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Disclaimer of Political Rights As An Effort to Eradicate Corruption

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Abstract

Corruption is an extraordinary crime, so extraordinary methods are also needed to prevent and eradicate this crime. The imposition of serious crimes is one of the ways needed to eradicate them, then new punitive breakthroughs are also needed in order to provide a sense of deterrence and fear to both the perpetrators and the community. Several cases that have been decided during the trial of corruption at the first level, among others, are on behalf of the accused, Inspector General. Djoko Susilo in the corruption case of the procurement of a driving license (SIM) simulator tool, the KPK Public Prosecutor demanded additional crimes of revoking the right to vote and vote in general elections and public office (political rights), and the panel of judges granted the demands at the appeal level. This additional punishment is regulated in article 35 of the Criminal Code in conjunction with article 18 paragraph (1) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Corruption. This research uses normative legal research methods, supported by primary, secondary and tertiary legal sources. With descriptive qualitative analysis.The problem with this additional punishment for depriving political rights is how to apply this additional

punishment for depriving political rights in the prevention and eradication of corruption, because of course the KPK has strong reasons why this additional punishment is included as a punishment for perpetrators of corruption.

A. Introduction

Indonesia is a constitutional state, the legal basis of Indonesia is a constitutional state which is clearly stated in 1 paragraph (3) the 1945 Constitution of the Republic of Indonesia (UUD 1945) which states that "the Indonesian state is a constitutional state."[1] Likewise with a criminal act, a person who commits a crime must have a legal basis in punishing or convicting a perpetrator of a criminal act. This is in accordance with the principle of legality in the Criminal Code (KUHP), that "an act cannot be punished, except based on the strength of the provisions of the existing criminal legislation."[2]

AV Dicey in Introduction to the law of the Constituion, elements of the Rule of law in a classical sense include:[3]

a. Supremacy of the law; absence of arbitrary power, in the sense that a person can only be punished if he violates the law.
b. The same position in facing the law (equality before the law). This proposition applies both to ordinary people, as well as to officials.
c. Guaranteed human rights by law (in other countries by constitution) as well as court decisions.

Corruption in Indonesia has entered into state institutions, both the legislative, the executive, and even the Judiciary.[4] In this case the people who become officials in these institutions are mostly the perpetrators of corruption (corruptors).[5] Regarding the causes of corruption in Indonesia, according to the advisor to the Corruption Eradication Commission, Abdullah Hehamahua, there are at least eight, one of which is a light sentence for corruptors. This is because law enforcement does not work where law enforcement officers can be paid, starting from the police, prosecutors, judges and lawyers, so the sentences imposed on corruptors are very light so that they do not have a deterrent effect on corruptors.[6] In fact, it does not cause fear in the community so that officials and entrepreneurs continue to carry out the KKN process.[7]

Corruption as a material legal concept means an act that is regulated in the law concerning corruption itself or an act that is formulated in a law stipulated by the government which contains actions called corruption.[8] There is an interest which the legislators want to protect, therefore the prohibition of corruption is formulated in the law. Anyone who violates

[1] Kus Eddy Sartono, "Kajian Konstitusi Indonesia Dari Awal Kemerdekaan Sampai Reformasi Konstitusi Pasca Orde Baru," *Humanika, Kajian Ilmiah Mata Kuliah Umum* 8, no. 1 (August 28, 2008), https://doi.org/10.21831/HUM.V8I1.21011.

[2] M. (Muchamad) MuIksan, "Asas Legalitas Dalam Hukum Pidana : Studi Komparatif Asas Legalitas Hukum Pidana Indonesia Dan Hukum Pidana Islam (Jinayah)," *Serambi Hukum* 11, no. 01 (July 29, 2017): 1–26, https://www.neliti.com/id/publications/163598/.

[3] Miriam Budiardjo, *Fundamentals of Political Science*, Jakarta, Gramedia Pustaka Utama, 2010, p. 113.

[4] Andin Sofyanoor, "Peran Hukum Administrasi Negara Dalam Pemberantasan Korupsi Di Indonesia," *Sibatik JournaL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 1, no. 2 (2022): 21–30, https://doi.org/10.54443/sibatik.v1i2.9.

[5] Cecep Dudi Muklis Sabigin, "Perspektif Perbuatan Melawan Hukum Oleh Pejabat Publik Dalam Tindak Pidana Korupsi," *Jurnal Konstituen* 3, no. 1 (2021): 49–58.

[6] M. Wahib Aziz, "Sanksi Tindak Pidana Korupsi Dalam Perspektif Fiqih Jinayat," *International Journal Ihya' 'Ulum Al-Din* 18, no. 2 (2017): 159, https://doi.org/10.21580/ihya.17.2.1735.

[7] Abu Fida'Abdur Rafi, *Corruption Disease Therapy with Tazkiyatun (Soul Purification),* Jakarta, Republika, 2006.

[8] Wicipto Setiadi, "Korupsi Di Indonesia Penyebab, Hambatan, Solusi Dan Regulasi," *Jurnal Legislasi Indonesia* 15, no. 3 (November 21, 2018): 249–62, https://doi.org/10.54629/JLI.V15I3.234.

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the provisions of the legislation has committed an act against the law.[9] The nature of being against the law materially violates the legal interests that the law wants to protect in the formulation of certain offenses. This means that the act is a despicable act because it is contrary to the sense of justice or the norms of social life in society, then the act can be punished.[10] The nature of being against the formal law is: "all the written parts of the offense formulation have been fulfilled (so all the written requirements are to be convicted).[11]

New punitive breakthroughs are a way out to make perpetrators of criminal acts of corruption deter not only the perpetrators but also in terms of preventive action, people in positions become afraid to commit corruption. Apart from the weighting of the main criminal penalty, it must also be seen from the side of the additional punishment. Additional penalties can be used as alternative punishments that can eradicate and prevent corruption. Law Number 31 of 1999 (LN. No.140 of 1999, TLN. No. 3847) in conjunction with Law Number 20 of 2001 (LN.No.134 of 2001, TLN.No.4150) concerning Corruption as well regulates additional crimes that can be applied to perpetrators of corruption.[12] The additional penalties are:[13]

1. Confiscation of movable property that is tangible or intangible or immovable property that is used for or obtained from a criminal act of corruption, including the company owned by the convict in which the criminal act of corruption was committed, as well as from the goods that replaced these items;
2. Payment of replacement money in an amount equal to the amount of assets obtained from the criminal act of corruption;
3. The closure of all or part of the company for a maximum period of 1 (one) year;
4. Revocation of all or part of certain rights or of all or part of certain benefits that have been or can be given by the Government to the convicted person.

During 2013-2018, the corruption court (corruption) revoked the political rights of 26 corruptors who were proven to be involved in corruption cases. Revocation of political rights against officials caught in corruption is one of the additional punishments that the panel of judges will reward after the confiscation of assets. This was done in order to create a deterrent effect because he had diverted his authority for the benefit of himself and the group.[14]

In this case, a judge at the Jakarta Corruption Court (Tipikor) granted the prosecutor's request to the Corruption Eradication Commission (KPK) regarding the revocation of the political rights of the inactive Southeast Sulawesi Governor Nur Alam, on March 28, 2018.Nur Alam was proven to have spent Rp. 4,3 trillion when he became Governor of Southeast Sulawesi. However, not only Nur Alam, but because many officials who have been caught in corruption cases have been deprived of political rights.[15]

Based on the description of the background that has been stated above, the problem in this research is: how is the application of this additional punishment for depriving political rights in the prevention and eradication of corruption.

This type of research is normative legal research, namely legal research which is carried out by examining library materials or secondary data as the basic material for research by conducting a search of laws and regulations and literature related to the problem under study.

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[9] Ernest Runtukahu, "Corruption in the Concept of Formal Law and the Concept of Material Law, published in Lex Crimen, Vol.1, Number 2, 2012, p. 78.

[10] Mutiara Aerlang and Annisa Reginasari, "Pakar Rupia (Apa Kerja Keras Koruptor Indonesia ?): Membangun Sanksi Psikososial Bagi Terpidana Kasus Korupsi," *Integritas* 2, no. 1 (2016): 175–89.

[11] JE Sahetapy, Translation of Schaffmeter et a1, Criminal Law, Yogyakarta, Liberty, 2005, p. 39.

[12] Dyah Listyorini, Adi Suliantoro, and Fitika Andraini, "Implementasi Undang Undang Nomor 20 Tahun 2001 Terhadap Mata Kuliah Pendidikan Anti Korupsi Pada Mahasiswa Universitas Stikubank Semarang," *Jurnal Pendidikan Kewarganegaraan Undiksha* 9, no. 1 (November 14, 2021): 223–32, https://doi.org/10.23887/JPKU.V9I1.32723.

[13] Kristwan Genova Damanik, "Antara Uang Pengganti Dan Kerugian Negara Dalam Tindak Pidana Korupsi," *Masalah-Masalah Hukum* 45, no. 1 (2016): 1, https://doi.org/10.14710/mmh.45.1.2016.1-10.

[14] "KPK: Hak Politik 26 Koruptor Dicabut Sepanjang 2013-2017," accessed August 30, 2023, https://nasional.kompas.com/read/2018/09/18/13252541/kpk-hak-politik-26-koruptor-dicabut-sepanjang-2013-2017.

[15] *Ibid*.

By using primary legal material sources form The 1945 Constitution of the Republic of Indonesia, Law no. 1 of 1946 concerning Criminal Law Regulations, Law Number 8 of 1981 concerning Criminal Procedure Law, Law Number 31 of 1999 jo. Law Number 20 Year 2001 (State Gazette Year 1999 number: 140) concerning Corruption Crime, Law No. 19 of 2019 concerning the second amendment to Law No. 30 of 2002 concerning the Corruption Eradication Commission (State Gazette of the Republic of Indonesia Number 197 of 2019), Law Number 22 of 2007 (State Gazette of the Republic of Indonesia Number 59 of 2007) concerning General Election. Secondary Legal Materials include, among others, legal doctrines and theories, research results or scientific works. Tertiary Law Materials in this law dictionary and other dictionaries.

The legal materials obtained in this study were then analyzed using the following methods: (1) Qualitative Analysis, namely data obtained from the research results then grouped and then linked to the problem under study according to the quality of truth, so as to answer the existing problems; (2) Descriptive Analysis, namely describing and explaining data obtained from library research. From the data analysis, it is continued by drawing conclusions from the inductive method, which is a special way of thinking and then a general conclusion is drawn so that it is able to answer the problem formulation.

B. Discussion

The application of additional penalties is regulated in Law No. 31 of 1999 concerning the Eradication of Corruption Crimes regulates additional crimes as regulated in Article 18 paragraph (1) letter d "revocation of all or part of certain rights or the elimination of all or part of certain benefits, which have been or can be given by the government to convicted persons."[16] The Criminal Code also regulates certain rights that can be revoked by a judge's decision, as regulated in Article 35 paragraph (1).[17] The rights of the convicted person which by a Judge's decision can be revoked in matters determined by this statute book, or in regulations other common ones are:[18]

1. The right to hold a general position or a certain position
2. The right to enter the armed forces
3. The right to vote and be elected in elections held based on general rules.
4. The right to become an advisor (*raadsman*) or administrator according to law (*gerechtelijke bewindvoerder*) the right to become a guardian, guardian of supervisors, supervisors or supervisors of a person who is not his own child;
5. The right to exercise the power of the father; carry out guardianship or custody of their own children;
6. The right to carry out a certain livelihood (*beroep*) as well as in paragraph (2) The judge is not authorized to dismiss an official from his position, if in special regulations other authorities determine the dismissal.

Article 36 Criminal Code “The right to hold an office in general or a certain position, and the right to enter the armed forces, except in the cases described in the second book can be revoked, in the case of convictions for crimes of office or crimes that violate the specific obligations of a position, or for using power, opportunities. or the means given to the convict because of his position.”

[16] Maman Budiman, “Problematika Penerapan Pasal 2 Dan 18 Undang-Undang Pemberantasan Tindak Pidana Korupsi,” *Jurnal Yudisial* 9, no. 3 (December 9, 2016): 303–15, https://doi.org/10.29123/JY.V9I3.13.

[17] Ramadina Karya, Jalu Amandan dan Savitri, “Permohonan Pencabutan Hak Remisi Sebagai Pidana,” *Jurnal Penelitian Hukum* 2, no. 1 (2015): 15–27.

[18] Denny Ardiansyah, “Pencabutan Hak Untuk Memilih Dan Dipilih Bagi Terpidana Tindak Pidana Korupsi,” *Jurnal Cakrawala Hukum* 8, no. 2 (2017): 139–48, https://doi.org/10.26905/idjch.v8i2.1802.

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Article 38 paragraph (1): If a right is revoked, the judge determines the duration of the revocation as follows:[19]

1. In the case of a death sentence or life imprisonment, the length of the revocation is life;
2. In the case of imprisonment for a specified period of time or imprisonment, the duration of revocation is at least two years and a maximum of five years longer than the basic sentence;
3. in the case of a fine, the duration of revocation is at least two years and a maximum of five years.

Article 38 of the Criminal Code paragraph (2) states that the revocation of rights will take effect on the day the judge's decision can be carried out. Article 18 paragraph (1) letter d of Law Number 31 Year 1999 and Article 35 to Article 38 of the Criminal Code do not specifically state the criteria for a defendant to be sentenced to additional crimes of deprivation of political rights. If you look at the context of Article 35 of the Criminal Code, the right to vote and be elected is the right of all Indonesian citizens unless the law stipulates otherwise. Meanwhile, the right to hold public office are those who have or those who will be given positions according to the criteria in accordance with the law. Everything applies to Indonesian citizens, not necessarily political persons, but in the three Supreme Court decisions it focuses on those who have positions and have political access.[20]

The criteria for the imposition of additional criminal decisions in the form of revocation of active and passive voting rights (in this context, choosing and being elected to a public office) can be found in the Constitutional Court decision Number 14-17 / PUU-V / 2007 regarding the review of article 58 letter f of Law Number 32 2004 concerning Regional Government against the 1945 Constitution of the Republic of Indonesia which regulates the revocation of voting rights. The Constitutional Court narrowed the enactment of this decision which previously contained two conditions, namely not applying for crimes of minor negligence (*culpa levis*) and not applying for crimes due to political reasons, narrowed by the Constitutional Court its validity is only for elected public office.[21]

Based on the decision of the Constitutional Court Number above, juridically, the criteria for the indictment that can be sentenced to additional crimes of revocation of certain rights, especially political rights in Indonesia in the form of revocation of the right to vote and to be elected in public office, can be concluded that is imposed on convicts who have political positions or positions in the convict committed a criminal act of corruption by abusing his / her authority or power. This is called political corruption, which has a wider impact than corruption in general. The impact of actions involves several aspects of community life, whether social, economic, political, social resilience, state integrity and diplomacy in the international arena.

The application of additional criminal charges in the form of deprivation of political rights against perpetrators of corruption can be seen, among others, in decision Number 37 / Pid.Sus-TPK / 2019 PN.Jmb, namely: In relation to the position of the Defendants, namely Defendant I Zainal Abidin, Defendant II Effendi Hatta, and Defendant III Muhamadiyah when they committed the corruption crime were members of the Provincial DPRD Jambi is elected directly by the people of Jambi Province, which is a strategic position and has the functions of Budgeting, Supervision and Legislation as well as other functions, namely absorbing, gathering, accommodating and following up on the aspirations of the people who are expected to apply the principles of good governance, however the actions of the defendants have injured trust. the public given to him and at the same time increasing the "public distrust" to the

[19] Fernando I. Kansil, "Sanksi Pidana Dalam Sistem Pemidanaan Menurut Kuhp Dan Di Luar Kuhp," *Lex Crimen* 3, no. 3 (2014): 26–34, https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/5296.
[20] Fatimah, "Kebijakan Formulasi Asas Vicariuos Liability Dalam Hukum Pidana Di Indonesia," *Rechtsidee* 9, no. 2 (2014): 223–38.
[21]The decision of the Constitutional Court of the Republic of Indonesia, in H. Muhlis Matu, Henry Yosodiningrat, Sudjatmiko,. Ahmad Taufik as the Petitioner, Number 14-17 / PUU-V / 2007, pp. 130–134.

legislative body, namely the Jambi Provincial DPRD and destroying the system of checks and balances between the Executive and the Legislature in Jambi Province.

In relation to the additional crimes filed by the Public Prosecutor in their demands are considered as follows: Additional crimes have been expressly regulated in the Criminal Code, as well as Law No. 31/1999 on Corruption Eradication as amended by Law No. 20/2001. Regarding Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Corruption Crimes, it has regulated additional penalties in the form of payment of replacement money as stipulated in Article 18 paragraph (1) letter b, and additional penalties in the form of revoking all or part of certain rights as referred to in Article 18 paragraph (1) letter d, whose complete formulation is as follows:[22]

Article 18:

(1) In addition to additional penalties as referred to in the Criminal Code, additional penalties are:
    a. Confiscation of movable property that is tangible or intangible or immovable property that is used for or obtained from a criminal act of corruption, including the company owned by the convict where the criminal act of corruption was committed, as well as from the goods replacing these items;
    b. Payment of replacement money in an amount equal to the amount of assets obtained from the criminal act of corruption.
    c. The closure of all or part of the company for a maximum period of 1 (one) year;
    d. Revocation of all or part of certain rights or removal of all or part of certain benefits that have been or can be given by the Government to the convicted person.
(2) If the convicted person does not pay the replacement money as referred to in paragraph (1) letter b, within 1 (one) month after the court decision has obtained permanent legal force, the prosecutor may confiscate his property and auction it off to cover the replacement money.
(3) In the event that the convicted person does not have sufficient assets to pay the replacement money as referred to in paragraph (1) letter b, then the convicted person shall be sentenced to imprisonment whose duration does not exceed the maximum threat of the principal punishment in accordance with the provisions of this Law and the duration of said punishment is already determined in a court decision. Defendant I Zainal Abidin, Defendant II Effendi Hatta, and Defendant III Muhamadiyah have been legally and convincingly proven guilty of committing the crime of corruption together and continuing as charged in the First Alternative Indictment;

Punish Defendant I Zainal Abidin, Defendant II Effendi Hatta, and Defendant III Muhamadiyah. Therefore, they are each imprisoned for 4 (four) years, and a fine of Rp.200,000,000.00 (two hundred million rupiah) provided that the fine is not paid and replaced by imprisonment for 3 (three) months; Imposing additional sentences against Defendant I Zainal Abidin, Defendant II Effendi Hatta, and Defendant III Muhamadiyah in the form of revocation of their right to be elected to public office for 5 (five) years since the Defendants have finished serving their main crimes; Sentencing Defendant II Effendi Hatta to pay replacement money to recover state money in the amount of Rp 100,000,000.00 (one hundred million rupiah),

This additional punishment of deprivation of political rights is a form of punishment recently applied by the Corruption Eradication Commission with the aim of finding an effective punishment in eradicating corruption.

[22] Juandra Juandra, Mohd Din, and Darmawan Darmawan, "Kewenangan Hakim Menjatuhkan Pidana Uang Pengganti Dalam Perkara Korupsi Yang Tidak Didakwakan Pasal 18 Uu Tipikor," *Jurnal Ius Constituendum* 6, no. 2 (2021): 442, https://doi.org/10.26623/jic.v6i2.4235.

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Additional penalties in the form of revocation of certain rights do not mean that the convict's rights can be revoked entirely. The revocation does not cover the revocation of rights to life, civil rights (civil) and constitutional rights. There are two things about the revocation of certain rights, namely:

1. It is not automatic, it must be determined by a judge's decision
2. Not valid for life, there is a certain period according to the prevailing laws and regulations with a judge's decision.

Revocation of certain rights is only for criminal offenses which are expressly determined by law that the criminal act is punishable by additional penalties. The length of time the revocation of certain rights is life imprisonment, the length of which is life. As for the imprisonment or imprisonment of a minimum length of two years and a maximum of five years longer than the main sentence.

C. Conclusion

The application of additional penalties is regulated in Law No. 31 of 1999 concerning the Eradication of Corruption Crimes regulates additional crimes as stipulated in Article 18 paragraph (1) letter d "revocation of all or part of certain rights or the elimination of all or part of certain benefits, which have been or can be given by the government to the convicted person. . " The Criminal Code also regulates certain rights that can be revoked by a judge's decision, as regulated in Article 35 paragraph (1). The rights of a convicted person by a Judge's decision can be revoked in matters determined by this law. Article 38 of the Criminal Code paragraph (2) states that the revocation of rights will take effect on the day the judge's decision can be carried out.

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