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### Legal Analysis of the Revocation of Voting and Elected Members of the House of Representatives on the Supreme Court Ruling No. 225 PK/PID. SUS/2017 BY Law NUMBER 7 YEAR 2017 ON GENERAL ELECTIONS

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# Legal Analysis of the Revocation of Voting and Elected Members of the House of Representatives on the Supreme Court Ruling No. 225 PK/PID. SUS/2017 BY Law NUMBER 7 YEAR 2017 ON GENERAL ELECTIONS

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## ABSTRACT

MA purgatori No 225/PK/pidsus/2017 decided the main criminal offense against Defendant Patrice Rio Capella based on article 12 letter (a) of Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended by Law No. 20 of 2001 along with an additional criminal revocation of voting rights and chosen. There is a problem with the revocation of the right to vote and be elected. The problem is how is the validity of revocation of the right to vote and be elected in the Supreme Court Purgatori No. 225 PK/Pid. Sus/2017 according to Law No. 7 of 2017 concerning General Elections? This problem uses normative research methods and expert interview data. The author analyzes that the revocation of the right to vote and be chosen is contrary to the state's constitution and human rights, in which Article 240 of the Election Law is strengthened that Indonesian citizens are an absolute requirement to vote and be elected without any limitations on the revocation of the right to vote and be elected. Additional crimes in the form of revocation of the right to vote and be chosen undermine the democratic order in Indonesia. The author suggests to the Judge to wisely decide and consider all issues so that there is no chaos in democracy.

**Keywords:** *Revocation of the right to vote and be elected, General election, Constitution Human Rights*

## 1. INTRODUCTION

### 1.1. Background

Indonesia is a sovereign republic, the Constitution of the Indonesian State of Republic 1945 (UUD NRI 1945) Article 1 paragraph (2) explains the sovereignty of the people. That is, Rakyatlah who have the will of the country to be able to play the goal and direction of state of life in the country for a noble ideals desired. This concept describes the Rakyatlah that become the only source of state power because on the foundation of the sovereign State exists because it has a people inside it. In such a way appears Adagium "*solus populi Supremalex*" the highest law that is the voice of the people or *Volk vovuli vo dei* or the voice of the people is the voice of God. <sup>[1]</sup> the spearhead of the nation's very high position in a country so that the people have the right to be protected by the state.

The development of democracy and the Republic state is the fruit of the state's sovereignty. The sovereignty of the State is given because of the sovereign populace who essentially rakyatlah the highest position in the government of a country both from, by, and for the people. So the function of

government in the country is to realize the direction of nation and country based on the voices of people. The state of Indonesia applies *Trias Politica* theory to its *executive, legislative, and judicial* systems, of which the three synergize each other in carrying out their function to run the government wheel to realize the ideals of the nation based on Pancasila.

Democracy is a country that upholds the voices of people. The voice was used to run the government. The object of that democracy is the voice or opinions or views are usually accommodated as a change in the running of government wheels. Democratic country puts people first as the subject of the country because of Rakyatlah controlling the goals and ideals of the nation. The people as the subject of a democracy state are given a role in the government through the general election, where the people choose their representatives to perform the next governmental function with the validity period in accordance with the law.

However, in its application in the field is not actually implemented by the people, after the emergence of representative democracy practice, consequently rarely the sound that is true and should be based on the people is used by its representatives in the Government to realize the ideals of the nation.

Consequently many representatives of people who misuse the function of its misconduct prioritize the personal or other interests in the running of government wheels. <sup>[2]</sup> Munir Fuady explained that in a state of democracy, the active role of Rakyatlah which is a fundamental principle especially in the implementation of elections. The general election is a means of organizing in collecting people in representing the people in the government. Conceptually elections is a means of implementing the sovereignty of people. Elections are a mechanism for people to occupy a particular political position. The position is a variety of types ranging from the President, vice president, to the representatives of the people in the Government of central and local governments. They work on behalf of the State in running the government wheel by the people's orders. Therefore, there is no space for people to participate in a direct democracy event. <sup>[3]</sup>

In the event of direct democracy, the people were granted authority of voting and elected (pointing and appointed) the right to his consitation to appoint and appointed a representative who would work in government and represent the voice of his people in government. These pointed and designated rights are the basis of the sovereign State in which the leadership of the Government is elected by the people to represent the interests of the people. The general election is a container in giving the vote given to the country so that the people are granted the constitutional rights in the implementation of the role. Therefore, the rights of pointing and designated citizens are already the basis of a democracy and sovereign State and have obtained maximum security from the state. The security in question includes guarantees and legal certainty for citizens to play an active role in the democracy process<sup>[4]</sup> the assurance to protect the citizens legally from the country's expectations.

On the journey of Indonesia ratified (*ICCPR*) or international conventants something that becomes the nature of human beings and something to rule that is stated in the Law no. 12 of 2005 Where there is also an appointing and designated right part for citizens who must be protected countries that ratify it. The purpose of the establishment of *ICPPR* itself has a human rights principle to achieve a pleasure in civil rights based on international relations. In the understanding of history, Indonesia once practiced the concept of a legal country (*Rechtsstaat*) which is partly from the recognition of the state law is about the protection and recognition of the rights of citizens. Because the rights inherent to human beings are protection for the citizens of the country that are used in the state of law, because the state of law is born from a sovereign country where the sovereign state there is the people therein. When it is based on some explanations and theories that exist, it is clear that there is no part for the high level to restrict people to vote for citizens on something inherent that the human rights are primarily led and designated citizens in a democracy journey. <sup>[5]</sup>

The right to appoint and be appointed for an Indonesian citizen is highly protected by some national instruments, especially in the Constitution in Indonesia. Human rights law, the *ICCPR* Act and the General Election Act also govern the appointment and the protest for citizens. The national regulation is clear in explaining that the voting and selecting rights are protected by the state. Therefore, the right to vote and be chosen as proof that the people as sovereign holders as already set forth in the CONSTITUTION of NRI 1945 then it is due to the state of WAIJB to protect the rights that have been dianugerahkannya, but in its current application there are precisely some decisions that are judged strongly contrary to that in the decision of the Supreme Court of 225 the Republic of SUS/2017.

In the ruling, an Indonesian citizen named Patrice Rio Capella who is a member of the House of Representatives is known to receive a form of goods and the lure of *cash* amounting to RP 200.000.000 (two hundred million rupiah) from Gatot Pujo Nugroho and Evy susanti through Fransisca Insani Rahesti, where the alleged granting of the defendant was used to move the accused to the defendant Sukasukanya Act in The action that has been done by the accused Patrice Rio Capella is deemed contrary to its obligations as a member of the House of Representatives is contrary to the provisions of article 5 number (4) Act No 28 year 1999, article 236 paragraph (3) of Law No. 17 year 2014 and article 288 paragraph (3) of Regulation No. 1 year 2014 OF DPR RI and Article 3 paragraph (5) of House of Representatives regulation Rakyat Republic of Indonesia number 01 year 2015

The defendant's actions were criminal acts threatened with the law in Article 12 letter (a) Number 31 year 1999. <sup>[6]</sup> in Amar verdict number 225 PK/PID. SUS/2017, the Supreme Court stated that the defendant named Patrice Rio Capella, stated to do a thing that is forbidden is corruption and to impose sanctions on the defendant for the confinement for 1 (one) Year 6 (six) months with a fine of Rp 50.000.000, 00 (fifty million Rupiah), with the choice if the fine is not able to be paid will be chosen to be sentenced to be confined for 1 (one) month. However, there is an additional criminal in the judgment where the judge in the High court level revoked the right to vote and be elected to Patrice Rio Capella based on legislation for 3 (three) years since the decision of the judge could be executed. <sup>[7]</sup>

Based on the chronology that the author described above, there appears a problem that the author is deemed a omission of the rights pointing and appointed to Patrice Rio Capella, because it does not correspond to:

1. Article 1 paragraph (2) of the Constitution of the Republic of Indonesia 1945;
2. Article 43 law number [\[KN1\]](#) 39 year 1999 about human rights
3. Article 240 Act No. 7 of 2017 on general elections Where in the 3rd Regulation has confirmed that the repeal of something inherent to the human being to appoint and appointed a citizen is brightly

unexplained in the rules. The Constitution of the Republic of Indonesia has listed the right to appoint and be designated to be protected. And in the formulation of legislation should not be any rules or draft law how in his written charge in the Constitution of the Republic of Indonesia 1945 it is formulated if:

- A. Article 1 paragraph (2) of the Constitution of the Republic of Indonesia 1945, has explained that "the people as holders of power are contained in the Constitution", meaning Rakyatlah who have the will and purpose in the *Mencita-citakan* of the purpose of a country because he is the owner.
- B. Section 43 of the Law Nomor [\[KN2\]](#) 39 year 1999 on human rights that confirms that, "all people have the right to be appointed and point to a selection based on the inherent conformity of the taking of direct aspiration, general, without limitation, closed, honest, and fair in accordance with the provisions of the rules that are written" means that all Indonesian people have been granted rights inherent to himself in his participation in the elections to the principle of the right to express a right of aspiration that is direct, public, borderless, unknowable, not lying, and fair in accordance with the law.
- c. Article 240 Act No. 7 of 2017 on general elections explaining the terms of nomination that in this article the nomination is not contained in the explanation of the prohibition of a person to repeal his or her right of choice. This means that the pointed and designated right of the elections in the election LAW gives its citizens an absolute right to play an active role in the implementation of the elections without any restriction.

Therefore, the Supreme Court ruling No. 225 PK/Pid. SUS/2017 raises a problematics, about the omission that a person receives to appoint and designate another trusted person, so it raises the norm debate.

## 1.2. Formulation of Problems

According to the background description displayed, an issue that would be examined and described by the author is:

1. How the validity of the omission of something fundamental to appoint and appointed as a member of the House of Representatives on the Supreme Court ruling No. 225 PK/Pid. Sus/2017 pursuant to Act No. 7 of 2017 on elections?

Based on the problems in the explanation, something you want to achieve from this writing is:

1. to understand the validity of the disappearance and appointed as a part of the legislature at the Supreme Court ruling No. 225 PK/Pid. Sus/2017 pursuant to Act No. 7 of 2017 on general elections.

## 1.3. Research Methods

At the writing of this method of writing using researching techniques with normative legal

research. Normative legal research is a procedure to obtain basic rules, basic nature, as well as an understanding of experts to answer any legal issues faced. [\[81\]](#) The type of data that the authors use is a secondary data type. Secondary data types are data that are used from literature study results and or a study of literature or a library material relating to research issues or materials often referred to as legal substances. [\[9\]](#)

Primary Legal material symbolizes the authoritative legal material, meaning it has authority. [\[10\]](#) The primary legal material used in this writing is the Constitution NRI year 1945, Law No. 39 year 1999, ruling MA number 225 PK/PID. SUS/2017, Act No. 7 year 2017.

Secondary Legal materials are all publications of laws that are not official documents. [\[11\]](#) Secondary legal materials used in this writing are various legal libraries that are books or legal journals on the Basic Principles (legal principles),.

A legal material consisting of non-legal textbooks related to research, [\[12\]](#) such as the Great English Dictionary, the Legal dictionary.

## 2. DISCUSSION

2.1. How the validity of the revocation of voting and elected to a member of the House of Representatives on the Supreme Court ruling No. 225 PK/Pid. Sus/2017 pursuant to Act No. 7 of 2017 on elections? [\[KN3\]](#)

When it is linked to regulation, that the revocation of appointing and designated citizens must not be arbitrarily implemented, because if viewed from the various regulations, the ruling stated that the verdict is related to the omission of something fundamental to appoint and designate a non-accompaniment. In the opinion of Mr. Aji Wibowo, he explained the classification of *derogable right* and *Non Derogabel right* in the broader human rights, regarding the revocation of a thing to be appointed and pointed out is the right of the Constitution of citizens who can not be limited in this case entered in the classification of *Non derogable right*. Because human rights should be as human beings must be fulfilled by the state. The human group that is called the people is the basis of the form of a legal state, the state of law is formed from the existence of sovereign states, if it is scattered down then the position of the people who hold the highest power in a country. Rakyatlah that determines the way the views and progress of a country are, therefore, the rights that include human beings when constrained are contrary to human nature. It means that the state should not limit anything inherent to a human being protected by

an organization that is a country where it is the human nature of every citizen that must be protected by the state.

There is also a section 28 D paragraph (3) of the Constitution 1945 implies if: All who live in a country have the right to get the opportunity to be in a government. The government has no authority to restrict the right of the Constitution of its citizens and every citizen has equal rights in the government. The people must play a role in the government during the time prescribed by the law, the people need to obtain justice when the inequality of treatment is done by the state. The explanation above explains that in organizing the people's government is a major role in the success of the state implementation, because the people are a major dominant in the country that designates its rights and obligations on the country. Similarly, the author also strongly agree with the opinion of Mr. Ahmad Redi, when the judge dropped the decision based on his idealisms on an existing rule without the consideration of each individual, the nature and level of the fact that the ruling will still be turned into law if the ruling is disconnected and Inkrah. That regarding the disappearance and the designated appointment based on the LAW of the criminal law *Jo* /Penal code can be ruled out based on *Lex posterior derogate legi inferiori* WHERE the ICCPR Law and human rights law must FORWARD from THE Criminal Code AND LAW due TO ICCPR JO LAW, the human rights law applies LATER than the other law. Based on the explanation, the ideal legal framework is a legal framework based on the law of ICCPR Jo., the human rights law which means that the revocation of pointed and designated rights shall not be enforced for its citizens, whether the defendant in corruption or other cases of criminal acts relating to the misuse of power/authority of public officials. <sup>[13]</sup>

The Defendant Patrice Rio Capella gets an item or lure *cash* amounting to Rp 200.000.000, 00 (two hundred million rupiah) from Gatot Pujo Nugroho and Evy susanti through Fransisca Insani Rahesti, to mobilize to do or not to do something in his post. In the ruling, it is said that the actions that have been undertaken by the defendant Patrice Rio Capella is deemed to violate the rules with its obligations which are contrary to the provisions of article 5 Figure 4 Act No. 28 of 1999, article 236 paragraph (3) of Law No. 17 year 2014 and article 288 paragraph (3) of Regulation Number 1 year 2014 of the House of Representatives of the Republic of Indonesia and article 3 paragraph (5) of the Republic of Indonesia Representative Council Regulation number 1 year 2015. The defendant's deed is a unlawful act as stipulated and sanctioned in article 12 of the letter (a) of law No. 31 of 1999. <sup>[14]</sup>

Surely and should the defendant be sentenced to the main penalty of imprisonment and pay not by plus additional criminal revocation of pointing and appointed rights. Because the revocation of these rights is not a consequence to give the effect of the deterrent, looapun criminal and with fines is enough to make a deterrent effect of the defendant. The above

chapters have explained enough of the deeds perpetrated by the defendant to the passage as a result of the fact. Not by giving the additional penalty of disappearance and designation to be filed with the defendant. From the bottom of the judges to break the additional criminal is no wise judges use the criminal CODE and the LAW of TIPIKOR as the power in the severed revocation of one's rights.

Based on such consideration should judge only sentenced according to the deed which is forbidden to spread the existing rules, because based on the principle of legal legality of criminal events there is no action that can be punished without any rules that set it, therefore the decision of the revocation of such rights is not appropriate to the defendant because the addition of criminal is not in accordance with the deeds done. In the event of a criminal offence in an order does not mean that the diat is not allowed to follow the elections in the future. The effect of the verdict is not to be deterrent, but it has resulted in a negative impact on the concept of a democratic country, so that the democratic order in a large organization that emphasizes the high inherent thing has been broken. Therefore, the country needs a legal rejuvenation, or a harmonising of the law to explain that the rights of citizens in the Constitution must be protected.

## **1. The description of additional penalties for disappearances and appointment**

Indonesia is a regulated country according to its constitution ideally the legal sovereignty system or *supremacy* being the highest authority in the Republic. <sup>[15]</sup> all rules and policies addressed to its citizens must be in fairness without prejudice to human rights and rights in its constitution. The allotment of criminal penalties, is the most important of the mirror of our justice including the verdict that gives additional sanctions on the revocation of pointing and designated rights. The judicial method that ends with the impose of additional punishments must be walked in accordance with the grounds of a truly fair judicial judgment we are judged to be good. Judges as God's representatives in the world must impose a criminal ruling based on existing rules and judges ' consideration without prejudice to the rights of others set forth in the Constitution for the sake of their validity, balance, and legal certainty for all parties. So the judge not only idealism alone with the rules of the rules but should be wise in the consideration of the problem in each rule. <sup>[16]</sup> based on the theory of legal certainty, the legal certainty in a country is a guarantee for its citizens, that the law should be well executed in protecting human rights within a country. Therefore, the State of law must provide protection and legal assurance to its citizens.

The verdict in the green table at the first level sentenced the sentence of imprisonment and a fine, in this case the first level judge has been very prudent in

its verdict without giving additional criminal that claimed the right of the Constitution of citizens. Then the defendant put his right to the appeal of the purpose of alleviating the criminal. However, in the rate of appeal the ruling properly alleviate the criminal but besides the judge also gives another sentence beyond the main form of omission of appointed and pointed, which is reinforced again with the decision of the casation with Amar its verdict:

1. Order the defendant Patrice Rio Capella above, obviously wrongly doing the deed to enrich themselves;
2. sentenced the defendant to imprisonment for 1 (one) Year 6 (six) months and pay Rp 50.000.000, 00 (Limma thirty million rupiah) if the fine is not able to be replaced by criminal confinement for 1 (one) month;
3. sentenced defendants with criminal Extra to Patrice Rio Capella in the form of omission of designating and appointed to the elections held under national regulations for 3 (years) counted since the ruling of the judge can be executed;
4. Reduce the time of detention and arrest that has been delivered by the defendant by deducting everything from the punishment given;
5. displaying the goods found in the Genesis case; Sequence number 1 to the number 18 in accordance with the criminal prosecution is used in the other file, the case of Gatot Nugroho and Evy Susanti;
6. charge The claimants a review/convicted in order to bear the bill on the review inspection of Rp 2,500, 00 (two thousand five hundred rupiah);

In consideration of the legal basis of the defendant is subject to criminal matter as in the ruling because the defendant as the state in the legislative body in carrying out its main obligation and usefulness has committed a misguided deed that the defendant becomes a case broker in the acceptance of bribery to stop the corruption that is being handled by the Attorney general who is the area of supervision. The deed of suspect is evidenced by the transaction of money from certain parties received by the defendant contrary to section 288 paragraph (3) of Regulation No. 1 of 2014 of DPR RI on code of conduct "Members are prohibited from spreading to enrich themselves, handing over the position, and nepotism", as well as article 3 paragraph (5) of the House of Representatives of the People's Council of Indonesia number 1 year 2015 about the code of ethics of the People's Representative Council of Indonesia "that each member of the House of Representatives of the people of Indonesia is not allowed to apply and to Or prizes other than what is entitled to them in accordance with the rules ".

As the author has outlined, that Indonesia is a sovereign state so that any policy of state maintenance including the ruling judge shall be in accordance with the prevailing rules. According to the principal criminal writer given to Patrice Rio Capella It has been quite effective to as a special preventive to Rio

Patrice Capella by also providing a fine amount of money amounting to Rp 50.000.00, 00 (fifty million rupiahs) to provide a deterrent effect.

It Is not only a prison sentence and a fee that is implemented to Patrice Rio Capella but the additional penalty for the revocation of a certain right is the right to appoint and be appointed in an open position. Judgment of the supreme judge on the verdict MA NO 225/PK/PID. SUS/2017 additional criminal as conducted by *Judex Facti* already referred to article 35 paragraph (1) *J. o* Article 38 paragraph (1) And (2) Criminal Code. This provision allows the right of the guilty to be revoked along with the judgment of Judge decision in the provisions of this law or the other law is the right to appoint and be appointed to the elections made under the national law. The additional criminal proceedings of the disappearance of political rights referred to in Amar can be justified because it has a legal basis. That revocation of political rights of PK applicant does not include Ultra petita because it has a legal basis.

The *Bleid* Bentukk Revoke the rights of citizens is an arbitrary act of law enforcement. <sup>[17]</sup> Although the legal basis on coloured is governed by Law No. 31 of 1999 governs additional criminal as stipulated in article 18 paragraph (1) d ". The criminal CODE shall also govern certain rights which may be revoked by the judgment of the judges, as provided for in article 35 paragraph (1) C "right to choose and be elected in the elections held under the general rules". The rationing of revocation of voting and voting rights is not merely a retaliation, or the effect of making the most important deterrent providing guidance and pengayoman. The Pengayoman was taken as well as to the public and to inmates to provide a deterrent effect and could be a good member of society after the end of the criminal verdict. Such a concept of EAS that is no longer a concept of imprisonment, but also as a rehabilitation and social reintegration efforts. The concepts in Indonesia are called correctional. <sup>[18]</sup> contained in Law No. 12 of 1995 on the Correctional Institution of article 3 which says "The correctional system allows for the correctional community to be able to integrate healthily with the community, in order to take an active role as a member of the ordinary people who are free and responsible". <sup>[19]</sup>

The view of the author of the judge sentenced the defendant to an absolute theory that explains that justification in a criminal offence is the crime or criminal act itself, in spite of the expected function of the criminal verdict itself. It is necessary that the maskud of this absolute doctrinal purpose as a vengeance according to Stammler's understanding, he explained that the absolute law was done to calm the law has been rebuted. The absolute legal purpose in court can be said to be retaliatory. However, this legal theory is as if implemented in this country. The decision of the judge who applied the omission of the rights pointed and appointed to the defendant that the law should be fair, must be true, and should be prudent, not only sentenced according to what is deserved punishment.

In the verdict that wise weighed should be in a good way, so that the verdict that will be ended the Inkrah can be a good legal product. Not give any consideration contrary to other rules. But for the realization of the legal ideals, namely the protection and assurance of human rights in the State of law, and sovereign states. The law has to be fair to the people, the law must demonstrate truth, and the policy of disconnecting because the people are not groups of wickedness, but wickedness grows from the people in society. It should be that the law is not sharper and unwise, it should be the law as a construction of a pengayoman so that when prisoners who return again into society can embrace it together with the community again before it.

According to the author, the additional criminal applied by the defendant was not in line with the correctional system. So it becomes a question whether the additional criminal allotment still needs to be dropped. It is important to remember that corruption defendants still have a right to justice, however large. Do not until the ruling is merely a sense of hatred and the exclusion of justice. <sup>[20]</sup> In addition to the revocation of voting and selected, many are also in conflict with other laws, due to the Constitution of NRI 1945 governing the sovereignty of the people, the state of law, and the right to freedom to elect and be elected has become the right of the Constitution given by the State against its unlimited citizens, and then further governed by the Human Rights Act *J. O the ICCPR* that defy the revocation of voting rights and chosen to be revoked.

### **A. based on the Constitution of the Republic of Indonesia 1945**

The laws of the Republic of Indonesia 1945 which became the Constitutional foundation in which human rights are implied, is set forth in article 1 paragraph (2) that "the people as sovereign holders and run under the Constitution". <sup>[21]</sup> the foundation on that basis becomes the strong EPS that warge state as the sovereign holder cannot be restricted to the rights of citizens. Therein something inherent in one's self also guarantees the political rights in article 27 clause (1) If "All persons who are in a thematic have a place of conformity in the law and government and are required to elevate the law and government with no exceptions". <sup>[22]</sup> The article explained that in the Government of the citizens were given equal opportunities both in the selection of representatives elected as representatives in the government wheels and uphold the law and government. Not only so, there are other chapters governing in section 28D of subsection (1) explaining if "All citizens are entitled to their existence, deferred, backrest, and straight legal certainty and actions in front of the rules". <sup>[23]</sup> All of the above chapters provide protection to its citizens in the governance of the government because it is essentially a sovereign people and originates from the rakyatlah of the government.

The Constitution of the country of Republik Indonesia 1945 rebuted If Indonesia is a country of regulation (*Rechstaat*). Ideally as a legal country, Indonesia is implementing a legal self-reliance system or a law *Supermasi* that has the highest authority in the country. <sup>[24]</sup>—A regulatory country essentially upholds something inherent in its citizens especially something inherent in a person who is in an area written in a constitution that cannot be limited by the State itself. The legal state is based on the sovereign State, where the sovereign State itself originated from the people. The principle of the law is present to form the way of government and wheels of life from various fields with the aim of achieving the ideals of the nation, and foster a peaceful, safe and orderly life. The government itself grows and develops because of the need of people as people living in a social environment that must be fulfilled as human beings, and very unnatural the state restricts the rights of its citizens ' constitution to be restricted outside of human nature.

### **B. based on law No 39 year 1999 on human Rights**

In fact, the decisive and determined can be implemented from human rights. Where it can not be boxed-kotaki because of its nature as a human. The right to appoint a designated DNA is a clung to the state's citizens. Human rights are implemented into the Indonesian constitution to protect its citizens as citizens of citizens who have the rights of citizen to the state of democracy, especially the voting and elected rights held in the elections where such rights can not be reduced or restricted under any circumstances (*Non-Derogable rights*) including something that is accepted by Seseoraang to be able to power and generally human rights explain the ruling obliged to secure the right *to vote*, and the right *to be elected* of its people because all the ruling is obliged to publish regulations in order to guarantee its position as part of the state as well as the subject of law without discrimination based on any chance of a potent opportunity to ensure the right to achieve the principle of legal clarity, and the principle of use which belongs to the general principles of good governance is also governed by Law No. 30 of 2014 on government administration , and the principle of justice.

Fulfillment of protection of human rights, other than stipulated in the Constitution of the Republic of Indonesia 1945 only but also stipulated in Law No. 39 year 1999 on human Rights Article 23 clause (1) states that "all persons without limits to vote and have the comfort of power". <sup>[25]</sup> not only is it contained in chapters 43 paragraph (1), and subsection (2) states that "(1) every citizen has the right to be elected and to appoint based on elections and have equal rights; (2) Any residing in a place has the right to participate in the administration either directly or the intermediary of the chosen representatives without limitation in the manner stipulated in the law. <sup>[26]</sup>This



is manifestly a basis for the opposition of the ruling judge who has the' the vote of voting and elected.

Other regulations are governed by Law No. 26 of 2000 concerning the Court of Human rights and Law No. 12 of 2005 on the ratification of the Convention on Civil and Political Rights. In the international conventants also self-governed rights and the right to power which is expressly set forth in article 2 paragraph (1) and paragraph (3) shall explain if "(1) Each party seeks to respect and ensure all rights of persons residing in its territory and subject to its recognized jurisdiction in the convening without any differentiation such as RAS, gender, ethnicity, religion, language, political opinions or any other opinion , social background or national origin, wealth, birth or other status.

In addition, it is also governed by article 25 stating if "All citizens must have an inherent and equal opportunity, without any of the above-mentioned study of 2 and free of any reason: (a) taking part in public affairs, directly or through freely chosen representatives; (b) To select and be selected in a purely periodic election which will be determined by the most common and equivalent designating rights to be held by a closed vote, guaranteeing the flexibility of stating the intent of the pointer; (c) To have a way, with the requirements of a line, to public service in his country ". <sup>[271]</sup>

Voting and elected rights of legislative members have been governed by themselves in Law No. 7 of 2017 of Article 198 subsection (1) and subsection (2) where it states that "(1) Indonesian citizens at the time of the vote of 17 (seventeen) years or older or have been/have been legally valid to appoint; (2) The Indonesian person referred to in paragraph (1) is listed as 1 (one) time by the election committee in the pointer list. <sup>[281]</sup>

Philosophically something inherent in man is a fundamental right that exists in a person because of his nature as a person who cannot be constrained by anyone. Because of the his humanitarian nature that is related to the law of nature, so that both the right to choose and the right to be elected from the members of the House of Representatives should not be limited, because it can violate the constitutional **human rights** of the members of the House of Representatives has such rights: the Right to voice draft law; The right to give questions; **voting and elected rights**; The right to convey proposals and opinions; Rights of immunity; The right to defend themselves; Protocolary Rights; Financial and administrative rights; Supervisory rights; The right to propose and fight for the development of the Dapil; And the right to explain the explanation regarding the law. <sup>[291]</sup>

The *Supremacy* of the law is Dicitacitakan constitutional state principle. Which means that everyone is clearly subject to the Constitution. That means any decision of the judge in disconnecting any thing that ends up being a legal product. Things like this need to be reduced or eliminated. Because the law that restricts the rights of its citizens makes the boomerang for the progress of the country itself. In addition, TAA is realized contrary to the Constitution

and with the Pancasila that explain the social justice that should be applied to the law in Indonesia.

Although the country has acknowledged the assurance and protection of pointing and appointed rights, but in fact the provisions or consideration of any verdict verdict judge, there is still a judge taking the removal of something inherent to appoint and appointed. And from the obvious it is the result of the convicts who run the act to not exercise the right to appoint and be appointed in the implementation of elections by law. The state must be more sensitive to consideration of the Court's decisions. The state must be active against a ruling that provides restrictions on the rights to its citizens, the State must care for the community. The state of law should not give a sharper legal down, because the law must be justice, the people are not the seed of a crime, but evil is born from friction in the people. The government must give the punishment that corrects its society instead of giving laws that torture its people.

### **C. Under Law Nomor [\[KN4\]](#) 7 year 2017 on general elections**

Based on THE ELECTION law bAhwa to appoint and appointed has its own arrangement of Sendri-. In article 198 clause (3) the ELECTORAL LAW governing the terms of elect explains that a person cannot choose based on a court ruling. However, the arrangement in respect of which is governed in the ELECTION LAW shall not be any supporting article concerning revocation of voting rights. The author finds matters governed by the Act regarding the terms to be selected based on article terms of the prospective central legislative candidate, provincial legislature and member of the Regency/city legislature governed in article 240. The terms of the above nomination explained that anyone with an Indonesian citizen is given a thing to be managed to nominate themselves in the elections held by the country. This chapter is a strong foundation for a person to run for himself without limitation.

Thus, with the penalty of loss to appoint and appointed according to legislation, that part should not apply to any person who has the intention to nominate himself as a member of the House of Representatives. As of article 43 paragraph (1) OF law number 39 year 1999 about Hak Asasi Manusia reads: "All citizens have the right in their own country to vote or elected in the elections based on the similarity of the rights of citizens by voting". The electoral law as a fundamental rule of election in organizing the elections of representatives in the Government, because on the constitution of the country is already regulated. Then, the rights are also listed in the Human Rights Act *J. O (ICCPR)* which strengthens the rights of voting and voting.

### 3. COVER

#### 3.1. Conclusion

In the case that the author of lifting essentially criminal resettlement of pointed and appointed rights has claimed that the inherent constitution of the people as well as damaging the concept of the democratic State also injuring legal justice in the State of the Republic of Indonesia because the criminal law as a final settlement is well-known enough to make a person inmates be deterrent in fact, not also adding additional criminal Indonesia state as the country that holds firmly and the state according to the content on the CONSTITUTION NRI 1945 should strongly uphold the meaning of the value of justice. The decision to revoke voting rights and voting rights is very inappropriate in a sovereign state. Additional criminal grants are not solely for the sake of following the existing rules, which are more important to the giving of guidance and Pengayoman. Pengayoman as well as to the people and to inmates to make it deterrent and can be a good member of society when free later. To be a new form of EAS function that is no longer a mere punishment, but also as a shape of self-balancing in the social environment. The conception in Indonesia is called the correctional as stipulated in the Law No. 12 of 1995 on Correctional Institution article 3 which reads "Correctional system to work on people who are in a container to be better healthy and good with around, so that it can become a better person as a member of the society that is without limits and responsible with the deeds".

The rules in the Criminal Code and the LAW of the TIPIKOR shall be the decision to be granted the right to vote and be selected to be used in additional judgment. Because many contrary to national law, especially the PENAL code and the law of TIPIKOR merfeed the old Dutch legal product that still used to fill the void of law. Not that all in reality should be hastily disconnected. The judge must also have extensive knowledge of all existing rules of law, should the judge be able to escalate the foundation of the ruling with a new rule regarding voting and voting rights.

#### 3.2. Suggestions

To prevent the return of the revocation of voting and selected rights at a later date the author gives advice to the parties in order not to happen again such thing in the present day:

1. for the government, to harmonize the legislation so that there is no conflict between the laws and regulations so it does not confuse law enforcement to impose the verdict.

-In order for the government to make legal products does not contradict other legal norms, because it will cause confusion for the parties concerned.

-The government must be sensitive to legal products that have long been a habit of judges to disconnect without careful consideration, and become the decision of opposition with other rules of law.

2. for the judge, to be wise in giving judgments and scales in order that in the event of selecting and being elected is no longer a limitation of citizens to join in pointing and appointed; so also have to advise the principle of *lex superior derogat legi priori* which is the principle of *mengenyoverride* old law with the new law.

-The judge as the representative of God in the world, must have a broad displacement in the existing legal product, so that in disconnecting a thing is no longer about the fornication of the rights of its citizens.

3. for the Eradication commission of Corruption, to coordinate with the appropriate institutions of capacity, supervision over competent institutions, conducting investigations, and prosecution, and carrying out measures of criminal acts of corruption by promoting the humanitarian principle of both the defendant so as not to be deprivation of independence for the defendant. [\[KN5\]](#)

4. for the defendant, especially any defendant who is sentenced to disappearance to appoint and designate can submit an application test to the Court of custody of the omission to be appointed and the index.

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