

JURIDICAL REVIEW OF THE IMPOSITION OF ADDITIONAL PENALTIES FOR PERPETRATORS OF CORRUPTION IN INDONESIA

Sumarno

benerno14@gmail.com

Lecturer at Faculty of Law, Universitas Pembangunan Panca Budi Medan

ABSTRACT

To eradicate corruption, strict sanctions must be applied in order to have a deterrent effect on corruptors, at the same time it is expected to stop anyone from committing corruption. One of the latest breakthroughs was to apply additional penalties, namely revocation of certain rights. The perpetrators of corruption would lose the right to vote and be elected in public office. The additional criminal imposition in the corruption case was still relatively new, so it was very interesting to study. This study discussed the suitability of additional criminal imposition of the revocation of the right to vote and be elected in public office against the convicted person of corruption by Article 38 of the Criminal Code and how to revoke the right to vote and be elected in a public position. From the background above, then the problem in this paper was how were additional penalties in criminal corruption cases, and how was the process of implementing additional penalties in criminal cases of corruption. Given this study used a normative approach, then the collection of legal materials was carried out with procedures for identification and inventory of primary legal materials, secondary legal materials and tertiary legal materials. The results of the study indicated that additional penalties in corruption cases must be understood as part of the efforts to prosecute those who broke the law. The methodology used was how the process of carrying out additional penalties in criminal cases of corruption was as an effort to restore state assets. How was the process of implementing additional punishments in cases of corruption in the case of revoking political rights in Indonesia. The problem approach used in this study was the normative juridical approach. Based on this approach, this study covered the scope of a positive legal inventory research. Considering that this research used a normative approach, the collection of legal materials was carried out with procedures for identification and inventory of primary legal materials, secondary legal materials and tertiary legal materials.

In this case the law violated was a criminal act of corruption. Criminal act of corruption was a special crime. The principle of its enactment was that special criminal law was prioritized over general crimes. Additional forms of penalties included: deprivation of goods, payment of substitute money, closure of the company. If the convict did not pay the replacement money, then the property could be confiscated by the prosecutor and auctioned to cover the replacement money. The process of implementing court decisions was generally regulated in Chapter XIX of the Criminal Procedure Code. In the event that a judge imposed additional criminal penalties in the form of a replacement payment, the convict was given a period of one month.

A. INTRODUCTION

Indonesia's economic conditions reportedly continued to progress, physical and psychological development continued to be encouraged to achieve the promised targets. It is important to realize that government orientation was not considered wrong, but more than that, mega projects that were always buzzing could not be separated from the failure of the government in terms of its human resources. Even the Minister of research and technology

and several institutions under other ministries also took part in the success of the government program. However, the mega projects that were on the agenda of the government seemed to be broken in the middle of the road because government officials were still involved in pantastic corruption scandals, let's say the chairman of the House of Representatives also played a big role in tasting and enjoying the corruption.

Corruption is an act against the law by enriching oneself or others by misusing authority, opportunity or facilities that exist because of the position that could harm another person or country.¹ The problem of corruption, collusion and nepotism (KKN) for developing countries was like an Aids disease that was difficult to avoid and to find its medicine. Although it is the determination of all nations in the world to eliminate or reduce the level of intensity, quality and quantity in an effort to create clean governance and good governance, corruption is difficult to eradicate.²

Various surveys conducted by foreign institutions such as the Global Corruption Index or Transparency International Index and some domestic survey institutions indicated that the ranking of corruption in Indonesia was among the top ranks.³ The increasing of uncontrolled corruption would bring disaster not only to the life of the national economy but also to the life of the nation and state in general.⁴ Corruption is a criminal act that is systematic and detrimental to sustainable development so that it requires comprehensive, systematic and sustainable prevention and eradication measures.

However, the right way to impoverish corruptors could not be described yet and there was no proper legal definition of impoverishment, while President Susilo Bambang Yudhoyono (SBY) in a press conference stressed the importance of alleviating poverty in the development agenda to replace the Millennium Development Goals (MDGs) which ended in 2015. "We must continue to fight poverty in various forms in the post 2015 period,"⁴

Eradicating corruption and creating clean governance in Indonesia is not a world order, but it is our agenda," he said in a press statement in Monrovia, before continuing his visit to Nigeria.³ President Joko Widodo also issued Presidential Instruction Number 7 of 2015 concerning Action to Prevent and Eradicate Corruption.⁵

The eradication of corruption stated by the President is not as easy as just turning the hands. In Indonesia itself, efforts to eradicate criminal acts of corruption had existed since the Dutch era as regulated by Articles 209, 210, 387, 388, 415, 416, 417, 418, 419, 420, 423, and 435 in the Criminal Code. But since 1971, there had been *Lex Specialis Derogate Lege Generalis* on Corruption Crimes, namely: First, the Law of the Republic of Indonesia Number 03 of 1971 concerning Corruption Crimes (State Gazette of the Republic of Indonesia 1971 Number 19) which was passed on March 29, 1971 had been revoked and no longer valid; Secondly, Law of the Republic of Indonesia Number 31 of 1999 concerning on Eradication of Corruption Crimes (State Gazette of the Republic of Indonesia of 1999 Number 140 and Supplement to the State Gazette of the Republic of Indonesia 3874) or referred to law No.31 of 1999;

Third, the Law of the Republic of Indonesia Number 20 of 2001 concerning on Amendments to Law Number 31 of 1999 concerning on Eradication of Corruption Crimes (State Gazette of the Republic of Indonesia of 2001 Number 134 and Supplement to the State

¹ M. Marwan & Jimmy P., *Kamus Hukum*, (Yogyakarta: Gama Press, 2009), h. 384

² Teguh Sulistia dan Aria Zurnetti, *Hukum Pidana: Horizon Baru Pasca Reformasi*, (Jakarta: Rajawali Pers, 2011), h. 192.

³ Semma, *Negara dan Korupsi: Pemikiran Mochtar Lubis atas Negara, Manusia Indonesia, dan Perilaku Politik*, (Jakarta: Yayasan Obor Indonesia, 2008), h. 81

⁴ Nur Basuki Minarno, 'Proses Penanganan Perkara dalam Tindak Pidana Korupsi (Tinj. Hukum Acara "Khusus" dalam Tindak Pidana Korupsi)' (2002) 17 *Yuridika*.h.398.

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Gazette of the Republic of Indonesia 4150) or referred to Law No. 20/2001; Fourth, Law of the Republic of Indonesia Number 07 of 2006 Concerning on the Ratification of the United Nations Convention Against Corruption, 2003 or the United Nations Anti-Corruption Convention, 2003 (State Gazette of the Republic of Indonesia Number 32 of 2006 and Supplement to the State Gazette of the Republic of Indonesia 4620) or referred to law No. 07/2006.

In addition, Indonesia is also equipped with laws that support the eradication of corruption, namely: first, the Law of the Republic of Indonesia Number 28 of 1999 concerning on Clean and Corruption, Collusion and Nepotism State Administrators. (State Gazette of the Republic of Indonesia of 1999 Number 75 and Supplement to the State Gazette of the Republic of Indonesia 3851) or referred to Law No.28 / 1999; secondly, Indonesian Law Number 25 of 2002 concerning on Money Laundering (State Gazette of the Republic of Indonesia of 2002 Number 30 and Supplement to the State Gazette of the Republic of Indonesia 4191) or referred to Law No.25 / 2002; third, Law of the Republic of Indonesia Number 30 of 2002 concerning on the Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2002 Number 137 and Supplement to the State Gazette of the Republic of Indonesia 4250) or referred to Law No.30/2002; fourth, Law of the Republic of Indonesia Number 25 of 2003 concerning Amendment to Law Number 25 of 2002 concerning on Money Laundering (State Gazette of the Republic of Indonesia of 2003 Number 108 and Supplement to the State Gazette of the Republic of Indonesia 4324) or referred to Law No.25 / 2003; fifth, Law of the Republic of Indonesia Number 8 of 2010 concerning on the Eradication and Prevention of Money Laundering (State Gazette of the Republic of Indonesia Number 122 of 2010 and Supplement to the State Gazette of the Republic of Indonesia 5164) or referred to Law No.8 / 2010.

Additional penalties in corruption are textually stipulated in Law No. 31/1999 articles 17 and 18:

1. In the Penal Code, additional penalties are the seizure of tangible movable property or immovable property obtained from a criminal act of corruption, payment of substitute money, revocation of all or part of certain rights or elimination of certain benefits, and
2. If the convict does not pay the replacement money then the property can be confiscated by the prosecutor and auctioned to cover the replacement money.

If the convict does not have sufficient property to pay replacement money, then he is sentenced to imprisonment which does not exceed the maximum sentence of the principal sentence by a court decision.

One element of corruption in article 2 and 3 of the law is the economic loss of the country. As a consequence, eradicating corruption is not solely aimed at infringing corruptors on imprisonment, but also must be able to recover the loss of the State. Refunds to the State are expected to cover the inability of the state to finance various aspects that are urgently needed. Refunds in corruption cases got less attention to be discussed in writing. The problem turned out to be quite complicated; a set of rules that accompanied this problem was not perfect.

B. FORMULATION OF PROBLEMS

1. How was the process of carrying out additional penalties in the case of corruption in an effort to restore State assets?
2. How was the process of implementing additional penalties in the case of corruption in the case of revoking political rights in Indonesia?

C. RESEARCH METHOD

The problem approach used in this study was the normative juridical approach. Based on this approach, this study covered the scope of a positive legal inventory research. Considering that this research used a normative approach, the collection of legal materials was carried out with procedures for identification and inventory of primary legal materials, secondary legal materials and tertiary legal materials..

DISCUSSION

A. Additional Penalties in Corruption

Article 18 of Indonesian Law, Number 20 of 2001 concerning on Eradication of Corruption Crimes reads as follows ⁴:

- (1) In the Criminal Code, additional penalties are:
 - a. Deprivation of tangible or intangible movable goods or immovable property obtained from criminal acts of corruption, including convicted companies where corruption is committed, so does the price of the goods that replace these items;
 - b. Payment of the maximum amount of compensation is the same as property obtained from corruption;
 - c. Closure of all or part of the company for a maximum period of 1 (one) year;
 - d. Revocation of all or part of certain rights or the elimination of all or part of certain benefits which have been given by the government.
- (2) If the convict does not pay the replacement money as referred to in paragraph (1) letter b, no later than 1 (one) month after the court decision has obtained permanent legal force, then his property can be confiscated by the prosecutor and auctioned to cover the replacement money.

If the convict does not have enough property to pay the replacement money as referred to in paragraph (1) letter b, then he shall be sentenced to imprisonment which does not exceed the maximum sentence of the principal sentence in accordance with the provisions of this law.

Additional penalties in corruption cases must be understood as part of criminal prosecution of those who violate the law. In this case, the law violated is a criminal act of corruption. To understand more about this problem it is better to recall the concept of punishment fully.

The types of penalties are listed in Article 10 of the Criminal Procedure Code. These types also apply to offenses listed outside the Criminal Code, unless the provisions of the law deviate (Article 103). These types of penalties are distinguished in principal and additional penalties. In principle, the additional criminal sanction is only imposed if the principal punishment is imposed. The types of penalties are as follows:

- a. Principal penalties include: Death penalty, Prison, confinement, fine, and closure.
- b. Additional penalties include: revocation of certain rights, seizure of certain items, and the announcement of a judge's decision⁶

Criminal sanctions regulated in the Corruption Eradication Act, namely: Death penalty. Whether based on Article 69 of the Indonesian Criminal Code, the PTK Law or based on the highest human rights, capital punishment is the heaviest crime because its implementation is in the form of an attack on the right of human life which is the main human right. In addition, execution cannot be corrected if errors are found later on. For this reason, only criminal acts that are truly severe are sentenced to death. And in every article that states capital punishment, other criminal alternatives always exist so that the judge does not automatically impose the death penalty. For example a life imprisonment or a temporary sentence for a maximum of 20 years as stated in article 340 of the Criminal Code. This principle is also

⁶ Andi Hamid, *Azas-Azas Hukum Pidana*, Ed. 1 Jakarta Yasrit Watampone, hal. 175.

followed by other laws including the PTPK Law.

Classic methods of returning state losses from criminal corruption are by confiscating and seizing property of corruptors (corruption convicts) for the interests of the state that is permitted by the Criminal Procedure Code if the verdict of corruption cases has permanent legal force. However, in seizing corruptor property, arbitrary actions cannot be done, there must be an inverse evidence of where corruptor property is obtained, this matter is regulated in Article 37 A and Article 38 B Law Number 20 Year 2001 concerning on Amendment to Law Number 31 Year 1999 about Eradication of Corruption Crimes. The role of the investigator is very dominant to reveal the assets of the corruptor, if the investigator flirts with the corruptor, it is harm to law enforcement, and this is where the investigator must be careful.⁷

B. Additional Penalties in the form of Revocation of the Right to Choose and to be Chosen for Public Position

The 1945 Constitution affirmed that the Republic of Indonesia is a country based on law (*rechtstaat*). Ideally as a rule of law, Indonesia adheres to a system of legal sovereignty or supremacy of law that the law has the highest power in the country.⁸ In this case, a court decision is an important milestone for the reflection of justice, including a court decision in the form of criminal imprisonment and conviction. Criminal imprisonment and prosecution do not just appear, but through the judicial process.⁹ As quoted by Bambang Waluyo, G.P. Hoefnages said that sanctions in criminal law are all reactions to violations of law that are determined by law starting from the detention of a suspect, the prosecution of the defendant to the conviction of a judge.¹⁰

Criminal punishment can be said as a reflection of our criminal justice. If the judicial process with criminal imposition goes according to the principle of justice, surely our judiciary is considered good. And vice versa, it can even be labeled as a decline in legal authority.¹¹ Criminal punishment as an act against a criminal can be morally justified not because the convicted person has been proven guilty, but because the conviction has positive consequences for the convicted person, victims and also other people in the community.¹² Judges imposes a penalty must be in order to guarantee the establishment of truth, justice and legal certainty for the community. So it's not revenge, work routine or formality.¹³ Criminal demands and convictions by public prosecutors and judges are two main things, namely things that are mitigating and burdensome.

Corruption has resulted in the perpetrator obtaining financial benefits and vice versa, the country as a victim suffered financial losses. Corruption has resulted in poverty, so that corruption perpetrators must be imposed additional criminal sanctions in the form of compensation payments and the seizure of tangible or intangible movable or immovable

⁷ Pasal 194 ayat 1 Undang-Undang Nomor 81 Tahun 1981 Tentang Hukum Acara Pidana atau disebut KUHP.

⁸ Bambang Waluyo, *Pidana dan Pemidanaan*, Cet. Ke-2, (Jakarta: Sinar Grafika, 2004), h. 33.

⁹ Ibid, h. 57

¹⁰ Teguh Prasetyo, *Kriminalisasi dalam Hukum Pidana*, (Bandung: Nusa Media, 2010), h. 79

¹¹ Arif Barda Nawawi, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana Dalam Penegakan Hukum dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*, Cet. I, Kencana Prenada Medio Group, 2007, hal.13

¹² C.S.T. Kasnsil dkk, *Tindak Pidana dalam Undang-Undang Nasional*, (Jakarta: Jala Permata Aksara, 2009), h. 91

¹³ Teguh Prasetyo, *Kriminalisasi dalam Hukum Pidana*, (Bandung: Nusa Media, 2010), h. 79

property obtained from criminal acts of corruption including convict's companies where corruption is committed.

All forms of *beleid* or revoking the rights of others are arbitrary (*willekeur*).¹⁴ The *Yuridis* basis regarding the additional crimes is regulated in Law Number 31 of 1999 concerning on Eradication of Corruption Crimes concerning additional crimes as regulated in Article 18 paragraph (1) letter d "revocation of all or part of certain rights or the elimination of all or part of certain profits, can be given by the government to the convicted person." The Criminal Code also regulates certain rights can be revoked by a judge's decision, as stipulated in Article 35 paragraph (1) letter c "The right to vote and be elected in elections held based on general rules".¹⁵

Additional penalties in the form of temporary revocation of certain rights are temporary.²⁷ The Criminal Code regulates the time limit for revoking the rights that can be imposed on a convicted person. As stipulated in Article 38 paragraph (1):

- (1) If the revocation of rights is carried out, the judge determines the length of revocation as follows:
 1. in the event of a death sentence or imprisonment for life, the length of the revocation is lifetime;
 2. in the case of imprisonment for a certain time or imprisonment, the period of revocation is at least two years and the maximum is five years longer than the principal sentence;
 3. In the case of fines, the minimum revocation is two years and the maximum is five years.

According to the researcher, the verdict applied to Djoko Susilo in terms of revoking certain rights to choose and be elected in public office was arbitrariness. Because the judge does not specify how long the sentence will be revoked as stipulated in Article 38 of the Criminal Code. The judge in imposing additional charges on revocation of rights should state how long the rights will be revoked.

Keep in mind that a defendant of corruption still has the right to justice no matter how wrong he is. Criminal prosecution should not be solely based on hatred and exclusion of justice.

What the KPK feared was that these corrupt prisoners would run for office and be elected as legislators, regional heads or elected government and will again commit corruption one day if their right to vote and be elected in public office is not revoked. So in formulating the laws, the Public Prosecutor feels the need to revoke these rights.

While the consideration of the Corruption Panel Judges in the Central Jakarta District Court relating to the revocation of the right to vote and be elected in a public office reads "Considering, that the additional criminal charges requested by the Public Prosecutor regarding to revoking the defendant's right to participate in political activities, according to the panel of judges, this matter is considered excessive, considering the defendant was sentenced to a criminal sentence with a relatively long prison term, he will automatically be selected by the conditions contained in the political organization, if the defendant uses his constitutional right to participate in political activities, for reasons of legal consideration, the Panel of Judges will not impose additional criminal charges on this matter."³²

Law Number 42 of 2008 concerning on General Elections of the President and Vice President regulates several conditions to become presidential and vice presidential candidates

¹⁵ Pasal 18 ayat (1) huruf d Undang-undang Nomor 31 Tahun 1999 Tentang Pemberantasan Tindakan Pidana Korupsi dan Pasal 35 ayat (1) huruf c KUHP

as in Article 5 letter c: “never betrayed the country, never committed corruption and other serious crimes” and letter n: “never been given a prison sentence based on a court decision that has permanent legal force for committing a crime with a prison sentence of 5 (five) years or more”

Law Number 12 of 2008 concerning on the Second Amendment to Law Number 32 of 2004 about Regional Government also regulates administrative requirements for someone who will run in general elections for the regional leaders, and one of them is regulated in Article 58 letter f “never been sentenced to imprisonment based on a court decision that has obtained permanent legal force due to a criminal offense that is punishable by imprisonment for a maximum of 5 (five) years or more” Law Number 8 of 2012 concerning General Elections of Members of the People's Legislative Assembly, Regional Representative Council, and Regional People's Legislative Assembly also regulates administrative requirements for someone who is running for legislative candidates, namely in Article 51 paragraph (1) letter g “never been sentenced to imprisonment based on a court decision that has permanent legal force because of committing a crime with a prison sentence of 5 (five) years or more”

According to the researcher, additional charges regarding on the revocation of the right to vote and be elected in public office applied to Djoko Susilo seemed excessive, because considering the criminal sanctions in the article above, Djoko Susilo has automatically been terminated in the administrative requirements both in the political party organization and the conditions set out in the law that the researcher had mentioned above. This is if Djoko Susilo wishes to use his right to be elected in a public office. So according to the researcher, the KPK Public Prosecutor and Judge do not need to prosecute and impose additional criminal penalties if they have sentenced a convicted criminal to a long prison sentence. If Djoko Susilo cannot use his constitutional rights to be elected in a general election then he has been harmed, because the right to vote and be elected has been revoked simultaneously. In this case, Djoko Susilo is the same as a Foreign Citizen (WNA) who does not have the right to vote in a general election, even though he is an Indonesian citizen who has a guarantee in the law to use his constitutional rights to elect and to be elected in a public office.

From the perspective of progressive law, then the additional charges of revoking the right to vote and being elected to the Djoko Susilo case is a courage to release from conventional legal practice, and including new breakthroughs in punishing corruptors because all this time, corruptors had never been convicted of these additional penalties. Motives and ways of corruptors to engage in corruption are increasingly diverse, so countermeasures and sentences are also varied to adjust existing developments; moreover the state losses caused by corruption are not small. Because the law moves dynamically to adjust to the times, new breakthroughs in practice need to be done, one of which is by imposing additional criminal revocation of certain rights to vote and be elected in public office for corruption cases. As in the concept of progressive law, the law is not for its own sake, but for a purpose that is outside itself.

Corruption in Indonesia has gone too far into the lives of the people and the state, the anti-corruption laws that are getting harder and even more likely to overdose, have not helped at all. The repressive method is not the only solution, it is necessary to dismantle the state management system. Preventive systems must take precedence over repressive systems. Based on experience in Hong Kong, Singapore, Malaysia, Thailand and Australia (New South Wales) in eradicating corruption, severe punishment is not a priority, but the state management system that is prone to corruption must be addressed first before taking repressive action. Generally, the material criminal law applied in those countries is the anti-corruption law that is available in the Criminal Code without changing the criminal penalties to be more severe as is done in Indonesia.

CLOSING

Conclusion

Additional penalties concerning on the revocation of the right to vote and be elected in public office may not be carried out in an arbitrary manner, because the judge must limit the revocation of the right within a certain period of time as stipulated in article 38 of the Criminal Code. From the perspective of progressive law, additional penalties regarding to the revocation of the right to vote and be elected in some cases are courage to make new breakthroughs in punishing corruptors, because all this time corruptors had never been punished with additional penalties.

Additional penalties concerning on revocation of the right to vote and be elected to office were human rights violations, because the right has been revoked fully, which should only be limited to a certain period. As a result of these additional crimes, the perpetrator of corruption cannot use his right to vote and be elected in public office for life, even though he has been free from the prison sentence he has served. One way to return corruption money to the state from corruption is to provide additional criminal penalties in the form of a refund. Additional penalties for payment of replacement money are criminal policies that are inseparable from broader policies, namely policies to achieve community welfare and policies for the protection of society.

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