

Political Rights of Former Prisoners in Electoral Democracy: A Contextualized Islamic Political Perspective from Indonesia and Uzbekistan

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Abstract: The restriction of passive political rights for former prisoners represents a globally contested legal phenomenon at the intersection of democratic integrity, human rights, and moral leadership standards. Despite its prevalence, comparative normative scholarship examining this restriction through an integrated Islamic political jurisprudence framework remains limited. This study addresses that gap by analyzing the legal dynamics of electoral democracy and the restriction of passive political rights for former convicts through a comparative study of Indonesia and Uzbekistan, integrated with a *Siyāṣah Sharʿiyyah* perspective. Employing normative legal research with statutory, conceptual, and comparative approaches, this study systematically examines constitutional frameworks, constitutional court rulings, and electoral reform legislation in both jurisdictions. The findings reveal three convergent dimensions: first, both countries ground political right restrictions in the principles of proportionality, legal certainty, and public interest protection, though through contrasting institutional mechanisms — Indonesia through judicialized constitutional review and Uzbekistan through state-led administrative reform; second, Indonesia's Constitutional Court Decision No. 56/PUU-XVII/2019 establishes a mandatory five-year post-sentence waiting period as a sociological rehabilitation filter, while Uzbekistan's 2019 Electoral Code liberalized voting access without fully resolving the passive rights gap for serious offenders; third, from a *Siyāṣah Sharʿiyyah* standpoint, leadership eligibility is conditioned upon *Adalah* (moral integrity) and *Amanah* (trustworthiness), wherein criminal conviction — particularly for corruption — constitutes a temporary forfeiture of *Adalah*, recoverable through verified *Tawbah* (repentance) and *Raddul I'tibār* (rehabilitation), yet legitimately subject to conditional restriction under *Maṣlaḥah Mursalah* (public interest). This study contributes a normative-comparative model demonstrating that temporal restrictions on the right to be elected are compatible with both international human rights standards and Islamic political ethics, provided they are proportional, non-discriminatory, and legally bounded. The findings offer policy implications for Muslim-majority democracies seeking to harmonize electoral integrity with rehabilitative justice frameworks.

Keywords: Political Rights; Former Prisoners; *Siyāṣah Sharʿiyyah*; Electoral Democracy; Comparative Constitutional Law; *Maṣlaḥah Mursalah*.

Abstrak: Pembatasan hak politik pasif bagi mantan narapidana merupakan fenomena hukum yang diperdebatkan secara global pada titik persinggungan antara integritas demokrasi, hak asasi manusia, dan standar kepemimpinan bermoral. Meskipun fenomena ini bersifat universal, kajian normatif-komparatif yang secara khusus menganalisis pembatasan tersebut melalui kerangka yurisprudensi politik Islam masih sangat terbatas. Penelitian ini mengisi kesenjangan tersebut dengan menganalisis dinamika hukum demokrasi elektoral dan pembatasan hak politik pasif bagi mantan narapidana melalui studi perbandingan antara Indonesia dan Uzbekistan yang diintegrasikan dengan perspektif *Siyāṣah Sharʿiyyah*. Dengan menggunakan penelitian hukum normatif melalui pendekatan perundang-undangan, konseptual, dan perbandingan hukum, penelitian ini mengkaji secara sistematis kerangka konstitusional, putusan mahkamah konstitusi, dan legislasi reformasi pemilu di kedua yurisdiksi. Hasil penelitian mengungkap tiga dimensi konvergensi: pertama, kedua negara mendasarkan pembatasan hak politik pada prinsip proporsionalitas, kepastian hukum, dan perlindungan kepentingan publik, meski melalui mekanisme institusional yang berbeda — Indonesia melalui pengujian konstitusional yang yudisial dan Uzbekistan melalui reformasi administratif berbasis negara; kedua, Putusan Mahkamah Konstitusi Nomor 56/PUU-XVII/2019 menetapkan masa tunggu lima tahun pascapenyelesaian pidana sebagai filter rehabilitasi sosiologis, sementara Kode Pemilihan Uzbekistan 2019 meliberalisasi hak pilih aktif tanpa sepenuhnya menyelesaikan kesenjangan hak pasif bagi pelaku kejahatan serius; ketiga, dari perspektif *Siyāṣah Sharʿiyyah*, kelayakan kepemimpinan disyaratkan oleh *Adalah* (integritas moral) dan *Amanah* (kepercayaan), di mana pemidanaan — khususnya atas tindak pidana korupsi — merupakan gugurnya *Adalah* yang bersifat sementara, dapat dipulihkan melalui *Tawbah* (pertobatan) dan *Raddul I'tibār* (rehabilitasi) yang terverifikasi, namun tetap dapat dibatasi secara kondisional berdasarkan *Maṣlaḥah Mursalah* (kemaslahatan umum). Penelitian ini memberikan kontribusi berupa model normatif-komparatif yang menunjukkan bahwa pembatasan temporal atas hak untuk dipilih kompatibel sekaligus dengan standar hak asasi manusia internasional dan etika politik Islam, sepanjang bersifat proporsional, non-diskriminatif, dan terbatas secara hukum. Temuan ini menawarkan implikasi kebijakan bagi negara-negara demokrasi mayoritas Muslim yang berupaya mengharmonisasikan integritas elektoral dengan kerangka keadilan rehabilitatif.

Kata Kunci: Hak Politik; Mantan Narapidana; *Siyāṣah Sharʿiyyah*; Demokrasi Elektoral; Hukum Konstitusi Komparatif; *Maṣlaḥah Mursalah*.

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Introduction

Electoral democracy functions as an intricate sociopolitical architecture that prioritizes the electoral process as the primary mechanism for the manifestation of popular sovereignty.¹ Within this framework, the legitimacy of political authority is not derived from coercion or hereditary succession but from the aggregate will of the citizenry, expressed through free, secret, and periodic balloting.² The strategic objective of this system is to ensure that the individuals entrusted with executive and legislative stewardship are truly representative of the public interest. Consequently, a transparent, fair, and fraud-free electoral environment serves as the indispensable foundation for strengthening political representation and ensuring that the continuity of government remains anchored in the consensus of the governed.³

The efficacy of electoral democracy is intrinsically linked to its ability to identify and elevate ideal leaders.⁴ Elections provide a structured platform for the electorate to evaluate the track record, moral vision, and practical competence of candidates.⁵ This

evaluative function is paramount because leaders are the primary architects of public policy, influencing the socio-economic trajectory of the nation. In this context, the demand for high ethical standards often leads to legal and sociological debates regarding the eligibility of individuals with criminal histories. The restriction of political rights for former prisoners is frequently justified as a means of safeguarding the integrity of democratic institutions, preventing those who have previously violated the legal and social contract from immediately assuming positions of high public trust.⁶

This function is crucial because ideal leaders are the policymakers who will influence various aspects of the political, social, and economic life of society. In addition, electoral democracy also functions as a tool of social control that forces potential leaders to be transparent and accountable for their campaign promises, because they know they will later have to regain the trust of the people through the next election.⁷ Therefore, elections are not just an administrative procedure, but a strategic process in ensuring that political power is in the hands of leaders who have strong legitimacy and truly represent the voice of the people fairly and democratically. Thus, the function of electoral democracy through elections in choosing ideal

¹ Elia Mwangi, "Who Votes in Tanzania? An Overview of the Law and Practices Relating to Parliamentary Elections," *African Human Rights Law Journal* 22, no. 1 (2022): 139–60, <https://doi.org/10.17159/1996-2096/2022/v22n1a6>.

² Mehrnaz Tajaddod Alizadeh et al., "How to Compose a Media Mix to Win an Electoral Campaign? Proposing a Framework for Political Marketing," *Ad Minister* 1, no. 1 (2021): 166.

³ R. M. Sukmariningsih, "Constitutionality Rights in Election: Lesson from the Indonesia Election," *Sch Int J Law Crime Justice* 7956, no. 2016 (2021): 446–50, <https://doi.org/10.36348/sijlcj.2021.v04i07.002>.

⁴ Dwiyanto Indiahono, "Bureaucratic Neutrality Index in Direct Regional Head Elections: Optimism in Developing Professional Bureaucracy in Indonesia," *Public Policy and Administration* 21, no. 3 (2022): 249–61, <https://doi.org/10.5755/jo1.pppaa.21.3.31788>.

⁵ Dicky Eko Prasetyo et al., "Post-Election Reconciliation

in 2024 as a Constitutional Convention in Indonesia: A Progressive Legal Culture Perspective," *Jambura Law Review* 7, no. 1 (2025): 176–96, <https://doi.org/10.33756/jlr.v7i1.26999>.

⁶ Dewi Analis Indriyani and Zaihan Harmaen Anggayudha, "Political Party Coup: Anomalies within the Democratic Party," *Jurnal Penelitian Hukum De Jure* 21, no. 3 (2021): 331, <https://doi.org/10.30641/dejure.2021.v21.331-344>.

⁷ Siti Mardiana Medan Area Wim Putra Tri Pratama S and Maksum Syahri Lubis Lubis, "Empowering Women In Politics (Study At The Regional Leadership Council Of The North Sumatra Persatuan Indonesia Party) Research And," *International Jurnal Islamic Education, Multiculturalism* 5, no. 1 (2022): 279–93.

leaders is the main asset for building an effective government, trusted by the people, and capable of bringing progress to the country.

One of the characteristics of an ideal leader in a constitutional democracy is that the leader is not a prisoner or a former prisoner. Former prisoners in the context of electoral democracy can be considered to have a "sociological defect" as a leader, where as a former prisoner, a potential leader in electoral democracy can be considered to have an "old stain" that should be cleared in society before running in the general election contest.⁸ The restriction on former prisoners from running in general elections has the primary function of maintaining the integrity and quality of the implementation of democracy and the electoral process itself. This restriction is applied to prevent former prisoners, especially those who have committed serious crimes such as corruption, from abusing public positions or repeating their actions that harm society and the state.⁹

The restriction on former prisoners from running in general elections has the primary function of maintaining the integrity and quality of the implementation of democracy and the electoral process itself. This restriction is applied to prevent former prisoners, especially those who have committed serious crimes such as corruption, from abusing public positions or repeating their actions that harm

society and the state.¹⁰ In general, this restriction is implemented to ensure that individuals who have been involved in criminal acts, especially those involving serious crimes such as corruption, terrorism, or sexual offenses, do not immediately return to public positions before a certain period of time has passed since their sentence. This policy is seen as an effort to give former prisoners time to demonstrate a change in attitude and perfect reintegration into society, while also protecting society from potential abuse of power by figures who have committed serious offenses.¹¹

At the international level, this restriction also reflects a balance between protecting the political rights of citizens and the need to maintain the credibility of representative bodies and the government. However, the limitations on the political rights of former prisoners vary depending on the legal system and democratic norms in each country, with variations in the duration of the restriction and the types of criminal acts that are prohibited. In some countries, this restriction is also a matter of debate regarding human rights, especially the right to political participation as a fundamental right, so there are often legislative or legal efforts to regulate in detail so that this restriction does not violate the principles of justice and non-discrimination.¹² Thus, the phenomenon of

⁸ Paulus Dedi Dores Malau et al., "Juridical Review of the Constitutional Rights of Former Convicts Obtaining Parole in Nominating Regional Head Elections," *Yustisia Tirtayasa: Jurnal Tugas Akhir* 4, no. 3 (2024), <https://doi.org/10.51825/yta.v4i3.27553>.

⁹ Riana Susmayanti and Mochammad Noor Rois Zain, "Loosening Requirements for Parliament Membership: The Meaning of Power in Forming Election Law?," *Proceedings of the 12th UUM International Legal Conference* 2023, 2024, 55-76, https://doi.org/10.2991/978-94-6463-352-8_5.

¹⁰ Sylvia Iasulaitis et al., "The Interfaces Twitter Elections Dataset: Construction Process and Characteristics of Big Social Data during the 2022 Presidential Elections in Brazil," *PLOS ONE* 20, no. 2 (2025): e0316626, <https://doi.org/10.1371/journal.pone.0316626>.

¹¹ Ho Keat Leng, "TikTok in Political Campaigns: An Examination of the 2023 Singapore Presidential Election," *Journal of Nonprofit & Public Sector Marketing* 1, no. 1 (2025): 1-26, <https://doi.org/10.1080/10495142.2025.2551354>.

¹² Tereza Maciel Lyra et al., "The National Health Policy for People with Disabilities in Brazil: An Analysis of the

restricting former prisoners from running in elections has become a mechanism that is adopted globally as part of efforts to build a healthy democracy, maintain public trust, and avoid the risk of corruption or abuse of power by perpetrators of serious crimes who have not fully undergone social and political rehabilitation.

Based on the problems above, this research aims to analyze the aspects of electoral democracy and political rights for former prisoners to run in general election contests by making a comparison between Indonesia and Uzbekistan. A legal comparison between Indonesia and Uzbekistan regarding general elections is necessary because the two countries have different political, social, and cultural systems, so the approach to organizing elections also has its own unique characteristics. By comparing the election system between Indonesia, which is a parliamentary democracy with an open proportional election system, and Uzbekistan, which implements a presidential system with strict control over the election process and a dominant political party, a deep understanding of the advantages and disadvantages of each system can be obtained.

This comparison is important to improve the quality of election administration in both countries by learning from best practices and existing weaknesses. In addition, a comparison of election law can help in promoting legal and policy reforms that are more adaptive to political dynamics and public aspirations, including issues of democratization, transparency, and accountability in election administration.

Furthermore, the comparison also serves as a means to strengthen bilateral relations and cooperation between countries in the field of democracy and good governance. The legal issues discussed in this study include: (i) the legal position of political rights related to legal restrictions for former prisoners to run in general elections and (ii) a legal comparison of restrictions for former prisoners to run in general elections from a human rights perspective: a legal comparison between Indonesia and Uzbekistan.

Method

This research is a normative or doctrinal legal research that focuses on the analysis of written legal norms, legal principles, and the synchronization of laws and regulations governing the restriction of passive political rights for former prisoners.¹³ The approaches employed include the statute approach to examine election regulations and human rights at both national and international levels, as well as the conceptual approach, which draws from legal doctrines concerning justice, proportionality, and public morality. Additionally, a comparative approach is utilized to dissect fundamental differences and similarities in legal policies between Indonesia and Uzbekistan, which are subsequently integrated with an Islamic legal perspective through the *Siyasah Shar'iyah* framework.

The primary sources of information in this study are derived from systematically collected primary and secondary legal materials. Primary legal materials consist of the constitutions, election laws, and rulings from the constitutional judicial institutions of

Content, Context and the Performance of Social Actors," *Health Policy and Planning* 37, no. 9 (2022): 1086–97, <https://doi.org/10.1093/heapol/czac051>.

¹³ Tunggul Ansari Setia Negara, "Normative Legal Research In Indonesia: Its Origins And Approaches," *ACLJ* 4, no. 1 (2023): 5.

both countries that possess the authority to review the constitutionality of political right restrictions. Meanwhile, secondary legal materials include academic legal literature, reputable international scientific journals, research reports, and both classical and contemporary texts discussing leadership qualifications in Islam (*adalah* and *amanah*). To complement the analysis, non-legal materials such as legal dictionaries and encyclopedias are also utilized to strengthen the operational definitions and terminology used throughout the manuscript.

All legal materials gathered through library research techniques are analyzed qualitatively using a descriptive-analytical method. The analysis process involves identifying, classifying, and interpreting the legal norms applicable in Indonesia and Uzbekistan to uncover the *ratio legis* behind the restriction of rights for former convicts. Conclusions are drawn using a deductive reasoning method, in which general premises regarding democracy and human rights are confronted with legal facts and the principle of *Maslahah Mursalah*. This approach aims to produce a prescriptive legal argument concerning the ideal construction of the right to be elected while continuing to uphold moral integrity within an electoral democratic system.

Result and Discussions

Legal Status of Political Rights Related to Legal Restrictions for Former Convicts to Run for Election

Political rights are an integral part of human rights, guaranteeing every individual the opportunity and freedom to participate in the political processes of the country in which

they live.¹⁴ These rights include the ability to vote and to be elected in general elections, as well as the freedom to express opinions, assemble, and form political organizations. Through political rights, citizens can participate in decision-making that affects their lives directly or indirectly, thereby creating a democratic and just system of government.¹⁵

The importance of political rights as part of human rights lies in their function to guarantee equality and justice for all individuals, without discrimination based on ethnicity, religion, race, gender, or social status.¹⁶ By protecting political rights, the state recognizes the dignity and value of every human being as an active subject in national and state life. Therefore, the exercise of political rights must be protected and respected by the state and society in order to create a conducive environment for the development of freedom and political participation, while also serving as the foundation for the establishment of democracy and the comprehensive enforcement of human rights.

Efforts to understand political rights must be understood comprehensively with the conception of human rights. Based on the definition referring to Black's Law Dictionary, human rights are fundamental rights inherent

¹⁴ Paul Atagamen Aidonojie et al., "Examining Human Rights Abuses on Religious, Cultural, and Political Intolerance in Nigeria," *Journal of Sustainable Development and Regulatory Issues (JSDERI)* 3, no. 1 (2025): 78–94, <https://doi.org/10.53955/jsderi.v3i1.55>.

¹⁵ Helmi Kamal et al., "Women's Political Representation in Feminist Perspectives: Case Study in the Bone Regency People's Representative Council," *Sawwa: Jurnal Studi Gender* 18, no. 1 (2023): 121–46, <https://doi.org/10.21580/sa.v18i1.17967>.

¹⁶ Edy Mulyono et al., "Legal Uncertainty and Barriers to Women's Representation in Village Governance," *Indonesian Journal of Innovation Studies* 26, no. 1 (2025): 4–7, <https://doi.org/10.21070/ijins.v26i1.1283>.

to every individual, which cannot be revoked or eliminated by anyone because these rights are an essential part of a person's humanity.¹⁷ These rights are inherent to humans from birth as a natural and universal gift, originating from the dignity and existence of humans as God's creation.¹⁸ Human rights guarantee protection of freedom and equality before the law and grant every individual the right to life, liberty, security, and to participate in social, political, and economic life in a fair and equal manner.¹⁹ In a legal context, human rights also play an important role in protecting individuals from arbitrary actions by the state or other parties, thus becoming a fundamental basis for the enforcement of democracy, justice, and respect for human dignity as a whole.²⁰

Political rights are a fundamental aspect of human rights, granting every individual the freedom and opportunity to participate actively in national and governmental life. These rights include the right to vote and to be elected in general elections, the right to associate and assemble, as well as the freedom to express opinions and criticisms of the government.²¹ Through political rights, a person has a role in determining the direction

of state policy and leadership, directly or indirectly, which forms the basis for the realization of a healthy and just democratic system. In the context of human rights, political rights fall into the category of rights that safeguard civil and political freedoms, which must be protected by the state in accordance with constitutional principles and international law.²² The regulation of political rights as an essential part of human rights has been clearly and firmly stipulated in various human rights instruments at the global level, especially in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Civil and Political Rights (ICCPR).

In the UDHR, adopted by the United Nations in 1948, political rights are explicitly regulated in Article 21, which states that everyone has the right to participate in the government of their country directly or through freely chosen representatives, as well as the right to equal access to public service. This article also affirms that the will of the people shall be the basis of the authority of government, which is expressed through periodic, fair, and secret elections to ensure that the voices of the people are valued without any discrimination. Furthermore, in the ICCPR, which came into force in 1976, political rights are further strengthened and elaborated in several important articles, especially Article 25, which affirms the right of every citizen to participate in the government of the country, the right to vote and to be elected in free and fair elections, and the freedom to access public office in accordance

¹⁷ Henry Campbell Black Bryan A. Garner, *Black's Law Dictionary*, 11th ed. (West Publishing Co, St. Paul, 2019).

¹⁸ Noviyanti Dicky Eko Prasetyo, Muh. Ali Masnun, Arinto Nugroho, Denial Ikram, "Discrimination Related to Labour Age Limitation in Indonesia: A Human Rights and Comparative Law Perspective," *Suara Hukum* 6, no. 2 (2024): 228–54.

¹⁹ Rizal Sitinjak et al., "Efektivitas Penegakan Hukum Terhadap Tindak Pidana Terorisme Di Indonesia: Studi Kasus Densus 88 AT Polri," *Humaniorum* 3, no. 1 (2025): 100–105, <https://doi.org/10.37010/hmr.v3i1.93>.

²⁰ Oksana Khablo and Ivo Svoboda, "International Standards for the Application of the Presumption of Innocence in Criminal Proceedings," *Naukovij Visnik Nacional'noi Akademii Vnutrišnih Sprav* 29, no. 1 (2024): 55–65, <https://doi.org/10.56215/naia-herald/1.2024.55>.

²¹ Yuval Shany, "The Road Taken: ICCPR and Discriminatory Restrictions on Religious Freedom," *Harvard Human Rights Journal* 34, no. 1 (2021): 305–13.

²² Antje Missbach and Gunnar Stange, "Muslim Solidarity and the Lack of Effective Protection for Rohingya Refugees in Southeast Asia," *Social Sciences* 10, no. 5 (2021): 1–16, <https://doi.org/10.3390/socsci10050166>.

with procedures established by law. In addition, Article 19 of the ICCPR also protects freedom of expression, which is an integral part of political rights, as well as Article 21, which regulates the right to freedom of peaceful assembly. These instruments together form a solid international legal framework for the protection of political rights as human rights, requiring member states to respect, protect, and fulfill the political rights of their citizens as part of the promotion of just democracy and universal respect for human rights. Thus, the regulation of political rights in these various global instruments not only becomes a normative basis for countries in implementing democracy and the rule of law but also serves as a tool for verification and monitoring of the implementation of political rights at the international level to prevent violations and ensure inclusive and fair political participation for all citizens without exception.²³

The characteristics of political rights as part of human rights can be seen from two types of rights: derogable rights and non-derogable rights. Derogable rights are rights that can be restricted or reduced in emergency situations, such as war or national crisis, but must still be maintained in accordance with applicable legal procedures.²⁴ For example, freedom of assembly may be restricted in certain situations to maintain national security. Meanwhile, non-derogable rights are fundamental rights that may not be

reduced or revoked under any circumstances, due to their absolute and essential nature for human existence.²⁵ The right to life, the prohibition of torture, and freedom from slavery are among the non-derogable rights whose full continuation must be guaranteed.

Political rights often fall into the category of derogable rights because they can be restricted for reasons of security or public order, but the state must ensure that these restrictions are not arbitrary and still respect the principles of human rights.²⁶ This is important to avoid abuse of power and oppression that can undermine democracy. Therefore, the exercise of political rights must be accompanied by strong legal protection so that these rights can be fully enjoyed by every citizen, as well as serving as a control mechanism against government power. Thus, political rights as part of human rights are not only a right to political participation but also a reflection of the protection of fundamental freedoms and social justice that support the establishment of democracy and the rule of law in society.

The regulation of political rights in Indonesia as stipulated in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) is a very important constitutional foundation as a guarantee of the implementation of human rights in the political field for all Indonesian citizens. The articles in the UUD NRI 1945 explicitly regulate the right of citizens to participate in government and the political process, which

²³ Sonya Hellen Sinombor, "Kedudukan Deklarasi Universal Hak Asasi Manusia (UDHR) Dalam Sistem Hukum Di Indonesia," *Jurnal Al-Wasath* 3, no. 1 (2022): 1–12, <https://doi.org/10.47776/alwasath.v3i1.330>.

²⁴ Muhammad Ihsan Firdaus, "The Legalization of Interfaith Marriage in Indonesia (Between Universalism and Cultural Relativism)," *The Easta Journal Law and Human Rights* 1, no. 02 (2023): 64–72, <https://doi.org/10.58812/eslhr.v1i02.52>.

²⁵ Nusrat Jahan Mim, "Religion at the Margins: Resistance to Secular Humanitarianism at the Rohingya Refugee Camps in Bangladesh," *Religions* 11, no. 8 (2020): 1–17, <https://doi.org/10.3390/rel11080423>.

²⁶ Marew Abebe Salemot, "Non-Derogable Rights during State of Emergency: Evaluation of the Ethiopian Legal Framework in Light of International Standards," *Hawassa University Journal of Law* 5, no. 1 (2021): 177.

includes the right to vote and the right to be elected in general elections, as well as freedom of association, assembly, and expression. Article 1 paragraph (2) of the UUD NRI 1945 states that sovereignty is in the hands of the people and is exercised according to the Constitution, which is the main foundation for the political right of the people to participate in determining the direction of government. Article 27 paragraph (1) of the UUD NRI 1945 affirms the principle of equality before the law and government without discrimination, guaranteeing that every citizen has the same rights in the political sphere. In addition, Article 28D paragraphs (1) and (3) of the UUD NRI 1945 include the right to legal recognition and equal opportunity for everyone to participate in government. Article 28E paragraph (3) of the UUD NRI 1945 provides guarantees of freedom of association, assembly, and expression, which are essential political rights that support the democratic process. Specifically, the right to vote and to be elected is regulated in various articles, such as Article 19 paragraph (1) of the UUD NRI 1945 which regulates general elections directly, publicly, freely, secretly, and honestly and fairly; Article 22C paragraph (1) of the UUD NRI 1945 which provides the legal basis for the implementation of elections; and Article 6A paragraph (1) of the UUD NRI 1945 which regulates the position of the House of Representatives as representatives of the people. The UUD NRI 1945 also regulates restrictions on political rights to ensure respect for the rights of others and public order, as regulated in Article 28J paragraph (2) of the UUD NRI 1945, which stipulates that restrictions must be based on law and to maintain morality, security, and order in a democratic society. All of these provisions

affirm that political rights are not only protected human rights, but also an obligation for the state to provide ample space for free and fair political participation without discrimination based on ethnicity, religion, race, or social status.²⁷ The implementation of political rights in the UUD NRI 1945 reflects the state's commitment to the enforcement of democracy based on popular sovereignty, where the people have a major role in electing leaders and determining public policies that impact the life of the nation and state. Thus, the regulation of political rights in the UUD NRI 1945 not only provides a solid legal basis but also serves as an instrument that guarantees the protection and respect of citizens' political rights as part of fundamental human rights in Indonesia.

As stipulated in the UDHR, ICCPR, and UUD NRI 1945, it can essentially be concluded that political rights are rights that can be limited because they are characterized as derogable rights. Political rights are categorized as derogable rights because they can be restricted or reduced by the state under certain conditions, such as emergency situations or to maintain public safety and order. Political rights, including the right to vote, to be elected, to freely associate, to assemble, and to express opinions, are important human rights, but they are not absolute and unconditional like non-derogable rights. The main parameter that affirms that political rights are derogable rights is the existence of legal provisions that allow for the restriction or postponement of these rights if necessary to meet certain legitimate objectives, such as the protection of the rights

²⁷ M. Ibrahim, "The Judicialisation of Discrimination in the Indonesian Constitutional Court," *International Journal of Discrimination and the Law* 22, no. 2 (2022): 127.

and freedoms of others, national security, public order, or public morality.²⁸

The regulation of derogable rights must also take into account the principles of human rights and must not be carried out arbitrarily or discriminatorily. Political rights as derogable rights can be restricted by the state based on law, to avoid abuse of power that can harm the interests of the wider community and maintain the stability of the state.²⁹ Another parameter that marks political rights as derogable is the provision that restrictions must be made for clear reasons and within limits that do not weaken the essence of the right itself, so that its democratic function is maintained. In the context of international law, for example, the ICCPR, derogable rights are described as civil and political rights that must still be guaranteed fulfillment, but may be subject to legal restrictions under certain circumstances.³⁰ Thus, political rights as derogable rights are an important part of the dynamics of government and state management which allows the balance between individual freedom and the collective interests of society to be maintained proportionally and fairly under the law.

One form of restriction on political rights

is the restriction regarding the political rights of former prisoners to participate in general election contests. Political rights in the context of general elections are divided into two main types, namely active political rights and passive political rights, both of which are very important in ensuring citizen participation in the democratic process. Active political rights are the rights of every citizen to elect prospective leaders or people's representatives at various levels of government through general elections that take place directly, publicly, freely, secretly, honestly, and fairly.³¹ This right allows citizens who meet the requirements, such as a minimum age of 17 years, have been registered on the permanent voter list, and are not currently having their voting rights revoked, to cast their votes in determining the direction of government. Conversely, passive political rights are the rights of citizens who meet certain requirements to nominate themselves and be elected as state officials, both in the legislature and the executive. This right provides an opportunity for individuals to participate directly in government by becoming people's representatives or other public officials.

The main difference between active and passive political rights lies in their function and role in general elections. Active political rights relate to the ability to vote, while passive political rights relate to the ability to be elected and hold office. The restriction of passive political rights for former prisoners to run for office in general elections, when viewed from the perspective of the theory of

²⁸ Andi Intan Purnamasari et al., "Redesigning: Handling Of Indonesian Election Violations Abroad To Realizing Quality 2024 Elections," *Fiat Justisia: Jurnal Ilmu Hukum* 17, no. 1 (2023): 75-92, <https://doi.org/10.25041/fiatjustisia.v17n01.2637>.

²⁹ Sheila Kusuma Wardani Amnesti et al., "Legal Protection of Personal Data Security in Indonesian Local Government Apps: Al Farabi's Perspective," *Legality: Jurnal Ilmiah Hukum* 33, no. 1 (2024): 1-19, <https://doi.org/10.22219/ljih.v33i1.34623>.

³⁰ Erma Defiana Putriyanti et al., "An Examination of Human Rights Related to the Protection of Debtor Customer Data and Information Through Bank Secrecy Rules," *International Journal of Islamic Education, Research and Multiculturalism (IJIERM)* 7, no. 1 (2025): 171-86, <https://doi.org/10.47006/ijierm.v7i1.389>.

³¹ Suwito Suwito and Siti Ngainnur Rohmah, "Democratic Practices in Indonesia's Multi-Party Election System During the Old Order Period," *STAATSRECHT: Indonesian Constitutional Law Journal* 5, no. 1 (2021), <https://doi.org/10.15408/siclj.v5i1.20753>.

justice in law, sociology, and human rights, contains profound complexities and requires a balance between individual interests and the collective interests of society. From the perspective of the theory of justice, this restriction can be understood through the principles of distributive justice and procedural justice, where the state has an obligation to maintain the integrity and morality of the democratic process and ensure that prospective leaders who are proposed have a good track record and do not harm the public interest.³² In this context, the restriction of political rights for former prisoners, especially those who commit serious crimes such as corruption, narcotics, and sexual offenses, is considered a form of justice protection for the wider community to prevent abuse of power and corruption that damages the system of government. However, these restrictions must be based on clear, transparent, and proportional legal procedures to avoid injustice and discrimination that violate human rights.

From a sociological perspective, this restriction also takes into account the social and political impacts that arise from the involvement of former prisoners in the political arena. Society needs trust and confidence in the public officials who represent them, so the restriction on former prisoners is intended to maintain social trust and political legitimacy. This restriction also functions as a form of social sanction that serves as a reminder of the consequences of criminal acts and provides space for former prisoners for social rehabilitation, self-

improvement, and demonstrating moral commitment before returning to participate in politics. However, the restriction should not become a permanent mechanism of social exclusion, as this could hinder the process of social reintegration and the basic political rights inherent in every citizen as part of human rights.

Within the framework of human rights, political rights are included in the category of derogable rights, so restrictions on the political rights of former prisoners can be imposed, but must meet human rights principles such as being non-discriminatory, fair, proportional, and in accordance with applicable legal provisions, as well as taking into account a reasonable and non-permanent period of restriction. This demonstrates an effort to balance respect for the right to be elected with the aim of maintaining the morality and integrity of government. Thus, the restriction of passive political rights for former prisoners is a legal and social effort that prioritizes justice for society without neglecting individual rights, while providing space for a conducive social and political rehabilitation process in the future, so that democracy can run in a healthy, fair, and reliable manner amidst the challenges of managing human rights and socio-political stability.

The restriction of passive political rights for former convicts to run for office in general elections is very relevant when viewed from the perspective of the principle of proportionality,³³ which is one of the

³² Kamal Fahmi Kurnia et al., "The Authority of Constitutional Court in General Election Results: Is It Powerful or Meaningless?," *International Conference on Law Reform* 121, no. 1 (2020): 130–34, <https://doi.org/10.2991/aebmr.k.200226.026>.

³³ Komang Suputra Kurniawan and I. Gede Agus Kurniawan, "The Limitations of Lex Generalis: Analyzing the Readiness of the GDPR and PDP Law for AI-Based Facial Recognition Technology," *SIGn Jurnal Hukum* 7, no. 2 (2025): 838–52, <https://doi.org/https://doi.org/10.37276/sjh.v7i2.533>.

fundamental principles in law, which requires a balance between restricting individual rights and protecting the public interest.³⁴ The principle of proportionality requires that any restriction on political rights is not arbitrary and must have clear justification, including providing a certain time period or deadline for running for office after completing a sentence, while also taking into account the type of crime committed.³⁵ This approach refers to Gustav Radbruch's view which emphasizes the importance of fulfilling three main aspects of law, namely legal certainty, legal utility, and legal justice.³⁶ In this context, legal certainty is reflected in the existence of a waiting period or political pause, usually for five years after the defendant has completed the sentence, which explicitly regulates these restrictions to avoid ambiguity and ensure certainty for all interested parties.³⁷ The aspect of legal expediency is seen in the efforts of this restriction, which not only protects the integrity of the political system and democracy from potential damage that may be caused by prospective former prisoners who have previously committed

serious crimes, such as corruption, narcotics, or other serious crimes, but also provides space for former prisoners to improve themselves before fully participating in political life again.³⁸ Meanwhile, the aspect of legal justice requires that these restrictions must be fair and balanced, not generalizing all former prisoners without distinguishing the level of seriousness of the crime and post-sentence behavior, and must avoid discrimination that reduces their overall social and political reintegration opportunities.³⁹

The Islamic Political Paradigm: *Siyasah Shar'iyah* and Leadership Qualifications

The Islamic perspective on political rights and leadership is primarily articulated through the doctrine of *Siyasah Shar'iyah*.⁴⁰ This framework grants the state and its rulers the authority to implement policies and enact regulations that promote the public interest (*Maslahah*), as long as such measures do not contravene the universal principles of the Sharia.⁴¹ In Islam, leadership is viewed not merely as a secular administrative role but as an *Amanah* (trust) and a religious duty aimed at establishing justice, welfare, and the

³⁴ Gehan Gunatilleke, "Justifying Limitations on the Freedom of Expression," *Human Rights Review* 22, no. 1 (2021): 91–108, <https://doi.org/10.1007/s12142-020-00608-8>.

³⁵ Mei Susanto et al., "Should the Muslim President Become a Constitutional Convention in Indonesia? Based on Constitutional Debates about Islam and State, and the Constitutional Practice," *Cogent Social Sciences* 9, no. 1 (2023): 3–4, <https://doi.org/10.1080/23311886.2023.2196815>.

³⁶ Hemmalika alyanti Chandra Anisyaniawati, A., Fauzan naufal kusuma, Haifa zanati, "Konsep Hukum Dan Keadilan Dalam Pemikiran Gustav Radbruch," *Praxis: Jurnal Filsafat Terapan* 20, no. 1 (2025): 4–11.

³⁷ Else Suhaimi, "Pola Rekrutmen Politik Berdasarkan Ideologi Partai Politik Dalam Sistem Ketatanegaraan Indonesia," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 18, no. 1 (2018): 105–24, <https://doi.org/https://doi.org/10.19109/nurani.v18i1.2021>.

³⁸ Anisa Defbi Mariana and I. Gede Agus Kurniawan, "Plato's Justice in Business Law: A Study from the Perspective of Legal Philosophy," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 24, no. 1 (2025), <https://doi.org/https://doi.org/10.31941/pj.v24i2.6930>.

³⁹ Rian Ganggas Puspatara and I. Gede Agus Kurniawan, "Rethinking Unjust Enrichment: Advancing Distributive Justice in Indonesian Law," *Rechtsidee* 11, no. 1 (2023), <https://doi.org/https://doi.org/10.21070/jihr.v12i1.961>.

⁴⁰ Hasrat Efendi Samosir et al., "Recontextualizing the Medina Charter: Consensus-Based Political Communication for Contemporary Plural Societies," *MILRev: Metro Islamic Law Review* 4, no. 1 (2025): 645–75, <https://doi.org/https://doi.org/10.32332/milrev.v4i1.10523>.

⁴¹ Mohamad Hashim Kamali, "Siyasah Shar'iyah or the Policies of Islamic Government," *The American Journal of (Slamic Social Sciences* 6, no. 1 (1989): 59–80.

protection of faith.⁴²

Islamic political thought emphasizes a set of rigorous qualifications for individuals seeking public office.⁴³ These criteria are designed to ensure that the leader acts as a moral role model for the community and as a faithful steward of the people's resources.⁴⁴ The four foundational traits often cited include *Siddiq* (truthfulness), *Amanah* (trustworthiness), *Tabligh* (transparency/communication), and *Fathanah* (intelligence/wisdom).

Table 1. Islamic Leadership Qualifications and Their Implications for Former Convicts

Leadership Trait	Definition and Political Implication	Relevance to Former Convicts
<i>Adalah</i> (Justice)	The requirement for a leader to possess moral rectitude and a clean track record.	A criminal conviction for a serious offense is often seen as a temporary or permanent forfeiture of <i>Adalah</i> .
<i>Amanah</i> (Trust)	The capacity to handle public power and resources with absolute integrity.	Crimes like corruption are direct violations of the principle of <i>Amanah</i> , making the offender suspect for public office.
<i>Taqwa</i> (Piety)	A state of God-consciousness that prevents the individual from committing harmful acts.	Repentance (<i>Tawbah</i>) is required to restore <i>Taqwa</i> , but political eligibility may still be limited.
<i>Shura</i> (Consultation)	The obligation to seek counsel and prioritize inclusivity in decision-making.	Requires leaders who are respected by the community, a status damaged by incarceration.

⁴² Muhtar Solihin, "Islamic Perspective of Leadership," *IJRDO-Journal of Social Science and Humanities Research* 2, no. 3 (2017): 1–9.

⁴³ Sayed Rafli Tabrani and Irwansyah, "Tinjauan Fiqh Siasah Dan Yuridis Terhadap Wacana Sistem Proporsional Tertutup Pada Pemilu 2024," *Jurnal Hukum* 39, no. 1 (2023), <https://doi.org/https://dx.doi.org/10.26532/jh.v39i1.30714>.

⁴⁴ Ahmad Annizar et al., "Identity Politics and Prospective Leader Selection: A Perspective from Fiqh Siyasah," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 11, no. 1 (2024), <https://doi.org/http://dx.doi.org/10.29300/mzn.v11i1.3445>.

The requirement of *Adalah* is particularly critical in the debate over the rights of former prisoners. Traditional Islamic jurisprudence suggests that a person who has committed a serious crime and received a legal sentence may have their *Adalah* impaired. While the individual can achieve spiritual forgiveness through *Tawbah*, their eligibility for positions of high authority (such as the *Imamate* or high legislative office) may be permanently or temporarily affected. Some contemporary scholars argue that granting leadership rights to former prisoners, especially those who committed special crimes like corruption, is *makruh* (discouraged) because it weakens the moral authority of the state.⁴⁵

Islam is fundamentally a religion of mercy and rehabilitation. The purpose of punishment in the Islamic criminal justice system is not merely retribution but the reclamation and correction of the offender.⁴⁶ The concept of *Tawbah* (repentance) provides a path for the individual to return to God and society. However, *Tawbah* has specific legal and social requirements: the cessation of the sin, genuine remorse, a firm resolve not to repeat the act, and the restoration of the rights of those harmed.⁴⁷

In a political context, the restoration of a person's dignity and legal standing is known as *Raddul I'tibar*.⁴⁸ This principle acknowledges

⁴⁵ Irvan Refliandi and Fatimah, "Giving the Right to Former Prisoners to Be Leaders in the Study of the Philosophy of Islamic Law," *HAKAMAIN: Journal of Sharia and Studies* 2, no. 2 (2023): 196–206, <https://doi.org/10.57255/hakamain.v2i2.329>.

⁴⁶ Aisha Tariq and Muhammad Mumtaz Ali Khan, "A Comparative Study of The of Rights of Prisoners Under the Shari'ah And the Contemporary Legal System of Pakistan," *International Law*, 2021, 185–93.

⁴⁷ Shaykh Noorud-deen Rashid, *What Are the Conditions of Repentance (Tawbah)?*, 2024, <https://islamanswers.co.uk/question/what-are-the-conditions-of-repentance-tawbah/>.

⁴⁸ Muhaimin et al., "Maqashid's Lens on Checks and

that a person should not be deprived of their social and civil rights for their entire life after serving a sentence.⁴⁹ Yet, a distinction is often made between the "rights of a citizen" and the "privilege of leadership."⁵⁰ While *Raddul l'tibar* might restore a person's right to vote or to hold ordinary employment, the higher threshold of *Amanah* required for elective office may necessitate more stringent proof of rehabilitation or a specific waiting period, as seen in the Indonesian model.⁵¹

Maqasid al-Sharia, or the higher objectives of Islamic law, provides a robust framework for balancing individual rights with the collective well-being of the *Ummah* (community).⁵² The *Maqasid* prioritize the protection of five essential values: religion (*hifzh al-din*), life (*hifzh al-nafs*), intellect (*hifzh al-aql*), progeny (*hifzh al-nasl*), and property (*hifzh al-mal*).⁵³ The restriction of political rights for former prisoners, particularly those

involved in systemic corruption or drug-related crimes, can be justified through the lens of *Maqasid al-Sharia*:

- a. Protection of Property (*Hifzh al-Mal*): The exclusion of former corruption convicts is a direct implementation of the objective to protect public wealth from potential predators who have already proven their willingness to misappropriate social resources.⁵⁴
- b. Protection of Religion/Morality (*Hifzh al-Din*): By ensuring that leaders are individuals of high moral character, the state upholds the spiritual and ethical standards that define an Islamic polity.
- c. Protection of Intellect and Order (*Hifzh al-Aql/AI-Nizam*): Ensuring that the decision-making bodies of the state are filled with competent and trustworthy individuals protects the rational management of the state and prevents chaos.

This "*Maqasid-based*" approach allows for a dynamic reinterpretation of Sharia that aligns with modern human rights standards while maintaining its ethical core.⁵⁵ It suggests that while political rights are important, they must be exercised in a way that does not endanger the foundational interests of society. Therefore, conditional restrictions—such as the 5-year waiting period implemented in Indonesia—are seen as a legitimate application of *Maslahah Mursalah* (public

Balances of Simultaneous Elections in Indonesia," *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 20, no. 2 (2023), <https://doi.org/https://doi.org/10.21154/justicia.v20i2.7377>.

⁴⁹ Hanie Kiumarsi and Seyedmahmood Majidi, "Rehabilitation in Iran's Law," *European Journal of Experimental Biology* 3, no. 1 (2013): 292–97.

⁵⁰ Mukhsin Aseri et al., "Negotiating Authority and Knowledge: Religion, Science, and Politics in the Fatwa Transformations of the Indonesian Ulema Council," *Journal of Islamic Law* 6, no. 2 (2025): 286–316, <https://doi.org/https://doi.org/10.24260/jil.v6i2.4702>.

⁵¹ Alfian Widyatama et al., "Democracy and the Political Rights of Former Prisoners in Indonesia: A Legal Perspective," *Rule of Law Studies Journal* 1, no. 3 (2025): 179–90, <https://doi.org/10.64780/rolsj.v1i3.93>.

⁵² Zainal Muttaqin, "Formalization of Islamic Law in Indonesia in the Framework of Social Engineering Theory by Roscoe Pound," *El-Mashlahah* 11, no. 2 (2021): 97–115, <https://doi.org/https://doi.org/10.23971/elma.v11i2.2825>.

⁵³ Ahmad Muhamad Mustain Nasoha et al., "Criminal Law in Muslim-Majority Countries: Balancing Sharia, Human Rights, and Global Standards," *SHAHIH: Journal of Islamicate Multidisciplinary* 10, no. 1 (2025): 1–18, <https://doi.org/10.22515/shahih.v10i1.10038>.

⁵⁴ Muhammad Arafat and Asmuni, "Implementation of Maqashid Al-Syariah in Islamic Criminal Law in Muslim Countries: A Comparative Study in Saudi Arabia, Iran, Malaysia, and Indonesia," *AL-SULTHANIYAH* 14, no. 1 (2025): 45–68, <https://doi.org/https://doi.org/10.37567/al-sulthaniyah.v14i1.3577>.

⁵⁵ Iskandar Syukur and Noor Sulastry Yurni Ahmad, "The Indonesian Islam: Law and the Ideological Perspective," *Al-'Adalah* 11, no. 2 (2014): 235–48, <https://doi.org/https://doi.org/10.24042/adalah.v12i2.3016>.

interest not explicitly mentioned in scripture but consistent with its spirit).

Indonesia: The Judicial Struggle for Electoral Integrity and Political Justice

Indonesia presents a compelling case study of a nation where the judiciary has taken an active role in defining the boundaries of political participation for former convicts. As the world's largest Muslim-majority democracy, Indonesia's legal system must navigate the tension between constitutional guarantees of equality and the societal demand for a "clean" government.⁵⁶

The foundational statute for Indonesian elections is Law Number 7 of 2017. Article 240 paragraph (1) letter g initially allowed former prisoners to run for legislative office as long as they had completed their sentence and "openly and honestly" disclosed their status to the public. This "honesty requirement" was intended as a form of transparency, leaving the final judgment to the voters. However, public dissatisfaction with the presence of former corruption convicts in the candidate pool led the General Election Commission (KPU) to attempt more restrictive measures through internal regulations (PKPU).

The Indonesian Constitutional Court (*Mahkamah Konstitusi*) has issued several landmark decisions that have shaped the current requirements for former prisoner candidacy. These rulings demonstrate a "judicial activism" aimed at reconciling individual rights with the preservation of democratic quality. Decision Number 56/PUU-XVII/2019 was particularly revolutionary. The Court argued that the simple requirement of

public announcement was insufficient to deter corruption or to ensure the integrity of leaders. By imposing a mandatory five-year waiting period, the Court provided a temporal space for the individual to adapt and prove themselves as a reformed citizen. This period also serves as a "sociological filter," reducing the likelihood that a former prisoner can immediately exploit their previous political networks for electoral gain. This decision reflects a prioritization of the collective right to good governance over the individual's immediate right to be elected.

Despite the clarity provided by the Constitutional Court, implementation at the regional level has been inconsistent. In the 2020 local elections, the South Lampung Bawaslu reinterpreted these rules to approve a candidate who had not yet completed the waiting period, leading to significant legal controversy and a perceived failure to ensure the integrity of the candidate pool.²⁴ Such instances suggest that the transition from judicial theory to administrative practice requires stronger synchronization and a deeper internalisation of constitutional values by election organizers.⁵⁷

Uzbekistan: Democratization, "Enlightened Islam," and the 2019 Reforms

Uzbekistan's approach to the political rights of former prisoners is situated within its unique post-Soviet transition and the more recent "New Uzbekistan" reform movement

⁵⁶ Sulistyani Eka Lestari, "Study of Morality And Human Rights On Former Corruption Prisoners Who Become A Prospective Regional Head," *YURISDIKSI: Jurnal Wacana Hukum Dan Sains* 18, no. 3 (2022): 391–402.

⁵⁷ Ahmad Syarifudin and Dini Lionita Septiani, "Implications of Bawaslu's Interpretation of the Constitutional Court Decision on the Eligibility of Former Convicts as Regional Head Candidates in Local Elections," *As-Siyasi: Journal of Constitutional Law* 3, no. 2 (2023): 177–98, <https://doi.org/http://dx.doi.org/10.24042/as-siyasi.v3i2.19432>.

led by President Shavkat Mirziyoyev.⁵⁸ After decades of isolation and strict control under the Karimov regime, Uzbekistan has embarked on a path of liberalization that includes significant changes to its electoral and religious policies.⁵⁹

In February 2019, the Uzbek government enacted a set of reforms that marked a significant departure from previous practices. One of the most critical developments was the removal of broad-based voting restrictions on individuals with past criminal convictions. Under the old system, a criminal record often meant a lifetime of disenfranchisement. The new Electoral Code sought to re-engage former prisoners in the political process, reflecting a broader commitment to "humanism and generosity".⁶⁰

Table 2. Key Electoral Reforms in Uzbekistan (2019) and Their Political Implications

Key Feature of 2019 Reform	Strategic Objective	Observed Outcome
Removal of Felon Voting Bans	Promotes social reintegration and political inclusion for former convicts.	Increased voter eligibility; recognized by international observers as a positive step.
Gender Quota (30%)	Ensures female representation in the Oliy Majlis (Parliament).	Women now hold roughly 32 percent of seats in the lower house.
Direct Election Participation	Ecological Party required to compete directly rather than receiving reserved seats.	Encouraged political party development and competition

While these reforms expanded active political rights (voting), the path to passive

political rights (standing for office) remains more complex. Uzbekistan still maintains restrictions on individuals convicted of "serious or especially serious crimes," a provision enshrined in Article 128 of the 2023 Constitution. Furthermore, despite the release of over 50 political prisoners since 2016, many have not been "legally rehabilitated," which prevents them from fully clearing their records and participating as candidates.

Uzbekistan identifies as a secular state but actively promotes what it calls "Enlightened Islam" (*Ma'rifatli Islom*).⁶¹ This policy involves the proactive use of the country's Islamic heritage—specifically the moderate Hanafi-Maturidi tradition—to foster social cohesion and counter radical ideologies. The state's involvement in religious education and the restoration of Islamic monuments is designed to present a model of Islam that is compatible with a modern, secular state.

In terms of political rights, the "Enlightened Islam" paradigm emphasizes the leader's responsibility to be a "servant of the people".⁶² However, the state remains cautious about the intersection of religion and political opposition. Groups like Hizb ut-Tahrir remain banned, and individuals associated with them often face significant barriers to political reintegration.⁶³ The Uzbek model prioritizes administrative stability and state-led democratization over the "judicialized" competition seen in Indonesia, meaning that

⁵⁸ Human Rights Watch, *Uzbekistan's Parliamentary Elections: A Human Rights Background*, 2019, <https://www.hrw.org/news/2019/12/17/uzbekistans-parliamentary-elections-human-rights-background>.

⁵⁹ Human Rights Watch, *World Report 2021 - Uzbekistan*, 2021, <https://www.ecoi.net/de/dokument/2043741.html>.

⁶⁰ Дониёр Тухсинов, *Prisoners May Be Granted the Right to Vote in Elections*, 2018, <https://kun.uz/en/55421576>.

⁶¹ Svante E. Cornell and Jacob Zenn, *Religion and the Secular State in Uzbekistan* (Central Asia-Caucasus Institute & Silk Road Studies Program, 2018).

⁶² S. Frederick Starr and Svante E. Cornell, *Uzbekistan: A New Model for Reform in the Muslim World?* (Central Asia-Caucasus Institute & Silk Road Studies Program, 2018).

⁶³ Emmanuel Karagiannis, "Political Islam in Uzbekistan: Hizb Ut-Tahrir al-Islami," *Europe-Asia Studies* 58, no. 2 (2006): 261–80, <https://doi.org/10.1080/09668130500481444>.

the political rights of former prisoners are often mediated by executive grace rather than judicial mandate.

Comparative Synthesis: Proportionality, Justice, and Sociological Outcomes

A comparative analysis of Indonesia and Uzbekistan reveals that while both nations are moving toward a more inclusive electoral democracy, their methods and justifications reflect different legal cultures and political priorities.

The legal frameworks in both countries can be evaluated through Gustav Radbruch's philosophy, which identifies three essential pillars of law: legal certainty, legal utility, and legal justice.

- a. **Legal Certainty:** Indonesia achieves this through the explicit 5-year waiting period defined by the Constitutional Court. Uzbekistan achieves it through the 2019 Electoral Code that removed broad felon voting bans, though uncertainty remains regarding the rehabilitation of political prisoners.
- b. **Legal Utility:** Both nations prioritize the utility of "governance integrity." By restricting former serious offenders from office, they seek to build public trust and prevent the recurrence of crime in high places.
- c. **Legal Justice:** Justice requires that no one is punished indefinitely. The Islamic principle of *Raddul I'tibar* supports the eventual restoration of rights. Indonesia's "waiting period" and Uzbekistan's "removal of signature lists restrictions" both aim for a balanced form of justice that allows for a "second chance" without compromising the state.

The Indonesian model is more "bottom-

up" and judicialized, where civil society groups (like ICW and Perludem) challenge laws to force ethical standards into the electoral framework.⁶⁴ The Uzbek model is more "top-down," where the state liberalizes political rights as part of a broader strategy for economic modernization and international re-engagement.

The restriction of passive political rights for former prisoners is an important implementation aimed at safeguarding the integrity and morality of the democratic system while also ensuring citizen participation. This study confirms that while political rights are fundamental human rights, they are derogable and can be limited in the pursuit of a higher public interest—a concept that resonates deeply with both the secular principle of proportionality and the Islamic doctrine of *Maslahah*.

In Indonesia, the focus on the "sociological defect" and the mandatory waiting period provides a sophisticated, though still unevenly applied, model for balancing the right to be elected with the requirement of moral integrity. In Uzbekistan, the shift toward removing broad voting bans represents a significant milestone in the country's democratization, though the continued lack of legal rehabilitation for many former political prisoners remains a hurdle to full political inclusion.

For both nations, the path forward requires a more profound harmonization of human rights with the enforcement of a quality-based democracy. This involves not

⁶⁴ Constitutional Court of the Republic of Indonesia, *Summary of Lawsuit Verdict Number 56/PUU-XVII/2019 Regarding the Requirement to Become a Regional Head Candidate for Former Corruptors*, 2019, https://aacc-asia.org/content/landmarkdecisions/73_sinopsis_perkara_652.docx.

only legal reform but a cultural shift in how leadership is perceived. From an Islamic perspective, the restoration of a person's civil rights (*Raddul I'tibar*) must be accompanied by a rigorous assessment of their *Adalah* (justice) and *Amanah* (trustworthiness) before they are entrusted with the stewardship of the community. By integrating these ethical values with the procedural requirements of electoral democracy, Indonesia and Uzbekistan can build political systems that are not only inclusive but also fundamentally just and resilient.

Conclusion

Political rights for former prisoners are a fundamental part of human rights categorized as derogable rights; thus, their fulfillment can be restricted by the state for the sake of public interest, national security, and public morality. The restriction of passive political rights (the right to be elected) for former prisoners in Indonesia and Uzbekistan is a legitimate legal step to maintain the integrity of state institutions and ensure that elected leaders possess a clean moral track record. Although there are differences in mechanisms—where Indonesia prioritizes the constitutional judicial role through Constitutional Court rulings, while Uzbekistan emphasizes administrative legal certainty—both countries equally apply the principle of proportionality to balance the protection of individual rights and the collective interests of society.

In the perspective of *Siyasah Shar'iyah*, leadership is viewed as an *Amanah* (a sacred mandate) that demands very strict moral qualifications, especially the attributes of *Adalah* (justice and moral integrity). Serious criminal offenses committed by an individual are considered to potentially damage this

Adalah attribute, thereby hindering their eligibility to hold public office related to the public welfare. Although Islam recognizes the concept of *Tawbah* (repentance) for spiritual relationships and *Raddul I'tibar* for social rehabilitation, the right to be elected as a leader can still be restricted for the sake of *Maslahah Mursalah* (public interest) to prevent systemic damage in the future.

Overall, restricting the passive political rights of former prisoners by implementing waiting periods or specific requirements is not a form of discrimination that violates human rights, but rather an effort to strengthen the quality of democracy. The ideal legal construction must still provide space for social rehabilitation and reintegration, yet continue to place moral integrity as the highest standard in political leadership succession to realize clean and authoritative governance.

CRedit authorship contribution statement

Shulhan Iqbal Nasution: Conceptualization, Methodology, Investigation, Data curation, Writing – original draft. Sugih Ayu Pratitis: Formal analysis, Literature review, Validation, Writing – review & editing. Mhd Anzor Lubis: Theoretical framework, Supervision, Methodological refinement, Writing – review & editing. Windy Sri Wahyuni: Data interpretation, Validation, Visualization, Writing – review & editing. Bazarova Dildora Baxadirovna: Comparative analysis, International perspective, Critical review, Writing – review & editing. All authors have read and approved the final manuscript.

Declaration of competing interest

The authors declare that they have no known competing financial, institutional, or personal interests that could have appeared to influence the work reported in this paper.

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