side its benefits for public wide .

One of the scholars who has view special towards *Maslahah* Theory is Imam al-Ghazali. Al-Ghazali argued essence from draft *thank you* is For take advantages and avoidance loss with objective guard principles Sharia . For him , a profit must be in line with objective Sharia , even If contradictory with desire human , because interest man No always based on will Sharia , however often influenced by desire weather lust . The objective of the Shari'a must be guarded , according to Al-Ghazali, includes maintain religion, soul , mind , offspring and property . If any action done For guard fifth

²⁰⁶ Look legal considerations , decisions Court Constitution No 87/PUU-XX/2022, 33-34.

aspect objective Sharia that , then called as thank you . On the other hand , effort For reject all form associated losses with fifth aspect objective Sharia is also considered as thank you .²⁰⁷

Based on explanation above , yes understood that Imam Al-Ghazali defined thank you as business For guard the objectives of Islamic law, namely protect religion, soul , mind , offspring and property object . Everything with purpose For guard fifth the purpose of Islamic law called as thank you . On the contrary , things are destructive or obstruct the five objectives of Islamic law called as *mafsadat* , and because That business For reject and avoid it called thank you .

Reviewed from importance and quality Maslahah , expert ushul fiqh share Maslahah into 3 levels , namely :²⁰⁸

a. *Al- Maslahah al- Dharuriyyat*

Maslahah Dharuriyyat refer to related interests with need principal man both in this world and in the afterlife . This interest has very crucial role in life human , because its incompleteness can result destruction , disaster , and damage to life man . This *issue* includes aspects like maintenance of religion, existence self , reason , offspring , and wealth . Example concrete from maintenance descendants and wealth can found in activities muamalah like interaction social with fellow man .

c. *Al Maslahah al- Hajiyyat*

Maslahah Hajiyyat is complementary interests interest principal as well as overcome difficulty faced man . This is legal principles that provide lightness in life man . In context Muamalat , this relief is reflected in the permit For do transaction sell buy greetings , as well cooperation in the field Agriculture and farming .

²⁰⁷ Nasrun Haroen, *Ushul Fiqh* , Volume I (Jakarta: Logos Wacana Ilmu, 2011), 114.

²⁰⁸ Firdaus, *Ushul Fiqh: Methods for Comprehensively Studying and Understanding Islamic Law* (Depok: Rajawali Pers, 2017), 93-94.

d. Al- Maslahah al- Tahsiniyat

Maslahah tahsiniyat is nature of interest as complement . The goal is For improve morals and morals . When these interests are not fulfilled in life humans , no will give rise to significant damage . For example , in the context of worship, necessity guard cleanliness , closing private parts , and use decent clothes .

Previously permissibility nomination ex- prisoner as candidate members of the DPR, Provincial DPR , Regency /City DPR have guaranteed in Article 240 paragraph (1) letter g of Law No. 7 of 2017 concerning General elections . That ex- prisoner can nominate self as members of the DPR, Provincial DPR , Regency /City DPR as appropriate condition No Once convicted prison more from 5 Years based on decision court authorized and excepted open openly and honestly with the public that in question ex- prisoner .²⁰⁹

Post Verdict Court Constitution No 87/PUU-XX/2022 concerning allowed ex- prisoner nominate self return as members of the DPR, Provincial DPR , Regency /City DPR.²¹⁰Announce the verdict from court This constitution has two perspectives , first the judge's decision can be seen from perspective right constitutional ex- prisoner in attendance as well as in government which is guaranteed by the 1945 Constitution as constitution second highest seen from sudit look public lay as voters whose rights are also guaranteed by the constitution .

²⁰⁹Article 240 paragraph (1) letter g Law No. 7 of 2017 concerning General elections .

²¹⁰Look amar verdict , Verdict Court Constitution No 87/PUU-XX/2022, 36.

Decision Court Constitution No 87/PUU-XX/2022 if look from perspective ex- prisoner , this decision is favorable they (give benefit), because ex- prisoner can nominate self return as member legislature in elections after serving a criminal term No more from 5 Years in accordance decision competent court and undergo a waiting period for 5 years with the aim as an adjustment period yourself in society .²¹¹

Consideration the law assembly opinion that No There is choice besides add 5 year waiting period requirement for the former prisoner yng nominate self as candidate legislative , so condition become nature cumulative . Assembly can't forbid it ex- prisoner nominate self as candidate member legislative Because right human rights guaranteed in the constitution For own equal status under the law. Meanwhile the waiting period considered for majestic as an adjustment period ex- prisoners in society and consideration for voters For determined Oantas candidate elected in the election , so The legal considerations of this assembly are considered fair for ex- prisoners and voters .

ICW²¹² opinion that nomination ex- prisoner as candidate legislative necessity caution among ordinary people in choosing and

²¹¹Article 28 D paragraph (1) of the 1945 Constitution states " Everyone has right For acknowledged , given guarantee , given security , provided A certainty in just law , and given treatment equal under the law." In this context , it is imply that someone before Once imprisoned own right For given recognition by society , gain guarantees , protection and equal treatment in the eyes of the law.

²¹²ICW is acronym from Indonesian Corruption Wacth . ICW is organization independent of its movement oppose activity corruption with the Community.

paying attention record footsteps candidate the legislature will chosen . ICW urges the KPU to act institution organizer election general announce the list of names legislative candidate ex-prisoners to society own reference for consideration record footsteps candidate the legislature will chosen .

In line with ICW opinion , Firli Bahuri²¹³ opinion that must exists openness from ex- nominating prisoners self as naggota legislative to the status as ex- prisoner to public . Openness identity the aim as consideration to voters For determine his choice in the election .²¹⁴

Based on description above , author conclude that Decision Court Constitution No 87/PUU-XX/2022 provides justice for ex-inmates who nominate self as candidate legislature and society as voter . Society as voters can consider candidate according to him worthy as candidate legislature within the mandatory 5 year waiting period carried out ex- prisoner after finished serving his criminal term and disclosure of status to the public must done ex- prisoner . Whereas permissibility nomination ex- prisoner as candidate member legislative is form guarantee right basic human beings as

²¹³ Firli Bahuri is retired appointed police officer become Chairman of the Corruption Eradication Committee for the 2019-2023 term , before Finally arrested in a blackmail case to former Minister of Agriculture Syahrul Yasin Limpo.

²¹⁴ Azhar Bagas Ramadhan, "Firli Bahuri Regarding Ex-corruptor Nyaleg: Must Announce It to the Public," detikNews, 2023, <https://news.detik.com/pemilu/d-6905050/firli-bahuri-soal-ex-corruptor-nyaleg-must-be-announced-to-the-public>.

stated in the 1945 Constitution , namely every Indonesian citizens have equal status before the law.

Refers to understanding The problem mentioned by al-Ghazali is that Something things can be mentioned as thank you if aim expediency and exclusion harm as well as fulfill the 5 principles that is that is *hifzh ad- din* (religion), *hifzh an- nafs* (soul), *hifzh al- ' aql* (reason), *hifzh an- nasl* (descendants), and *hifzh al- maal* (treasure).²¹⁵ Following explanation analysis in the table :

Table 3.4
Suitability Elements Legal Considerations of Decision No. 87/PUU-XX/2022
Based on Principles Maslahah Al-Ghazali

No	Principles Maslahah According to al-Ghazali	Elements Decision Legal Considerations Court Constitution No 87/PUU-XX/2022
1	<i>Hifzh ad-din</i> (religion) ²¹⁶	on elements Hifzh ad-din (religion) ratio decidendi this yet fulfill it . No There is element emergencies that affect and can endanger religion. related permissibility ex-prisoner nominate self as candidate members of the DPR, Provincial DPRD , and Regency /City DPRD, assembly constitution No ad element coercion choose ex- convicts in elections , but public can consider the choices are many candidate with openness record traces to the public . so that This is not look can harming religion, where public as voters provided Lots choice candidate from those who have record clean trail as well as vision appropriate mission and the candidate who

²¹⁵ M. Najich Syamsuddini, "The Concept of Al-Maslahat Al-Murlah According to Imam Al-Ghazali and Imam Malik (Exclusive and Inclusive Studies)," *Al Yasini: Islamic, Social, Legal and Educational Journal* Vol. 7, no. 1 (2022): 106, <https://doi.org/10.55102/alyasini.v7i2.4691> .

²¹⁶ Safeguarding religion is one of the elements of Maslahah Dharuriyyat. The idea is acceptable because it refers to the three qualifications above, namely emergency conditions because it contains steps to protect one of these principles, namely preserving life and this can guarantee the lives of Muslims. This problem is universal because it considers the whole society, not some parts of society. Quoted by Nur Asiah Kudaedah, "Maslahah According to the Concept of Imam Al Ghazali," *Diktum: Journal of Sharia and Law* Vol. 18, no. 1 (2020): 123–124, <https://doi.org/10.35905/diktum.v18i1.663> .

		has recap footsteps as ex- prisoners who have served his sentence and has adapt yourself in society with serving a 5 year waiting period .
2	<i>Hifzh an- nafs</i> (Soul) ²¹⁷	Form guarding soul in the ratio decidendi in the a quo decision , namely form restrictions right constitutional ex- prisoner as candidate members of the DPR, Provincial DPRD , and Regency /City DPRD, are more concerned with recovery integrity ex- inmates who nominate self . addition 5 year waiting period requirement as means adjustment ex- prisoner in society For build his image return and openness record traces to the public . consideration in the future For create and maintain integrity leadership and service generally satisfactory for society , so exists prosperity for the society he leads .
3	<i>Hifzh al -' aql</i> (reason) ²¹⁸	The phrase “... in order give material consideration for candidate selective in judging or determine his choice . Because , related with This is it , voters can in a way critical evaluate candidate who will he chose as choice good who has lack nor excess For known by the public general (<i>notoir feiten</i>).” The judge granted spaciousness for society as voters For think critical in determining legislative candidates who will he chose .
4	<i>Hifzh an- nasl</i> (descendant) ²¹⁹	In amar the verdict assembly set a number of condition for ex- inmates who nominate self as candidate member legislative among them is No pass criminal prison more from 5 Years in accordance decision competent court , bypassing the 5 year waiting period after

²¹⁷ Among the shari'ah that are required to maintain the soul is the obligation to try to obtain food, drink and clothing to maintain life. Likewise, the obligation to qshas or prosecute people who commit crimes. Quoted by Sahibul Ardi, "The Concept of Maslahah in the Ushuliyin Perspective," *An-Nahdhah* Vol. 10, no. 20 (2017): 233–58, <https://www.jurnal.staidarululumkandangan.ac.id/index.php/annahdhah/article/view/54> .

²¹⁸ Among the shari'ah that are required to maintain reason is the obligation to abandon drinking alcohol and everything that is intoxicating. Likewise torturing people who drink it. Quoted by Maghfur Ahmad, "Nahdhatul Ulama and the Enforcement of Human Rights in Indonesia," *Religia* Vol. 13, no. 2 (2010): 175–90.

²¹⁹ Among the shari'ah that are required to maintain offspring is the obligation to refrain from committing adultery. Likewise, the punishment imposed on adultery perpetrators, male or female. M. Najich Syamsuddini, "The Concept of Al-Maslahat Al-Murlah According to Imam Al-Ghazali and Imam Malik (Exclusive and Inclusive Studies)," *Al Yasini: Islamic, Social, Legal and Educational Journal* 7, no. 1 (2022): 103, <https://doi.org/10.55102/alyasini.v7i2.4691> .

		serve a criminal term , be open and honest regarding the former's status prisoner to public . And within the requirements nomination ex- prisoner as candidate member legislative only follow a number of follow crimes that pass the qualifications . This is for avoid follow criminal repetition that smears integrity candidate leaders and those who harm public . ²²⁰
5	<i>Hifzh al- maal</i> (treasure) ²²¹	Based on legal considerations , this is fulfilled element <i>hifzh al- maal</i> , meaning No there is prohibitions and restrictions in a way intact right constitutional ex- prisoners who wish nominate self as candidate members of the DPR, Provincial DPRD, Regency /City DPRD . This constitutional right can likened as mandatory assets maintained , through material testing ex- prisoner fight for right constitutional as an Indonesian citizen for entitled nominate self as candidate members of the DPR, Provincial DPRD, Regency /City DPRD . In Law No. 7 of 2017 concerning Elections and some Former Constitutional Court decision prisoner can nominate self as candidate members of the DPR, Provincial DPRD, Regency /City DPRD and even head area .

Source : Analysis writer from various source 2024

From legal considerations of the Decision Court Constitution No. 87/PUU-XX/2022 which is stated in the legal considerations states that assembly No own other choice than than do equalization of the norms of Article 240 paragraph (1) with added a 5 year waiting period in accordance reference to norms in Article 7

²²⁰ Look amar verdict , Verdict Court Constitution No 87/PUU-XX/2022.

²²¹ Among the sharia requirements for maintaining property is the obligation to maintain property, which has a broad meaning, including protecting property from damage, neglect and criminal acts. This principle also includes activities such as saving, investing and giving charity for public and personal interests that bring goodness. Yarif Hidayatullah, "Maslahah Murlah According to Al-Ghazali," *Al-Mizan* Vol. 4, no. 1 (2018): 115–36, <https://www.ejurnal.iiq.ac.id>.

paragraph (2) letter g of Law No. 10 of 2016.²²² Equating norms aims For fulfil legal certainty of norms of Article 240 paragraph (1) letter g of Law No. 7 of 2017 concerning General Election not yet fulfill the 5 principles *maslahah* according to al-Ghazali which is 5 principles *thank you* .²²³ Precisely on *Hifzh ad-din* (religion) ie religious protection . Permission ex- inmates nominate self as members of the DPR, Provincial DPRD , and Regency /City DPRD are not own element endangering religion and Muslims . Assembly Constitution No force For choose ex- convicts in elections , but assembly give public material considerations and materials think For determined candidate worthy leader chosen . So that can concluded that decision choose Good the bad leader returned to consideration society as voter .

P messenger Court Constitution No 87/PUU-XX/2022 status only grant part with legal considerations for equalizing norms in articles . Precisely in legal considerations [3.13] paragraph 3 which reads :

" With Thus , based on description legal considerations , the Court opinion to the norm provisions of Article 240 paragraph (1) letter g of Law 7/2017 are necessary done alignment with applies also to wait period 5 (five) years after ex- convict finished undergo criminal prison based on decision the court has have permanent legal force and existence honesty or openness about background behind teak himself as ex- convict

²²²Article 7 paragraph (2) letter g Law No. 10 of 2016 concerning Change Second on the Law Number 1 of 2015 Concerning Determination Regulation Government Replacement Constitution Number 1 of 2014 Concerning Election Governor Regent and Mayor Become Constitution .

²²³ Firdaus, *Ushul Fiqh: Methods for Comprehensively Studying and Understanding Islamic Law* , 93.

as condition candidate members of the DPR, Provincial DPRD, and Regency /City DPRD , in addition Other conditions were also added as meaning constitutional in a way conditions contained in Article 7 paragraph (2) letter g Law 10/2016..."

This decision can be made said in accordance with Al-Ghazali's *Maslahah* Theory based on the level . Tiers *the problem* in question is *Maslahah Hajjiyat* is complementary interests interest principal as well as overcome difficulty faced man . This is legal principles that provide lightness in life man . ²²⁴In context muamalah , assembly decide For add a 5 year waiting period as an adjustment period for ex- convicts and consideration period for voters For evaluate worthy candidate For chosen as candidate members of the DPR, Provincial DPRD, Regency /City DPRD .

2. Take a Look *Ratio Decidendi* Decision Court Constitution No 87/PUU-XX/2022 According to *Maslahah* Al-Ghazali's Theory

The judge's decision is a statement delivered by a judge in court with objective For end or finish a case or dispute between the parties involved. Not only saying the so -called verbal as verdicts, but also written and later statements pronounced by the judge in court considered as verdict. Draft decision written No own strength as decision before be spoken in a way verbally in court by the judge. The verdict pronounced in court No can contradictory with what is written, and sometimes called as verdict.

²²⁴ Amir Syarifudin, *Ushul Fiqh* , Volume 2 (Jakarta: Kencana Prenada Media Group, 2009), 348-350.

²²⁵According to I Rubini and Chidir Ali, the verdict is deed closing of a legal process case, is also known as verdict, which contains final legal conclusions from the judge along with the consequences.²²⁶

Ratio decidendi is a Latin legal term which is literally means "reason decision". In a legal context, this term refers to the basis or existing legal principles base or reason main from A decision court or the judge's decision in a particular case.²²⁷

Ratio decidendi reflect understanding and interpretation of the law applied by the court in resolving the case, and often becomes base or precedent for similar cases in the future. In other words, it is argument or essential explanation For determine decision in a particular case.²²⁸

Published Decision Court Constitution No 87/PUU-XX/2022 concerning requirements nomination ex- prisoner as candidate members of the DPR, Provincial DPR, Regency /City DPR added reference permissibility nomination ex- prisoners in elections legislative. Especially *on the ratio decidendi* from Decision Court Constitution No 87/PUU-XX/2022 which contains the judge's consideration in making his decision matter.

²²⁵ Sunarto, *The Active Role of Judges in Civil Cases* (Jakarta: Prenada Media, 2019), 191.

²²⁶ I Rubini and Chidir Ali, *Introduction to Civil Procedure Law* (Bandung: Alumni, 1974), 105.

²²⁷ Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2017), 53.

²²⁸ Arga Andhika Putra Wibawa and Nynda Fatmawati Octarina, "Ratio Decidendi of the State Administrative Court in Cases of Dismissal of Civil Servants," *Bureaucracy Journal : Indonesia Journal Of Law And Social-Political Governance* Vol. 3, no. 1 (2023): 1131, <https://doi.org/10.53363/bureau.v3i1.288>.

Expediency Decision Court Constitution No. 87/PUU-XX/2022 will also analyzed from facet thank you according to al-Ghazali. According to al-Ghazali, literally , *maslahah* refers to taking benefits and avoidance loss . However , in context discussion This is the problem , the focus not by definition but rather on maintenance goals *shâri'at* . The purpose of the *shâri'at* for creature includes five aspects , namely maintain religion, soul , mind , offspring and property riches . Therefore that , every supportive actions maintenance on fifth principle this basis can be considered as thank you . On the contrary , action is inhibiting achievement principles the called as sorry , and refused *sorry* considered as something *thank you* .²²⁹

In the Book of *Shifa' al- Ghalil* al-Ghazali said :²³⁰

وَتُنَسَمُ قِسْمَةٌ أُخْرَى بِالْإِضَافَةِ إِلَى مَرَاتِبِهَا فِي الْوُضُوحِ وَالْحَقَاءِ، فَمِنْهَا مَا يَتَعَلَّقُ
بِمَصْلَحَةِ الْأَعْلَبِ وَمِنْهَا يَتَعَلَّقُ بِمَصْلَحَةِ شَخْصٍ مُعَيَّنٍ فِي وَاقِعَةٍ نَادِرَةٍ
وَتَتَفَاوَتْ هَذِهِ الْمَرَاتِبُ بِتَفَاوُتِ مَصَالِحِهَا فِي الظُّهُورِ، وَكَذَلِكَ حُجَّةٌ بِشَرْطِ
أَلَّا يُصَادِمَ نَصًّا وَلَا يَتَعَرَّضَ لَهُ بِالتَّغْيِيرِ

Meaning : "In other divisions , based on clear and vague Benefits , there are related benefits with benefit the majority and some are related with the benefit of certain people on rare occasions . These Level Differences are based on difference he explained benefit that and all assessed as proposition with condition benefit the not very strange , no contradictory with nash and cannot change . "

²²⁹ Abu Hamid bin Muhammad bin Muhammad Al-Ghazali, *Al-Mustasfa Min 'Itmi Ushul* , Juz II (Beirut: Dar al-Fikr, 1983), 15.

²³⁰ Abu Hamid bin Muhammad bin Muhammad Al-Ghazali, *Shifa' Al-Ghalil Fi Bayan Al-Shahabi Wa Al-Mukhayya! Wa Masalil Al- Ta'lil* (Baghdad: Matba'ah al-Irshad, 1971), 209-210.

Editorial above show al-Ghazali's clarity in judging proof *benefit ammah* , *ghalibah* and *khassah* with condition No contradictory with *nash* and *benefit* the No Possible changed . Al-Ghazali also assessed proof *benefit nadirah* though only related for certain people just .

Table 3.5
Ratio Decidendi Analysis of Constitutional Court Decision No. 87/PUU-XX/2022 Based on Maslahah Al-Ghazali

No	Contents of Judge's Considerations [3.13]	Maslahah Al-Ghazali Based on A number of Category	Information
1	<p>Paragraph 2²³¹ <i>" With Thus , based on description legal considerations , the Court opinion to the norm provisions of Article 240 paragraph (1) letter g of Law 7/2017 are necessary done alignment with applies also to waited 46 terms 5 (five) years after ex- convict finished undergo criminal prison based on decision the court has have permanent legal force and existence honesty or openness about background behind teak</i></p>	<p>Based on his level <i>Maslahah hajiyyat</i>²³²</p>	<p>Maslahah hajiyyat as level of problem secondary in nature complete . Referring to the phrase "... <i>Court opinion to the norm provisions of Article 240 paragraph (1) letter g of Law 7/2017 are necessary done alignment with applies also to waited 46 terms 5 (five) years ...</i>". Assembly decision constitution in action this alignment as complement condition ex- prisoner as candidate</p>

²³¹ Look legal considerations [[3.13]] paragraph 2, Decision Court Constitution No 87/PUU-XX/2022, 32-33.

²³² Maslahah hajiyyah is, all forms of deeds and actions that are not related to other grounds (which are in maslahah dharuriyah) which are needed by society are still realized, but can avoid difficulties and eliminate narrowness. Included in the case of Hajjiyah in this context is that the assembly equates the norms of Article 240 paragraph (1) letter g of Law No. 7 of 2017 with the norms of Article 7 paragraph (2) letter g of Law No. 10 of 2016. The equalization of the norms of this article can fulfill the previous requirements It has been included in Law No. 7 of 2017, so that the requirements for former prisoners as candidates for members of the DPR, provincial DPRD and district/city DPRD are cumulative. Quoted by Izzat Abdika Mukalafin, "Issues in the Judge's Legal Considerations in the Polygamy Permit Decision Number 0020 / Pdt. G / 2017 / PA.MN," *Ascarya* Vol. 1, No. 1 (2021): 44, <https://doi.org/10.53754/iscs.v1i1.4>.

<p><i>himself as ex- convict as condition candidate members of the DPR, Provincial DPRD, and Regency /City DPRD , in addition Other conditions were also added as meaning constitutional in a way conditions contained in Article 7 paragraph (2) letter g of Law 10/2016. Because , as has cited in the legal considerations of decisions Previously the waiting period was 5 (five) years after convict serving the criminal term is viewed time Enough For do introspection yourself and adapt with public the environment for candidate head regions , including in this case candidates members of the DPR, provincial DPRD, and district / city DPRD . Thereby case condition exists must explain in a way open to public about teak himself and not cover background behind his life is in order give material consideration for candidate selective in judging or determine his choice . Because , related with This is it , voters can in a way critical evaluate candidate who will he chose as choice good who has lack nor excess For known by the public general (notoir feiten). Therefore That's it , this matter comes home to public or the people as voters For give his voice to</i></p>		<p>existing members of the DPR, Provincial DPRD , Regency /City DPRD arranged previously in Article 240 paragraph (1) letter g Law No. 7 of 2017. Alignment of the norms of this article is in the form additional waiting period of 5 years for ex- which prisoner teha complete the criminal term and will nominate himself in the election .</p>
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	<p><i>candidate who is a ex-convict or No give his voice to candidate the . Additionally , for charging position through elections (elected officials), at the end society that has sovereignty highest that will be determine choice ;"</i></p>		
2	<p>Paragraph 3²³³ <i>" That Next , related with condition No as perpetrator follow criminal in a way over and over again important for Court For confirm return Because fact empirical show that there is a number of candidate head area ever undergo criminal or not given enough time For adapt and prove self has in a way factual immersed in society it turns out trapped back in behavior No commendable , even repeat return follow the same penalty (in casu in a way factual specifically follow criminal corruption) , so increasingly Far from objective presenting a leader who is clean , honest and has integrity . Therefore That's for protection more interest big , that is , in this case it is of interest public will a leader who is clean , has integrity and is capable give service</i></p>	<p>Based on vague and clear including Maslahah Ghalibah²³⁴</p>	<p><i>The phrase “ Because That's for protection more interest big , that is , in this case it is of interest public will a leader who is clean , has integrity and is capable give service good public as well as presenting well-being for the society he leads ,” pointed out that the judge decides a quo matter with put forward interest public wide specifically public as voters with realization leaders with integrity and creation service to good society .</i></p>

²³³ Look legal considerations [3.13] paragraph 3, Decision Court Constitution No 87/PUU-XX/2022, 33.

²³⁴ Benefits that are related to the benefit of the majority of humans, are not related to the benefit of humans as a whole and are not related to the benefit of certain people. Quoted by Mohammad Hadi Sucipto and Khotib, "The Maslahah Mursale Debate in the Books of Al-Imam Al-Ghazali," *El-Faqih: Journal of Islamic Thought and Law* Vol. 6, no. 1 (2020): 13, <https://doi.org/10.29062/faqih.v6i1.106>.

<p><i>good public as well as presenting well-being for the community he leads, the Court No find any other way except enforce condition cumulative as contained in the legal considerations of the decisions Court Constitution that has quoted above and last confirmed in the ruling Decision Court Constitution Number 56/PUU-XVII/2019. Additionally, step this is also seen important by the Court for the sake of providing legal certainty as well return meaning essential from election candidate members of the DPR, provincial DPRD, and district / city DPRD, namely produce people who have quality and integrity For become official public and at the same time not remove right political ever citizen become convict For still join in participate in government .”</i></p>		
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Source : Analysis writer from various source 2024

From a formal legal perspective in Indonesia, the judge's considerations are considered fair Because give solution for both party that is ex- prisoner as candidate legislature and society as voter . The meaning can be interpreted this ruling provides benefit for ex-prisoner as chance chance second For chosen as candidate member legislative or not harm for public as voters own choices and

considerations For choose candidate who each thinks is appropriate chosen .

Expediency Decision Court Constitution No. 87/PUU-XX/2022 will also analyzed from facet *thank you* according to al-Ghazali. According to al-Ghazali, literally , *maslahah* refers to taking benefits and avoidance loss . However, in context discussion This is the problem, the focus not by definition but rather on maintenance goals *shâri'at*. The purpose of *the shâri'at* for creature includes five aspects, namely maintain religion, soul, mind, offspring and property riches. Therefore that, every supportive actions maintenance on fifth principle this basis can be considered as *thank you*. On the contrary, action is inhibiting achievement principles the called as sorry, and refused *sorry* considered as something *thank you*.²³⁵

Based on description on *ratio decidendi* contain level *Maslahah Hajjiyyat* . *Maslahah Hajjiyyat* is complementary interests interest principal as well as overcome difficulty faced man. This is legal principles that provide lightness in life humans in context Muamalah.²³⁶ On the legal considerations of the assembly constitution opinion No There is any other way than do equalization of norms Article 240 paragraph (1) letter g Law No. 7 of 2017

²³⁵ Abu Hamid bin Muhammad bin Muhammad Al-Ghazali, *Al-Mustasfa Min 'Ilmi Ushul* , Juz II (Beirut: Dar al-Fikr, 1983), 15.

²³⁶ Amir Syarifudin, *Ushul Fiqh* , 349.

concerning General elections. Addition 5 Year waiting period requirement and not ex- the prisoner did it follow criminal repeated seen assembly constitution as road best For complete condition ability ex- prisoner.

Based on faint he explained included in the related Maslahah Ghalibah benefit public the majority, no included in benefits whole society No too benefit group certain .²³⁷ Assembly Constitution notice interest of the wider community mainly as voters to create and maintain it integrity elected leader .

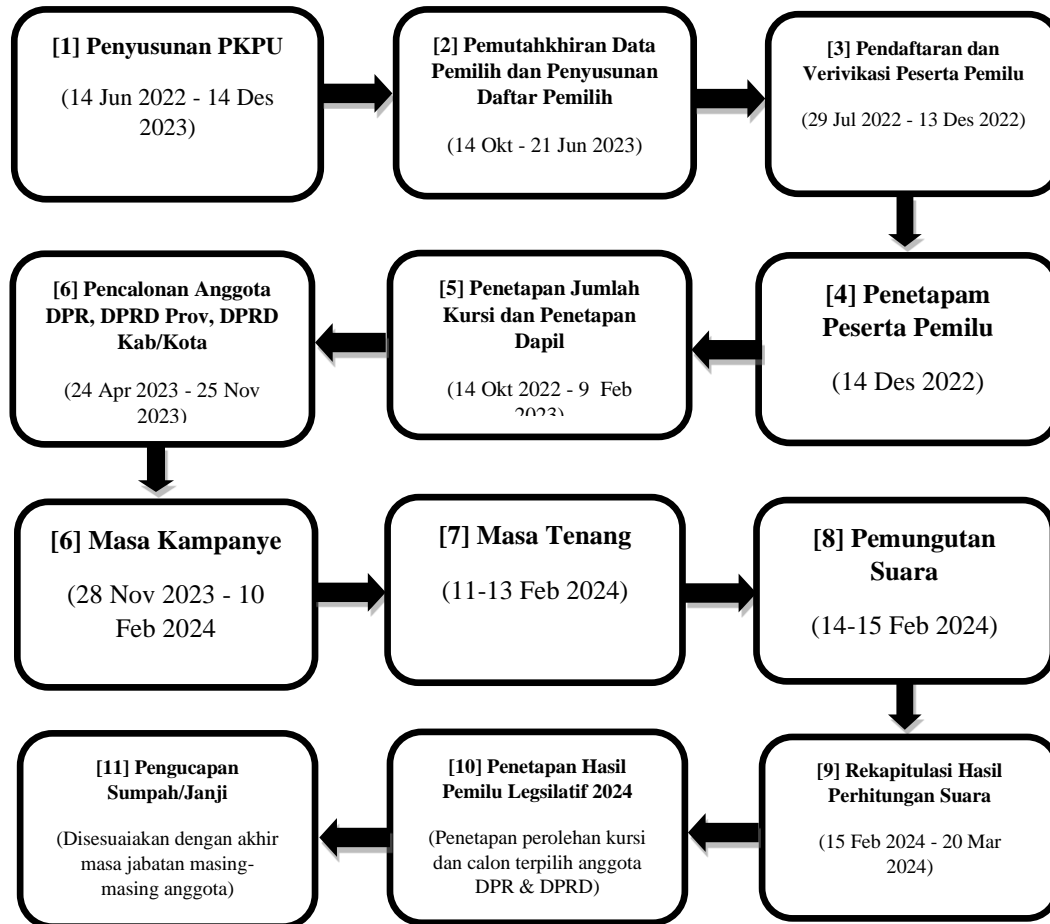
3. Reconceptual Design Condition Nomination Ex Prisoner Decision Court Constitution No 87/PUU-XX/2022

Nomination ex- prisoner as candidate members of the DPR, Provincial DPRD, Regency /City DPRD invite polemic in the registration process . Disharmonization KPU Regulation No. 10 of 2023 against Decision Court Constitution No 87/PUU-XX/2022 becomes polemic because 2024 election already operate stages election general, whereas There is a number of problem regarding PKPU No. 10 of 2023 and the Decision Court Constitution No 87/PUU-XX/2022.²³⁸ However writer will explained related stages 2024 elections in pictures following:

²³⁷ Mohammad Hadi Sucipto and Khotib, "The Maslahah Mursale Debate in the Books of Al-Imam Al-Ghazali." 13.

²³⁸ Yulida Medistiara, "MA Urged to Immediately Read Decision on PKPU Judicial Test for Ex-Corruptor to Advance to Legislative Election," detikNews, 14 August 2023, accessed 6 March 2024,

Figure 3.2
Stages Election 2024 Legislature



Source : PKPU No. 3 of 2022 concerning Stages and Schedule of Implementation Election Year 2024

In accordance with the timeline shared by the drafting KPU KPU regulations begin from June 14 2022 – December 14 2023, onwards April 18 2023 promulgation of PKPU No. 10 of 2023 as legal regulations as signs election legislative 2024. On 24 April 2023 – 25 November 2023 elections Already enter nomination member nomination members of the

<https://news.detik.com/berita/d-6875534/ma-didesak-segera-read-out-the-pkpu-ex-corruptor's-judicial-trial-decision-to-advance-in-legislative-elections>.

DPR, Provincial DPRD , and Regency /City DPRD 2024.²³⁹ Then on September 29 2023 it was issued Decision Supreme Court No. 28 P/HUM/2023 concerning material review of Article 11 paragraph (6) PKPU No. 10 of 2023,²⁴⁰ furthermore KPU's response regarding the material test of Article 11 paragraph (6) PKPU No. 10 of 2023 is that the material test the contradictory with Article 76 paragraph (3) Law no. 7 of 2023 ²⁴¹which reads :²⁴²

“Application testing as referred to in paragraph (2) is submitted to Supreme Court no later than 30 (three twenty) days Work since KPU regulations promulgated .”

Here's the process harmonizing the registration process ex-prisoner as candidate members of the DPR, Provincial DPRD, Regency /City DPRD :

²³⁹ KPU Regulation No. 3 of 2022 concerning Stages and Implementation Schedule General Election in 2024.

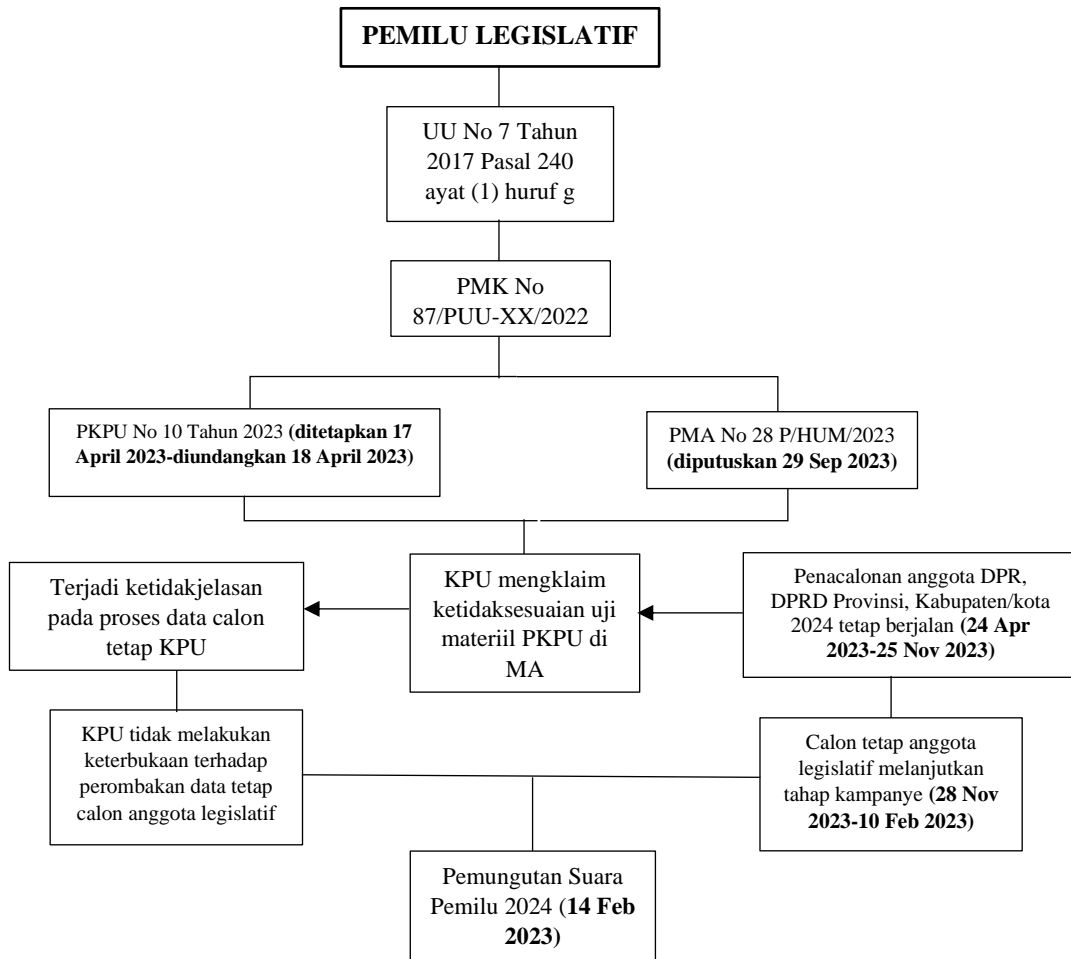
²⁴⁰ JDIH BPK, "KPU Regulation No. 10 of 2023 concerning Nominations of Members of the People's Representative Council, Provincial Regional People's Representative Council, and Regency/City Regional People's Representative Council," JDIH BPK, 2023, accessed March 6 2024, <https://peraturan.bpk.go.id/Details/249179/peraturan-kpu-no-10-Tahun-2023>.

²⁴¹ Andi Saputra, "KPU's response to the Supreme Court's decision to grant the lawsuit of a former Nyaleg prisoner," detikNews, 30 September 2023, accessed 12 March 2024, <https://news.detik.com/pemilu/d-6958569/respons-kpu-soal-ma's-decision-which-granted-his-ex-convict's-lawsuit>.

²⁴²Article 76 paragraph (3) Law no. 7 of 2023 concerning Determination Regulation Government Replacement Constitution Number 1 of 2022 Concerning Changes to the Law Number 7 of 2017 Concerning General Elections Become Law.

Figure 3.3

Election Disharmonization Process 2024 Legislature .



Source : Analysis writer originate from various source 2024

Information :

- a. Election 2024 legislature set according to Law No. 7 of 2017, meanwhile condition nomination ex- prisoner as candidate members of the DPR, Provincial DPRD , Regency /City DPRD are regulated in Article 240 paragraph (1) letter g of Law No. 7 of 2017.
- b. Article 240 paragraph (1) letter g Law No. 7 of 2017 underwent a material review at the Constitutional Court so that condition

nomination ex- prisoner as candidate members of the DPR, Provincial DPRD , Regency /City DPRD become nature cumulative consequence equalization of article norms which refer to the norms of Article 7 paragraph (2) of Law No. 10 of 2016.

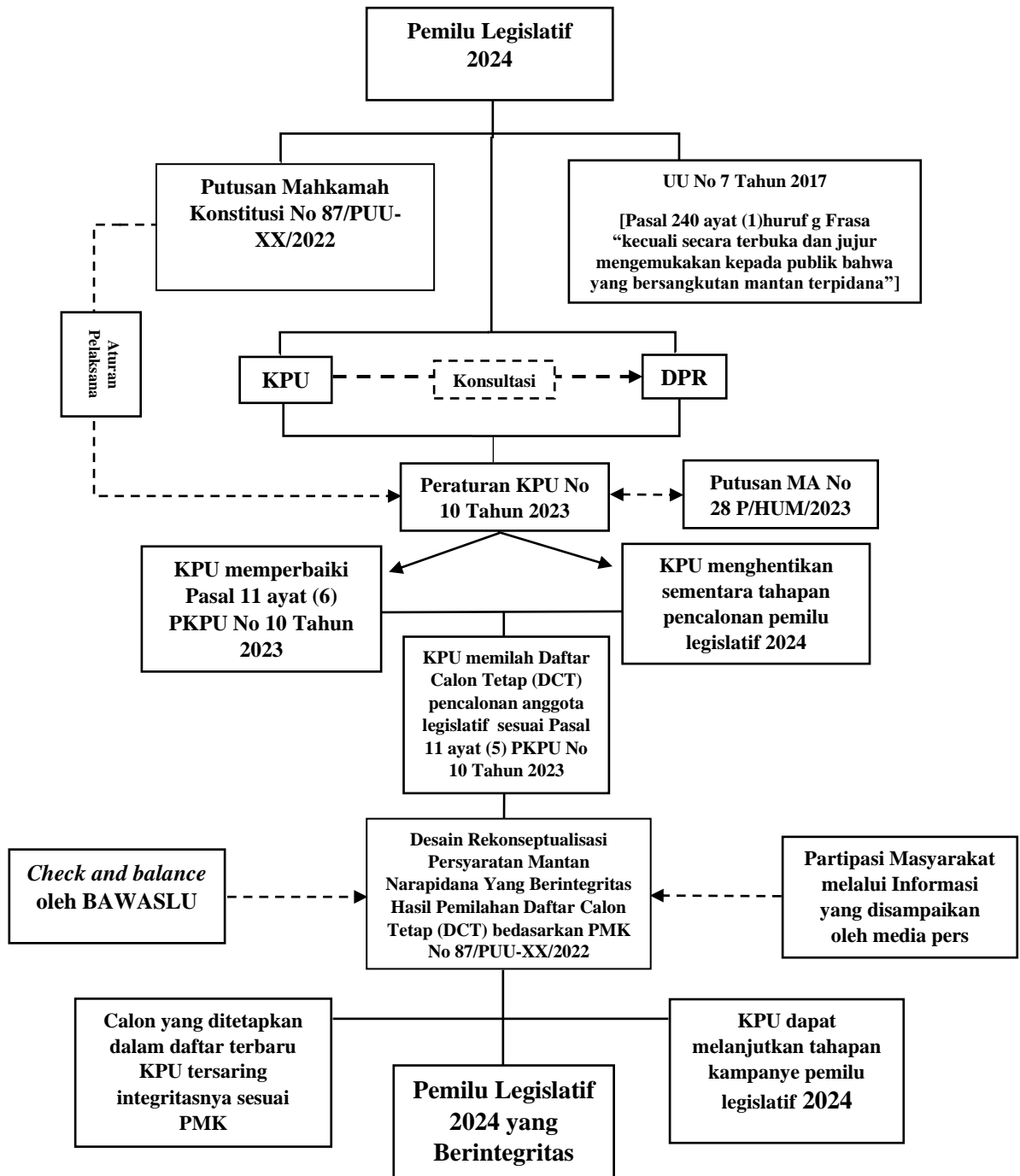
- c. The KPU established PKPU No. 10 of 2023 , stipulated on April 17 2023 and promulgated on April 18 2023.
- d. On 29 September 2023 the Supreme Court granted the material review of Article 11 paragraph (6) PKPU No. 10 of 2023 in amar Decision No. 28 P/HUM/2023 The Supreme Court decided that the KPU should revoke it article 11 paragraph (6) because contradictory amar PMK decision No 87/PUU-XX/2022.
- e. After the KPU still issued PMA No 28/P/HUM/2023 continue stages election 2024 legislature , namely stage nomination Member of DPR, Provincial DPRD , Regency / City 2024 permanent running April 24, 2023-November 25, 2023.
- f. The KPU's response regarding the material review of Article 11 paragraph (6) PKPU No. 10 of 2023 is that the KPU stated that the material review the No in accordance with Article 76 paragraph (3) Law no. 7 of 2023 that those who feel disadvantaged on PKPU can submit a material test to Supreme Court no later than 30 days since PKPU was promulgated .
- g. Although the KPU responded that the material review of Article 11 paragraph (6) PKPU No. 10 of 2023, for Furthermore, the KPU did not There is response regarding candidate data still members of the DPR, Provincial DPRD, Regency /City DPRD . After related PMA decisions the KPU's obligation to revoke Article 11 paragraph (6) PKPU No. 10 of 2023.
- h. Election 2024 legislature remains progress in stages campaign on 28 November 2023-10 February 2024, until the end stage

election 2024 legislature , namely collector The vote will be held on February 14 , 2024.

After stage determination participant election Of course There is a number of candidate from ex- inmates who don't fulfil condition because There is change mandatory article carried out by the KPU. However , the KPU agreed No give clarity about ex- inmates who nominate self as candidate members of the DPR, Provincial DPR , Regency /City DPR.

So why That writer , want to explained design reconceptualization about condition ex- prisoner as candidate member members of the relevant DPR, Provincial DPR , Regency /City DPR about Decision Court Constitution No 87/PUU-XX/2022 as results decision on material review of Article 240 paragraph (1) letter g of Law No. 7 of 2017 and KPU Regulation No. 10 of 2023 as form rule executor from Decision Court Constitution No 87/PUU-XX/2022. This reconceptualization design is purposeful For conceptualize repeat scheme rule about condition ex- prisoner as candidate members of the DPR, Provincial DPR , Regency /City DPR. Following design reconceptualization designed by the author 2024

Figure 3.4
Reconceptual Design Condition Ex Prisoner
As a Legislative Candidate with Integrity



Source : Analysis writer from various source 2024

Information :

- a. Election the 2024 legislature is regulated in Law No. 2017 in particular condition for ex- inmates who nominate self as candidate member Regulated by DPR, Provincial DRR , Regency / City DPRD in Article 240 paragraph (1) letter g of Law No. 7 of 2017.
- b. Article 240 paragraph (1) letter g of Law No. 7 of 2017 is undergoing material review on Phrase " except in a way open and honest put forward to public that in question ex- convict ” for equalization of norms with the norms of Article 7 paragraph (2) letter g of Law No. 10 of 2016 becomes condition cumulative with additional waiting period of 5 years , so he took it out MK Decision No 87/PUU-XX/2022.
- c. The KPU is institution organizer election . The formation of PKPU KPU must do consultation to DPR RI Commission II.
- d. PKPU No. 10 of 2023 as rule executor from MK Decision No 87/PUU-XX/2022. However, Article 11 paragraph (5) and paragraph (6) are mutually exclusive conflict that causes disharmonization of PKPU No. 10 of 2023 with MK Decision No 87/PUU-XX/2022. So that submission of a judicial review to Supreme Court .
- e. Court in Decision No. 28 P/HUM/2023 issued on September 29 2023 decided regarding *the judicial review* of Article 11 paragraph (6) PKPU No. 10 of 2023 that chapter the contradictory with MK Decision No 87/PUU-XX/2022 and the KPU must quick do change chapter .
- f. After he took it out decided by MA No. 28 P/HUM/ 2023, KPU must postpone stages election 2024 legislature for temporary . Stages election legislation that was in progress when it was issued the Supreme Court's decision on October 28 2023 is coincide with implemented it stages nomination members of the DPR, Provincial DPRD , Regency /City DPRD which started from 24 April 2023-25 November 2023.
- g. The KPU must quick Possible respond Supreme Court Decision No. 28 P/HUM/2023 with revoke Article 11 paragraph (6) PKPU No. 10 of 2023

which is contradictory with amar decision MK Decision No 87/PUU-XX/2022.

- h. Form design reconceptualization lies with the KPU must sort Return to the list of Permanent Candidates (DCT) candidates members of the DPR, Provincial DPRD , Regency /City DPRD from ex- prisoner in accordance with Article 11 paragraph (5) PKPU No. 10 of 2023 without eliminate Article 11 paragraph (6) PKPU No. 10 of 2023 because its status is in conflict with PMK No. 87/PUU-XX/2022 according to PMA No. 28 P/HUM/2023.
- i. Based on design reconceptualization of the Permanent Candidate List (DCT) of candidates members of the DPR, Provincial DPRD, Regency /City DPRD for elections 2024 legislature through checks and balances from BAWASLU as institution monitor and act violations that occurred in the election , as well public participation through press media as distributor information related election course and process 2024 legislature .
- j. Result of sorting and filtering return to the former KPU's Permanent Candidate List (DCT). prisoner in accordance condition MK Decision No 87/PUU-XX/2022, KPU accepts continue stages election 2024 legislature in the running members of the DPR, Provincial DPRD , Regency /City DPRD, as well as candidate antan convicts named in the KPU's latest Permanent Candidate List (DCT) are screened his integrity in accordance MK Decision No 87/PUU-XX/2022.
- k. Final destination design reconceptualization condition ex- prisoner as candidate members of the DPR, Provincial DPRD, Regency /City DPRD are produce leaders and elections legislative 2024 which integrity . Referring to the judge's considerations in Constitutional Court Decision No. 87/PUU-XX/2022 for produce a leader with integrity and competence do service public with Good so that bring welfare and prosperity for the people he leads .

CHAPTER IV

CLOSING

A. Conclusion

Based on explanation already be delivered writer on can withdrawn conclusion that :

1. Analysis of Ratio Decidendi in Decisions Court Constitution No 87/PUU-XX/2022 has two conclusions namely the first , provisions related decision Court The Constitution grants it part has explain in a way detailed that condition ex- inmates who nominate self as members of the DPR, Provincial DPR , Regency /City DPR in Article 240 paragraph (1) letter g of Law No. 7 of 2017 must done equalization of article norms against Article 7 paragraph (2) letter g of Law No. 10 of 2016. Second , the Supreme Court Constitution weigh based all over legal considerations that No There is any other way except do equalization of article norms towards the article being tested with so public can consider worthy candidate For chosen without must remove right political from ex- prisoner as candidate members of the DPR, Provincial DPR , Regency /City DPR. The judge's considerations are based on decision previously only influence the decision next with exists equalization of norms.
2. It happened disharmonization related addition cutting right politics in Article 11 paragraph (6) KPU Regulation No. 10 of 2023 as form relief from requirements set by the Decision Court Constitution No 87/PUU-

XX/2022 no in accordance based on hierarchy regulation legislation according to theory norm level . Background The formation of Article 11 paragraph (6) of KPU Regulation No. 10 of 2023 refers to Article 38 paragraph (1) number 3 of the Criminal Code in obiter *dicta* (the judge's consideration outside *ratio decidendi*) Decision Court Constitution No 87/PUU-XX/2022. This causes no KPU's consistency in forming KPU regulations that cause legal uncertainty in the former prisoner as candidate members of the DPR, Provincial DPR , Regency /City DPR.

3. Decision Court Constitution No 87/PUU-XX/2022 is related condition ex-prisoner as candidate members of the DPR, Provincial DPR, Regency /City DPR already in accordance with theory Maslahah Al-Ghazali from facet the level . Equating the norms of Article 240 paragraph (1) letter g of Law No. 7 of 2017 with the norms of Article 7 paragraph (2) letter g of Law No. 10 of 2016 so that become nature requirements cumulative as complementary complement condition nomination ex- existing prisoners regulated in Law No. 7 of 2017 concerning Election . Reconceptualization design related condition ex- prisoner as candidate members of the DPR, Provincial DPR, Regency /City DPR with integrity aim conceptualize repeat requirements stated in PKPU No. 10 of 2023.

B. Suggestion

Based on discussion that has been explained by the author on there is some related suggestions condition nomination ex- prisoner as candidate members of the DPR, Provincial DPR , Regency /City DPR , among others following :

1. It is important for judges to have legal considerations in decisions previously related case nomination ex- prisoner as candidate members of the DPR, Provincial DPR , Regency /City DPR. The judge must pay attention more interest broad order awake integrity leadership and quality service public for public .
2. The KPU should be institution organizer election general more be careful in your research formation KPU regulations as wrong One the governing rules about the way election general . disharmony that occurs between establishment of Article 11 paragraph (6) of KPU Regulation No. 10 of 2023 and Decision Supreme Court Constitution No 87/PUU-XX/2022 causes happen legal uncertainty .
3. Decision Mahkamah Constitution No 87/PUU-XX/2022 can become reference in Century front , related arrangement right constitutional ex-prisoner as candidate members of the DPR, Provincial DPR , Regency /City DPR and justice for public wide with uphold values benefit .

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LEGISLATION

1945 Constitution of the Republic of Indonesia

Constitution Number 7 of 2017 concerning General elections

Constitution Number 10 of 2016 concerning Change Second on the Law Number 1 of 2015 Concerning Determination Regulation Government Replacement
Constitution Number 1 of 2014 Concerning Election Governor , Regent , and Mayor Become Constitution

Constitution Number 24 of 2003 concerning Court Constitution

Law No. 48 of 2009 concerning Power Justice

Decision Supreme Court No 28 P/HUM/2023

Decision Court Constitution No 56/PUU-XVII/2019

Treatise Hearing Case Decision Supreme Court No 28 P/HUM/2023

Regulation No. 10 of 2023 Nominations Member of the People's Representative Council , Provincial Regional People's Representative Council , and Regency /City Regional People's Representative Council

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Life motto : *“A life that is not fought for No will won ”* -Sutan Sjahrir

Formal Education History

1. RA Iskandar Sulaiman
2. MI Iskandar Sulaiman
3. Batu State MTs
4. MAN Batu City

Non-Formal Education History

Ma'had Sunan Ampel Al -' Aly