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Criminal Liability Political Parties in Criminal Acts of Corruption: Indonesia Korea Comparison

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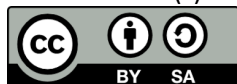
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ABSTRACT

Political parties are often in the spotlight because of the corrupt behavior of their members with the aim of party interests. The forms of criminal acts of corruption by cadres or political party administrators have various modes, including bribery, buying and selling positions, extorting strategic sectors, harming state finances, abuse of authority and misuse of budgets in development programs. Although there are many cases where political parties are suspected of being in the vortex of enjoying the proceeds of criminal acts of corruption, until now criminal responsibility is still borne by individuals, whether cadres or administrators of political parties. This study aims to provide an overview of the

criminal liability arrangements of political parties in corruption in Indonesia and to conduct a comparative study of the accountability of political parties in Indonesia and South Korea. The research method used is non-doctrinal by taking secondary data sources with legal, conceptual and grammatical approaches. The results show that Indonesia still includes political parties as corporations, however, political parties in Indonesia are legal entities that cannot be held criminally responsible. South Korea is an example of a country that regulates criminal acts of political parties through their respective laws. In general, South Korea imposes criminal responsibility on persons or administrators of party members, not on the party itself.

KEYWORDS

Political Parties, Corruption, Criminal Liability

1 INTRODUCTION

The concept of General Elections adopted by democratic countries is one of the main pillars of the accumulation of the will of the people. Through elections, the people elect their representatives and demonstrate their sovereignty at both the central and regional levels. The role of political parties is said to be almost dominating in all modern democratic state life. Its implementation can be seen in the election process for the President and Vice President who are required to have accommodative management of political

parties. political parties or coalitions of political parties participating in the general election prior to the implementation of the general election". Another implementation is contained in Article 22E paragraph (3), namely "Participants in the general election to elect members of the DPR and DPRD members are political parties". The articles in the constitution guarantee that one of the sources of the country's political life is in political parties.

The magnitude of the role of political parties has attracted the world's attention by making the issue of political party corruption a global agenda. World countries agree that elections can be an entry point for political party corruption, so that concrete steps must be taken to prevent it, one of which is by conducting strict audits of political parties in each country (Holloway, 2010). Political corruption itself involves various kinds of crimes and fraud committed by political leaders, before, during and after taking office (Aspan & Suwandi, 2020). In the context of Indonesia, corrupt criminal acts by political parties are indicated by the results of the Global Corruption Barometer (GCB) survey report in 2020 by Transparency International Indonesia (TII), which puts the state institution of the House of Representatives as the most corrupt institution in Indonesia with a percentage of 48%. Then followed by government officials, police, business sector, judges or courts, ministers, non-governmental organizations, bankers, TNI and religious leaders (Hidayat, 2020). Of the many perpetrators of corruption, the most involved are the cadres and administrators of political parties, reaching 35% (Paath, 2017).

A row of political party corruption cases involving party officials as well as members of the People's Representative Council (DPR) is shown by quite fantastic numbers where as of March 28, 2020, the Golkar Party has 26 people, the Indonesian Democratic Party of Struggle (PDIP) 18 people, the Democratic Party 9 people, National Mandate Party (PAN) 6 people, United Development Party (PPP) 5 people, National Awakening Party (PKB) 2 people, Prosperous Justice Party (PKS) 2 people, People's Conscience Party (Hanura) 2 people, National Democratic Party (Nasdem) 1 person and the Crescent Star Party (PBB) 1 person. Meanwhile, corruption data by political party management cadres who have served as cabinet ministers in the Jokowi-JK and Jokowi-Ma'ruf eras are at least four people, namely Imam Nahrawi (National

Awakening Party cadre), Idrus Marham (Golkar Party administrator), Edhy Prabowo (Gerindra Party officials) and Juliari Batubara (PDI-P cadre) (Asmara, 2020). From a series of cases that occurred, we know that the practice of politics through political parties does not escape the very large capital so that a lot of costs must be incurred from the start of the nomination until the desired position is realized. After getting a position, a party cadre wants to quickly return campaign capital when he runs for office, besides that he also has to support his political party as his vehicle (Arliman, 2016). The forms of corruption carried out by state officials are very diverse, ranging from bribery, extortion of strategic sectors, abuse of authority for business and personal interests, playing the budget of every development program (Wangga & Silvya, 2018). Among the many cases of political party corruption, the corruption of minister Juliari Batubara was very surprising when on the week of December 5, 2020, the KPK named the PDI-Perjuangan cadre as a suspect in the alleged corruption in the procurement of Covid-19 social assistance. The KPK reported that JPB had corrupted the aid of basic food packages of Rp. 10,000 per basic food from a value of Rp. 300,000 per package of Covid-19 social assistance. During the period from October to December 2020, the Minister of Social Affairs, Juliari Batubara, has distributed a fee of approximately Rp. 12 billion to MJS and AW. Of the fee, as much as Rp 8.8 billion went into Juliari Batubara's personal pocket, which made the state finances suffer losses. This case has received wide attention, apart from the threat of capital punishment for corruption perpetrators during a disaster, the public is also reviewing corporate criminal liability for political parties that are indicated to receive corruption funds from their cadres. Although there are many cases where political parties are suspected of being in the vortex of enjoying the proceeds of criminal acts of corruption, until now criminal responsibility is still borne by individuals, whether cadres or administrators of political parties. In fact, law enforcement can cooperate with the Center for Financial Transaction Reports and Analysis (PPATK) to trace the flow of funds resulting from corruption crimes committed by cadres or political party administrators to find out whether the proceeds of corruption are also enjoyed by political parties. Supposedly, the PPATK report could be a strong piece of evidence for the law to hold political parties

accountable for criminal acts of corruption. The assumption that the actions of cadres or administrators of political parties are not the policies of political parties so that criminal responsibility can only be imposed on these individuals should need to be reexamined. The direction of the government's political policy towards the criminal responsibility of political parties as legal entities, can be seen in the current regulation by not placing a burden on political parties for criminal acts committed by their administrators/cadres. However, seeing the Indonesian Criminal Code Draft, which explicitly excludes political parties as corporations, is again a discussion whether this means that the government is more inclined to protect political parties given their important role in a modern democracy than to protect the public from harming political parties?

Responding to the discussion on the direction of government policy on the criminal responsibility of political parties in Indonesia, we need to learn from other countries regarding the same thing. In some countries, the provisions for corruption of political parties are not only regulated in law but also contained in the constitution. While other countries only regulate in law only. South Korea is an example of a country that regulates criminal acts of political party corruption through laws. In general, regulations in South Korea impose criminal responsibility on people or administrators of party members, not on the party itself.

2 METHOD

This study aims to analyze and compare the criminal liability of political parties in corruption cases in Indonesia and Korea. The research method used is non-doctrinal by taking secondary data sources with legal, conceptual and grammatical approaches. This study uses a comparative law study. Based on the description of the background above, the formulation of the problem in writing is how is the criminal responsibility of political parties in Indonesia in cases of criminal acts of corruption and how is the comparison of criminal responsibility for corruption of political parties with the state of South Korea?

3 RESULT AND DISCUSSION

A. Criminal Accountability of Political Parties in Cases of Corruption Crimes

The definition of a political party is legally regulated in Article 1 paragraph (1) of Law Number 2 of 2008 as amended by Law Number 2 of 2011 concerning Political Parties (Political Party Law), namely: Political parties are organizations that are national and formed by a group of Indonesian citizens voluntarily on the basis of the same will and ideals to fight for and defend the political interests of members, society, nation and state, and maintain the integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Article 3 of the Political Party Law mandates that every political party must be registered with the Ministry of Law and Human Rights to become a legal entity. As a legal entity, political parties are required to have a notarial deed of establishment of a political party; a name, symbol, or image that does not have similarities in principle or in its entirety with the name, symbol, or image mark that has been used legally by another political party in accordance with statutory regulations. Then Article 2 paragraph (3) emphasizes that the proof of a political party as a legal entity is to include the Articles of Association and Bylaws as well as the management of political parties in the Deed of Establishment of Political Parties.

In its position as legal subjects, political parties are legal subjects who have rights and obligations in every action on behalf of political parties. However, as legal entities, political parties cannot be charged with criminal responsibility. This is reinforced by Article 1 of the Regulation of the Minister of Law and Human Rights Number 6 of 2014 concerning the Ratification of Legal Entities of Associations:

An association is a legal entity which is a collection of people established to realize a common purpose and certain goals in the social, religious, and humanitarian fields and not to distribute profits to its members.

From the article it can be interpreted that what is meant by an association of legal entities is only those engaged in the social, religious and humanitarian fields. Meanwhile, although political parties also fight for and defend the wider community, on the other hand political parties remain focused on political

movements for the benefit and interests of members whose qualifications are not included in the Permenkumhan. Therefore, as legal subjects, political parties cannot be interpreted as an extension of the definition of a corporation so that they are not included in the form of a corporation and cannot be held criminally responsible.

In terminology, corporations are the subject of legal entities or *rechts persons* who are closely related to civil law. However, that does not mean that all corporate actions are free from criminal law. As stipulated in Article 1 paragraph (1) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, a corporation is a collection of people and/or assets that is organized either as a legal entity or non-corporate entity. law. R Wiryono provides understanding into several types of corporations that explain the definition of corporations according to the Corruption Act, among others (Wiryono, 2009):

1. An organized collection of people and assets in the form of a legal entity;
2. An organized collection of people and assets that are not legal entities;
3. An organized group of people in the form of a legal entity;
4. An organized group of people who are not legal entities;
5. An organized collection of wealth in the form of a legal entity; and
6. An organized collection of assets that is not a legal entity.

Based on the understanding of corporations in the Law on the Eradication of Criminal Acts of Corruption and the understanding of political parties in the Law on Political Parties, political parties as subjects of criminal law in the Law on the Eradication of Criminal Acts of Corruption cannot be interpreted as corporate legal entities. Thus, political parties cannot be charged with criminal responsibility in cases of corruption.

In looking at the form of accountability of political parties as non-corporate legal entities, the author first describes the sound of Article 2 paragraph (1) and Article 20 of the Law on the Eradication of Corruption Crimes, which are as follows:

Article 2 paragraph (1):

Any person who unlawfully commits an act of enriching himself or

another person or a corporation that can harm the state's finances or the state's economy, shall be sentenced to life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years. years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

Article 20 :

- (1) In the event that a criminal act of corruption is committed by or on behalf of a corporation, criminal prosecution and punishment may be made against the corporation and/or its management;
- (2) A criminal act of corruption is committed by a corporation if the crime is committed by people, either based on work or other relationships, acting within the corporate environment, either individually or jointly;
- (3) In the event that a criminal charge is made against a corporation, the corporation is represented by the management;
- (4) The management representing the corporation as referred to in paragraph (3) may be represented by another person;
- (5) The judge may order the management of the corporation to appear in person in court and may also order that the management be brought to court;
- (6) In the event that a criminal charge is made against a corporation, the summons to appear and the submission of the summons shall be submitted to the management at the management's residence or at the management's office; and
- (7) The principal punishment that can be imposed on a corporation is only a fine, with the maximum penalty being added by 1/3 (one third).

In addition to reviewing the criminalization of political parties involved in corruption cases in the Corruption Eradication Act, the author will also describe the prohibitions on corruption by political parties in Article 40 paragraph (3) of the Political Party Law, namely:

Political parties are prohibited:

- a. Receiving from or giving to foreign parties donations in any form that is contrary to the laws and regulations;
- b. Receive donations in the form of money, goods, or services from any party without stating a clear identity;
- c. Receiving donations from individuals and/or companies/business entities exceeding the limits stipulated in the laws and regulations;
- d. Request or receive funds from state-owned enterprises, regional-owned enterprises, and village-owned enterprises or by other names; or
- e. Using factions in the People's Consultative Assembly, the People's Representative Council, the provincial Regional People's Representative Council, and the Regency/Municipal People's Representative Council as a source of funding for Political Parties.

Regarding the prohibition, the Political Party Law stipulates criminal sanctions in Article 48 paragraph (4) which reads "In the event of a violation of the provisions as referred to in Article 40 paragraph (3) letter a, the administrator of the Political Party concerned shall be punished with imprisonment for a maximum of 2 (two) years and a fine of 2 (two) times the amount of funds received." And Article 48 paragraph (5) which reads "In the event of a violation of the provisions of Article 40 paragraph (3) letter b, letter c, and letter d, the administrator of the Political Party concerned shall be punished with imprisonment for a maximum of 1 (one) year and a fine 2 (two) times the amount of funds received."

Based on the provisions of the Law on the Eradication of Criminal Acts of Corruption, the Law on Political Parties, and the limitation of the definition of political parties according to the qualifications of the Minister of Law and Human Rights (Permenkumham) Number 6 of 2014 concerning Legal Entity Associations, it can be seen that criminal liability for cases of criminal acts of corruption can only be charged to the administrators of political parties. The burden of criminal responsibility by political parties in the Law on Political

Parties relating to acts of corruption lies with the administrators of political parties, namely imprisonment and fines.

The descriptions above have provided an illustration that the form of criminal liability of political parties in cases of criminal acts of corruption is to adhere to the doctrine of vicarious liability. This doctrine is also called substitute liability, meaning that an individual, be it a manager, staff or agent in a legal entity, is criminally responsible for mistakes that carry the name of a legal entity as a result of that person's actions. So in giving the burden of criminal responsibility, this doctrine requires proof which includes that the management of a legal entity commits a crime; the crime is committed and acts within the scope of work of a legal entity; and crimes are committed with the intention of benefiting legal entities (Muladi & Dwidja Priyatno, 2011).

The doctrine of vicarious liability or the delegation principle is a doctrine that is also used in the Law on the Eradication of Criminal Acts of Corruption and the Law on Political Parties, namely by imposing criminal responsibility for political parties on cases of criminal acts of corruption to the management and cadres of their political parties. In the Law on Political Parties, political party administrators may be subject to imprisonment for two years and a fine of twice the amount of funds received on suspicion of meeting the elements of political prohibition as regulated in Article 40 paragraph (3) letter a. As well as being threatened with imprisonment for one year and a fine twice the amount of funds received which meet the criminal elements in Article 40 paragraph (3) letter b, letter c and letter d.

However, the difficulty in applying criminal responsibility to political party administrators or cadres for criminal cases using the vicarious liability doctrine is a way of proving that the management or cadre is committing corruption on behalf of political parties, working for the benefit of political parties and committing crimes because of political parties. This is the hardest thing to prove by law enforcement and the easiest to refute by any political party regarding its cadres or administrators who are caught on suspicion of corruption on the grounds that the cadre's or management's mistakes are acts on behalf of individuals as individuals not on behalf of political parties. Because in defense, every political party has never issued a policy that ordered to

corrupt state money or harm state finances. In fact, there are strong allegations that the proceeds of corruption committed by political party cadres or administrators have flowed into the finances of political parties or for the activities of political parties.

B. Comparison of Criminal Liability for Corruption of Political Parties in Other Countries

Regulations regarding criminal acts of political parties are also regulated by many countries in the world. There are countries that regulate through their constitution, while others regulate through laws. South Korea is an example of a country that regulates criminal acts of political parties through laws. South Korea regulates criminal acts of political parties through the 정치자금법 (jeongchi jageumbeob) [Political Fund Act], amended by Act. No. 14838, June 30, 2017 (S.Kor.). The legal definition of a political party has been regulated in Article 2 정당법 (jeokdangbeob) [Political Parties Act], amended through the Act. No. 10396, July 23, 2010 (S.Kor.). that is “For the purposes of this law, the term 'political party' means a national organization which voluntarily aims to promote responsible political statements or policies and to take part in shaping the political will of the people in the national interest by recommending or supporting candidates for public positions”. This law generally regulates the outline of political parties in South Korea. Meanwhile, the provisions for financial crimes and corruption in political parties are specifically regulated in the 정치자금법 (jeongchi jageumbeob) [Political Fund Act/Political Finance Act] Act. No. 14838, June 30, 2017 (S.Kor.). The law aims to ensure proper provision of political party finances, promote transparency, and contribute to the development of democratic politics by preventing illegal funding. The formulation is regulated in Article 45 of the Political Fund Act (Violation of Giving and Receiving Political Funds), namely anyone (referring to a person who commits a relevant violation as a member of a political party, supporting association, corporation or other organization; and anyone who is equated also applies) who Contributing or receiving political funds in violation of this act will be punished with imprisonment with labor for not more than five years or a fine not exceeding ₩ 10,000,000 (ten million won).

Furthermore, Article 146 of the Political Fund Act (Violations of Various Restrictions) provides for persons who can be sentenced to imprisonment for a maximum of three years of work or a fine of a maximum of ₩ 6,000,000 (six million won) i.e. those who give or receive an amount different from what is required. included in or from the nominal value of receiving party membership fees or receiving political funds, falsifying party membership fees or receiving political funds, divulging facts regarding membership lists while carrying out their duties, a person who has issued a serial number of receipt of political funds issued to an association supporter without through procedures or has notified other state institutions, someone who has failed to maintain accounting books or entered false data in them, someone who has leaked confidential information that he has learned in the course of carrying out his duties, someone who has channeled political funds for purposes other than political activities, and so on.

In addition, Article 48 of the Political Fund Act (Violations of Ignoring Obligations of Supervision) provides that the following persons may be punished with a maximum fine of ₩ 2,000,000 (two million won) for violating the election and appointment authority who has neglected their duties in electing, appointing, and supervising the person responsible for the calculation of funds, someone who has contributed and channeled political funds in a way that makes it impossible to identify his real name or who has channeled political funds more than a limited number of years for which political funds are permitted to be disbursed in cash, someone who has contribute political funds on behalf of another person or under a false name, a person who fails to return a membership fee to the National Treasury without any justifiable reason, a person who fails to maintain a membership register or prepare a false membership register.

Furthermore, Article 49 of the Political Fund Act (Criminal Provisions Regarding Violations Related to Election Fees) regulates the person in charge of calculating funds who fail to make an accountant report on the cost of general election expenses without a proper reason or who inputs false details in the accounting report, imitates, falsifies the accounting report. or omitting items that are required to be included in the accounting report is punishable by

imprisonment for a maximum of five years' labor or a maximum fine of ₩ 20,000,000 (twenty million won).

Furthermore, the comparison can be seen from the following table:

TABLE 1. The Comparison of Criminal Liability Political Parties In Criminal Acts of Corruption Between Indonesia and South Korea

No	Indicator	Indonesia	South Korea
1	Legal basis	Law Number 2 of 2008 concerning Political Parties	정치자금법 (jeongchi jageumbeob) [Political Fund Act/ Political Finance Act], amended by Act. No. 14838, June 30, 2017 (S.Kor.)
2	Rule form	Constitution	Constitution
3	Giving and receiving donations from political parties against the law	Political parties are prohibited from receiving from or giving to foreign parties donations in any form that is contradictory with laws and regulations (Article 40 (3) point a)	Anyone (referring to a person who commits the relevant infringing act as a member of a political party, supporting association, corporation or other organization; and anyone who is the same applies) who gives or receives political funds in violation of the act (Article 45)
		Penalties are imposed on political parties and administrators	Punishment is imposed on individuals (Article 45)
		Administrative sanctions (Article 47 (5)) as well as imprisonment and fines (Article 48 (4))	Imprisonment and fines (Article 45)

4	Making donations against the law	Any person or company and/or business entity that contributes to a Political Party exceeding the provisions (Article 49 (1))	A person who has received financial support, collected contributions, or contributed to the violation (Article 45 (2) point b) A person who has made or received political funds without mandating them with the Election Commission (Article 45(2) point d)
		Punishment is imposed on individuals and or legal entities (Article 49 (1))	Punishment is imposed on individuals
		Imprisonment and fines (Article 49 (1))	Imprisonment and fines (Article 45(2))
5	Receiving donations illegally	Political party administrators who receive donations from individuals and/or company/business entity that exceeds the provisions (Article 49 (2))	a person who has contributed and channeled political funds in a way that makes it impossible to identify his real name or who has channeled political funds more than a limited number of years in which political funds are permitted to be disbursed in cash (Article 48(2))
		Penalties imposed on political party administrators (Article 49 (2))	Punishment is imposed on individuals
		Imprisonment and fines (Article 49 (2))	Fines (Article 48 (2))
6	The object of donation is against the law	Donations received by political parties from individuals and/or company/business entity that exceeds the specified limit in Article 35 paragraph (1) letter b and letter c are confiscated for	In the case of paragraphs (1) and (2), the money and goods given and the profits from the property must be confiscated and when confiscation is not

		the state (Article 49 (3))	possible, goods with an equivalent value will be collected in addition (Article 45 (3))
7	Misuse of Political Party Purpose	Political Party administrators who use their Political Parties to carry out activities as referred to in Article 40 paragraph (5) (Article 50)	A person who has channeled political funds for purposes other than political activities (Article 47 (1) point a)
		Penalties are imposed on political parties and their administrators (Article 50)	The penalty is imposed on the management (Article 47 (1) point a)
		Imprisonment and fines (Article 50) and dissolution of political parties	Imprisonment and fines (Article 47 (1) point a)

The advantage of the criminal regulations of political parties in Indonesia is that they are arranged in one unified rule in the form of a law. However, this raises the possibility that there are gaps in things that have not been regulated because the substance is published in general. Meanwhile, the advantages of the criminal regulations of political parties in South Korea are that they are specifically regulated in a single law, separate from general regulations regarding political parties, thus expanding the regulations regarding political parties. South Korea makes categorizations for each action and its criminal penalties, including Violations of Giving and Receiving Political Funds, Violations of Various Restrictions (in political party activities), Violations of Various Mandatory Regulations, Violations of Ignoring Obligations of Supervision, and Criminal Provisions Regarding Violations Related to Election Fees. These categories make the rules regarding crime and accountability for each action more complex. However, this difference in the political finance law adds new regulations that are feared to overlap with the main law. In general, this law emphasizes several basic principles:

1. No one may contribute or receive political funds in any form that is not specified in this law.
2. Political funds must be managed fairly and regulated so that they are free from suspicion. The financial accounting system must be open to the public.

3. Political funds are disbursed only to cover costs needed for political activities and will not be channeled for personal expenses or illegal purposes.
4. Anyone who at one time contributes more than the limit to political funds or pays at one time for political activities in excess of the limit, must make the contribution or pay the fee properly. Means of checks, credit cards, account transfers or other means to ensure the clarity of the identity of those who donate and use funds.
5. Everyone is prohibited from contributing political funds on behalf of others or falsifying names.

4 CONCLUSION

The criminal responsibility of political parties for corruption cases in accordance with Article 40 paragraph (3) letter a, letter b, letter c, and letter d of the Political Party Law is charged to political party administrators with a maximum imprisonment of two years for fulfilling the elements of letter a and criminal imprisonment for a maximum of one year for the fulfillment of elements of letter b, letter c, and letter d as well as a fine of twice the amount of funds received. Thus, the form of criminal liability of political parties in cases of criminal acts of corruption uses the doctrine of vicarious liability. Meanwhile, regulations against political party crimes in South Korea also impose criminal threats on the subject who commits it, not on political parties. In general, this law emphasizes the basic principle that no one should give or receive political funds in any form that is not specified in the law.

5 DECLARATION OF CONFLICTION INTERESTS

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