

The Additional Criminal Revocation of Whole or Part of Certain Rights of Corruption Convicts Human Rights Perspective

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Abstract. *This study aims to find out and examine about additional punishment for the revocation of all or part of certain rights of corruption convicts from a human rights perspective. This study uses a normative juridical approach that is descriptive analysis. The data used is secondary data obtained through library research, which is then analyzed qualitatively. Based on the research it was concluded that the additional punishment of revoking all or part of certain rights of corruption convicts from a human rights perspective is not a violation and is permissible. Limitations and reductions in human rights must be carried out with certain conditions and must not jeopardize the meaning of human rights themselves, as stated in the Siracusa Principles.*

Keywords: Corruption; Convict; Criminal.

1. Introduction

Corruption is a crime that is systematic and structured, which can only be committed by certain people, so this crime is also known as an extraordinary crime. The fundamental reason for corruption is referred to as an extraordinary crime, because this crime involves officials and the bureaucracy, as well as people who have access to or are involved in managing government goods or finances. In addition, proving this crime has a fairly high level of difficulty, considering that the perpetrators of corruption (corruptors) are people who have high thinking skills and qualified knowledge, but not accompanied by morality and self-integrity.¹

¹Siregar, Gomgom TP and Silaban, Rudolf. (2020). Victims' Rights in Criminal Law Enforcement. First Print. Medan: Manhaji Medan, p. 86.

The greater the power and authority of a person or in an official, the greater the opportunity for corruption. This is as stated by the British historian Lord Acton, that power tends to corrupt, absolute power corrupts absolutely. Power tends to deviate, moreover, great power is sure to deviate even more.

This corruption is dangerous for the country, so this crime must be eradicated and the law must be upheld. Eradication of criminal acts of corruption is part of criminal law enforcement activities, namely an activity to operationalize criminal laws and regulations by law enforcement officials.

Law enforcement in a rule of law is the soul of a body that makes it alive. Without it, the rule of law is only an idea and aspiration, or in other words that law enforcement is an indicator of a rule of law.²Consistent law enforcement will provide a sense of security, justice and certainty.³In law enforcement efforts, law enforcers are required to carry out their duties in accordance with the mandate of statutory regulations, which lead to actions and decisions with the substance of justice for the parties.⁴

One of the efforts to uphold the law is to stipulate negative sanctions, namely in the form of penalties or criminal sanctions, both principal and additional criminal sanctions. For perpetrators of corruption, additional criminal sanctions that can be imposed or applied are regulated in Article 86 of Law Number 1 of 2023 concerning the Criminal Code (KUHP) and Article 18 paragraph (1) of Law Number 31 of 1999 concerning Eradication Corruption crime jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, which states that in addition to the main crime against the perpetrators of corruption can be subject to additional criminal sanctions, one of the additional crimes is in the form of revocation of rights certain.

²Syahri, Alvi. (September 2020). Law Enforcement Against Policies Who Breached the Code of Conduct. in the Sovereign Law Journal Vol. 3 No. 3, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/11238/4399>.

³Praptiwi, Anggrin Gayuh and Hanim Lathifah. (September 2019). Effectiveness And Role Of The Food Duty Unit Of Police Region Of Central Java In Law Enforcement In The Field Of Food In The Regional Law Of POLDA Central Java. in the Sovereign Law Journal Vol. 2 No. 3, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/5669/3416>.

⁴Setiyadi, Iwan and Kusriyah, Sri. (June 2019). Law Enforcement Process Analysis By Agencies Of Provos Indonesian National Police (Inp) On Discipline Violation In The Form Of Crime By Police Members (Case Study In National Police Headquarter). in the Sovereign Law Journal, Vol. 2 No. 2, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/5424/3345>.

With regard to the revocation of certain rights in one part of the punishment regulated in Article 66 paragraph (1) letter a of the Criminal Code, this includes revocation of the rights to life as well as civil rights and constitutional rights.⁵

Criminal revocation of certain rights for perpetrators of corruption on the one hand is considered to have violated human rights, but on the other hand it really needs to be done, because the perpetrators of corruption have made a big mistake by undermining public trust, and closing the door to commit crimes corruption returns through the use of political rights.

The purpose of this study is to find out and examine the additional punishment for the revocation of all or part of certain rights for corruption convicts from a human rights perspective.

2. Research Methods

The type of research used in writing this legal journal is normative juridical, which is descriptive analysis in nature. The data used in this research is secondary data. According to the data that has been obtained, it is then analyzed using qualitative data analysis.

3. Result and Discussion

Crime must be eradicated because it hinders the achievement of people's welfare, so social policies are needed because they are related to welfare or what is the role of the state in relation to the welfare of its citizens and government policies related to actions that have a direct impact on the welfare of citizens.⁶

One form of crime that has a negative impact on the state and people's welfare is corruption, where this crime is very widespread, not only in the legislative sphere, but also in the executive and judiciary. It is very ironic, if state administrators and law enforcers who are supposed to be role models for citizens, commit such disgraceful acts, and large losses must be borne not only by the state because of losses to state finances, but also have prevented the state from making the people prosperous.

Criminal acts or criminal acts, then the perpetrators will be dealt with through the judicial process by giving and imposing criminal sanctions on the perpetrators in accordance with the criminal threats stipulated in the articles in the criminal

⁵Hamzah, Andi. (2010). Principles of Criminal Law. Jakarta: Rineka Cipta, p. 211.

⁶Kendi, John. (2017). Criminal Law Policy (Penal Policy) in the Law Enforcement System in Indonesia. First Print. Yogyakarta: Student Library, p. 51.

law, which the perpetrators have actually violated.⁷The law becomes the basis, basis, morals, and oversees the achievement of life goals that are aspired together. Of course the law also functions to prevent, reduce and eradicate criminal acts⁸ and in the event of a criminal act of corruption. Various institutions, actions, and assessments of resistance which are in a series of major actions that are usually under the title "eradication of corruption",⁹ then the perpetrators must be given strict and severe sanctions considering the consequences of their actions are very detrimental to the state and the people, one of which is by imposing additional penalties in the form of revoking all or part of certain rights for convicts in corruption cases.

In the concept of sentencing in general, sentencing has the aim of achieving justice, benefit and certainty, both for perpetrators and victims and society. The aim of modern punishment is to use the integrative model of criminal prosecution. According to Muladi, the reason for implementing the integrative model is because of the complexity of the problem of sentencing as a result of efforts to pay more attention to factors related to human rights and to make punishment operational and functional, therefore the approach is carried out using a multidimensional approach. This approach emphasizes the effects of punishment, both on perpetrators and victims and society. The impact of a crime can be individual or social. This approach is in line with the modern nuances of social defense punishment, which does not emphasize punishment, but seeks to create equal conditions of justice for perpetrators of criminal acts and victims, which will also affect the condition of society. The interests of the victim or the community are a concern.¹⁰

⁷Siregar, Gomgom TP and Silaban, Rudolf. *op. cit.*, p. 3.

⁸Waluyo, Bambang, (2020). *Settlement of Criminal Cases, Implementation of Restorative and Transformative Justice*. First Print. Jakarta: Sinar Graphics, p. 1.

⁹Leksana, Cipto Dwi and Suharto, Rakhmat Bowo. (March 2019). *Implementation of Cooperation Agreement Between the Ministry of Internal Affairs, Police, Attorney General Office (Ago) in Handling and Crime of Corruption in Indonesia*. in the *Sovereign Law Journal*, Vol. 2 Issue 1. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/4217/2923>.

¹⁰Yusuf DM, Mohd. Good luck, Elvi. Susanti, Devi and Soba, Hifni. (December 2022), *Provision of Additional Penalties Against the Revocation of the Political Rights of Convicted Corruption Cases Based on Legislation*, in *The Juris Journal of Law Studies* Vol. VI No. 2. url: <https://ejournal.stih-awanglong.ac.id/index.php/juris/article/view/634/417>.

The rights of convicts in corruption cases can be revoked by a judge's decision¹¹. These rights are as specified in Article 86 of the Criminal Code, that:

Additional punishment in the form of revocation of certain rights, as referred to in Article 66 paragraph (1) letter a, can be in the form of:

- a. The right to hold public office in general or certain positions;
- b. The right to become a member of the Indonesian National Armed Forces and the Indonesian National Police;
- c. The right to vote and be elected in elections held in accordance with the provisions of laws and regulations;
- d. The right to be a guardian, guardian, guardian, or guardian over a person who is not his own child;
- e. The right to exercise paternal authority, to exercise guardianship, or to have custody of one's own child;
- f. The right to carry out certain professions; and/or
- g. Right to parole.

Related to the criminal act of corruption, additional punishment in the form of revocation of certain rights, which can be imposed on convicts of corruption cases are Article 86 letter a, letter b, letter c, letter f and letter g, namely the right to hold public office in general or public office. certain rights, the right to become a member of the Indonesian National Armed Forces and the State Police of the Republic of Indonesia, the right to vote and to be elected in elections held in accordance with statutory provisions, the right to carry out certain professions, and the right to obtain parole, as stated in the provisions of Article 87 of the Criminal Code and Article 89 of the Criminal Code. Article 87 of the Criminal Code, states that:

Unless otherwise stipulated by law, revocation of rights as referred to in Article 86 letter a, letter b, letter c, and letter f can only be carried out if the perpetrator is convicted of committing a crime punishable by imprisonment of 5 (five) years or more in the form of:

- a. A crime related to a position or a crime that violates the specific obligations of a position;
- b. Criminal acts related to their profession; or

¹¹Bakhri, Syaiful, (2009). *Development of the Criminal System in Indonesia*. Yogyakarta: Total Media, p. 216.

c. Crime by abusing the authority, opportunity, or means given to him because of his position or profession.

Furthermore Article 89 of the Criminal Code, states that:

Unless otherwise stipulated by law, revocation of rights as referred to in Article 86 letter g can only be carried out if the perpetrator is convicted for:

- a. Committing a criminal act of office or a criminal act that violates the special obligations of a position;
- b. Abusing the authority, opportunity, or means given to him because of his position; or
- c. Committing a crime punishable by imprisonment for a maximum of 15 (fifteen) years or more.

Regarding the implementation of the revocation of certain rights, it is regulated in Article 90 of the Criminal Code, which states that:

(1) If the penalty for revocation of rights is imposed, the length of time for revocation must be determined if:

- a. Sentenced to death or life imprisonment, revocation of rights is carried out forever;
- b. Sentenced to imprisonment, imprisonment, or surveillance for a certain time, revocation of rights is carried out for a minimum of 2 (two) years and a maximum of 5 (five) years longer than the principal sentence imposed; or
- c. Sentenced to a fine, revocation of rights is carried out for a minimum of 2 (two) years and a maximum of 5 (five) years

(2) The provisions referred to in paragraph (1) letter b do not apply if what is revoked is the right to obtain parole;

(3) The punishment for revocation of rights begins on the date the court decision has obtained permanent legal force.

One of the judge's decisions that imposed additional punishment in the form of revocation of certain rights, namely in the Supreme Court Decision Number: 537K/Pid.Sus/2014 against the Former Police Traffic Corps Inspector General (Irjen) Djoko Susilo, which imposed a principal sentence of 18 years imprisonment and a fine of up to 1 billion rupiahs, and an additional penalty in the form of payment of compensation in the amount of 32 billion rupiahs, as well as a criminal penalty for revoking certain rights, namely the right to vote and be elected to public office.

One of the efforts to prevent corruption from recurring by public officials or state administrators is to revoke certain rights, one of which is to limit the political rights of corruption convicts to run again in general elections. According to Harris G. Warren, that the general election (election) is an opportunity when citizens choose officials and decide what they want the government to do for them.¹² General elections are a constitutional mandate that must be carried out by the government, in this case guaranteeing and protecting the implementation of people's sovereignty in granting political rights.¹³

Hans Kelsen argues that political rights are among the rights that are usually granted by the legal system to citizens, usually defined as the right to participate in the formation of the will of the state. Political right. The main thing is the right to vote, namely the right to participate in the election of members of the legislature and other state officials. The characteristic of political rights is that these political rights provide the legal possibility for individuals to participate in the formation or implementation of legal norms.¹⁴

General elections in Indonesia prioritize the values of honesty. These values of honesty are true principles that are already owned by the Indonesian nation and have been set forth in the constitution of the Republic of Indonesia, namely in Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia that: "General elections are carried out directly, the general, free, confidential, honest and fair every five years". Honest general elections are important for the election of people's representatives or officials who sit in government who are qualified, and are able to voice the voice of the people, thus the people must also know in detail and in detail about the background and track record of the candidates for the people's representatives who will be elected.¹⁵ to benefit personally from his authority and position. The potential risk of corruption in the political system has not changed, besides that abuse of power can also be carried

¹²Huda, Uu Nurul. (2018). *Law of Political Parties and Elections in Indonesia*. First Print. Bandung: Media Focus, p. 83.

¹³Hastuti, Nurul Fuji Sri and Hafidz, Jawade. (June 2019). Implementation Of Article 240 Paragraph (1) Letters G Act No. 7 Of 2017 In The Making Of Combating Corruption Crime In Legislative Institutions (Case Study in KPU of Central Java). in the *Sovereign Law Journal*, Vol. 2 Issue 2. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/5415/3342>.

¹⁴Etra, Agusniwan. (2021). *Political Rights of Former Convicts to Be Elected in Regional Head Elections*. First Edition. First Print. Depok: Raja Grafindo Persada, p. 64-65.

¹⁵Sanditya, Ardi and Wahyuningsih, Sri Endah. (September 2019). Hint As A Means Of Verification And Inspection Decision In Subsidized Fertilizer Corruption (Case Study Case Number 45/Pid.Sus-TPK/2016/PN SMG). in the *Sovereign Law Journal*, Vol. 2 Issue 3. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/5635/3389>.

out due to indications of a suspicious relationship between politicians and businessmen.¹⁶

Restricting the right to vote is certainly a natural thing. In relation to the principle of universal suffrage, the principle of restriction is placed as a counterbalance, in which the principle of limitation of suffrage requires that political constellations in general elections involving users of voting rights as the main target continue to be carried out in the framework of freedom, equality and accountability as basic principles of democracy.¹⁷

Democracy and human rights are two ideas that develop side by side, born from the same principle that humans have the right to determine their own destiny. In its development, these two thoughts seem to have branched off in a direction that is getting further away from one another, especially at the level of implementation. Democracy that is in the political realm is increasingly strengthened by ideas of power, while human rights, which are actually the substance of the implementation of democracy, seem to be subordinated to democracy because it is at the level of the people who have no power. The implementation of these two thoughts should also go hand in hand, with human rights as the substance, and democracy as one of the procedures for implementing/upholding human rights.¹⁸

The imposition of additional punishment through the punishment of revocation of certain rights, is basically a form of limitation on human rights, which can only be carried out on the basis of provisions that are already regulated in law, and has the aim of respecting the good name of others, protecting national security or public order, public good or public morals. Human rights according to Leah Levin are: "Human right meaning moral claims which are reliable and inherent in all human individuals by virtue of their humanity alone" (the rights inherent in humans without which it is impossible for humans to live as humans).¹⁹

¹⁶Wigana, Aga and Maryanto. (March 2020). The Strength of Proof of Telephone Tapping As Electronic Evidence in Revealing Corruption Cases. in the Sovereign Law Journal, Vol. 3 Issue 1. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8399/3941>.

¹⁷Isra, Saldi and Fahmi, Khairul. (2019). Democratic General Elections. Depok: Raja Grafindo Persada, p. 208.

¹⁸Prasetianingsih, Rahayu. Human Rights in Indonesian Democracy After 20 Years of Reform, in Perwira, Indra. Susanto, May and Zulfikar, M. Adnan Yazar. (2019). Law, Human Rights, and Democracy; Collection of Articles in the Context of the 80th Birthday of Prof. (Em). Dr. H. Rukmana Amanwinata, SH, MH First Edition. Bandung: Center for State Policy Studies, Faculty of Law, Padjadjaran University, p. 261.

¹⁹Arifin, Firdaus. (2019). Human rights; Theory, Development and Setting. First Print. Yogyakarta: Thafa Media, p. 1-2.

All human rights reflect a certain level of restriction that the state intentionally imposes on its citizens. Rights and freedoms can rarely be absolute, but they can be qualified. So, a state, for example, limits a person's right to absolute privacy when the state needs to enter the house to investigate a crime.²⁰

Revocation of certain rights, such as revocation of political rights and others based on a human rights perspective is not a violation and is permissible. Restrictions and reductions in human rights must be carried out with certain conditions and must not jeopardize the meaning of human rights themselves. This is as stated in the *Siracusa* Principles. This principle states that restrictions on rights must not harm the essence of rights. All limitation clauses must be interpreted strictly and are intended to support rights. This principle also emphasizes that restrictions on rights may not be imposed arbitrarily. Restrictions on human rights can only be made if the following conditions are met:²¹

1. *Prescribed by Law*(regulated by law);
2. *In a democratic society*(necessary in a democratic society);
3. *Public order/public order*(to protect public order);
4. *public health*(to protect public health);
5. *public morals*(to protect public morals);
6. *national security*(to protect national security);
7. *public safety*(to protect public safety);
8. *Rights and freedoms of others or the rights or reputations of others* (protecting the rights and freedoms of others).

As the limitation of human rights in additional punishment in the form of revocation of all or part of certain rights of corruption convicts is in accordance with the *Siracusa* Principles, namely the revocation of all or part of certain rights has been regulated in the Criminal Code accompanied by conditions and implementation. Additional punishment in the form of revoking all or part of certain rights of corruption convicts is urgently needed as a preventive measure or to prevent repeated acts of corruption by perpetrators of corruption, in which

²⁰Etra, Agusniwan. op. cit., p. 34.

²¹Matompo, Osgar S. (June 2014). Restrictions on Human Rights in an Emergency Perspective. in Journal of Legal Media Vol. 21 No. 1. url: <https://media.neliti.com/media/publications/113633-ID-pembatasan-terhadap-hak-asasi-humanada.pdf>.

the consequences of this criminal act of corruption are not only detrimental to state finances but also hinder the state from prospering. In addition, corruption also has an impact on the moral degradation of the nation, given that corruption has occurred in all government institutions and levels of society. The nature of corruption will form a moral that tends to be capitalist and individualistic, and does not think about the surrounding environment. This trait does not reflect the personality, character and greatness of the nation.²²

Especially for the Indonesian state which declares itself as a legal state, as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that: "Indonesia is a legal state". The characteristics of a rule of law state are that it requires government participation in protecting human rights (HAM),²³ one of which is the right to be protected from any actions or actions that can harm, such as criminal acts through applicable legal regulations. The criminal act of corruption is also an act of violating human rights, especially the rights of the people to obtain life welfare, so that corruption has taken away these welfare rights from the people of Indonesia, so that it is not only the rights of convicts who must be protected, but the rights of the state and people victims must also be protected by law.

Corruption is an act that can cause harm to many parties and can even affect the existence and development of progress and welfare of the people of a country.²⁴ The criminal act of corruption is also a violation of the social rights and economic rights of the community, so that the criminal act of corruption can no longer be classified as an ordinary crime, but has become an extraordinary crime.²⁵

Legal needs in society are basically aimed at creating justice, and regulations that are implemented are aimed at guaranteeing certainty in the relationship

²²Zuhairmanto, Gholibuddin. Saraswati, Retno and Benuf, Kornelius. (March 2022). The Practical Barriers to Auction of Confiscated Objects for Corruption Crime. in the Sovereign Law Journal, Vol. 5 Issue 1. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/18555/6694>.

²³Widayati and Yudistira, Ari. (March 2021). The Investigation Process of Prospective Children in Criminal Action. in the Sovereign Law Journal Vol. 4 Issue 1, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/13695/5374>.

²⁴Siregar, Hulman. (March 2018). Formulation of Criminal and Punishment of Corruption Crimes which are Harmful to State Finances and Problems in Their Application. in the Sovereign Law Journal Vol. 1.No. 1. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/2626/1975>.

²⁵Sulastri, Lucia. (June 2022). The Legal Protection on Reporters for Corruption Crime. in the Sovereign Law Journal, Vol. 5 Issue 2. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/21024/6994>.

between community members and one another.²⁶As the purpose of law according to the Utility Theory put forward by Jeremy Bentham, which states that the purpose of law is basically to provide the greatest possible benefit to society in general, or in the sense of happiness for many people, not for a handful of people.

Revocation of certain rights granted by the government to corruption convicts is a progressive step taken by judges, because this step will greatly support efforts to prevent and eradicate corruption.

4. Conclusion

Additional punishment for revoking all or part of certain rights of a person convicted of corruption from a human rights perspective is not a violation and is permissible. Limitations and reductions in human rights must be carried out with certain conditions and must not endanger the meaning of human rights themselves, as stated in the *Siracusa* Principles. Additional punishment in the form of revocation of all or part of certain rights of corruption convicts is urgently needed as a preventive measure or to prevent repeated acts of corruption by perpetrators of corruption. For judges, in making decisions for perpetrators of corruption, it is very necessary to impose additional punishments in the form of revocation of certain rights in addition to the main punishment, as a form of preventive measures and a deterrent effect for corruptors.

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²⁶Indah S., C. Maya. (2019). Victim Protection, A Perspective of Victimology and Criminology. Second Edition. Third Printing. Jakarta: Kencana Prenada Media Group, p. 93.

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