

Legal Analysis of Additional Criminal Sanctions for Revocation of Political Rights in Corruption Criminal Acts Based on Justice Values

Ari Wibowo¹⁾ & Arpangi²⁾

¹⁾Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: ariwibowo.std@unissula.ac.id

²⁾Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: arpangi.std@unissula.ac.id

Abstract. *Indonesia as a country of law faces challenges in eradicating corruption which is an extraordinary crime, with the high involvement of public officials in corruption cases. To provide a deterrent effect, additional criminal penalties in the form of revocation of political rights are the answer, although in its implementation it still faces various obstacles. The purpose of this study is to urge the imposition of additional criminal penalties in the form of revocation of political rights in corruption crimes and to analyze the ideal regulation of the imposition of additional criminal penalties in the form of revocation of political rights in corruption crimes based on the value of justice in the future. The method of approach used in compiling the thesis is normative legal research. The specifications in this study are descriptive analysis. The theories used include the theory of punishment, the theory of legal certainty, and the theory of justice. The results of this study are (1)The urgency of imposing additional criminal penalties in the form of revocation of political rights in corruption crimes lies in the need for extraordinary efforts to overcome corruption crimes. Revocation of political rights is an instrument to create a deterrent effect, prevent perpetrators from reoccupying public office that has been misused, and strengthen public trust in the legal system.*

Keywords: *Additional; Corruption; Criminal; Penalties.*

1. Introduction

The 1945 Constitution states that Indonesia is a country based on law, this is stated in the 1945 Constitution of the Republic of Indonesia which is the

constitution for the State of Indonesia.¹From these provisions it can be stated that it is true that Indonesia is all regulated by law. Law as a regulator from all existing perspectives, both from activities carried out by a person, or those carried out by an institution. Even the law also regulates a person's behavior with the actions they do and the effects received from those actions. The many existing legal regulations must be obeyed as well as referring to regulations on corruption.²

Corruption is an extraordinary crime (extra ordinary crime).³This is reasonable because corruption has an extraordinary impact, not only can it harm the state's finances but it can also cause losses to the people's economy. As an extraordinary crime, the handling of corruption must also be extraordinary. Corruption is defined as an evil act (crime), namely an act of rottenness, can be bribed, immoral, depravity and dishonesty, of course what is meant here is the moral or morals of the person who commits the act of corruption because a person with good morals will certainly not commit corruption. "⁴Andi Hamzah, in his legal dictionary, defines corruption as a bad, rotten, depraved act, one that is prone to bribery, an act that insults or slanders, deviates from purity, and is immoral.⁵

Legally, the criminal penalty for revoking the right to be elected to public office is regulated by Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.⁶This can be seen from the provisions of Article 18 Paragraph (1) of the Corruption Eradication Law, which reads:

(1) In addition to the additional penalties as referred to in the Criminal Code, the additional penalties are:

¹Jawade Hafidz Arsyad, *Corruption in the Perspective of HAN (State Administrative Law)*, Sinar Grafika, Jakarta, 2015, p. 5

²Muhammad Arif Fauzi and Umi Rozah, Bambang Dwi Baskoro, *Effectiveness of Additional Criminal Penalties in the Form of Replacement Money in Corruption Crimes*, Diponegoro Law Journal, Vol. 5, No. 3, 2016, pp. 1-11

³Evi Hartanti, *Criminal Acts of Corruption*, Sinar Grafika, Jakarta, 2007, p. 5

⁴S, Mailoa, *Behavior and Culture of Corruption in the Context of Law Enforcement in Indonesia*, Inaugural Speech of Professor in the Field of Criminal Law, Faculty of Law, Pattimura University, Ambon, 2006

⁵Andi Hamzah, *Eradication of Corruption Through National and International Law*, Raja Grafindo Persada, Jakarta, 2015, p. 4

⁶Syarifuddin Syarifuddin, *Application of Additional Criminal Sanctions of Revocation of Political Rights in Corruption Crimes* Decision Number: 38/PID.SUS/TPK/2013/PN.JKT.PST and Decision Number: 040/PID.SUS/TPK/2017/PN.JKT.PST. *Unes Journal of Swara Justisia*, Vol. 3, No. 3, 2019, pp. 348-359

- a. confiscation of tangible or intangible movable property or immovable property used for or obtained from criminal acts of corruption, including companies owned by convicts where criminal acts of corruption were committed, as well as goods replacing such goods;
- b. payment of compensation in an amount that is at most equal to the assets obtained from the criminal act of 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 elimination of all or part of certain benefits, which have been or may be granted by the Government to the convict;
- e. Revocation of all or part of certain rights or the elimination of all or part of certain benefits, which have been or may be granted by the Government to the convict.

Examining the provisions of Article 18 Paragraph (1) letter d of the Corruption Eradication Law, the additional criminal penalty which contains the phrase "revocation of all or part of certain rights" is a special form of additional criminal provisions in the Criminal Code (KUHP).⁷ Although the provisions of Article 18 Paragraph (1) letter d do not explicitly explain what is meant by "certain rights", various court decisions examining and trying corruption cases have concretized these "certain rights" in the form of revocation of the right to be elected to public office. This can be seen in several court decisions, such as the decision of the corruption court which imposed a criminal penalty of revocation of the right to be elected to public office against Inspector General Djoko Susilo in the corruption case of the procurement of SIM simulators for the Traffic Corps of the Indonesian Police Headquarters, Luthfi Hasan Ishak.

Artidjo Alkostar said that the imposition of criminal sanctions for the revocation of political rights is an ethical and legal consequence of the commission of corruption by public officials. The ethical consequences are related to the betrayal of the people's mandate, because public office is a power obtained from the people for the benefit of the people's welfare. While the legal consequences are related to the increased punishment for perpetrators of corruption that have been regulated in laws and regulations.⁸

⁷Happy Hayati Helmi and Anna Erliyana, Ban on Nomination of Former Corrupt Convicts in the 2019 Simultaneous Elections: Law as a Means of Social Engineering. *National Law Magazine*, Vol. 48, No. 2, 2018, pp. 53-84.

⁸Bintang Raihan Sulaeman and Chepi Ali Firman Zakaria, The Freedom from Political Rights Revocation in Corruption Cases is Linked to the Purpose of Criminalization, *Bandung Conference Series: Law Studies*, Vol. 3 No. 1, 2023, pp. 565-562

Examining the phrase "not currently having his/her voting rights revoked based on a court decision that has permanent legal force" in Article 7 paragraph (2) letter g of the Regional Election Law shows legal uncertainty and weak support for the spirit of eradicating corruption. This is caused by the disparity in the Corruption Crime Court Decisions regarding the length of the revocation of the right to be elected in public office.⁹This disparity is reflected in examples of decisions, such as against the former Regent of Purbalingga who was sentenced to a penalty of revocation of the right to vote for 3 (three) years, while the former Governor of Jambi, Zumi Zola, was sentenced to a similar penalty of 5 (five) years.

Constitutional Court Decision Number 56/PUU-XVII/2019 forms a new legal construction related to the requirements for regional head nominations (Governor, Regent, and Mayor). Regional heads who have been proven to have committed a criminal act of corruption and have been sentenced to the main penalty and the additional penalty of revocation of the right to be elected in public office, cannot submit a regional head nomination within 5 (five) years after completing the main penalty.¹⁰Consequently, the Constitutional Court Decision Number 56/PUU-XVII/2019 strengthens the existence and impact of imposing criminal penalties for revoking the right to vote in criminal acts of corruption.

Regulations regarding the revocation of political rights in Indonesia have not been specifically regulated in the election law or the corruption law as a mandatory sanction. Its implementation still depends on the judge's decision per case (judge's discretion). This creates disparities; some corruptors have their political rights revoked, but some do not, depending on the prosecutor's demands and the judge's considerations. An attempt to create a general ban policy for corruptors was made through KPU Regulation Number 20 of 2018 which prohibits former corruption convicts from running as legislative candidates. However, the Supreme Court in 2018 overturned the regulation, stating that the prohibition on former corruption convicts from becoming legislative candidates was contrary to the applicable Election Law. The Supreme Court's decision emphasized that restrictions on political rights must be based on law (legislation) and cannot be unilaterally determined by the regulations of the election organizing institution. As a result, until now former corruption convicts can still run after being released, as long as they meet the requirements set

⁹Sabungan Sibarani, Legal Analysis Regarding the Revocation of Political Rights for Corruptors Based on the Perspective of Human Rights, Proceedings of the National Expert Seminar, 2019, pp. 1-7

¹⁰Linsey Stephani Hutabarat and Diki Zukriadi, Legal Analysis of the Restrictions on Political Rights of Former Corruption Convicts as Legislative Candidates Study of Constitutional Court Decision NO. 56/PUU-XVII/2019, *Innovative: Journal of Social Science Research*, Vol. 4, No. 6, 2024, pp. 9021-9031

(including the obligation to announce their former criminal status to the public according to KPU provisions after the Supreme Court's decision). This condition has sparked debate in Indonesia about the need for stricter regulations. On the one hand, there are concerns that lifetime bans violate human rights and the principle of rehabilitation; on the other hand, the public demands assurances that public office will not be filled again by repeat corruptors.

2. Research Methods

The approach method in this research is normative legal research. Normative legal research is research that uses methods that refer to legal norms contained in laws and court decisions,¹¹ related to legal analysis of the imposition of additional criminal penalties for the revocation of political rights in corruption crimes based on the value of justice. In normative legal research, what is used is referring to the source of legal materials, namely research that refers to legal norms contained in legal instruments. According to Ronald Dworkin, normative legal research is also called doctrinal research, namely research that analyzes both the law written in books (law as written in the book), and the law decided by judges through the process.¹²

3. Results and Discussion

3.1. Urgency of Additional Criminal Sanctions for Revocation of Political Rights in Corruption Crimes

Corruption is an act that deviates from the values and social norms prevailing in society, with the main goal of gaining personal gain. The crime of corruption not only harms the state, but also violates the social and economic rights of society at large, so that this crime cannot be categorized as an ordinary crime, but rather as an extraordinary crime. Therefore, efforts to overcome it must be carried out with extraordinary steps that go beyond conventional approaches.¹³

Corruption is a form of crime that can be considered an enemy of the state and must be fought seriously. The most common type of corruption is that committed by public officials, such as regional heads, members of the DPR, DPRD, and others. The high number of corruption cases that continue to occur has caused complex problems, not only impact state financial losses, but also encouraging the government and legislative institutions to continue to evaluate

¹¹Soerjono Soekanto and Sri Mamudji, *Normative Legal Research*, Raja Grafindo Persada, Jakarta, 2004, p. 14

¹²Bismar Nasution, *Normative Legal Research Methods and Comparative Law*, presented at the "Interactive Dialogue on Legal Research in the Accreditation Magazine", Medan, February 18, 2003, p. 1.

¹³Armunanto Hutahaean and Erlyn Indarti. "Corruption Eradication Strategy by the Indonesian National Police (POLRI)." *Legal Issues* Vol. 49. No. 3, 2020, pp. 314-323

and review regulations governing the application of criminal sanctions for perpetrators of corruption.¹⁴

The definition of political rights itself is not clearly regulated in the laws and regulations. Jimly Asshiddiqie mentioned that the group of political rights guaranteed in the 1945 Constitution of the Republic of Indonesia includes the right to associate, assemble, and express opinions peacefully, the right to vote and be elected in the framework of representative institutions, and the right to be appointed to public positions.¹⁵

There are three things that must be considered in the revocation of political rights, namely:

1) Subject of the Criminal Act.

Revocation of political rights is more relevant if given to perpetrators who hold public office from the results of general elections (elections). The position used by the perpetrator to commit corruption is correlated with the revoked political rights, so this is intended so that the perpetrator no longer holds the same position, because he has been proven to have abused his power. If using a broader perspective, the revocation of political rights should be imposed on all public officials who are proven to have committed corruption. This kind of expansion has actually been done to public office positions that were not elected through elections, for example in the corruption case involving the former Head of the Traffic Corps of the Indonesian National Police Djoko Susilo (DS). The last perspective is that all perpetrators of corruption can be subject to sanctions in the form of revocation of political rights. Someone who has been proven in court to have committed corruption certainly has experience in abusing office, either as a public official or as a third party who influences public officials to abuse their office. For example, perpetrators of corruption from the private sector who bribe public officials certainly have a greater potential to abuse their office when holding public office.

2) Time Limitation for Revocation of Political Rights.

The revocation of political rights still varies, either without a time limit or limited to a certain time. Ideally, the revocation of political rights is carried out without a time limit, because this will be a lesson and deterrence for both the perpetrators and the public in general. There even needs to be an expansion of positions that cannot be given to former corruption convicts, namely all positions that receive funds from the state or from state-owned companies (BUMN/BUMD).

¹⁴Perangin-Angin, Joppy Porensen Papana. "Implementation of Judge's Decisions Regarding the Revocation of Political Rights of Corruption Offenders." *Dictum* Vol. 2. No. 3, 2023, pp. 138-147.

¹⁵Jimly Asshiddiqie, *The Constitution and Constitutionalism of Indonesia*, Sinar Grafika, Jakarta, 2010, p. 90.

Corruption perpetrators will also not be allowed to occupy strategic positions in political parties, because they receive financial assistance from the state periodically. This affirmation is needed so that in the future, even though corruption perpetrators do not hold public office, they are able to control political parties which in fact have great power. On the other hand, if the revocation of political rights is carried out with a time limit, the limitation needs to consider the election/regional election period, not be limited based on a linear calculation of years. For example, perpetrators of corruption are revoked of their political rights for three election/regional election periods, not revoked for three years.

3) Have a Strong Legal Basis

Guidelines for law enforcers are needed to maximize the use of criminal revocation of political rights in corruption cases. At least in every law enforcement agency or at least directions on the urgency of criminal revocation of political rights. Including for corruption judges, there needs to be strengthening of the understanding of special punishments for perpetrators of corruption. This can start from the judge selection process to periodic training for corruption judges regarding the development of punishments that need to be applied to perpetrators of corruption, one of which is the urgency of revocation of political rights.

In addition to the Criminal Code, the revocation of certain rights for corruptors is also strengthened in Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. Article 18 paragraph (1) letter d emphasizes that, "In addition to additional penalties as referred to in the Criminal Code, additional penalties include the revocation of all or part of certain rights or the elimination of all or part of certain benefits, which have been or may be given by the Government to the convict." Thus, the basis or foundation for the revocation of political rights for convicts of corruption is actually quite adequate.

Revocation of certain rights is only for crimes that are expressly determined by law that the crime is threatened with additional punishment. The length of the period of revocation of certain rights is for life imprisonment, the duration is life. As for imprisonment or confinement, the minimum duration is two years and the maximum is five years longer than the main punishment.

Revocation of political rights is basically an addition to existing laws. Convicts lose their right to vote and be elected in addition to holding public office. Revocation of political rights is given because the judge considers the convict to have abused his rights and authority as a public official. Revocation of political rights, especially the right to be elected as a public official, is a form of punishment because the person concerned is not trustworthy in holding public office. Revocation of political rights for corruptors is an action that provides a

deterrent effect in eradicating corruption amidst low verdicts for corruption cases.

The theory of legal certainty, as stated by Gustav Radbruch, the law must be able to provide certainty, clarity, and predictability so that society understands the limits of actions that are permitted and prohibited. Legal certainty also demands that the implementation of the law be carried out consistently and non-discriminatory. The existence of legal norms governing the revocation of political rights in the Criminal Code and the Corruption Law has provided sufficient normative basis. However, its application in practice is not yet consistent and is often subjective and uneven between cases, which ultimately creates uncertainty in law enforcement.

3.2. Ideal Arrangement for Additional Criminal Sanctions for Revocation of Political Rights in Corruption Crimes Based on Justice Values in the Future

Political Rights are the basic rights of every human being in political life. Political rights are individual rights that cannot be taken away just like that, even a subsection of Human Rights, which as we know that Human Rights are individual rights that must be respected and protected. Political Human Rights based on the Universal Declaration of Human Rights can be classified into: (1) The right to vote and be elected in an election; (2) The right to participate in government activities; (3) The right to create and establish a political party or other political organization; (4) The right to create and submit a petition proposal. The rampant practice of corruption in Indonesia, accompanied by a trend of low criminal sentences, has led some parties to assume that the revocation of political rights for convicts in corruption cases is an effort that needs to be made in order to eradicate corruption in the country.¹⁶

Revocation of political rights for those convicted of corruption is not the right policy to take, some even think that the punishment is contrary to Human Rights values. The polemic related to the revocation of political rights for those convicted of corruption cases has created two camps, namely the "pro" camp and the "contra" camp. Rejection of the revocation of political rights for those convicted of corruption cases has several factors to consider. Starting from economic, sociological, psychological factors and others. However, the most dominant among them is Human Rights (HAM).

Political rights are part of Human Rights. Its existence can be found in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to in this study as the 1945 Constitution of the Republic of Indonesia) Article 28D paragraph (3) which states, "Every citizen has the right to obtain equal opportunities in

¹⁶Oheo Kaimuddin Haris, et al. "Imposition of Additional Criminal Sanctions in the Form of Revocation of Political Rights Against Corruption Convicts." *Halu Oleo Legal Research* Vol. 6. No. 3, 2024, pp. 755-772.

government," or in other laws and regulations as stated in Law Number 39 of 1999 concerning Human Rights Article 43 which states: "(1) Every citizen has the right to be elected and to vote in general elections based on equal rights through direct, general, free, secret, honest and fair voting in accordance with the provisions of laws and regulations; (2) Every citizen has the right to participate in government directly or through representatives freely chosen by him, in the manner determined in laws and regulations; (3) Every citizen can be appointed to any government position.¹⁷

The provision states that everyone has an equal opportunity to be involved in politics. This also applies to those convicted of corruption. Moreover, regarding the revocation of political rights in the form of the revocation of the right to vote, which is an implementation of freedom of opinion. It is written in Article 28E of the 1945 Constitution of the Republic of Indonesia paragraph (3), namely: "Everyone has the right to freedom of association, assembly, and expression of opinion." It is a basic human right to have their opinions heard, and if that right is revoked, of course it is discrimination against the human being himself. The 1945 Constitution of the Republic of Indonesia in Article 28I paragraph (2) rejects all forms of discriminatory actions, as written: "Everyone has the right to be free from discriminatory treatment on any basis and has the right to receive protection against such discriminatory treatment." So it is clear that everyone has the right to defend their political rights, especially the right to vote, as one of the means of fighting for the right to express their opinions and the right not to receive discriminatory treatment. This opinion also legally refers to the 5th principle of Pancasila, "Social justice for all Indonesian people," considering that those convicted of corruption are also part of the Indonesian people as referred to in the provision, so justice for them must also be guaranteed.

The restrictions on passive voting rights according to the position of the person convicted of corruption include:

1) Restrictions on office by election (elected official)

An elected official is a public office whose procedure for filling the office directly or indirectly requires participation or support from the people. Positions that are directly elected by the people can be seen in the implementation of the General Election and Regional Head Election (Pemilukada). The following are the restrictions on rights regulated by law in Indonesia: a. Article 5 letter n of Law number 42 of 2008 concerning the Presidential and Vice Presidential Election (Pilpres) restrictions on former convicts from holding the positions of President and Vice President. b. Article 58 letter f of Law number 12 of 2008 concerning Regional Government which regulates the requirements for regional head

¹⁷Mirza Hilmi Fahlevi and Achmad Hariri. "Analysis of the Loss of Political Rights for Corruption Convicts Reviewed from Human Rights." *Madani Legal Review*, Vol. 5. No. 1, 2021, pp. 42-55.

candidates. Article 58 letter f regulates the prohibition on former convicts from running as regional heads.

2) Restrictions on positions by appointment (appointed official)

Appointed official positions are positions whose selection is carried out by an official who has the authority to select, for example, the position of Supreme Court Justice candidate who is selected by the Supreme Court Justices and ministers who are selected by the President. The following are restrictions on the rights of former convicts including corruption convicts that are regulated by legislation in Indonesia:

- a. Article 7 letter b number 4 of Law Number 3 of 2009 concerning the Supreme Court of the Republic of Indonesia;
- b. Article 26 letter i of Law Number 18 of 2011 concerning the Judicial Commission;
- c. Article 21 letter g of Law Number 25 of 2003 concerning the Crime of Money Laundering;
- d. Article 13 of Law Number 15 of 2006 concerning the Audit Board;
- e. Article 22 paragraph (2) letter f of Law Number 39 of 2008 concerning State Ministries.

The criteria for imposing additional criminal sentences in the form of revocation of active voting rights or passive voting rights can be found in the Constitutional Court decision number 14-17/PUU-V/2007 concerning the judicial review of Article 58 letter f of Law number 32 of 2004 concerning Regional Government against the 1945 Constitution of the Republic of Indonesia which regulates the revocation of voting rights. The Constitutional Court narrowed the application of the decision which previously contained two conditions, namely not applicable to minor negligence crimes (*culpa levis*) and not applicable to crimes for political reasons, narrowed by the Constitutional Court to its application, namely only for elected public offices (elected officials).

From the study of political corruption that occurs in several modern countries, it is seen that political corruption has a wider impact compared to corruption carried out by people who do not have political positions. The entity of political corruption is inherently intertwined with power. Political corruption is more in the stage of maintaining and expanding power. From the constellation of abuse of power and the need for socio-political order, it demands a commensurate role of control over the implementation of power. Government power is mandated to regulate and distribute state wealth, so that in the distribution process there is always the potential for deviations by those in authority, namely those holding power.

In relation to the element of imposing additional criminal sanctions, the revocation of political rights in this case is not clearly stated and qualified in the laws and regulations in Indonesia. However, the imposition of this additional criminal sanction can ultimately still be applied by the judge only based on justice, benefit, and certainty according to the judge's own beliefs. The imposition of additional criminal sanctions, the revocation of political rights, is contained in Article 35 paragraph 1, point 1 and point 3 of the Criminal Code which states that the right to hold office in general or a certain office and the right to vote and be elected in elections held based on general rules.¹⁸

In addition, other provisions in the form of determining the time period for imposing additional criminal sanctions in the form of revocation of political rights contained in Article 38 paragraph (1) of the Criminal Code state that if rights are revoked, the judge determines the length of the revocation, if the sentence is death or life imprisonment, then the length of the revocation is for life, if the sentence is imprisonment for a certain period, the length of the revocation is at least two years and at most five years longer than the main sentence and in the case of a fine, the length of the revocation is at least two years and at most five years.

The period is that in the revocation of political rights for perpetrators of corruption, their office status is revoked when they have received a judge's decision in court. And in the verdict, there is a clear mention of the main crime first and added with additional crimes, namely the crime of revocation of certain rights, especially political rights. That in the case of the Revocation of certain rights, especially political rights, only for crimes that are expressly determined by law that the crime is threatened with additional crimes.

The imposition of additional criminal sanctions does not have clear element qualifications that then become a reference in its imposition, as the author said earlier that in the end this criminal sanction will be applied together with the main criminal sanction and only based on the belief of the judge who decides it, or it can be said to only be an additional weapon owned by the judge if in that case the judge feels that the perpetrator of the corruption crime deserves it. However, this will certainly make law enforcement less consistent because in the end it is not certain that the perpetrator who commits a crime with greater losses and impacts will receive this criminal sanction and vice versa it is not certain that the perpetrator who commits a crime with a small impact cannot receive this additional punishment, it all depends on the judge who decides it in order to provide a deterrent effect on the perpetrator so that the perpetrator

¹⁸Haris, Oheo Kaimuddin, et al. "Imposition of Additional Criminal Sanctions in the Form of Revocation of Political Rights Against Corruption Convicts." *Halu Oleo Legal Research* Vol. 6. No. 3, 2024, pp. 755-772.

does not repeat similar crimes again and also so that other people who have not become perpetrators are afraid or do not commit similar crimes.

The implementation of sanctions in the form of revocation of political rights plays an important role in efforts to eradicate corruption, especially in creating a deterrent effect for perpetrators of corruption. With this sanction, both perpetrators and the wider community are expected to be reluctant to commit corruption because of the consequences in the form of losing the right to be involved in public office. Corruption is a form of extraordinary crime that betrays public trust, but ironically, the perpetrators often still have the ambition to return to strategic positions in government. Therefore, revocation of political rights is an important instrument to prevent them from repeating their actions. This approach is in line with the theory of relative punishment (goal theory), which emphasizes three main functions of punishment: preventive, namely protecting society by separating perpetrators from their social environment; deterrence, which aims to create fear so that others do not follow in the footsteps of the crime; and reformative, namely encouraging changes in the perpetrator's behavior towards a better direction.

Revocation of political rights is actually a form of additional punishment that complements the main sanctions imposed on perpetrators of criminal acts. This sanction results in the convict losing the right to vote and be elected, and no longer having the opportunity to hold public office. Its application is based on the judge's consideration that the convict has abused the trust and authority inherent in his position as a state official. Revocation of the right to be elected is a form of correction for the lack of trust in carrying out public office. This step is one of the effective efforts to create a deterrent effect, especially when the verdicts against perpetrators of corruption are often considered too light and do not reflect a sense of justice.¹⁹

According to the author, this condition reflects an inconsistency in the legal system, where the imposition of additional criminal sanctions, especially the revocation of political rights, has the potential to cause controversy. This occurs because the judge's decision should be based on the facts revealed in the trial, including the qualifications of the violation and the aggravating elements. However, the unclear regulations regarding the criteria or parameters for aggravation in the application of additional sanctions actually open up room for inconsistency in the decision. The author assesses that this additional punishment has a significant impact on the perpetrator, because it involves the loss of fundamental political rights. Therefore, even though the perpetrator has been proven guilty, he or she still has the right to guarantee legal protection and

¹⁹Ahmad Mathar. "Sanctions in Legislation." *Aainul Haq: Journal of Islamic Family Law*, Vol. 3. No. 2, 2023, pp. 45-60

justice, including certainty regarding the legal basis used in imposing sanctions, as guaranteed in the applicable laws and regulations.

According to Sudikno Mertokusumo, legal certainty is one of the objectives of law that in this case to realize legal justice must be implemented in a good way. Legal certainty requires an effort to regulate law in legislation made by the authorities, so that the rules have a legal aspect that can guarantee the certainty that the law functions as a regulation that must be obeyed. That the existence of legal certainty means there is no legal vacuum.²⁰

In the practice of imposing additional criminal sanctions in the form of revocation of political rights against perpetrators of corruption, especially in bribery cases, the author assesses that there is a legal vacuum or at least the absence of adequate legal certainty. This uncertainty can be seen from the inconsistent qualification of the elements of additional criminal sanctions referred to in Article 18 paragraph (1) letter d of the Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Corruption. Although normatively the article provides a legal basis for the revocation of "certain rights", details regarding the types of rights that can be revoked can only be found in Article 35 paragraph (1) of the Criminal Code. However, the relationship between the two provisions is not explicitly regulated, making it difficult for judges to determine the standard for applying sanctions. As a result, the implementation of this additional punishment is often not uniform, creates a wide scope for interpretation, and ultimately has an impact on weak legal certainty in enforcing corruption criminal law.

The provisions of the laws and regulations governing additional criminal sanctions in the form of revocation of political rights do not contain any explicit provisions detailing the qualifications or elements that can be used as guidelines in imposing such sanctions. This ambiguity is contrary to the principle of legal certainty, because it places judges in a position that has no legal basis for imposing such additional penalties. As a result, judges' decisions are based more on subjective assessments or personal beliefs, rather than on definite legal norms. This situation has the potential to cause injustice, because it opens up space for inconsistent treatment where perpetrators who should not be subject to additional sanctions are subject to them, while perpetrators who should receive such sanctions are spared. This kind of irregularity not only disrupts legal certainty, but also weakens public trust in the criminal justice system.

The regulation of political rights revocation for corruption perpetrators in various countries displays various more explicit models. In Germany, for example, voting rights are only revoked for serious crimes that threaten the country's democratic

²⁰Siti Halilah and Mhd Fakhurrahman Arif. "The Principle of Legal Certainty According to Experts." *Siyasah: Journal of Constitutional Law* Vol. 4. No. 2, 2021. p. 56-65

order. Article 13 of the Bundeswahlgesetz states that a convict can only be banned from voting for 2–5 years if he or she is convicted of serious crimes such as treason, sabotage, election manipulation, or bribery in the election process. This means that Germany limits the scope of political rights revocation to "offenses against the state" only, and its implementation is also discretionary based on a court decision. This approach emphasizes the proportionality of ordinary corruption perpetrators outside the context of extreme politics not automatically losing their voting rights.

In France, criminal law explicitly accommodates the deprivation of civil and political rights as "interdictions complémentaires". Article 131-26 of the French Penal Code allows the court to deprive a convicted person of the right to vote and stand for election, as well as other civil rights, for up to 10 years for a felony (5 years for a misdemeanor). The period of the ban is determined by the judge and can cover all or part of these rights. French law also recognizes mandatory *inéligibilité* for public officials found guilty of corruption, which prevents them from running for office again for a certain period. A recent ruling by the Constitutional Council confirmed the legitimacy of this ban: a politician can be declared ineligible immediately after a guilty verdict, in order to "effectively deter" officials from undermining democracy. France provides a clear legal basis for such sanctions, as well as certainty about their duration and scope.

The United States does not have a specific federal law on disenfranchisement for corruption, and most of the provisions regarding voting and office rights are decentralized at the state level. Generally, Americans convicted of felonies can lose their right to vote for a term of imprisonment or longer depending on state law. The U.S. Constitution (14th Amendment, Section 2) even provides for "affirmative sanctions" for states to disenfranchise those who "commit rebellion or other crimes." A Supreme Court ruling (*Richardson v. Ramirez*, 1974) affirmed that restricting the right to vote for felons does not violate Equal Protection because the Amendment allows it. Section 3 of the 14th Amendment prohibits anyone from holding public office who has previously taken an oath to the Constitution and then rebels (although this is more about rebellion than corruption). At the congressional level, the U.S. House of Representatives and Senate have the internal power to remove their own members for corruption or dishonorable crimes ("expulsion" under Article I Section 5). In other words, the US allows for restrictions on political rights as a legal consequence even if not formalized in a single statute, with many states explicitly revoking the right to vote or run for office upon conviction (many based on the principle of felon disenfranchisement).

Duration Limit: Setting a specific time period (e.g. 5–10 years) according to the severity of the crime, maintaining proportionality. A firm duration strengthens

the principle of legal certainty and avoids lifetime revocation of rights that could potentially violate human rights.

The revocation of political rights should not be seen as a violation of human rights, but as a form of moral and social responsibility for the abuse of authority. In a progressive legal framework, protection of human rights cannot be separated from the individual's responsibility to society. Political rights are not absolute, if they are used to damage democracy, the state is obliged to set limits fairly and proportionally. Precisely because political rights are very important, they must be protected from abuse. A corruptor who is proven to have harmed public trust should not be given back access to the power he previously abused.

According to the author, there is currently no clarity in Indonesian positive law regarding the imposition of additional criminal penalties in the form of revocation of political rights. Article 18 paragraph (1) letter d of the Corruption Law and Article 35 of the Criminal Code do provide space for this, but do not explain in detail who is eligible to be subject to it, under what conditions, and how long the duration is. In practice, this creates legal uncertainty because the decision is very dependent on the subjectivity of the judge. This is where the importance of a progressive legal approach lies in encouraging the reformulation of the rules, so that norms do not only live in texts, but also have real and fair working power in society.

According to the author, it is time for Indonesia to have explicit norms that detail the subject of revocation of political rights, its time limit, and the objective parameters used in its imposition. In this way, the law not only provides certainty, but also reflects substantive justice that sides with the community as victims of systemic corruption practices. In line with the spirit of progressive law, this additional punishment must be directed towards preventive purposes, so as not only to punish the perpetrators, but also to prevent the return of corruption in the power structure. At the same time, this reformulation must still pay attention to the principle of proportionality so as not to violate human rights.

3.3. Obstacles and Solutions to Additional Criminal Sanctions for Revocation of Political Rights in Corruption Crimes

In essence, court decisions in corruption cases are a reflection of the values of justice contained in Pancasila. Therefore, it is also necessary to apply sanctions that can create justice for the wider community, considering that the losses caused by corruption crimes are not only state losses, but the community is also affected by them, because in this case, the state becomes a victim of the consequences obtained by the perpetrators of corruption.

It is important when we do not forget that there are additional penalties in the form of revocation of certain rights, which is not something new. Regulations regarding this have also been regulated in the Criminal Code and the Corruption

Law. This is done to give misery to perpetrators of corruption. One of the revocations of certain rights is the right to be elected and to vote, which will later apply in public office for perpetrators of corruption. An example that is proof that this can be carried out by Indonesia is the case of Inspector General Djoko Susilo, where the judge decided to give additional penalties in the form of revocation of political rights to the person concerned.

The use of additional sanctions in the form of revocation of political rights for perpetrators of corruption is still a matter of debate because Indonesia is a democratic country that upholds the recognition of Human Rights (HAM), but on the other hand, perpetrators of corruption often fail to exercise human rights themselves by making themselves into perpetrators of human rights violators.²¹

The application of additional criminal sanctions in the form of revocation of political rights against perpetrators of corruption in Indonesia still faces a number of obstacles, both in terms of legal structure, legal substance, and legal culture. The three are interrelated and affect the effectiveness of efforts to eradicate corruption as a whole.

From the aspect of legal structure, the main obstacle lies in the inconsistency of law enforcement by law enforcement officers, especially prosecutors and judges, in imposing additional penalties in the form of revocation of political rights. The Supreme Court has indeed issued a Supreme Court Circular (SEMA) No. 4 of 2011 which encourages the revocation of political rights as an additional penalty, but its nature is not yet firmly binding as a legal norm that must be implemented. As a result, many court decisions against corruptors do not include the revocation of political rights, so that they can still run for office or be elected to public office after being convicted. This is also exacerbated by the weak coordination between institutions such as the KPU and the Correctional Institution in filtering and recording ex-corruptors who have been subject to these sanctions.

The solution that can be taken is through explicit regulatory reformulation in the Corruption Law which requires the revocation of political rights as an additional punishment for certain corruption crimes, especially those related to public office. The government and the DPR need to encourage the revision of the Corruption Law and the Criminal Code to include strict rules regarding the type, duration, and requirements for the implementation of the revocation of political rights. On the other hand, the Supreme Court can issue binding MA regulations, not only in the form of SEMA. From a structural perspective, it is necessary to strengthen coordination between the KPU, Bawaslu, and Lapas in synchronizing data on corruption convicts whose political rights have been revoked. Meanwhile, from a cultural perspective, legal education for the community and

²¹Denny Ardiansyah, "Revocation of the Right to Vote and Be Voted for Corruption Convicts", *Jurnal Cakrawala Hukum*, 2015, pp. 139–148

fostering the integrity of political parties must continue to be carried out in order to form a collective awareness that integrity is more important than mere electability.

The author believes that as long as there is no strong commitment from the legislative and judicial institutions to make the revocation of political rights part of the effort to eradicate corruption, the deterrent effect on perpetrators will continue to be weak. The author believes that allowing former corruption convicts to compete in politics again without clear limitations is a form of legal leniency that is not in line with the principle of justice. Therefore, according to the author, a comprehensive reform is needed that does not only rely on legal instruments, but also on improving the quality of bureaucracy, strengthening community participation, and revitalizing the values of good governance so that law enforcement against perpetrators of corruption truly reflects justice.

4. Conclusion

The urgency of imposing additional criminal penalties in the form of revocation of political rights in corruption crimes lies in the need for extraordinary efforts to overcome corruption crimes. Revocation of political rights is an instrument to create a deterrent effect, prevent perpetrators from re-occupying public office that has been misused, and strengthen public trust in the legal system. The application of sanctions to limit political rights is in line with the objectives of criminalization in relative theory, namely as a preventive, deterrent, and reformative effort that is not only aimed at punishing, but also protecting society and improving perpetrators.

5. References

Al-Qur'an:

QS. Ali Imran 161

QS.al-Anfal 27

QS.al-Nisa' 58

QS.al-Zukhruf 65

QS. Al-Baqarah 188

Journals:

Adrianus Bawamenewi, Implementasi Hak Politik Warga Negara, *Majalan Ilmiah Warta Darmawangsa*, Vol. 13, No. 3, 2019,

Ahmad Mathar. "Sanksi Dalam Peraturan Perundang-Undangan." *Aainul Haq: Jurnal Hukum Keluarga Islam*, Vol. 3. No. 2, 2023,

- Arief Setiawan & Umar Ma'ruf, Penerapan Unsur Dapat Merugikan Keuangan Negara Dalam Tindak Pidana Korupsi" *Jurnal Khaira Ummah* Vol 12 No. 3 September 2017
- Armunanto Hutahaean dan Erlyn Indarti. "Strategi Pemberantasan Korupsi Oleh Kepolisian Negara Republik Indonesia (POLRI)." *Masalah-Masalah Hukum* Vol. 49. No. 3, 2020,
- Bintang Raihan Sulaeman dan Chepi Ali Firman Zakaria, Bebasnya Tuntutan Pencabutan Hak Politik dalam Kasus Tindak Pidana Korupsi Dihubungkan dengan Tujuan Pemidanaan, *Bandung Conference Series: Law Studies*, Vol. 3 No. 1, 2023,
- Citra Januardi Cibro. "Penjatuhan Pidana Tambahan Pencabutan Hak Politik Terhadap Pelaku Tindak Pidana Korupsi Terkait Jabatan Publik." *Locus Journal of Academic Literature Review*, Vol. 1, No. 4, 2022,
- Oheo Kaimuddin Haris, et al. "Pemberian Sanksi Pidana Tambahan Pencabutan Hak Politik Terhadap Terpidana Korupsi." *Halu Oleo Legal Research* Vol. 6. No. 3, 2024,
- Pan Mohamad Faiz, "Teori Keadilan John Rawls", *Jurnal Konstitusi*, Vol. 6 No. 1, 2009,
- Perangin-Angin, Joppy Porensen Papan. "Pelaksanaan Putusan Hakim Terhadap Pencabutan Hak-Hak Politik Pelaku Tindak Pidana Korupsi." *Diktum* Vol. 2. No. 3, 2023,
- Sabungan Sibarani, Analisis Hukum Mengenai Pencabutan Hak Politik Bagi Koruptor Berdasarkan Sudut Pandang Hak Asasi Manusia, *Prosiding Seminar Nasional Pakar*, 2019,
- Siti Halilah dan Mhd Fakhrurrahman Arif. "Asas Kepastian Hukum Menurut Para Ahli." *Siyasah: Jurnal Hukum Tata Negara* Vol. 4. No. 2, 2021.
- Syarifuddin Syarifuddin, Penerapan Pidana Tambahan Pencabutan Hak Politik Pada Tindak Pidana Korupsi Putusan Nomor: 38/PID.SUS/TPK/2013/PN.JKT.PST Dan Putusan Nomor: 040 /PID.SUS/TPK/2017/PN.JKT.PST. *Unes Journal of Swara Justisia*, Vol. 3, No. 3, 2019
- Titin Nurfatlah dan Zahratul'ain Taufik, Urgensi Pencabutan Hak Politik Sebagai Pidana Tambahan Terhadap Pelaku Tindak Pidana Korupsi Ditinjau Berdasarkan Tujuan Pemidanaan, *Jurnal Kompilasi Hukum*, Vol. 9, No. 2, 2024,

Winasya Pricilia Sumenge. "Efektivitas Kepatuhan Pidana Mati dalam Pemberantasan Tindak Pidana Korupsi di Indonesia." *Lex Et Societatis* Vol. 7. No. 12, 2019,

Books:

Achmad Ali, 2002, *Menguak Tabir Hukum (Suatu Kajian Filosofis dan Sosiologis)*, Toko Gunung Agung, Jakarta,

Adami Chazawi, 2002, *Pelajaran Hukum Pidana Bag. 1*, Raja Grafindo Persada, Jakarta,

R. Wiyono, 2012, *Pembahasan Undang-Undang Pemberantasan Tindak Pidana Korupsi*, Edisi Kedua, Sinar Grafika, Jakarta,

Roeslan Saleh, 2011, *Perbuatan Pidana dan Pertanggungjawaban Pidana*, dalam Mahrus Ali, *Dasar-Dasar Hukum Pidana*, Sinar Grafika, Jakarta,

Rohim, 2002, *Modus Operandi Tindak Pidana Korupsi*, Pena Multi Media, Depok,

Romli Atmasasmita, 2003, *Pengantar Hukum Kejahatan Bisnis*, Kencana, Jakarta,

Ronny Haniatjo Soemitro, 1990. *Metode Penelitian Hukum dan Jurimetri*. PT Ghalia Indonesia. Jakarta

S, Mailoa, 2006, *Perilaku dan Budaya Korupsi Dalam Konteks Penegakan Hukum di Indonesia, Pidato Pengukuhan Guru Besar Dalam Bidang Ilmu Hukum Pidana*, Fakultas Hukum Universitas Pattimura, Ambon,

Setiawan Budi, 2003, *Fiqh Aktual*, Gema Insani Press, Jakarta,

Soerjono Soekanto dan Sri Mamudji, 2004, *Penelitian Hukum Normatif*, Raja Grafindo Persada, Jakarta,

Soetandyo Wignjosoebroto, 2009, *Penelitian Hukum dan Hakikatnya sebagai Penelitian Ilmiah*, dalam Metode Penelitian Hukum: Konstelasi dan Refleksi, ed. Sulistyowati Irianto dan Shidarta, Yayasan Obor Indonesia, Jakarta,

Yudi Kristiana, 2003, *Pemberantasan Tindak Pidana Korupsi Perspektif Hukum Progresif*, Thafa Media, Yogyakarta,

Zainab Ompu Jainah, 2018. *Kapita Selekta Hukum Pidana*, Tira Smart, Tangerang,

Regulations:

The 1945 Constitution of the Republic of Indonesia;

Criminal Code (KUHP)

Criminal Procedure Code (KUHP);

Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHP);

Law-InviteNumber 30 of 2002 concerning the Corruption Eradication Commission;

Law-InviteNumber 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption;

Law-InviteNumber 39 of 1999 concerning Human Rights.

Etc:

Bismar Nasution, *Metode Penelitian Hukum Normatif dan Perbandingan Hukum*, disampaikan pada “Dialog Interaktif tentang Penelitian Hukum pada Majalah Akreditasi”, Medan, 18 February 2003,

<https://dipb.kemenkeu.go.id/kppn/manokwari/id/data-publikasi/berita-terbaru/3026-tindak-pidana-korupsi-pengertian-dan-unsur-unsurnya.html>,

KPK, Menebar Benih Anti Korupsi, Laporan Tahunan KPK 2022, <https://cms.kpk.go.id/storage/4205/Laporan-Tahunan-KPK-2022.pdf>