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REVIEW ARTICLE

REVOCATION OF POLITICAL RIGHTS OF THE PERPETRATORS OF CRIMINAL ACTS OF CORRUPTION

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ABSTRACT

The purposes of this paper are to identify and examine the revocation of political rights for corruptors as an extra-ordinary measure. The research showed that law enforcement through penal policies still have shortcomings such as light criminal sentence for perpetrators of criminal acts of corruption as well as lack of awareness among judges to apply the additional sentence of fixed-time revocation of rights. Penal law enforcement requires integral and sustainable policies through non-penal policies (prevention). Preventive efforts should be responsive to the demands of the community at large for officials who are clean, honest and who have integrity. Non-penal law shall be enforced through the concept of developing smart and integrity-based politics.

Keywords: Corruption; Corruptor; Non-Penal Policy; Penal Policy; Revocation of Political Rights

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INTRODUCTION

This paper is intended to study the fixed-time revocation of political rights of the perpetrators of criminal acts of corruption. The additional criminal sentence in the form of revocation of rights shall be applied to all perpetrators of criminal acts of corruption. In this context, lawyers or notaries committing criminal acts of corruption shall be imposed with revocation of their right to practice. Similarly, Professors committing criminal acts of corruption shall be imposed with revocation of their right to each or their academic rights. The same shall apply to public officials elected through political processes such as, among others, members of DPR, DPRD, Mayors, Regents/Vice Regents as well as Governors/Vice

Governors committing criminal acts of corruption which shall be subject to the additional criminal sentence in the form of fixed-time revocation of political rights.

Data from KPK shows that during the 2004-2017 period, there were 165 political officials committing unlawful acts and abusing their position by self-enrichment, enriching other persons or corporations and even bribery (Faisal, Barid and Mulyanto 2018). The perpetrators occupied the positions of Governor, Mayor, Regent/Vice Regent and members of DPR and DPRD (Faisal, Barid and Mulyanto 2018). Meanwhile, data from ICW mentions 245 officials trapped in corruption offense (Paskarina 2018). Criminal acts committed by public officials elected through political processes are known as political corruption. Political corruption is committed by the perpetrators with politician background although Law No. 31 year 1999 concerning Eradication of Criminal Acts of Corruption does not recognize political corruption offense. The law only refers to the criminal acts of corruption provided for in Article 2, Articles 3 through Article 16 as well as other criminal acts related to the criminal act of corruption provided for in Articles 21 through Article 24.

The increasing number of unlawful acts and abuse of position by officials resulting from political processes has encouraged many parties to study political corruption. The study conducted by ICW (2017) since 2014-2017 encouraged the judicial level to maximize the criminal sanctions of imprisonment and fine as well as maximum additional sanction against the perpetrators of political corruption (Milono 2014). Findings of ICW (2017), connected to the study by Milono (2014), indicate that sentence imposition by the judges has not been maximum due to lack of formulated guidelines on sentence imposition against state administrators committing criminal acts of corruption (Milono 2014).

The study by Faisal, Barid and Mulyanto (2018) from KPK shows the increasing political corruption by officials based on the cost in relatively expensive political activities. For J. Danang Widoyoko (2018), the increasing number of public officials committing unlawful acts and abuse of position by extracting public resources to their companies begins not only during the tender process but since the planning and budget formulation stage. Such acts involve politicians, the bureaucracy and the government (Widyoko 2018).

Widyoko (2018) continues with the fundamental issue of patronage in the political economy. Although various laws on goods and services procurement as well as electronic auction mechanism have been formulated, these have not been enough. In this context, Widyoko (2018) suggests that KPK should cooperate with KPU and BAWASLU to put in efforts in preventing corruption by regulating political funds.

Agus Faisal et.al (2018) and Widoyoko (2018) find that in the policies on the formulation of the Political Party Law, the financial sources of political parties have been regulated. The formulation of norms regulating financing sources for the activities of political parties provides, among other things, the maximum members' contribution (Rp 1 billion), personal sources (a maximum of Rp 7.5 billion) and state aid from the State Budget (APBN) or the Regional Budget (APBD).

It is observed that political corruption committed by public officials continues to increase and harms all sectors including education, health, religion, food et cetera (Muttaqin & Susanto, 2018). For Barda Nawawi (2015), sustainable efforts (*sustainable reform/sustainable development)* are necessary from generation to generation in line with the development of the community. Furthermore, Barda (Nawawi Arief 2007) confirms the need for integral criminal policies, not only using a repressive approach but also causative and preventive approaches as well as the approach of policies on social, political, cultural and moral values allowing for covering the loopholes or limiting the room for political corruption to occur (Nawawi Arief 2007).

One of the opportunities to limit the room for political corruption to occur is the policy on norm formulation of Article 182 sub-article (g) and Article 240 sub-article (g) of Law Number 7 Year 2017 concerning General Elections. The formulation of both norms which constitutes a requirement which must be met by the general election participants to elect DPD members and for nomination of members of DPR, DPD, DPRD of Province and DPRD of Regency/Municipality should read as follows: "*has never been imposed with criminal sanction of imprisonment based on a final and conclusive court decision for committing a criminal act subject to criminal sanction of imprisonment of 5 (five) years or more except if the person concerned openly and honestly declares that he/she is an ex-convict*".

The authentic understanding of the afore mentioned norm formulation is that general election participants, for DPR, DPD as well as DPRD of Province and DPRD of Regency/Municipality who have once been criminalized, need to honestly and openly make a public declaration. Such declaration shall be made at every stage of general election implementation, starting from campaign stage up to the voting stage.

Since the Elucidation of the law only refers to both Articles as "self-explanatory" then KPU as the national, permanent and independent general election organizing institution shall implement both norm formulation of Article 182 sub-article (g) and Article 240 sub-article (g) of Law Number 7 of 2017 concerning General Elections. The implementation of both norm formulations leads to the consequence to be known to the public at large, considering that 81 ex-convict candidates were nominated

by 14 Political Parties as potential candidates for DPRD of Province and DPRD of Regency/Municipality.

Implementation of both Articles by KPU is part of the efforts to develop smart and integrity-based politics. This scientific paper is intended to study law enforcement against the perpetrators of criminal acts of corruption by revocation of political rights in connection with the norms of Article 182 sub-article (g) and Article 240 sub-article (g) of Law Number 7 year 2017 concerning General Elections now and in the future.

LAW ENFORCEMENT & POLITICAL CORRUPTION PERPETRATORS

I. LAW ENFORCEMENT AGAINST THE PERPETRATORS OF POLITICAL CORRUPTION

The terminology of political corruption is not recognized in the penal law formulation policy, either KUHP as the Dutch colonial legacy/*Wvs* or Law Number 31 of 1999 *jo* Law Number 20 Year 2001 concerning Eradication of Criminal Acts of Corruption. The norm formulation of the laws only regulates which acts meet the formulation of corruption offense and the formulation of criminal sanctions.

In the history of human civilization, corruption crime was not recognized; only property and right to life-related crimes such as theft and murder were recognized (Dhakidae 2018). Corruption was an invented crime in the development of increasingly complex community life (Dhakidae 2018). In the formulation of criminal laws, no definition was found regarding corruption or political corruption.

Artidjo Alkostar (2015) asserts that political corruption is a species of general corruption but it is a top hat crime. The issue of political corruption is not only Indonesia's problem, but it is also a global issue. Transparency International announced as an international movement the fight against corruption through national, regional and global coalitions by embracing the state, civil society and the private sector (Bratsis Peter 2003). Political corruption is the conduct of misusing position or power by an official/ruler who has gained power through a political process. Position is abused to gain material or immaterial benefits such as prestige or power.

Political corruption means the abuse of political power by the government leaders to extract and accumulate for private enrichment, and to use politically corrupt means to maintain their hold on power. However,

abuse of political power for other purposes, such as repression of political opponents and general police brutality, is not considered political corruption. Political corruption takes place at the highest levels of the political system, and hence it can be differentiated from administrative or bureaucratic corruption and it can also be distinguished from business and private sector corruption.

Political corruption may take two forms (Peter Bratsis 2003), the *first* including accumulation and extraction in which government officials use and abuse their power to extract from the private sector, from government revenues and from the economy in the broad sense. Some examples of the aforementioned form of corruption are extraction, embezzlement, rent-seeking, looting and even kleptocracy. The *second* political corruption is where the resources gained (from public funds) are used for preserving and expanding power. This usually takes the form of favoritism and patronage politics. It includes financial and material distribution, favouritist benefit and loot and it has political motive.

Arnold Heidenheimer and Michael Johnston whose thoughts are quoted by Herry Priyono (2018) assert that corruption is morally defined as destruction of integrity in the implementation of public obligations by way of bribery or gifts, or even fraudulent practices in a country. Heidenheimer (Amundsen 1997) asserts that political corruption is any transaction between private and public sector actors through which collective goods are illegitimately converted into private-regarding payoffs. Political corruption may take place during the making of political decisions by using political power as the means in order to sustain power, status and wealth. Political corruption is defined as the manipulation of political institutions and the rules of procedures which therefore influences government institutions and the political system and leads to institutional decay (Amundsen 1997). Another thought asserts that political corruption takes place when laws and regulations are more or less systematically abused by the rulers, side-stepped, ignored or even tailored to fit their interests.

Enforcement against and mitigation of political corruption are part of criminal policy. For Sudarto (2006), criminal policy (criminal politics) constitutes a rational effort of the ruler or the community to mitigate crime (Sudarto 2006). The efforts include penal policy (penal law) as well as non-penal policy (which emphasizes prevention) (Nawawi Arief 2008). The crime to be mitigated is, of course, political corruption. Criminal law policy of the law on the eradication of criminal acts of corruption does not specifically regulate the types of political corruption offenses but the norm formulation has spread and existed since the Dutch era, through corruption offense regulated in KUHP/Wvs (Nawawi Arief 2015).

Following Indonesia's independence, corruption offense was stipulated through Military Rule Regulation No.PRT/PM/06/1957, Army Central War Rule Regulation No.PRT/PEPERPU/013/1958, Law Number 24/Prp/1960, Law Number 3/1971 as subsequently replaced with Law Number 31/1999 *jo* Law Number 20/2001 (Nawawi Arief 2013, 2015; Hamzah 2006). The efforts to eradication political corruption by penal policy (penal laws) through the formulation of maximum criminal sanctions starts from death sentence, criminal sanction of life imprisonment, criminal sanction of 20-year imprisonment up to the minimum criminal sanction of imprisonment for 1 year. The same shall apply to the formulation of maximum up to minimum criminal sanction of fine. The maximum criminal sanction of fine is Rp 1 (one) billion and the minimum fine is Rp 50 (fifty) million rupiah. ICW (2017) monitored corruption cases in 2014-2017 and found the trend of law enforcement imposing light criminal sanction of imprisonment against the perpetrators of criminal acts of corruption (Wangga, Kardono & Wirawan 2019).

Table. 1
Trend of Decisions on Criminal Sanction of Imprisonment in 2014-2017

Year	Category	Number of Perpetrators of Criminal Acts of Corruption (Defendants)
2014	Acquittal	19
	Light (0-4 years)	195
	Medium (4-10 years)	43
	Severe (≥ 10 years)	4
2015	Acquittal	38
	Light (0-4 years)	163
	Medium (4-10 years)	37
	Severe (≥ 10 years)	3
2016	Acquittal	46
	Light (0-4 years)	275
	Medium (4-10 years)	37
	Severe (≥ 10 years)	3
2017	Acquittal	22
	Light (0-4 years)	262
	Medium (4-10 years)	41
	Severe (≥ 10 years)	3

The increasingly high and massive corruption in all sectors is not in line with law enforcement at the judicial level. The table above describes the perpetrators of corruption in general who have been imposed with light criminal sanction of imprisonment (0-4 years) by the court judges. Law enforcement against the perpetrators of criminal acts corruption shows a disparity between common offense such as theft (of personal belongings) and robbing public property (public funds) being imposed with light punishment in larger number. As seen in 2014, 195 perpetrators of criminal acts of corruption were imposed with light sentence, while in 2015 there were 163 persons. In 2016, the number increased to become 275 persons while in 2017, 262 persons were imposed with light sentence for criminal acts of corruption. The criminalization disparity was due to the fact that the judges had not had any criminalization guidelines which must be considered before passing the decision.

The formulation of criminalization guidelines which must be considered by the judges was regulated only in the Draft of Indonesian Penal Code (R-KUHP) Article 60 of which reads; a) fault of the perpetrator of criminal act; b) motive and purpose of committing a criminal act; c) inner attitude of the perpetrator of criminal act; d) commission of the criminal act has been or has not been planned; e) means of committing a criminal act; f) attitude and actions of the perpetrator after committing a criminal act; g) life history, social condition and economic condition of the perpetrator of criminal act; h) influence of a criminal act on the future of the perpetrator of criminal act; i) influence of a criminal act on the victim or the victim's family; and/or k) legal value and justice living in the community.

In addition to criminalization guidelines, the judges also need to apply forms of additional criminal sanctions in Article 18 of Law Number 31 Year 1999 namely, among other things, dispossession of tangible or intangible movable goods or immovable goods used for or obtained from criminal acts of corruption, payment of damages, partial or total closure of a company for a maximum period of 1 year and revocation of all or a part of certain rights or elimination of all or a part of certain benefits. The example is revocation of political rights for a fixed time period, 5 (five) or 10 (ten) years, against perpetrators of criminal acts of corruption with political background or officials elected through political processes. This means that after the perpetrators have served criminal sanction of imprisonment, they have not been able to use their right to nominate for DPD or to become candidate members of DPR, DPRD of Province and DPRD of Regency/Municipality.

It is not after the lapse of 5 (five) years that the perpetrators of political corruption can exercise their right of nomination. This mandate of

the law does not apply to all perpetrators of criminal acts of political corruption. The writers can refer to an example of Wa Ode Nurhayati, member of the Budget Agency of DPR from PAN Faction who was only sentenced with imprisonment of 6 (six) years and criminal sanction of fine in the amount of Rp500,000,000.- (five hundred million rupiah) through Verdict Number 30/Pid. B/TPK/2012/PN.Jkt Pst and Verdict Number 60/Pid/TPK/2012/PT.DKI, Appeal Verdict Number 884K/Pid.susu/2013. The perpetrator was a State administrator, a member of DPR who should have imposed with additional punishment in the form of revocation of political rights and confiscation of property which the defendant could not prove as legitimately-earned property. The writers view that the perpetrator should be imposed with additional punishment considering that as member of DPR the perpetrator should have struggled for the regions' right to obtain fund allocations for the accelerated development of regional infrastructure (PPPID), such as Aceh Besar Regency, Pidi Jaya Regency, Bener Meriah Regency and Minahasa Regency.

The efforts to struggle for people's interest for the aforementioned regions were accompanied with rewards/request at 5%-6%. The perpetrator received rewards during the period from October 8, 2010 up to September 30, 2011 through a number of transaction, totaling Rp.50,595,979,593.77 (*fifty billion five hundred and ninety-five million nine hundred and seventy-nine thousand five hundred and ninety-three rupiah and seventy-seven cents*) placed in Account No. 102-00-0551613-0. Mandiri KCP Jakarta DPR-RI.

Abdul Fickar Hadjar (2012) made annotations to the verdict against Wa Ode Nurhayati and found the legal fact that the Public Prosecutor of KPK had received relatively good assistance from KPK investigators as well as PPATK through the technique of search of the defendant's assets. The search technique was applied by: search of asset opening/acquisition, living expenses and made-up means of acquisition. The results of asset search against the perpetrator (Wa Ode Nurhayati) indicated the legal fact that the perpetrator did not have any family business at all in Marauke. If the person concerned had any business, then the cash flow mechanism to and from the bank could be identified. The legal fact proved that the perpetrator placed, transferred, made payment repeatedly during 2010-2011 the time of which was concurrent with the position of the perpetrator as Member of DPR/Budget Agency of DPR-RI rather than as business actor. In fact, there was not found any legal fact in the form of tax payment transaction as a business person (either before or after sitting as member of DPR).

The legal fact clearly indicated that the wealth possessed by the perpetrator (Wa Ode Nurhayati) had not been obtained from legitimate proceeds (business) so that it is proper to suspect it to be the proceeds of

other criminal acts such as gratuity or even in-office extortion. It is unfortunate, however, that the legal fact was ignored as the judicial review judges, through Decision Number 214 PK/Pid.sus/2014 rejected the judicial review of the defendant (Wa ode Nurhayati) and changed the decision by returning the perpetrator's money in the amount of Rp 10,000,000,000,000,- (ten billion). The judges considered that the returned money in the amount of 10,000,000,000,000.- (ten billion) was not the proceeds of a crime but from the perpetrator's business run before sitting as member of DPR. The writers view that there was a mistake of the judges in understanding the technique for searching the defendant's assets where the defendant herself could not proved the money as the proceeds from business, without any tax payment transaction as included in the decision *aquo*.

The writers observed that the return of money in the amount of Rp 10,000,000,000,000.- (ten billion) to the perpetrator Wa Ode Nurhayati and non-revocation of her political rights for a fixed period for example 5 or 10 years became a loophole for the person concerned to nominate again for member of DPR. The Authors underline and raise question whether the perpetrator has realized her mistake, whether the very short punishment has successfully fixed her behavior making her feel worthy of becoming a legislative member. The study by Nimerodi Gulio (2018) shows that there has been no right and appropriate model of development for corruption-related convicts with good educational and economic background. Gulio (2018) adds that this political corruption does not require any skill development program. Political corruption convicts only need regular implementation of the rules of procedure in the correctional institution. For example, they need to obey the visit schedules, medical treatment schedule to the hospital or doctor, and so on.

For the writers, the activities of following the rules of procedure are the right and obligation of inmates in the correctional institutions so that they have no significant impact on the development of behavior of political corruption convicts. Limited human resources and limited development programs or lack of development method suitable for the background of corruption perpetrators will not make any change to the behavior and purpose of life of the person concerned.

Observing various existing limitations, the writers find it necessary to change the form of development not only being criminal sanction of imprisonment but also social work sanction which needs to be formulated for the perpetrators of criminal acts of corruption. In addition to changing the formulation of the forms of criminal sanctions, it is also necessary to strengthen it with non-penal policy (prevention). One of the preventive efforts against the perpetrators of political corruption is through the norms

of Article 182 sub-article (g) and Article 240 sub-article (g) of Law Number 7 Year 2017 concerning General Elections. The implementation of both norms by the General Election Commission (KPU) constitutes a policy to cover the gap for ex-convicts of corruption to be nominated as members of DPR, DPRD and DPD. For example, Wa Ode Nurhayati, an ex-convict in the corruption of budget allocation for the regional infrastructure development acceleration project (PPPID) filed a petition against KPU for stipulating the regulation prohibiting ex-convicts of corruption to become a legislative member candidate. The result was that the petition of Wa Ode Nurhayati, an ex-convict of corruption, was rejected so that she could not be nominated by a political party to become a legislative member.

For the writers, the rejection of the petition filed by the ex-convict as well as the ban against the political right of ex-convicts of corruption constitute law enforcement through non-penal policy which must be implemented in a sustainable manner as viewed by Barda Nawawi (2015). Nawawi (2015) asserts that law enforcement against criminal acts of corruption, particularly political corruption, cannot be conducted in part (merely criminal law policy) but it must be conducted in a sustainable manner (sustainable reform/sustainable development) through non-penal policy in accordance with the changes in the community (Nawawi Arief 2015). Law enforcement conducted integrally is not only repressive but also causative and preventive, based upon the policies on social, economic, political, cultural, and moral values covering the gap or limiting the room for political corruption to occur (Nawawi Arief 2007).

II. Revocation of Political Rights of the Perpetrators of Criminal Acts of Corruption

Law enforcement against the perpetrators of political corruption through the revocation of political rights constitutes a model of responsive law (Nonet & Selznick 1978) as well as progressive law (Rahardjo 2009). Law enforcement will create order in the community so that community order can last in a fair, prosperous and even manner. In KPK report, in 2013-2017, 26 public officials had their political rights revoked. This relatively small number was not in line with the judges' spirit to eradicate rotten, evil and despicable behavior against the perpetrators. A case study already described by the writers above was that of Wa Ode Nurhayati. The judges only imposed a criminal sanction of imprisonment of 6 (six) years and criminal sanction of fine of Rp 500,000,000.- (five hundred million rupiah). In fact, at the judicial review level, the person concerned obtained a

decision by the judges in the form of return of money in the amount of Rp 10,000,000,000,000.- (ten billion) as well as non-revocation of political rights for a fixed period, for example 5 or 10 years.

Application of additional criminal sanction in the form of fixed time revocation of political rights is very urgent and vital to be implemented against all perpetrators of political corruption. The application of the sanction of revocation of political rights is intended for humans (political officials) to realize their faults and not to repeat them. Efforts to correct the faults of corruptors through the application of the revocation of political rights are very urgent at this time. This is in line with the thought of Jeremy Bentham (Bentham 2006; Hiariej 2013) that criminal sanction must give benefits in the form of:

a) Improving self-correction among criminals;
b) Eliminating the capacity to commit crimes; and
c) Providing compensation to the harmed parties

Revocation of political rights will give the benefit of improved behavior of the perpetrators. After serving their imprisonment sentence, perpetrators will return to the community to socialize or interact with them. Various reactions will be received by the persons concerned. Assistance by the family, psychiatrists as well as religious opinion leaders will play a vital role in restoring behavior toward non-criminal one. Such efforts are intended to eliminate the capacity of the persons concerned to repeat their behavior. Improvement efforts must be repeated in order to form a positive behavioral pattern. For Bentham (2006; Hiariej 2013), criminal sanctions to be currently imposed to the perpetrators must also involve the victims (the community) and the perpetrators in order to pay attention to their life in the future. It is therefore very right for political corruptors to be imposed with the additional sanction in the form of revocation of political rights for a fixed period.

Quoting the thought of Satjipto Rahardjo (2009; L. Tanya 2015; Hidayat 2017) the judges as law enforcement officials may escape by finding new ways (*rule breaking*), namely, among other things:

a) using spiritual intelligence to rise from legal downturn gives an important message for us to be bold to find new ways (*rule breaking*) and never let ourselves be confined in old ways, applying old and traditional laws which to a greater extent clearly hurt the sense of justice;
b) the search for a deeper meaning should become the new standard in implementing the law and in living in a rule-of-law state, where each party involved in the law enforcement process is encouraged to always ask their conscience about the deeper meaning of law;
c) the law should be implemented not according to the principles of logic only but also with feelings, care and compassion for the weak or the

community at large. The community deprived of their economic, social, cultural and political rights

In Indonesian context, revocation of political rights of the perpetrators of political corruption by the law enforcement officials constitutes a principle of virtue in the legal science, as known with the phrase *Fiat Justita, Ne Pereat Mundus*. Hegel, a German philosopher interpreted the principle of *fiat iustita, ne pereat mundus* (Pandor 2012), which is, semantically, that law *(ius)* must be enforced so that the world will not perish. Allegorically, the world is interpreted as community relations or livelihood in the community (Pandor 2012). In relation to revocation of political rights of political officials, this principle is intended for creating order in the community so that the community order may continue in fair, prosperous and even manner. The order is to be filled by people who are clean, honest and who have integrity. Therefore, law must be interpreted as justice (*ius)*, which must serve the community, maintain social order in the community rather than preserving power/abuse.

Indonesia and the international world make efforts to keep and maintain community order regularly by self-adaptation through universal values recognized by civilized nations in the form of international conventions, model treaty, code of conduct, standard and guidelines and so on (Muladi 2002). One of the efforts has been Indonesia's ratification of the UN Anti-Corruption Convention through Law Number 7 Year 2006 concerning the Ratification of the UN Convention on Corruption.

The principles in this convention encourage member countries to increase the awareness of civil society of the consequences of corruption and for the community to be actively involved in the efforts of corruption prevention and eradication. For Ian McWalters (2006), the essence of corruption always changes; when one door is closed, there will be another hole for another way. For that purpose, it is very important to review the adequacy of the anti-corruption law with other laws (McWalters 2006). Observing the view of McWalters (2006), in line with the views of Sudarto (2006) and Nawawi Arief (2007), mitigation of the crime of political corruption is not only through penal policy but also non-penal policy.

One of the forms of non-penal policy which can be pursued according to McWalters (2006) is increasing the standard of ethics and monitoring as well as supervision of certain officials. Another non-penal effort is to stipulate quality requirement guaranteeing fair and participatory level of representation in electing political officials with quality, honesty, professionalism and integrity. For that purpose, KPU as the general election organizer shall conduct socialization of general election implementation related to the duties and authority of KPU. One of

the authorities of KPU is to treat general election participants in a fair and equal manner.

The principles of fairness and equality shall be applied by implementing the formulation of the norms of Article 182 sub-article (g) and Article 240 sub-article (g) of Law Number 7 Year 2017 concerning General Elections. The formulation of both norms constitutes a requirement which must be met by the general election participants to elect DPD members and for nomination of members of DPR, DPD, DPRD of Province and DPRD of Regency/Municipality which reads as follows: "has never been imposed with criminal sanction of imprisonment based on a final and conclusive court decision for committing a criminal act subject to criminal sanction of imprisonment of 5 (five) years or more except if the person concerned openly and honestly declares that he/she is an ex-convict".

The implementation of the duties and authority to produce quality representatives of the people in organizing (*electoral law*) and implementing general elections (*electoral process*). For that purpose, KPU has performed its obligation by issuing the announcement of 81 ex-convicts in corruption who would become potential candidates for DPRD of Province and DPRD of Regency/Municipality from 14 political parties (Kompas.com, 6 February 2019), namely, among others:

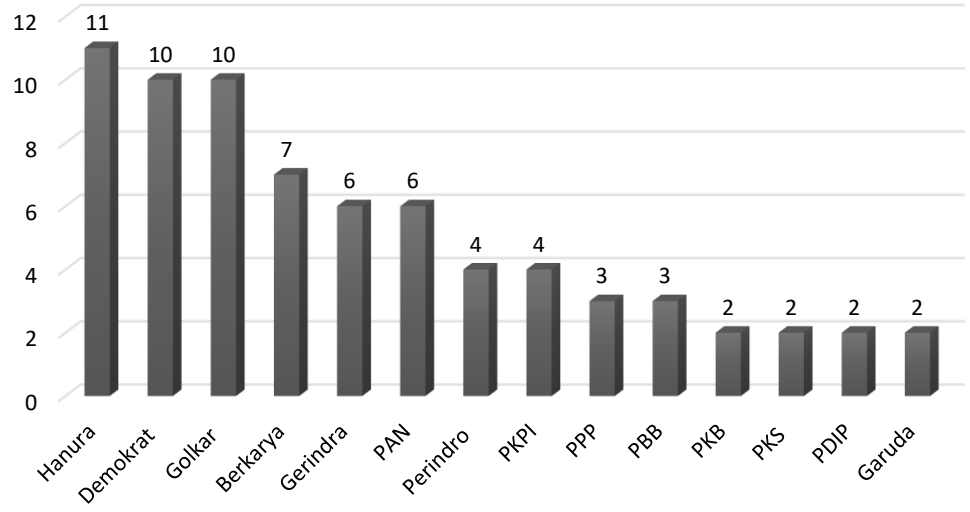

Fig. 1 Graphic Chart of Political Parties & Legislative Candidates for DPRD, DPD Who Are Convicts in Corruption

Fig. 1 showed that the community must realize and know that only two political parties has not nominated legislative candidates being convicts in corruption, namely, Nasdem Party and PSI. Meanwhile, 14

political parties still support or nominate legislative candidates for DPRD being convicts in corruption. The political party at the top position was Hanura with 11 persons. The second position is occupied by Demokrat Party and Golkar Party, with 10 persons, while the third position is occupied by Berkarya Party with 7 persons and the fourth position is occupied by PAN and Gerindra with 6 persons.

Perindo and PKPI are in the fifth position, with four persons. Meanwhile, the sixth position is occupied by two parties having three legislative candidates being convicts in corruption, namely PPP and PBB. The seventh or the last position is occupied by four political parties with twolegislative candidates, namely PKS, PKB, PDIP and Garuda Party.

The legislative candidates for DPRD and DPD who are convicts in corruption in the table above come from various Provinces and Regencies/Municipalities in Indonesia. The announcement obligation of KPU RI must also be implemented by Provincial KPU and Regency/Municipal KPU. The implementation of the obligation by KPU is, of course, not merely to implement the formulation of Article 182 sub-article (g) and Article 240 sub-article (g) of Law Number 7 Year 2017 concerning General Elections. It is, however, an effort to make the community realize its role in selecting legislative candidates who are clean, flawless and who have integrity. The community's awareness reflects the effort to prevent and eradicate criminal act of corruption as provided for in Article 41 paragraphs (3) and (4) of Law Number 31 Year 1999 concerning Eradication of Criminal Acts of Corruption.

The awareness to form community order which is honest, prosperous and equal is not merely the right and responsibility of the community, but also political parties. The right and responsibility of the community constitutes part of the awareness and knowledge in using their voting right to elect political official with quality, morals and integrity. Meanwhile, political party mechanism is intended for electing potential candidates who hare clean, honest and who have integrity as stated in the norm of Article 29 paragraph (1) of Law Number 2 of 2011 concerning Political Parties which reads "*political parties shall conduct recruitment of Indonesian citizens to become : a). members of Political Parties , b). potential candidates for DPR and DPRD, c). potential candidates of heads of region and vice heads of region, d). potential candidates for President and Vice President.* Furthermore, paragraphs (1a), (2), (3) assert that recruitment and cadre formation shall be conducted in a democratic manner with considerations on minimum women's representation of 3% in accordance with the Statute\/By-Laws as well as the Laws and Regulations by the decision of the Political Party.

Every citizen has the opportunity to become a member of a political party as well as to become a legislative candidate for DPR, DPRD and DPD.

To become a member of a political party and a legislative candidate for DPR and DPRD the recruitment and cadre formation shall be conducted in a democratic manner. The law does not provide the definition of "recruitment and cadre formation shall be conducted in a democratic manner". The elucidation only refers to it as being "self-explanatory".

The term *rekrutmen* is derived from the base word "*rekrut*", which means recruit (soldier) and new member. If we search the meaning in the Standard Indonesian Dictionary (subsequently referred to as KBBI), "*rekrutmen*" means mobilization (*pengerahan*). In KBBI, *pengerahan* means the process, method, and act of mobilizing.

The term *kaderisasi* (cadre formation) is derived from the word "*kader*" which means officer or non-commissioned officer in the army and a person expected to play an important role in government, a party and so on. The term *kaderisasi* in laws is derived from the word "*kader*" added with the suffix "*isasi*". In KBBI, *kaderisasi* is cadre formation, which means that it is half forced due to the loss of some mainstay players. The term *demokrasi* (democracy) is derived from the Greek word, "*demos*" which means people and "*kratos*" which means power/in power. Based on the terminology, it means people in power. Therefore, recruitment and cadre formation in a democratic manner to become member of political parties and legislative candidates for DPR and DPRD can be interpreted in such a way that the people is in power over the process, method, act of mobilization to become members of political parties and legislative candidates for DPR and DPRD. If it is based on people's power, citizens who will become members of political parties and legislative candidates for DPR and DPRD shall be citizens who are clean, hones, who have morals and integrity.

Political parties which receive funds from the State Budget (APBN) and Regional Budget (APBD) shall prioritize the implementation of political education activities such as, a) in-depth study of the four pillars of the nation and the state, namely *Pancasila*, the 1945 Constitution, *Bhineka Tunggal Ika* and the Unitary State of the Republic of Indonesia; b). understanding of the rights and obligations of Indonesian citizens in developing political ethics and culture; as well as c). cadre formation of political party members in a gradual and sustainable manner. On the other hand, however, a regulation is made which can be read as allowing for ex-convict (including those in corruption cases) candidates for DPR, DPRD provided that they shall openly and honestly declare to the public that they are ex-convicts and that prospective members of DPD who used to be imposed with criminal sanction shall posses a certificate from the correctional institution.

As a matter of fact, it has been clearly desired in the law that party members/cadres nominated and selected by the political parties shall have moral and integrity-based track records in order to be competent in making policies having positive impacts for the advancement and welfare of an advanced, just and prosperous nation. By realizing the norms of this law, it will be no longer necessary for political parties to nominate political party members/management who are ex-convicts in the nomination for DPR, DPRD as well as for DPD.

This is not merely the political right of convicts but also the right and responsibility of any political party on the basis of responsive law as conveyed by Philip Nonet & Philippe Selznick (1978) who positions law as the means and public aspiration. The demand of the community at large for the creation democratic and equal community order requires the leadership by those with hones and clean character and those who have integrity. They are not leaders with oppressive character who are greedy but leaders who are, as termed by Artidjo Alkostar (2017), leaders capable of distributing state wealth evenly, of maintaining state authority and providing infrastructure facilities for their people. According to the writers, efforts to maintain community order is a joint task of the community, political parties including law enforcement officials as well as law enforcement institutions. One of the efforts to make in the future is the support from the Supreme Court through a Circular of the Supreme Court of the Republic of Indonesia or a Regulation of the Supreme Court of the Republic of Indonesia which will require the judges examining, hearing and deciding upon political corruption cases to apply an additional criminal sanction in the form of fixed-time revocation of rights. The application of revocation of rights shall apply to all perpetrators of criminal acts of corruption, be it notaries, lawyers, professors as well as political officials and other professions.

CONCLUSION

The paper concludes that a weakness in law enforcement through the criminal law policy *in concreto* by the judges who still impose light criminal sanctions of imprisonment against the perpetrators of criminal acts of corruption and who have not imposed maximum additional criminal sanction in the form of fixed-time revocation of rights, such as revocation of political rights of the perpetrators of political corruption. This weakness needs a follow-up in the future by the Supreme Court by issuing a Circular of the Supreme Court of the Republic of Indonesia or a Regulation of the Supreme Court of the Republic of Indonesia which will require the judges

examining, hearing and deciding upon political corruption cases to apply an additional criminal sanction in the form of fixed-time revocation of political rights.

Moreover, in order to strengthen enforcement of criminal legal policies against the perpetrators of corruption, it is necessary to implement it in a sustainable and integral manner through non-penal policies (prevention). Preventive efforts are to be made by developing the concept of smart and integrity-based politics through the standards of ethics and monitoring as well as supervision of public officials or officials elected through political processes. Non-penal policy becomes the common right and responsibility of the community, political parties as well as general election organizers regarding public or political officials who are clean, honest and who have integrity.

REFERENCES

Amundsen, I. (1997). *Political Corruption: An Introduction to the Issues*. Norway: Chr Michelsen Institute, Development Studies and Human Rights.

Alkostar, A. (2017). "Konsep dan Implementasi Negara Hukum Pancasila Dalam mengatasi Permasalahan Hukum Nasional", *Seminar Paper*, presented on National Seminar, "Konsep dan Implementasi Hukum Negara Pancasila dalam Mengatasi Permasalahan Hukum Nasional, Semarang, 30 September 2017

Alkostar, A. (2015). *Korupsi Politik di Negara Modern.* Yogyakarta: FH UII Press.

Bentham, J. (2006). *Teori Perundang-undangan: Prinsip-Prinsip Legislasi, Hukum Perdata dan Hukum Pidana*, Nurhadi (transl). Bandung: Nuansa.

Bratsis, P. (2003). *Corrupt Compared to What ? Greece, Capitalist, Interest and The Specular Purity of The State*. London: The Hellenic Observatory, The European Intitute, London School of Economics and Political Science.

Budiardjo, M. (2008). *Dasar-Dasar Ilmu Politik* Edisi Revisi. Jakarta: Gramedia Pustaka Utama.

Damaitu, E. R. (2019). Progress and Decline of Legal Thought: Ex-Corruptor as a Legislative Candidate (Analysis of General Election Commission Regulation (PKPU) No. 20/2018). *JILS (Journal of Indonesian Legal Studies)*, *4*(1), 129-142. https://doi.org/10.15294/jils.v4i01.29690

Dhakidae, D. (2018). Korupsi dalam Relasi Modal dan Negara. *PRISMA: Jurnal Pemikiran Sosial Ekonomi*, *37*(3), 3-18.

Faisal, F., Barid, B., & Mulyanto, D. (2018). Pendanaan Partai politik di Indonesia: Mencari Pola Pendanaan Ideal untuk Mencegah Korupsi. *INTEGRITAS: Jurnal Anti Korupsi*, *4*(1), 265-287. https://doi.org/10.32697/integritas.v4i1.248

Farisa, F.C., & Wedhaswary, I.D. (January 2019). "Diumumkan KPU, Ini Daftar 49 Caleg DPRD dan DPD Eks Koruptor", *Online News KOMPAS*, retrieved from https://nasional.kompas.com/read/2019/01/31/08455491/diumumkan-kpu-ini-daftar-49-caleg-dprd-dan-dpd-yang-eks-koruptor, accessed on 6 February 2019

General Election Commission (KPU) Regulation No.20 Year 2018 concerning nomination of members of the House of Representatives (DPR), members of the Regional House of Representatives (DPRD) of Province and members of the Regional House of Representatives (DPRD) of Regency/Municipality

Hamzah, A. (2005). *Asas-Asas Hukum Pidana*. Jakarta: PT. Yarsif Watampone.

Hamzah, A. (2006). *Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional*. Jakarta: Rajawali Press.

Hadjar, A.F. (February 2013). Hukum Putusan pengadilan Tindak Pidana korupsi Pada Pengadilan Negeri Jakarta pusat No.30/Pid.B/TPK/2012/ PN.Jkt.Pst, atas nama Terdakwa Wa Ode Nurhayati. *Online Article*, retrieved from http://fickar15.blogspot.com/2013/02/anotasi-putusan-wa-ode-nurhayati.html

Hidayat, A. (2017). "Negara Hukum Berwatak Pancasila", *Presentation Paper*, presented on Guest Lecture Universitas Merdeka, Malang, 7 October 2017

Hiariej, E.O.S. (2013). Menyoal Putusan Pengadilan Tindak Pidana Korupsi. *Masalah-Masalah Hukum*, *42*(1), 55-62. DOI: 10.14710/mmh.42.1.2013.55-62.

https://definitions.uslegal.com/p/political-corruption/, *Political Corruption Law and Legal Definition*, accessed on 11 August 2018

Indonesian Corruption Watch (ICW). (2017). *Catatan Pemantauan Perkara Korupsi Yang Divonis Pengadilan*. Jakarta: ICW. Retrieved from https://antikorupsi.org/sites/default/files/files/Siaran%20Pers/TREN%20VONIS%20SEMESTER%201%20TAHUN%202017>, accessed on September 2018

Law Number 31 of 1999 *jo* Law Number 20 concerning Eradication of the Criminal Act of Corruption

Law No.7 of 2017 concerning General Elections

Law Number 2 of 2011 concerning Political Parties

McWalters, I. (2006). A Handbook on Fighting Corruption with Special Reference to Hongkong Experience and The United Nations Covention Against Corruption, translated into Bahasa by Djoko Pitono, et al, *Memerangi Korupsi Sebuah Peta Jalan untuk Indonesia*, Surabaya: JPBooks.

Milono, A. (2014). Formulasi Pedoman Penjatuhan Sanksi Pidana Terhadap Penyelenggara Negara Yang Melakukan Tindak Pidana Korupsi. *Arena Hukum*, *7*(1), 117-130. https://doi.org/10.21776/ub.arenahukum.2014.00701.7

Muttaqin, L., & Susanto, M.E. (2018). Mengkaji Serangan Balik Koruptor Terhadap KPK dan Strategi Menghadapinya. *INTEGRITAS: Jurnal Anti Korupsi*, *4*(1), 101-144. https://doi.org/10.32697/integritas.v4i1.146

Muladi, M. (2002). *Aspek Yuridis Normatif Dalam Tinjauan Kewibaan Peradilan Di Indonesia dalam Hak Asasi Manusia, Politik dan Sistem Peradilan Pidana*, Semarang: Universitas Diponegoro.

Nawawi Arief, B. (2013). Kebijakan Formulasi Ancaman Pidana Mati Dalam Undang-Undang Tindak Pidana Korupsi. *Masalah-Masalah Hukum*, *42*(1), 23-33. DOI: 10.14710/mmh.42.1.2013.23-33

Nawawi Arief, B. (2015). *Pidana Mati Perspektif Global, Pembaharuan Hukum Pidana dan Alternatif Pidana Untuk Koruptor*. Semarang: Penerbit Pustaka Magister.

Nawawi Arief, B. (2015). *Pembangunan Sistem Hukum Nasional (Indonesia)*. Semarang: Penerbit Pustaka Magister.

Nawawi Arief, B. (2007). *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana Dalam penanggulangan Kejahatan.* Jakarta: Kencana Prenada Media Group.

Nawawi Arief, B. (2008). *Bunga Rampai Kebijakan Hukum Pidana Perkembangan Penyusunan Konsep KUHP Baru.* Jakarta: Kencana Prenada Media Grup.

Nonet, P., & Selznick, P. (1978). *Hukum Responsif*, Raisul Muttaqien (transl). Bandung: Nusa Media.

Numerilo, G. (2018). Rekonstruksi Sistem Pembinaan Narapidana Korupsi di Indonesia. *Doctoral Dissertation.* Universitas Diponegoro, Semarang.

Online Standard Indonesian Dictionary (KBBI), Ministry of Education and Culture of the Republic of Indonesia.

Paskarina, C. (2018). *Korupsi Politik Dalam Kompetisi Elektoral. PRISMA: Jurnal Pemikiran Sosial Ekonomi*, *37*(3), 37-50.

Priyono, B.H. (2018). *Korupsi Melacak Arti, Menyimak Implikasi*. Jakarta: Gramedia Pustaka Utama.

Pandor, P. (2012). *Ex Latina Claritas Dari Bahasa Latin Muncul Kejernihan*, Jakarta: Obor.

Rahardjo, S. (2009). *Hukum Progresif Sebuah Sintesa Hukum Indonesia*. Yogyakarta: Genta Publishing.

Sorik, S. (2018). "Problematika PKPU No.20 Tahun 2018 Mantan Koruptor menjadi Caleg", *Online Article*, retrieved from http://www.politik.lipi.go.id/kolom/kolom-2/politik-nasional/1225-problematika-pkpu-no-20-tahun-2018-mantan-koruptor-menjadi-caleg, accessed on 8 February 2019

Sudarto, S. (2006). *Kapita selekta Hukum Pidana. Bandung*: Alumni.

Tanya, B.L. et.al. (2015). *Pancasila Bingkai Hukum Indonesia*. Yogyakarta: Genta Publshing.

Wangga, M.S.E., Kardono, R. B.A., & Wirawan, A. (2019). Penegakan Hukum Korupsi Politik. *Kanun Jurnal Ilmu Hukum*, *21*(1), 39-60. https://doi.org/10.24815/kanun.v21i1.12862

Widoyoko, J.D. (2018). Politik Patronase dan Pengadaan Studi Kasus Korupsi Proyek Wisma Atlet. *INTEGRITAS: Jurnal Anti Korupsi*, *4*(2), 1-23. https://doi.org/10.32697/integritas.v4i2.200

Widjojanto, B. (2016). *Berkelahi Melawan Korupsi Tunaikan Janji Wakafkan Diri.* Malang: Intrans Publishing.

QUOTE

Corruption is a cancer:
a cancer that eats away at a
citizen's faith in democracy,
diminishes the instinct for
innovation and creativity; already-
tight national budgets, crowding
out important national
investments. It wastes the talent
of entire generations. It scares
away investments and jobs.

Joe Biden
Former Vice President of America