

CHAPTER ONE

INTRODUCTION

A. Background

The Constitutional Court Decision No. 42/PUU-XII/2015 granted the judicial review of the provision of article 7 letter (g) of Law No. 8 of 2015 on the Regional Head Election. This decision gives chance to the ex-convicted to register themselves as the regional head candidates. However, the Constitutional Court also provides special requirement that they have to announce openly and honestly that they have ever been in the prison.¹ This decision also shows that there is remaining limitation for ex-convicted to register themselves as the regional head candidate.

In a democratic system of government, a leader will be directly elected by the people. It means that the people have the freedom to choose who will be the leader.² As happened in Indonesia, regional election is the biggest democratic event to determine their political choice and also brings a number of political parties filed its cadres. In the several some ex-convicted were nominated as the candidate of regional election. The Constitutional Court decision became the reference for the ex-convicted registration of the candidates.

¹ Yusti Agustin, "MK: Mantan Terpidana Dapat Mengikuti Pilkada dengan Syarat Tertentu", taken from <http://www.mahkamahkonstitusi.go.id/index.php?page=web.Berita&id=11443#.WhOqcUqnHIX>, accessed on October 25th, 2017, at 11.30 a.m.

² Ahmad Zazili, "Pengakuan Negara terhadap Hak-hak Politik (*Right to Vote*) Masyarakat Adat dalam pelaksanaan Pemilihan Umum", *Jurnal Hukum*, Vol. 9 No. 1, March 2012, p. 136.

After the Constitutional Court accepted the petition for the judicial review of Article 7 letter g of Law No. 8 of 2015 in conjunction with Law No. 1 of 2015 on the Stipulation of Government Regulation in Lieu of Law No. 1 of 2014 on the Election of Governor, Regent, and Mayor, which prohibit the ex-convicted to be the candidate as the head of region no longer exist.³ In this decision, the Constitutional Court declared, article 7 letter (g) stated that: “has never been imprisoned by a court ruling that has obtained a permanent legal force for committing a criminal offense punishable with imprisonment of 5 (five) years or more.”⁴ This contradicts to the 1945 Constitution.

According to a judge of the Constitutional Court in the Article 7 letter (g) of Law No. 8 of 2015 on the Election of the Regional Head is a form of reduction of rights to a person.⁵ Human rights can be interpreted as a right that belongs to someone, because someone is human, and human right are obtained by every human being as a grace from God Almighty.⁶ By having this rights, human being can claim their basic rights to the state, the fulfillment of these rights can-not be restricted or revoked, as long as the person do not violate the law and public interests, then there is no reason for such person to

³ Nurul adriyana, “MK Izinkan Mantan Napi Maju Pilkada”, Koran Sindo, July 10th, 2015, taken from <https://nasional.sindonews.com/read/1022241/149/mk-izinkan-mantan-napi-maju-pilkada-1436491828>, accessed on October 25th, 2017, at 10.40 a.m.

⁴ Article 7 letter (g) “Indonesian citizens who may be a candidate for Governor, Regent, and Mayor is eligible among others; (g). has never been imprisoned by a court ruling that has obtained a permanent legal force for committing a criminal offense punishable with imprisonment of 5 (five) years or more”.

⁵ Suara KPU “*Menjaga Hak Rakyat Bersuara dalam Pemilu*”, Edisi IV, July, 2015, P. 13, taken from <http://www.kpu.go.id/koleksigambar/Revisi+Final+Majalah+Suara+KPU+Edisi+4.compressed.pdf>, downloaded on October 27th, 2017, at 6.30 p.m.

⁶ Jimly Asshiddiqie, 2014, *Konstitusi & Konstitusionalisme Indonesia*, Jakarta: Sinar Grafik, p. 131

be deprived of their human rights. Everyone also has the role to participate in democracy, the participation of the people to fill the democracy must be guaranteed. Regarding the role of people to participate in the democracy, it means that people have the rights to participate in the government.

Indonesia has recognized the protection of human rights since the first constitution was established. The first 1945 Constitution, recognizes that the protection of human rights is regulated in article 27 paragraph (1) which stated that: "all citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions".⁷ After the amendment of 1945 Constitution, political rights are also stipulated in article 28D paragraph (3) which stated that: "every citizen shall have equal opportunity in the government".⁸

Regarding the political rights of ex-convict, some laws and regulations contain some limitations. One of the limit is in the position of regional head as regulated in Law No.8 of 2015 in conjunction to Law No. 1 of 2015 on Stipulation of Government Regulation In lieu of Law No. 1 of 2014 on Regional Government. In this Act, the limitation is shown to those who have been convicted or a criminal offense whose sentence is more than 5 (five) years imprisonment. It was regulated in article 7 letter (g) of Law No. 8 of 2015 on regional head election, and this article has been examined in the Constitutional Court.

⁷ Article 27 paragraph (1) of the 1945 Constitution

⁸ Article 28D paragraph (3) of the 1945 Constitution

Based on the explanation above, the author is interested to write about:
**“THE RIGHT OF EX-CONVICTED TO BE THE CANDIDATE OF
THE HEAD OF REGION”.**

B. Problem of Research

Based on the background above, the research problem can be formulated as follows: Whether the ex-convicted has the rights to be nominated as a candidate in the regional election?

C. Objective of Research

The objectives of the research are as follows:

1. To understand that the ex-convicted has the rights as a regional head candidate;
2. To analyze some cases in that the ex-convicted apply to be the regional head candidate;
3. To suggest better recommendation on the rights of ex-convicted to be the regional head candidate.

D. Benefit of Research

1. Theoretical Benefit

This research can be used as study materials toward other research related to the right of ex-convicted to be the candidate of regional head

2. Practical Benefit.

This research can be a reference material in the practice to provide information and advice to practitioners, and society field about the right of ex-convicted to be the candidate of regional head.