



# Leadership of Former Corruption Convicts in Government Analysis of Fiqh Siyasah (Case Study of Constitutional Court Decision Number 03-03/PHPU/DPD-XXII/2024)

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**Abstract:** This study discusses the leadership rights of former corruption convicts in government, especially through the Constitutional Court Decision Number 03-03/PHPU.DPD-XXII/2024, highlighting how constitutional rights and ethics of leadership in government. This study uses a normative legal method to analyze the application of legal norms and collect data through literature studies, including the Constitutional Court Decision Number 03-03/PHPU/DPD-XXII/2024. This paper raises 2 (two) problem formulations, namely: (1) How is the leadership of corruption convicts in government based on the Constitutional Court Decision Number 03-03/PHPU/DPD-XXII/2024 and (2) What is the view of fiqh siyasah on the leadership of former corruption convicts in government. The results of this study indicate that the rights of former convicts to lead in government are recognized based on the Constitutional Court decision, which is a constitutional right that must be recognized and restored. However, this is considered contrary to Islamic principles and leadership ethics, which consider individuals with a history of corruption unfit to lead. From the perspective of siyasah fiqh, the opportunity for former convicts to participate in elections is considered not in accordance with the leadership criteria set by the sharia.

**Keywords:** Leadership, Convicts, and Corruption..

## 1. Introduction

Leadership can be defined as the ability to influence strategies and goals, encourage commitment and adherence to tasks to achieve common goals, and motivate groups to recognize, maintain, and develop organizational culture. (Romy, Se, & Ardansyah, 2022), (Unaradjan, 2019). Factors in leadership include the quality of managers and team leaders in providing encouragement, enthusiasm, direction, and support to team members. According to Hersey and Blanchard, "A leader is someone who can influence other people or groups to perform the maximum performance that has been set in accordance with the goals of the organization. (Nursalim, Pratiwi, Farasi, & Anshori, 2023), (Yanuarti, 2021).

Leadership can also be defined as a complex process in which a leader influences his subordinates in implementing and achieving a vision, mission, and tasks, or objectives that will lead the organization to become more advanced and united. (Syahril, 2019), (Srifalensia, Syamsir, & Alfat, 2023). A leader carries out this process by applying his own leadership traits, namely beliefs, values, ethics, character, knowledge and skills. (Togatorop, Sibarani, & Sinaga, 2021), (Mamonto, 2019).

As the fourth largest democracy in the world, Indonesia requires every candidate for leader to take part in general elections (Pemilu). The right to participate in elections is regulated in Article 1 Paragraph (2) of the 1945 Constitution, which emphasizes that sovereignty lies in the hands of the people and is implemented in accordance with the

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constitution. (Srifalensia et al., 2023), (Pratiwi & Amin, 2024). Elections are very important in national life, because the people must choose candidates and parties that are able to represent their aspirations in government policies. Elections are expected to be carried out freely and fairly, guarantee individual rights, and have control over the implementation of elections. (Hoesein, 2023), (Badoh & Dahlan, 2010). The success of the election is determined by the acceptance of all participants (political parties and candidates) in a comprehensive (legitimate) and binding manner. (Ilhamsyah, Fadhly, Rafiie, & Najamudin, 2020).

According to Article 27 Paragraph (1) of the 1945 Constitution, "Every citizen has the same position in the eyes of the law and government and is obliged to respect the law without exception." (Yunita & Dewi, 2021), (Kambu, 2021) "In addition, Article 28D Paragraph (1) states, "Everyone has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law." (Novitasari, 2023), (Isra, 2014). Political rights include the people's right to vote and be elected in elections, participate directly in government or through elected representatives such as the People's Representative Council (DPR), Regional Representative Council (DPD), President and Vice President, submit opinions and complaints to the government, and the right to hold public office in government. (Cahyono, Iftitah, Hidayatullah, Yuliastuti, & Susetiyo, 2023), (Sulistiono & Boediningsih, 2023).

In determining the DPR, DPD, President and Vice President, and DPRD, a legitimate election is carried out, hereinafter referred to as an election, which is carried out directly, openly, freely, secretly, honestly, and in one unified state." reads Law No. 7 of 2017 Concerning Elections in the Republic of Indonesia. Thus, one of the basic rights of citizens is to vote in general elections. Therefore, it is important for the government to hold general elections in order to realize this basic right. General elections are choosing carefully, thoroughly according to one's conscience in order to elect people's representatives who truly act on behalf of. In most democratic countries, general elections are considered a symbol and a benchmark of democracy. (Dila & Lubis, 2023).

Elections are a means for the public to choose someone who is worthy of guaranteeing the rights of the public to be achieved as they should be. This noble ideal is contained in Article 1 paragraph (2) and 22E of the 1945 Constitution to provide access to people's sovereignty through general elections that are based on direct, free, secret, honest, and fair. In its development, it has produced a number of controversial policies that are not oriented towards the interests of the people. One of the policies that is very prominent is the permission of former convicts of corruption cases to return to contesting in elections. This permission is directly regulated in Law No. 7 of 2017 concerning General Elections (NANDA, n.d.).

Corruption will be very dangerous for the implementation of democracy and the rule of law in Indonesia. In the preamble to the United Nations Convention Against Corruption, it is recognized that the problem and serious threat of corruption will have an impact on the stability and security of society, damage democratic institutions and values, ethical values and justice, and put the sustainability of development and the rule of law in danger. So that in order to present candidates who meet expectations in the election, comprehensive requirements are needed as an effort to filter out individuals who are serious and not in carrying out state duties as public officials. (Rosdiawan, Atmaja, & Romadon, 2022).

Referring to Law No. 7 of 2017 concerning General Elections regarding the rights of former corruption convicts who are re-contesting in the election, it is regulated in Article 182 letter g of Law 7/2017 which states "never been sentenced to prison based on a court decision that has obtained permanent legal force for committing a crime that is threatened with imprisonment of 5 (five) years or more, unless openly and honestly stating to the public that the person concerned is a former convict". which has undergone a judicial review into Constitutional Court Decision Number 12/PUU-XXI/2023 which states

"Former convicts must fulfill a 5-year gap period, calculated after completing their prison sentence based on a court decision that has permanent legal force (pure acquittal) (Azwa, 2024).

However, in the last 2024 election on June 10, 2024, the Constitutional Court (MK) delivered its final decision regarding the 2024 Regional Representative Council (DPD) Election Results Dispute (PHPU) with case number 03-03/PHPU/DPD-XXII/2024. This decision is a follow-up to the dispute petition filed by the former corruption convict of the West Sumatra DPD candidate, namely Irman Gusman (IR) where IR was not included in the 2024 election contest, by the General Election Commission based on KPU Decree Number 1563 of 2023 concerning the List of Permanent Candidates for DPD Members in the 2024 Election, MODEL DCT.DPD List of Permanent Candidates for DPD Members, Electoral District of West Sumatra Province which is one of the main points of the applicant's request in case No. 03-03/PHPU/DPD-XXII/2024. The KPU is reluctant to determine IR's name in the DCT for DPD Members for the 2024 Election, Electoral District of West Sumatra, so that he loses the right to be a candidate or his right to vote in the National DPD Member Election on February 14, 2024.

The KPU's reason for not including IR in the DCT for DPD Members for the 2024 Election, namely by stating that the Applicant has not passed the 5 (year) grace period based on Supreme Court Decision No. 28.P/HUM/2023 dated 29 September 2023 in connection with the enactment of Article 11 paragraph (6) of PKPU 10/2023 and Article 18 paragraph (2) of PKPU 11/2023 concerning the requirement for former convicts for candidates for DPR/DPRD Members and candidates for DPD Members, the Supreme Court's ruling in point 3 states: "Article 18 paragraph (2) of the General Election Commission Regulation Number 11 of 2023 concerning the Second Amendment to the General Election Commission Regulation Number 10 of 2022 concerning the Nomination of Individual Participants in the General Election for Members of the Regional Representative Council is contrary to Higher Legislation, namely Article letter g of Law Number 7 of 2017 concerning General Elections in conjunction with the Constitutional Court Decision Number 12/PUU-XXI/2023 and therefore does not have binding legal force and does not apply generally." IR's candidacy was deemed ineligible, as the five-year grace period after completing his sentence would end on September 26, 2024.

The Constitutional Court in its decision granted all the petitions of the applicant and the Respondent. Regarding the Court's considerations in Article 182 letter g of Law Number 7 of 2017 concerning General Elections in conjunction with the Constitutional Court Decision Number 12/PUU-XXI/2023, Article 182 letter g (i), (ii), and (iii) must be read in one breath. Reading them separately will cause distortion of meaning and eliminate the essence of the meaning of the entire paragraph and the spirit underlying its formulation. This provision has clearly distinguished the construction of the threat of criminal punishment between criminal acts that are threatened with imprisonment of 5 (five) years or more, above which a 5 (five) year break requirement is imposed for convicts who have served it and wish to re-contest as election participants with criminal acts that carry a maximum penalty of 5 (five) years or five years or less as needed.

The Court emphasized that it is not included in the scope of the 5 (five) year gap requirement for convicts who are serving it. This means that the 5 (five) year criminal figure in the a quo context which is the meeting point of the two criminal threats cannot be interpreted as a maximum criminal threat of 5 (five) years. The two types of criminal threats in question have a clear demarcation line that is separate and not shaded from each other so that a distinction must be made between the criminal threat of 5 (five) years or more and the maximum criminal threat of 5 (five) years. In the context of the Applicant's status as a former convict, he is not bound by the provisions of the 5 (five) year gap period. (Adidarma, 2022).

It is important to analyze the policy of restoring the political rights of former corruption convicts in the context of *fiqh siyasah*, which is a discipline of sharia law that

emphasizes the development of government structures and political life in accordance with Islamic teachings. In Indonesia, Belief in God as the first principle in the national ideology makes the comparison between election policies and permission for former corruption convicts to participate in contests very urgent. Islamic teachings contain democratic values that are part of the goal of *rahmatan lil alamin* (Abdurrohman, 2022).

Legislative institutions in Islam are called *Ahl Al-Hall Wa Al-Aqdi*. *Ahl Al-Hall Wa Al-Aqdi*, are members of society who have the knowledge and wisdom needed to manage the interests of society, and have the ability to solve every problem related to defense and security, social problems, politics, and all leaders who are references for Muslims in matters of public welfare. Al-Mawardi mentioned 3 conditions that must be met by *ahl al-hall wa al-'aqd*, namely: First, fair, Islamic scholars argue that a person cannot have a stick of power unless they are fair. The nature of fairness is to avoid all major sins or minor sins and anything that can harm one's self-esteem, the nature of fairness also requires those in power to maintain a good name and be away from suspicion; Second, understand who is qualified to occupy the position of imam and what qualifications are needed; Third, Mastering the insight and wisdom needed to select the imam who is considered the most worthy and knows best which policies will benefit the people (Setiawan & Umardani, 2024).

The goal of Islam to be a religion that gives mercy to the entire universe is manifested in the teachings of sharia which serve as a guideline for life in the world, including in government and democracy based on the Qur'an and hadith. In national life, good policies must be based on values that are in accordance with the culture and social perceptions of society, especially the values of Islam as the majority religion, without reducing respect for other religions and beliefs.

Based on the explanation above, there is something interesting that according to the researcher can be studied in more depth regarding How the leadership of corruption convicts in government is based on the Constitutional Court Decision Number 03-03 / PHPU / DPD-XXII / 2024. In addition, it is also interesting to discuss the perspective of *fiqh siyasah* on the leadership of former corruption convicts in government.

## 2. Materials and Methods

The research method applied in writing this journal is a type of normative research. Normative research is a form of research that examines norms, basic rules, legal principles, doctrines, and jurisprudence that are the objects of normative study, which focuses on the analysis of the application of applicable positive legal norms. Data collection was carried out through literature studies, by examining judges' decisions related to election disputes in the Constitutional Court Decision Number 03-03 / PHPU / DPD-XXII / 2024. The focus of the research is to explain the Constitutional Court's decision which allows former corruption convicts to lead the government again. The author also examines the normative aspects of Islamic law from the perspective of *Fiqh Siyasah*. The approach used is a normative approach, which includes legal analysis within a research framework to address existing problems.

## 3. Results and Discussion

### 3.1 Leadership of Former Corruption Convicts in Government Based on Constitutional Court Decision No. 03-03/PHPU/DPD-XXII/2024

The Constitutional Court Decision Number 03-03/PHPU/DPD-XXII/2024, that the Constitutional Court decision granted the applicant's lawsuit in its entirety and rejected the respondent's request regarding the election results dispute (PHPU), one of the main points of which is the KPU Decision Number 1563 of 2023 concerning the List of Permanent Candidates for DPD Members in the 2024 Election, KPU Decision Number

1563 of 2023 concerning the List of Permanent Candidates for DPD Members in the 2024 Election, DCT MODEL. List of Permanent Candidates for DPD Members, Electoral District of West Sumatra Province. In the nomination of former convicts in the election, the Constitutional Court decision considered the matter of Article 182 letter g of Law 7/2017 in conjunction with the Constitutional Court Decision Number 12/PUU-XXI/2023 concerning "never been a convict based on a court decision that has obtained permanent legal force for committing a crime that is punishable by imprisonment of 5 (five) years or more".

The judge in the legal considerations (legal review) which were used as additional punishment, considered that regarding Article 182 letter g of Law 7/2017 in conjunction with the Constitutional Court Decision Number 12/PUU-XXI/2023, the core of the consideration is that the Court is of the opinion that Article 182 letter g must be read in its entirety, not separately, to avoid distortion of meaning. This provision clearly distinguishes between criminal acts that are threatened with imprisonment of 5 years or more, which require a 5-year break for convicts who wish to participate in the election, and criminal acts with a maximum threat of 5 years that are not subject to a break requirement. Thus, the figure of 5 years cannot be interpreted as the maximum threat. So that the Applicant's status as a former convict is not bound by the provisions of the break period.

The law may not revoke a person's right to vote but may only impose restrictions that do not conflict with the 1945 Constitution, which in Article 28J paragraph (2) of the 1945 Constitution states that restrictions may be made with the sole intention of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with considerations of morality, values, religion, security and public order in a democratic society.

Based on the explanation above, it can be understood that the Constitutional Court actually interpreted Article 182 letter g of Law Number 7 of 2017 concerning Elections in conjunction with the Constitutional Court Decision Number 12/PUU-XXI/2023. With this interpretation, even though the verdict stated that it granted the applicant's request, the Constitutional Court provided a new legal interpretation for former corruption convicts that the provision distinguishes between criminal acts with a prison sentence of 5 years or more, which requires a 5-year break for former convicts to participate in elections, and criminal acts with a maximum sentence of 5 years, which do not require a break. Therefore, former convicts who are not sentenced to more than 5 years are not bound by the provisions of the break period, allowing them to participate in elections without restrictions.

The Constitutional Court's decision is final and cannot be appealed to the court because the nature of the Constitutional Court's decision is final and can immediately obtain permanent legal force since it was pronounced and no legal remedies can be taken. The final nature inherent in the Constitutional Court's Decision makes the Constitutional Court's decision immediately valid as a source of law for every person and state institution.

The Constitutional Court plays an important role in the implementation of the system of checks and balances in state power in Indonesia, in accordance with Article

24C Paragraph (1) of the 1945 Constitution of the Republic of Indonesia. In carrying out its authority to carry out its constitutional role as the guardian of the constitution, final interpreter of the constitution, protector of democracy, and defender of constitutional rights and human rights, the Constitutional Court exercises its authority constitutionally. Regarding the political rights of former convicts in corruption cases, the role of the Constitutional Court is seen through several of its decisions.

The Indonesian Constitution guarantees the protection of human rights (HAM) through Articles 28A-28J of the 1945 Constitution and other regulations. The right to vote and be elected is affirmed in Article 43 Paragraph (1) of Law No. 39 of 1999, which states that every citizen has the right to participate in elections, both as voters and participants. In addition, the permission for former corruption convicts to participate in elections reflects the principle of democracy that places power in the hands of the people, in accordance with Article 1 Paragraph (2) of the 1945 Constitution. In a democratic system, the right to vote is entirely in the hands of the people through free and fair general elections, as regulated in Article 22E of the 1945 Constitution and Law No. 17 of 2017 concerning Elections.

The Constitutional Court Decision No. 03-03/PHPU/DPD-XXII/2024 opens up opportunities for former corruption convicts to get involved in politics, but also presents challenges. To create credible leadership, there needs to be a combination of rehabilitation, strict supervision, and ongoing ethics education. Thus, it is hoped that public trust can be built and the political environment can improve.

Seeing corruption is one of the most dangerous violations compared to drug abuse and child sexual abuse. Countries in the world including Indonesia categorize corruption as an extraordinary crime, because corruption that violates the economic rights of the community has become common and systematic in Indonesia.

The cause is the abuse of public office for personal gain, abuse of power and violation of the code of ethics. An act can be said to be a crime of corruption if it meets several requirements in the form of motivation, opportunity, intention and risk of corruption. If we look closely at the description above, corruption is considered to be in conflict with Article 28D Paragraph (1) of the 1945 Constitution which states, "Everyone has the right to recognition, guarantee, protection and certainty of fair law and equal treatment before the law." In fact, corruption also takes away social and economic rights.

Corruption should be seen as a human rights violation (HAM) that is equal to other serious violations, although its form is different from genocide or mass murder. The systemic impact of corruption can cause death and suffering, so that perpetrators of corruption deserve to be categorized as perpetrators of extraordinary crimes, or Extra Ordinary Crimes.

Punishment for perpetrators of corruption that violate human rights must be implemented firmly, considering its wide impact on society. Perpetrators should be given heavy prison sentences according to the severity of their actions, accompanied by significant fines to create a deterrent effect and compensate for losses. In addition, the return of illegally obtained assets must be carried out, and perpetrators must be banned from holding public office in the future. Revocation of certain rights, such as voting rights, can also be applied to enforce accountability. Handling this requires a serious

approach with strong and comprehensive laws, as well as professional and corruption-free law enforcement. All regulations, both laws and regional regulations, must support each other. Therefore, efficient and transparent collaboration between law enforcement organizations is essential to eradicate corruption effectively.

### 3.2 *Fiqh Siyasaah Perspective on the Leadership of Former Corruption Convicts in Government*

In fiqh siyasah, the position of a leader (amir) is very important, noble, and full of risk, because he must be accountable for his leadership before Allah SWT. Islam teaches that a leader must always be humble, prioritize the interests of his people, and not enrich or show himself to be higher than the people he leads. In the history of Islamic leadership during the time of the Prophet Muhammad SAW to the Khulafaur Rosyidin, all of them showed extraordinary simplicity, so that they succeeded in bringing Islamic civilization to its rapid development.

The substance of leadership in the perspective of Islam is a mandate. A national leader is essentially carrying out the mandate of Allah as well as the mandate of the community. The mandate contains the consequence of managing it with full responsibility according to the hopes and needs of its owner. Therefore, leadership is not a property right that can be enjoyed in any way the person who holds it pleases. so that the mandate must be given to someone who is truly "expert", qualified and has responsibility, is fair, honest and has good morals. Islam offers in choosing a leader so that he can bring the people to a better, harmonious, dynamic, prosperous, prosperous and peaceful life. This is emphasized by ALLAH in the Quran Surah An Nisa verse 58 as follows:

☞ God bless you Allah's blessings God willing ۞ كَانَ سَمِيعًا بَصِيرًا

"Indeed, Allah has commanded you to convey the message to those who are entitled to receive it, and when you establish a law between people, you must determine it fairly. Indeed, Allah is the best who teaches you. Indeed, Allah is All-Hearing, All-Seeing."

Allah informs us that He commands us to fulfill the mandate to its experts. This includes all the mandates that are obligatory for humans in the form of Allah's rights towards His servants such as prayer, zakat, fasting, expiation, vows. And apart from that, all of which are mandates that are given without the supervision of His other servants. As well as mandates in the form of the rights of some servants to other servants, such as deposits and so on, all of which are mandates that are carried out without the supervision of witnesses. Overall, this verse emphasizes ethical values in leadership and decision making, as well as the importance of justice in society.

Ibn Kathir in his interpretation said that the command to convey the mandate in the verse above (an-nisa), is general, not limited only to good people. Even betraying a betrayer is prohibited, as explained in a Hadith tahrij by Imam Ahmad:

خَانَكَ إِذْ أَلَمَّ بِكَ إِلَى مَنْ أَلَمَّ بِكَ وَلَا تُخْنَنَّ مَنْ

"Fulfill the mandate to the one who gave the mandate, and do not betray the one who has betrayed you" Abu Bakar who was the first Caliph after the Prophet Muhammad died. In his first speech after being appointed as Caliph, the contents of his speech were:

"O humans, I have been appointed to control your affairs, even though I am not the best person among you. So if I carry out my duties well, follow me, but if I make a mistake, then correct me! the person you see as strong, I see as weak, so that I can take away his rights, while the person you see as weak, I see as strong, so that I can return his rights to him. You must obey me as long as I obey Allah and His Messenger, but if I do not obey Allah and His Messenger you do not need to obey me."

From the verses, hadiths, and stories that exist, it can be concluded that a leader carries a mandate from the community and must be fair, humble, and accountable. A

leader must also prioritize religious values in his duties. This mandate must be accounted for both to Allah and to the community, with a focus on the interests of the people. This responsibility is an inevitability that must be fulfilled by a leader. Therefore, in choosing a leader according to Islam, it must be in accordance with the sharia. Therefore, there are four criteria that must be possessed by a person as a requirement to become a leader, namely *Shidq*, *Amanah*, *Fathonah*, and *Tabligh*.

From the explanation above, the criteria for selecting leaders in Islam emphasizes the importance of integrity, especially in the context of former perpetrators of corruption. In Islamic teachings, corruption is considered a betrayal of the mandate given by Allah, damaging public trust and creating injustice. The impacts of corruption include obstacles to economic growth, declining public services, and damaging public trust in the government and the law.

In Islamic law, corruption is known as *al-ghashab* and *al-fasad fi al-ard*, which means taking the rights of others and causing damage. *Fiqh siyasah* describes corruption as the abuse of power for personal or group interests, including embezzlement, bribery, and nepotism, which are contrary to the principles of Islamic justice.

Islamic teachings emphasize that corruptors must be severely punished because of its damaging impact on the nation. Corruption causes poverty due to injustice and reflects moral decay. To prevent it, firm action is needed with severe sanctions. The concepts used to prosecute corruptors include *saraqah* (theft), *ghulul* (embezzlement), and *risywah* (bribery). *Ta'zir* sanctions can vary from the most severe, such as the death penalty and amputation of hands, to lighter ones, such as imprisonment, according to the seriousness of the act and the impact caused.

In the context of the Indonesian Election, the permission of former corruption convicts to return to participate in leading the government again has no strong basis and is contrary to Islamic principles. Someone who has a history of corruption should no longer be considered worthy of leading, especially if given legitimacy through general elections organized by the state. This opinion is not in line with the Islamic view that does not tolerate acts of corruption.

From the conclusion above regarding the policy that provides tolerance and forgiveness to former corruption convicts to participate in leading the government again, it is contrary to the values of sharia law and *fiqh siyasah* in good governance. This approach is not in line with the Islamic view that considers corruption as a crime that should not be tolerated. Islam places leaders in an honorable position, so it should not give an opportunity to someone who has committed a despicable act, especially corruption, to lead. Therefore, acts of corruption that violate the oath in the name of Allah SWT make the individual unworthy to serve as a leader..

#### **4. Conclusion**

The right of former convicts to lead again in government, as stipulated in the Constitutional Court (MK) ruling, is a constitutional right that must be recognized and restored. In the ruling, it was stated that former convicts cannot be proposed as candidates for leadership, because they must meet a number of established requirements. However, on the other hand, giving former convicts the opportunity to play a leadership role in government also means restoring their rights. This includes the right to participate in politics as well as receive equal treatment before the law. Thus, this is important to ensure inclusiveness and justice in the government system.

From the perspective of *fiqh siyasah*, allowing former corruption convicts to participate again in government is an action that is contrary to the principles of democracy, the teachings of sharia law, and *fiqh siyasah*. The protection of human rights (HAM) given to former corruption convicts is not in line with the teachings of sharia which em-

phasize that leaders must occupy high, honorable positions and bear heavy responsibilities, both in this world and in the hereafter. The selection of leaders must be based on the criteria set by Allah SWT in the Qur'an, which includes aspects of trustworthiness, quality, responsibility, justice, honesty, morality, and ability and devotion to Allah SWT. A person who has been involved in corrupt practices is considered unfit to serve as a leader. Therefore, the policy that allows former corruption convicts to play a role in government again needs to be reviewed so that it is in line with the principles of justice and the values of Islamic teachings, which function as rahmatan lil alamin, bringing blessings to the entire universe.

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