



**REVOCACTION OF RIGHTS TO BE ELECTED AND VOTE FOR A
CONVICTED OF CORRUPTION**

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The criminal act of corruption is a criminal act that has an extra ordinary impact on the stability of the nation and state. Because the impact of these crimes is very systemic and make enormous losses in the state finance sector. Some cases occurred an ex-convict corruption case, when it was out of running his penalty, it turns out to be more officials in the environment of his service. The purpose of this study is first to examine or analyze the formulation policy of revocation of the right to be elected and vote for convicted corruption, secondly To review or analyze the policies that can be applied in the formulation in the future. The research method used in this legal research is juridical-normative, with a policy-oriented approach. The model of analysis is Juridical Comparative, and also conducts Prescriptive Juridical Analysis. The first result of research Whereas basically the regulation concerning additional crime in the form of revocation of certain rights including the right to be elected and vote has been regulated in criminal code (KUHP) and constitution No 31 of 1999 about eradication of corruption crime. Secondly that although there has been renewal in RUU KUHP (Draft of Criminal Code) 2012 on additional criminal provisions can stand on its own, but with regard to the right to vote and to be elected is still unclear, so there is still a gap for criminals who finish criminal can become public officials again.

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INTRODUCTIONS

After the collapse of the “*orde baru*” regime, Indonesia experienced an era of reform by conducting various changes and development on the aspects of life in nation and state, as well as changes and development in the field of law enforcement. One of the concerns of the government is law enforcement in the field of corruption.

The criminal act of corruption is a criminal act that has a tremendous impact on the stability of the nation and state. Because the impact of these crimes is very systemic and incurs enormous losses in the state financial sector. This is what causes a nation can not grow to follow the progress of the times.

The criminal act of corruption is classified as white collar crime which Sutherland defines as crime committed by person of respectability and high social status in the course of their occupation (crimes committed by persons who have high social standing and respectable in their work)¹, as occupational crime crimes committed by officials or bureaucrats is related to arbitrary actions that can harm society, corruption, manipulation, collusion, and various types of crimes related to owned power.

As an extra ordinary crime, various eradication efforts of corruption have always been the main study in various literatures. In addition, the post-reform government has issued Act no. 31 of 1999 j.o. Act no. 20 Of 2001 on the Eradication of Corruption. In addition also in 2002 also has established

KPK (Corruption Eradication Commission) an *ad hoc* institution established specifically to deal with corruption problems in this country.

From the records that existed since the establishment of the KPK has handled at least 385 cases of corruption. Of the total cases handled by KPK, each involving members of parliament and parliament as many as 72 cases, heads of ministry institutions as many as 9 cases, ambassadors as many as 4 cases and the commissioner there are 7 cases. In addition, there were 34 cases involving the mayors of the regents and vice regents, and the echelon I, II, III officials were also dominant in the number of 144 cases, as well as 8 cases, 87 private cases and 41 cases.² Of the total cases this does not include cases of corruption handled by police investigators and prosecutorial investigators.

Seeing the data on the number of corruption cases handled by law enforcement officers, this proves that the enforcement of corruption in Indonesia is being intensively conducted in order to save the country. However, although law enforcement officers have been working hard to uncover corruption cases, the reality in the field there are still new corruptors born to undermine the state money. As if not learned from the convicted corruptors who were thrown by the KPK to the penitentiary, but even more daring to do his actions.

Looking at the reality, various efforts are made by law enforcement officers, ranging from impoverishment of corruptors to the proposed social work for corrupt

¹ Mahrus Ali. 2008. *Kejahatan korporasi*. Yogyakarta: Arti Intan Bumi Intaran. Hlm. 21

² <http://www.republika.co.id/berita/nasional/hukum/13/09/26/mtqnm-sejak-berdiri-kpk-tercatat->

tangani-385-kasus had been accessed Juli 10th 2014 at 23:30

perpetrators as a deterrent effect. But it still does not stop corrupt behavior by officials in this country. Even surprisingly, in some cases an ex-corruption corruption prisoner, when he came out of his criminal practice, turned out to be another official in his service. For example, "former Azirwan convicted of corruption with a 2 of prison sentence of 6 months of bribery case of Commission IV member Al Amin Nasution. Prior to his resignation at the urging of the community, he served as Head of the Riau Islands Marine and Fishery Service. While in Lingga district, ex-convicted corruption is still Head of Department of Public Works and Transportation, Head of Department of Agriculture and Plantation, Head of Archive and Library Agency.³ "Then there are also cases in Tanjung Balai municipal government in North Sumatera" As happened in City Government Pemko) Tanjung Balai led by Mayor and Vice Mayor, Drs.H.Thamrin Munthe M.Hum-Rolel Harahap SE, who appointed a civil servant convicted of corruption Sumiran SH became Head of Department of Management of Revenue, Finance and Regional Asset (PPKAD) in Pemko Tanjungbalai . Kadis PPKAD Pemko Tanjungbalai is in accordance with that was launched by the group of Students of Tanjungbalai City through his leaflet mention Sumiran SH is the former Head of Finance Office in Mandailing Natal District

Government (Madina) who was once sentenced to prison by South Tapanulisi Court (Tapsel) Verdict: 126/ Pid.B/ 2002 /PN.PPPyb. in the case of corruption that he did in the financial office of Madina regency⁴ "the latter there is also the case head of the region convicted of corruption can be elected again" so far corruption perpetrators often get a good political position after serving the sentence. He cited the case in Boven Digoel, Papua and Tomohon, North Sulawesi. The perpetrator has been punished, but won again in the next election process of the regional head"⁵

From some of the cases presented, it appears that there is still a gap for former corrupt prisoners to be able to exist again to become a government employee even an official. This really hurt people's feelings where the state of Indonesian society is mostly still below the poverty line, but it is precisely the robbers of state money can swing freely again occupied positions in government.

At the end of 2013 there was a legal breakthrough by KPK on the driver license case that demanded for additional crime for defendant Inspector General Djoko Susilo. And the panel of judges also granted the KPK demands. The following is an excerpt from the verdict of the judges panel of the Jakarta High Court on Wednesday, December 18th, 2013⁶:

³ <http://www.negarahukum.com/hukum/ pencabutan - hak-sang-koruptor.html> accessed on Juli 10th 2014 at 23:13

⁴ <http://birokrasi.kompasiana.com/2012/ 11/ 10/ koruptor-jadi-pejabat-salah-siapa-502191.html> accessed Juli 10th 2014 at 23:35

⁵ <http://antikorupsijateng.wordpress.com/2013 /12/23 /tak-cukup-dimiskinkan-cabut-pula-hak-politik-koruptor/> accessed on Juli 10th 2014 at 23:40

⁶ quotation of the verdict in the official website of the Province Court of DKI Jakarta http://www.pt-jakarta.go.id/situs2/index.php?option=com_content &view=article&id=331:sidang-tindak-pidana-korupsi-inspektur-jenderal-polisi-drs-djoko-susilo-sh-msi-pada-pengadilan-tindak-pidana-korupsi-tingkat-banding-jakarta&catid=39:terbaru&Itemid=229 on juli 10th 2014 at 23:21

- a. Declare the Defendant, Inspector General of Police Drs. Djoko Susilo, SH., M.Sc., has been proven legally and convincingly under the guilty law of committing Corruption together and combined several crimes and Crime of Money Laundering together and Combined several crimes;
- b. Criminalize the Defendant in the form of imprisonment for 18 years and a fine of Rp. 1.000.000.000 (one billion rupiah), can be replaced by 1 year of confinement;
- c. Punish the defendant to pay the replacement Rp. 32.000.000.000 (thirty two billion rupiah), and if the Defendant fails to pay the replacement money within 1 month after the verdict obtains a permanent legal force, then the property may be seized by the Prosecutor and auctioned off to cover the replacement money. If his property is insufficient, he shall be imprisoned for 5 years;
- d. Punish the defendant with additional crime in the form of revocation of certain rights to elect and be elected in public office;

KPK made a breakthrough with the addition of prosecution that is by entering additional criminal deprivation of certain rights to be elected and vote in public office for the perpetrators of corruption. This happened for the first time in the corruption case of former Chief of Police Traffic Corps Inspector General Djoko Susilo.

RESEARCH METHODS

The research method used in this legal research is juridical-normative. Normative legal research is a research conducted by examining the literature. The approach that used is a policy oriented approach. Sources

of data derived from secondary data (library materials), data obtained from library materials include the Book of Criminal Law (Criminal Code), Draft of Criminal Code (RKUHP), Act no. 31 of 1999 on the Eradication of Corruption, the Foreign Criminal Code covers the Norwegian Criminal Code. Data collection is done by conducting library research and document study. In the data collection, as much as possible the data obtained and collected is expected to match the problems associated with this research.

The Model of Analysis conducted is Comparative Juridical, which is by comparing the legislative policies of other countries in formulating the revocation of the right to vote and to be elected, then also conducting Prescriptive Juridical Analysis, to review the future criminal law formulation policy in formulating the revocation of the right to vote and to be elected .

FINDINGS AND DISCUSSIONS

Formulation Policy of Additional Criminal Enforcement "Removal of Certain Rights to be Elected and Vote in Public Offices"

Literally, "public office" is nothing but a public position or a public position, that is a position concerning the people as a whole. But as a legal term, this "public office" word contains content ranging from the most narrow to the broadest terms. In a narrow sense, the term is commonly associated with the notion of "state officials" who are administratively determined in a limited manner as state officials under a special Government Regulation because they relate to the provisions of administrative rights in

the form of financial allowances and protocol rights.⁷

While in general, 'public office' is commonly defined as "a position or occupation established by law or by the act of a government body, for the purpose of exercising the authority of the government in the service of the public". But in practice in the United States, as reflected in court decisions, the notion of 'public office' can also be understood more limitedly. First, 'public officer' is distinguished from 'public employee'. Second, the holder of public office is determined by authority to make decisions on behalf of the state or public interest. If the intended position is only an advisory which contains non-binding considerations or non-compelling recommendations in the decision-making process, the position is not viewed as a 'public office'.⁸

The purpose of criminal law is not continuously achieved by imposition of criminal, but is a strong repressive measure of security measures. Criminal should be imposed on the defendant for having violated the law (criminal).

Criminal is seen as a sorrow imposed on the maker for committing a crime. This is not the final destination but the closest destination. This is the difference between criminal and action because action can be a sorrow too, but not an end. The ultimate goal of crime and action can be one, which is to improve the maker.

Indonesian Criminal Code recognizes two groups of criminal types, namely the principal and additional criminal. According to Article 10 of the Criminal Code consists of:

- 1) The death punishment
- 2) imprisonment
- 3) confinement
- 4) fined
- 5) *pidana tutupan* (political punishment added under Act No. 20 of 1946)

Then for additional criminal consists of:

- a. Revocation of certain rights
- b. Deprivation of certain goods and,
- c. Announcement of judge's verdict

Then according to the provisions of Article 35 Verse (1) of the Criminal Code that can be revoked by a judge by a court decision is:

- 1) the right to hold office in general or a certain position;
- 2) The right to enter the armed forces;
- 3) The right to vote and be elected in elections held under general rules;
- 4) The right to be an advisor or manager on the determination of the court, the right to be a guardian, guardian, supervisor or supervisor of non-children;
- 5) The right to exercise the authority of the father, to exercise guardianship or abilities of his own children;
- 6) The right to run a particular livelihood.

In the event of revocation of rights, Article 38 Verse (1) of the Criminal Code provides that a judge shall determine the duration of revocation of the rights as follows:

- 1) In the case of capital punishment or life imprisonment, the length of lifting is a lifetime.
- 2) In the case of imprisonment for a specified time or imprisonment, the length of retraction is at least two years and at most five years longer than the principal penalty.

⁷ Jimly Asshiddiqie, *Liberalisasi Sistem Pengisian Jabatan Publik*, Paper, P.2 ⁸ Ibid.

3) In the event of a fine, the length of repeal is at least two years and a maximum of five years.

Verse (2) states that the revocation of the right shall come into force on the day the judge ruling may be executed. In this case the judge is not authorized to dismiss an official from his position if in the specific rules specified other rulers for the dismissal. Meanwhile, in Act no. 31 of 1999 jo. Act no. 20 of 2001 on the Eradication of Criminal Acts of Corruption there are also provisions concerning additional criminal penalty, Article 18 Verse (1) states that In addition to additional criminal as referred to in the Criminal Code, as additional criminal is:

a. The seizure of tangible or intangible goods or immovable goods used for or derived from a criminal act of corruption, including a company owned by a convicted person in which a criminal act of corruption is committed, as well as from goods replacing the goods

b. Payment of replacement money in the amount of which is equal to the property obtained from the criminal act of corruption;

c. Closure of all or part of the company for a maximum of 1 (one) of;

d. Revocation of all or part of certain rights or the deletion of all or any of the particular benefits which the Government may or may have provided to the convicted person.

Then in Verse (2) states that if the convicted person does not pay the replacement money as referred to in Verse (1) letter b within a period of 1 (one) month after

the decision of the court which has obtained permanent legal force, then his property may be seized by the prosecutor and auctioned off to cover the replacement money.

And the last Verse (3) states that in the event that the defendant does not possess sufficient property to pay the replacement money as referred to in Verse (1) letter b, he shall be punished by imprisonment whose duration does not exceed the maximum threat of the principal penalty in accordance with the provisions of Law This invitation and the duration of the crime have been determined in the court's decision.

Additional criminal is basically a criminal that adds to the principal penalty imposed, and can not stand alone except in certain cases. In addition, this additional criminal is means can be dropped but not necessarily.⁹

In connection with the revocation of certain Rights in its history, these sanctions can already be found in Roman law. For example here *infamia* (loss of privileges as a Roman citizen or loss of honor), *deminutio existimationis* imposed on deeds of dishonorable works, including contract violations, and also relate to the conviction of certain crimes.¹⁰ The characteristic is that such punishment is not imposed but is automatically applied and as far as possible seeks to realize the *restitutioin integrum* which sometimes means a lifetime.¹¹ This punishment takes the form of the revocation of all private and public rights of the convicted person.¹²

⁹ Tolib Setiady. 2010. *Pokok-pokok Hukum Penitensier Indonesia*. Bandung: Alfabeta. P. 77

¹⁰ Jan R Emmelink. 2003. *Hukum Pidana, Komentar atas Pasal-pasal Terpenting Kitab Undang-Undang Hukum Pidana Belanda dan Padanannya dalam Kitab Undang-*

Undang Hukum Pidana Indonesia. Jakarta: Gramedia. P. 493

¹¹ Ibid.

¹² Ibid.

Kanter and Sianturi¹³ also remind the inclusion of additional criminal in Book I of the Criminal Code does not mean that additional criminal may be added for each crime. HB Vos¹⁴ said that the criminal deprivation of certain rights is in the domain of honor, which distinguishes it from the criminal disappearance of independence. First, the revocation of certain rights is not automatic because it must be determined by a judge's verdict. Second, it is not valid for life but according to the duration of the law with a judge's verdict.

Revocation of certain rights only to strict offenses determined by law. It is sometimes possible by law to repeal some of the rights concurrently in an act such as Article 350 of the Criminal Code. This Article states that when punishment for doom-slag, mooring or any of the crimes described in Articles 344, 347 and 348, may be punishable by removing the rights referred to in Article 35 of the Criminal Code.

According to Roeslan Saleh,¹⁵ the inclusion of certain rights in the Criminal Code because the legislators considered the additional penalty is appropriate. Suffering is not to want to eliminate someone's honor, but for other reasons such as special precautions. For example, revocation of a person's right becomes a doctor because of malpractice. The intention of revocation of the right is so that similar crimes are not committed by the person concerned.

Formulation Policy of Additional Criminal Enforcement Revocation of

Certain Rights to be Elected and Vote in Public Position "For Prisoners of Corruption in the Future"

Basically an additional criminal in the form of revocation of certain rights is not a new thing because it is already contained in the Criminal Code and also the law of corruption. But so far only in the case of Inspector General Djoko Susilo, the judge decided to provide additional criminal revocation of political rights for the perpetrators of corruption. While in the new case in 2014, the Commission again demanded a defendant Corruptor Akil Muchtar (former Chief Justice of the Constitutional Court) with additional criminal revocation of certain rights, but the panel of judges of Central Jakarta District Court did not pass the decision as prosecutors demanded by KPK.

The criminal act of corruption is an extraordinary crime, therefore in handling it must be in extraordinary ways as well. In practice corruption is often identified by abuse of power from authorized officials in order to gain personal gain. This is exactly what Kartono suggests that corruption is the behavior of individuals who use authority and office to gain personal gain, harming public and state interests. Thus corruption is a symptom of misconduct and mismanagement of power, for personal gain, mismanagement of state resources by using

¹³ E.Y. Kanter dan S.R. Sianturi. 2002. *Asas-Asas Hukum Pidana di Indonesia dan Penerapannya*. Jakarta: Stora Grafika. P. 481-482

¹⁴ Andi Hamzah. 2008. *Asas-Asas Hukum Pidana, edisi revisi*. Jakarta: Rineka Cipta. P. 203

¹⁵ Roeslan Saleh. 1960. *Stelsel Pidana Indonesia*. Yogyakarta: Yayasan Badan Penerbit Gadjah Mada. P. 19

formal powers and forces (by legal and armed forces) to enrich themselves.¹⁶

Seeing the reality of corruption that is often a crime committed in the office, and until the fact that the convicted corruption corrupt can still be free to occupy a certain position in government, of course we can not stay silent to see this problem.

In the theory of punishment known relative theory or objective theory, this theory stems from the basis that criminal law is a tool for upholding the order (law) in society. The criminal purpose is the order of society, and to enforce the order is necessary criminal.¹⁷ Criminal is a tool to prevent the appearance of a crime with the aim that the order of society is maintained. Judging from the angle of the society's defense, then the criminal is a forced necessity (*noodzakelijk*) is held.¹⁸

Judging from the nature of prevention, relative theory has two kinds of properties, namely general prevention (*generale preventie*) and special prevention (*speciale preventiae*). Among these general prevention criminal theories, this criminal theory is the longest-held theory. According to this theory, the punishment imposed on criminals is aimed at people (general) to be afraid to do evil.¹⁹ In some cases of criminal corruption, the criminal sanction imposed for this is only a criminal body, but has not touched into the aspect after a convicted person commits his ordination. Until in the end, in some cases the convicted criminal has finished his criminal life, he can still return to become a government official. This

ultimately lacks a deterrent effect because the corruptors themselves are still given the opportunity to work in government.

In relation to additional criminal sanctions in the form of revocation of eligible rights and electing or so-called political rights to occupy certain positions, this should be a joint consensus to be redefined as a special criminal law enforcement imposed on the perpetrators of corruption.

Andi Hamzah reminded in the event of revocation of the right to vote and be elected including active and passive voting rights. There is a difference between the Indonesian Criminal Code and the Dutch WvS. In the Indonesian Criminal Code the word 'election' is broader because it refers to general rules. Not elected according to the provisions of the Act.

Utrecht explains this issue more clearly. WVS Editor 1915-then became the Indonesian Criminal Code-using the phrase '*krachtens algemene verordeningen gehouden verkiezingen*', while the Dutch Wvs contain the phrase '*krachtens wettelijk voorschrift uitgeschreven verkiezingen*'. So, Utrecht said²⁰ in Indonesia not about whether active voting rights and passive voting rights were determined in a general regulation made by the central government, regional government, resident, or customary law. Sufficient if the election is based on a general regulation made by the central government and then used as the basis of a regional regulation or recognize and reinforce an adat law.

In some foreign Criminal Code which contains about additional criminal there are

¹⁶ Erika Ravida. 2003. *Korupsi di Indonesia, Masalah dan Solusinya*. Medan: Fakultas Ilmu Sosial dan Ilmu Politik Universitas Sumatera Utara. P. 2

¹⁷ Adami Chazawi. *Pelajaran Hukum Pidana Bagian 1*. Jakarta: Raja Grafindo Persada. P. 157

¹⁸ *Ibid.*

¹⁹ *Ibid.* P. 158

²⁰ E. Utrecht. 1999. *Rangkaian Sari Kuliah Hukum Pidana II*. Surabaya: Pustaka Tinta Mas. P.331

some that can be reference material as a renewal material. The Norwegian Penal Code provides supplementary punishment under Article 16 and one of them consists of deprivation of rights in the form of the right to become a member of the armed forces (provided for in Article (30) and the right to vote and to be elected (Article 31).²¹ However, according to Prof. Barda Nawawi Arief,²² in Article 15 which regulates the principal punishment there is a provision that under special circumstances a person may be subject to the deprivation of certain rights as mentioned in Article 29 in the form of:

1. Loss of rights to public offices (loss of public office);
2. Loss of right to hold office or to continue certain work (loss of the right to hold office or to pursue a certain occupation)

According to Article 15, this type of crime (loss of right deprivation of rights) may be as a stand-alone criminal in addition to other criminal or substitute punishment (in addition to or instead of other punishment) This is what should be a renewal material in relation to the revocation of the right to be elected and to vote or the right to hold certain positions. In Indonesia itself related to the additional criminal revocation of certain rights already formulated in the Draft Law of the Criminal Code 2012 in Article 67 not as an additional facultative criminal, but additional criminal can stand alone.

The following provisions in Article 67 of the 2012 Criminal Code :

- 1) Additional criminal consists of:
 - a. revocation of certain rights;
 - b. Deprivation of certain goods and/ or bill;

- c. Announcement of judge's verdict;
- d. Payment of indemnification; and
- e. Fulfillment of local customary obligations or legal obligations that live in the community.

- 2) Additional penalty may be imposed together with the principal penalty, as a stand-alone criminal or may be imposed together with other additional penalties.
- 3) Additional criminal sanction in the form of fulfillment of local customary obligations or obligations under the law living in the community or the revocation of rights acquired by the corporation may be imposed even though it is not contained in the formulation of a criminal offense.
- 4) 4) Additional criminal for trial and assistance shall be equal to the additional penalty for the offense.
- 5) Members of the Indonesian National Armed Forces who commit criminal offenses may be subject to additional criminal sanctions as provided in the laws and regulations of the Indonesian Armed Forces.

The Draft Law of the Criminal Code of 2012 has renewed the revocation of certain privileges which may stand on its own, as well as in Article 92 it has already qualified that additional penalty of revocation of certain rights is the right to hold a certain position, but in relation to the right to vote and to be elected is a criminal general additions. And in the end it becomes the authority of law enforcement officers themselves whether to apply or not, so its

²¹ Barda Nawawi Arief. 2010. *Perbandingan Hukum Pidana*. Jakarta: Raja Grafindo Persada. P.152

²² *Ibid.* Hlm. 153

essence to be not much different from the current Criminal Code because less emphasize an obligation in applying it specifically to convicted cases of corruption.

With the withdrawal of political rights for convicted corruption, of course, preventing similar acts from happening again, so that opportunities for recidive corruption crime to be closed. In addition it should also be considered to revoke pension benefits for former officials who are proven to commit a criminal act of corruption, in order to create a deterrent effect as well as shock therapy for other officials not to commit a criminal act of corruption.

CONCLUSIONS

Based on the result of the research and discussion, it can be concluded that firstly, the regulation concerning additional crime in the form of revocation of certain rights including the right to be elected and chosen has been regulated in Criminal Code and Act no 31 Of 1999 concerning the Eradication of Corruption. Secondly, even though there has been a revision in the 2012 Draft Criminal Code on additional criminal provisions can stand on its own, but the right to vote and vote is still unclear, so there is still a gap for corrupt criminals who can then become public officials again.

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