



Analysis of Political Criminalization in Indonesia

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ABSTRACT

Analysis Political punishment in the form of revocation of rights politics for those convicted of corruption. Method Which used in study This is method study normative law. Judging from its nature, this research is descriptive. Source data in this research is material law primary, material law secondary And material law tertiary. Method withdrawal conclusion in This study uses the deductive method, namely drawing general things to characteristic Which special. From results study This writer observe that happening practice corruption in Indonesia due to weak sentencing for public officials who corruption. Because of that, additional punishment for revocation of rights is imposed Politics basically aims to frighten and provide a deterrent effect to perpetrator corruption, so that official public Which before intend do corruption to be afraid to do it.

INTRODUCTION

Corruption is currently a special offense that is regulated separately outside the Criminal Code (KUHP). For The series of handling corruption cases applies the principle of prioritizing the process the solution. In this case what is appropriate is stated in article 25 of the Law Law Number 20 of 2001 concerning Eradication of Corruption Crimes which reads: "investigation, prosecution, examination at the trial court in Court cases in corruption cases take precedence over other cases settlement as soon as possible". As for other breakthroughs to be able to provide a deterrent and fear effect, namely by inserting additional criminal penalties for those caught in the case corruption. What is written in article 10 letter b number 1 of Law Number 1 Year 1946 About Regulation Law Criminal mention that criminal addition can be in the form of revocation of certain rights. What is meant by right- Certain rights are rights in holding a certain position or position which has been regulated in Article 35 paragraph (1) number 1 or active voting rights and voting rightspassive in general elections based on general rules such as those written in article 35 paragraph (1) number 3 of the Criminal Code (KUHP).

In this case there has been a different argumentation about the decision revocation of political rights. According to the chairman of the People's Representative Council (DPR), Bambang Soesatyo said that a revocation of political rights is not permissible carried out/revoked, because it has exceeded the limits of human rightsthemselves and human rights are the most basic rights possessed by human beings, unless corporal punishment is increased. Apart from Bambang Soesatyo who sided with the revocation of political rights, there are also opinions from the former chairman of the Constitutional Court, namely Mahfud MD, according to Mahfud MD (MD, 2015)that the revocation of political rights is not wrong. But that's too much in judging. Because it is based on the Criminal Code (KUHP), a person who is punished with a maximum penalty of five years may not hold office. All laws governing office the public has arranged it that way and for let alone put it in a verdict word demands Mahfud MD.

In addition, there is a more agreeable opinion about the revocation decision this political right. Because it will give a deterrent effect on criminals corruption and also the fear of committing acts of corruption for everyonepeople or state officials. As in the case of criminal acts of corruption happened to the former Head of the Traffic Corps (Kakorlantas) at the National Police Headquarters, Inspector Police General Djoko Susilo in a corruption case for a simulator equipment procurement project Driver's License (SIM). Former Kakorlantas Polri Headquarters Djoko Susilo tosentenced punishment criminal tree during 18 year prison And fine as much 1 billion rupiahs. The panel of judges also imposed additional criminal penalties in the form of: payment Money replacement of 32 billion rupiah.

In addition, at the time of cassation from the Prosperous Justice Party politicians (PKS) named Luthfi Hasan Ishaq, the panel of judges at the Supreme Court also imposing additional penalties in the form of revocation of passive voting rights or rights to be elected in the general election to politician Luthfi Hasan Ishaq. From Luthfi Hasan Ishaq still has the right to vote. the verdict was dropped because the PKS politician had been proven to have accepted bribes in the case import meat cattle at the Ministry of Agriculture. In addition to the Djoko Susilo corruption case and the Lutfi Hasan Ishaq corruption case who received a decision to revoke political rights, there is also the case of Romi Herton and his wife Masyito who was the mayor of Palembang from 2013-2014. Romi Herton and Masyito were sentenced to 7 years in prison by the judges. For Romi Herton 5 years imprisonment. Apart from that, he was also punished a fine of 200 million rupiah. If you don't pay the fine, you will be replaced for 2 months confinement.

The verdict on the husband and wife couple was added with repeal right chosen And choose during 5 year. Romi And Masyito are people who are in Akil Mochtar's corruption circle. Romi and Masyito bribed Akil, at that time Akil Mochtar was Chief Justice Constitution period 2008-2013. The accused bribed Akil Mochtar with the aim in order to win over Romi Herton and Masyito in the dispute over the election of the Wali city in Palembang (Khabibi, 2015). What makes withdraw from the existence of additional criminal penalties that form of revocation of the right to vote and be elected in public office is the case of Djoko Susilo, who was convicted in the first corruption case times get additional criminal penalties revocation of the right to vote and to be elected to public office. Then, after that came Luthfi Hasan Ishaq who received an additional criminal sentence from the judge's decision in the form of repeal the right to be elected. History record that This additional criminal penalty has been included for a long time since the criminal law in Indonesia had a dualistic pattern until the new 29 September 1958 the Criminal Code (KUHP) applies to all of Indonesia with a unification style which states about the enactment of the Law Number 1 of 1946. However, to the author's knowledge, the panel of judges did not never practiced in previous corruption cases even though the type of punishment this additional penalty already loaded Enough old in Indonesia.

LITERATURE REVIEWS

1. Analysis Juridical

According to (Surayin, 2001, matter. 10) analysis is something activity summarizes a large amount of raw data and then classifies it or separate the components and parts related to Then connected with data Which collected For answerproblem. The juridical meaning in this context is what is recognized by law, which has a legal basis and matters that form order as well has an effect on the violation, while juridical has a meaning namely a rule which in the eyes of the law is justified in its application, in the form of regulations written rules, customs, ethics or morals that form the basis of assessment.

In in the book (Rahardjo, 2006, matter. 124) term say "Juridical" originates from the English "juridicial" which is interpreted in Indonesian i.e. legal or normative. So, the purpose of juridical analysis here is something study in the form of analyzing a problem that occurs based on on law and legislation Which apply. Analysis juridical Which meant in study study This is analysis of elements of offense and criminal responsibility in terms of imposing sanctions on the accused as a criminal. As for the types of punishment to a person perpetrator criminal is as follows:

2. Type - Type Punishment

Various kinds of punishment can be seen in Article 10 of the Criminal Code states that the punishment that can be imposed on a criminal offender as following (Djamali, 2007, p. 186):

- a. Punishment tree (*Hoofd Straffen*).
 - 1) Punishment dead.
 - 2) Punishment prison.
 - 3) Punishment confinement.
 - 4) Punishment fine.
- b. Punishment Addition (*Bijkomende Straffen*).
 - 1) Repeal some rights certain.
 - 2) Deprivation goods certain.
 - 3) Announcement decision judge.

Subs of the legal system as mentioned in that provision it looks so simple. However, if you pay attention properly then its simplicity will become reduce. The punishment system listed in the Book of Laws The former criminal law for the Dutch government was meant to be enforced especially for Indonesia as colonized. At that time such a punishment system was yang in accordance with justice according to the occupiers. After Indonesia's independence, of course it is necessary revisited. If it is not in accordance with the needs of the nation and the sense of justice, may not be maintained.

3. Theory punishment

In life daily man often faced on something need Which urge, need satisfaction self. Even, sometimes The need arises because of the desire or pressure to maintain statusself. To meet urgent needs, usually often carried out without careful thought that can harm the environment or other humans. Matter such a thing would lead to a disproportionately negative consequence atmosphere and a life of good value. To return to the atmosphere and a life of good value, requires an accountability from actor who created the imbalance. For recipients of the overflow in taking responsibility for his actions, the overflow is in the form of punishment "convicted". So, person Which convicted means himself operate something punishment to be held accountable for his delinquent actions And endanger for the benefit of general (Djamali, 2007, matter. 171).

with criminal law, that is, part of the overall law that applies in a certain areacountry, Which have basics too rules for:

- 1) Set limits on what actions cannot be done prohibited, which is accompanied by threats or sanctions in the form of punishmentcertain for goods who violated the prohibition.
- 2) Give provisions when and in what cases to those who has violated written and applicable restrictions or sentenced criminal as has threatened.
- 3) Ensuring in what way the criminal imposition process can be carried out carried out, if there are people who have been suspected or have been proven violate ban the.

The term criminal is generally interpreted as punishment. Whereas, punishment is defined as judgment. Punishment too can interpreted as an action taken by a judge to convict a defendant. (Moeljatno, 2008, p. 17) says the criminal law that applies in Indonesia today it is criminal law that has been codified, that is, for the most part And rule - rule Which has arranged in One book Constitution (*wetboek*), which is called the Criminal Code (KUHP). sourced from law colonial Dutch, ie *Wetboek vans Strafrecht voor Netherlands-Indie (WvS)* .

In book flower rampant policy law criminal Which written by (Arief, 1996, p. 129) regarding criminal acts can be interpreted as something process related to the judge's statement to decide the case and impose a penalty on every person who has been declared provengUILTY of committing a criminal act. Based on the classic flow The purpose of criminal law is to protect someone from the power of the authoritiesor country. On the other hand, the teachings of modern adherents say that Criminal law is only to save society from every crimein the community, thus showing that criminal law must see the crimes and circumstances of criminals, thus this modern school influenced by the development of criminology.

With regard to goals criminal law science there are two streams written by (Prasetyo, 2013, p. 14) that is:

- 1) The classic flow aims to make someone not afraid do that deed not chill by public.
- 2) While the modern flow aims to teach someone whohave done bad deeds to be better And acceptable back by public.

In this case, criminal sanctions are one way to achieve this purpose of penal law. In fact, since the first criminal process has been discussed and debated by legal experts. So that finally got a theory about sentencing (Marpaung, 2009, p. 106), one of which is: Theory Rewards or Revenge (*Absolute/Vergeldingstheorie*) According to theory This, base law must searching for from crime That himself, because the crime has caused suffering to others and so on in return (*vergelding*) the perpetrator must also be given the same suffering because have done a bad deed. The view of this theory is that criminal can be done only someone has committed an evil deed or follow criminal (*quia peccatum est*). Criminal useful as something retribution to someone who has committed a crime. Actually, that is considered As a rule, the justification of a criminal act lies in the occurrence of the crime Alone.

METHODOLOGY

This research strives to analyze accurately so that there are benefits in research, so that study This can answer problem tree Which formulated, the authors in the study used research methods that outlined as follows:

a. Type And Characteristic study

By doing comparison scientific Which take comparison literature books And jurisprudence. Meanwhile, in terms of its nature, this writing is Descriptive in the the book (Soekanto, 1984, matter. 9), Which meant with study descriptive is For emphasize hypotheses so that can help in the strengthen theories long, or in the framework compile new theories systematically about related matters with base consideration judge in decide.

b. Data and Source Data

To complete the results of this study, some data is needed as in type study normative, as for data Which used is primary legal materials, secondary legal materials, and tertiary legal materials as for classification ingredients law the as following (Syafrinaldi, Book Guide Thesis Writing, 2014, p. 13):

1. Legal Materials Primary

Which will be the primary legal material in this research is case files at the Supreme Court of the Republic of Indonesia on criminal cases and laws and regulations and material other laws.

2. Legal Materials Secondary

Which will become material law secondary in the study This is results study Which earlier And literatures book laws that are mutually relevant to the basis of the judge's considerations in apply article to defendant.

3. Material Law Tertiary

What will be the material for tertiary law in this research is material law Which give instruction to material law primary and secondary legal materials in the form of Non Law Which form dictionary, encyclopedia, And writings Which relating to the revocation of political rights for convicts of corruption cases And base consideration law from judge in file decision of the Supreme Court of the Republic of Indonesia on criminal case Number: 2233 K/Pid. Sus/2017.

RESEARCH RESULTS

A. Drop Criminal Addition Which in the form Repeal Political Rights for Corruption Convicts

That in the constitution has emphasized the unitary state of the republic Indonesia is a country based on the rule of law " *rechstaat* " and that Of course in line with Spirit nation country Indonesia as something countrythe welfare of the " *welfare state* ". Basically, the law in the country of Indonesia as the highest power in a country in accordance with what is aspired and desired by Indonesia as a rule of law or supremacy country (Waluyo, 2016, matter. 14). In this case, a decision from the panel of judges/court is the highest and most valuable milestone based on the principles of justice in a country, contained in a decision from a panel of judges/courts that in the form of criminal punishment and punishment as well as regarding additional punishment in the form of revocation of political rights. Emergence in the community about criminal law verdicts and additional punishment does not just appear, it is very related to proceedings in court. The basis of this argument is in accordance with a quote from Bambang Waluyo, GP Hoefnages who says that "sanctions in law criminal is all reaction to violation law Whichdetermined by law starting from the detention of suspects and prosecution the defendant until a verdict is passed by a judge with permanent legal force (*inkracht*)" (Prasetyo, Deep Criminalization Criminal law, 2010, p. 34).

Repeal right political is category criminal addition Which allowed in the Indonesian criminal law system. This additional penalty regulated in the Criminal Code (KUHP) Article 10 letter a number 1 which states that additional punishment can be in the form of "revocation rights certain". Right certain Which meant can form right hold position on generally or position Which certain Which arranged in Chapter 35 paragraph (1) of the Criminal Code, or the right to vote and be elected in elections held based on the general rules as mentioned in Article 35 paragraph (1) numbers 3 of the Criminal Code. In addition to the Criminal Code, the revocation of certain rights for corruptors is also strengthened in Law Number 31 of 1999 concerning Eradication of Criminal Acts Corruption. On Chapter 18 paragraph (1) letter d confirmed that, "Besides criminal addition as referred to in the Criminal Code, as criminal addition is repeal whole or part rights certain or the elimination of all or part of certain profits, which have been or can be given by the Government to the convict". Thus, then base or base repeal right political for convict case corruption, indeed Already Enough adequate. On Finally, left How courage judge progressively For decide something the case.

It's revoked right For chosen nor right For choose (right political) to corruptors is a fact that is hotly discussed by all levels of society, especially for the academic environment, the environment practitioner, environment enforcer law And clan political. Phenomenon This actually nothing more than a public yearning for the objectivity of judges' decisions which usually only adds a penalty of fines and forfeiture against goods, now has shown the progressivity of the judge's decision or court by doing repeal right politics for corrupt.

Meanwhile, the meaning of political rights is not clearly regulated in the rules legislation. In the the book (Asshiddiqie, 2010, matter. 90) Which title constitution And constitutionalism Indonesia state that "a group of political rights guaranteed in the Constitution of the Republic Indonesia of 1945 included the right to associate, assemble and express income peacefully, the right to vote and be elected within the framework of the institution representative people, as well as right For can lifted in position position-public office".

DISCUSSION

Criminal imposition and sentencing can be said to be a reflection of the principles principle justice for Justice criminal in a country This, Because He has proven do something that is prohibited by the state. If the judicial process is for example ending with the imposition of a criminal means the process goes according to the principle of justice, necessarily justice in Indonesia is well rated. However, if it's the other way around, of course it's judged otherwise in that case, it can even be branded as a decline in authority in law. The jury is on the way sentencing the convict must be in order to guarantee the upholding of truth, justice, and legal certainty for its citizens. That is, the law is not just revenge feud will but routine work or characteristic procedure in judge.

As for the additional punishment in the form of revocation of political rights for this corruption convict in article 10 of the criminal law code on part b, Which consists from:

- a. "Repeal rights certain;
- b. Deprivation goods certain;
- c. Announcement of the judge's decision (PAF Lamintang and Theo Lamintang, 2009, p. 24)".

What is meant by revocation of political rights for convicts of corruption in Case Number: 2233 K/Pid.Sus/2017 is contained in Article 10 of the Criminal Code part b point (a), namely "revocation of certain rights". Revocation of a right certain conditions does not mean that the rights of the convict can be revoked, such revocation does not includes the revocation of the rights to life and civil rights (civil) and rights state administration. (Sudarto, 1996, p. 115)

Revocation of certain rights in a criminal sentence on field honor, No The same with loss independence. Certain revocation there are 2 things:

- 1) Must with a verdict judge And No characteristic automatic;
- 2) Must be according to the time period in accordance with the law and regulations from the magistrate. That is, not used throughout life (AZ Abidin Farid And Andi Hamza, 2008, p. 303).

In case Venus Paradise And Suparman decision assembly judge on first level at the Pekanbaru District Court, Johar Fiirdaus was not sentenced additional punishment in the form of revocation of the right to be elected in public office based on the demands of the Public Prosecutor. Likewise with Suparman who on level First sentenced free by judge. Then on court level appeal Venus Paradise No sentenced punishment criminal addition Which in the form of revocation of political rights. Meanwhile, Suparman, at the level of appeal amar from the panel of judges or the court corrects the decision of the acting court corruption at the first level of the Pekanbaru District Court, Riau Province by being sentenced to an

additional penalty in the form of revocation of the right to vote in position public. As described above, the State of Indonesia is a state of law (*rechstaat*) Which based on justice social based on Pancasila. Included in the judge's decision must be based on applicable law. Verdict received by Johar Firdaus and Suparman, namely for 6 (six) years imprisonment and a fine of Rp. 200,000,000.00 each. Whereas, property obtained from the proceeds of corruption has been confiscated for the state will but the judge still applies additional punishment in the form of revocation of rights For elected to public office during 5 (five) year.

In matter This Already should in punishment, judge must more prioritize goals from punishment for repair personal from Johar Paradise And Suparman, No matter as retribution feud to his deeds. Because of the additional punishment received by Johar Firdaus And Suparman which is the revocation of political rights in public office, which means that they can no longer be repaired, so they must revoked right For chosen in position the public so that No repeat crime the corruption ever done.

It takes gift verdict addition Which form repeal right politics by a panel of Supreme Court judges on Wednesday, November 8 2017 by Dr. Artidjo Alkostar, SH, LL.M as chairman majlis, Ms Lumne, Revocation of political rights can be done through a court decision mechanism. Then court has the right to give an additional verdict, this is based on and regulated by book Constitution law criminal chapter 10 letter b number 1 criminal addition in the form of revocation of certain rights, certain rights are intended in the form of the right to hold a position in general or a certain position contained in article 35 paragraph (1) of the Criminal Code, or the right to vote or vote in election general has arranged in Chapter 35 paragraph (1) number 3 Criminal Code.

CONCLUSIONS AND RECOMMENDATIONS

Based on the research from the discussion above, the authors conclude including as following:

1. Additional criminal imposition in the form of revocation of political rights including the right to be elected has violated Chapter 12 letters a Law Number 31 of 1999 as which has been amended by Law Number 20 of 2001 concerning eradication follow Criminal Corruption *juncto* Chapter 55 paragraph (1) number 1 Criminal Code *juncto* Constitution Number 8 Year 1981 about Criminal Code, Law Number 3 of 2009 concerning the Court great as well as regulation legislation other Which concerned. So that the revocation of political rights can be implemented as an additional punishment in criminal cases corruption, for example in terms of implementation that happened during This For follow criminal corruption, And punishment. The demand for the revocation of political rights is specifically directed at the defendant for who commit acts of corruption who have a profession as an official public or government officials who hold important positions and strategic. Given the classification is deprived of the right to be elected and the right to choose as additional punishment, until the verdict criminal addition the revocation of political rights has a facultative/optional nature. That is, majlis the judge or court has the proegrative right to convict or did not sentence the additional criminal sentence. As for the

parameters used by the panel of judges to determine whether it is necessary or not criminal verdict additional form revocation of the right to vote and right For chosen (right political), that is with method notice from the position or position of the accused when committing the crime of rape, the modus operandi of the crimes that have been committed and look at the impact economy Which generated for the people.

2. Legal considerations from the panel of judges who decided on the revocation of rights political for convict case corruption been considered with all facts Which disclosed in the judge with presenting witnesses and presenting evidence at trial. So that can prove the mistake Which in charge to defendant. First, the panel of judges considered the following matters mitigating and aggravating matters before the trial before convicting the accused guilty or not guilty, which will later will be material for the judge's consideration in imposing a sentence to defendant so that criminal Which dropped to defendant in accordance with sense of justice for defendant And also a sense of justice for people.

Suggestion

1. The hope so that criminal addition Which form revoked right For elected and the right to vote (political rights) is not seen as a fall punishment that is not arbitrary, and can provide a deterrent effect for everyone who commits a crime, especially for them Which sentenced to a criminal sentence punishable by imprisonment of five years or more. So that, important For he did revision to period time revocation of rights and entry into force of revocation of rights can be executed on day decision judge like Which has written on chapter 38 paragraph (2) Criminal Code. Specifically regarding the entry into force of the revocation of rights certain conditions can be carried out on the day of the judge's decision for convicts who sentenced criminal tree.
2. Additional punishment in the form of revocation of political rights succeeded as a breakthrough which is new in efforts to eradicate rasuah in Indonesia carried out by public officials, after its implementation The revision aims to be clearer about the entry into force of the revocation rights can be exercised on the day of the judge's decision as previously stated described in the first point above. Law enforcement tools should have clear and obvious parameters to define additional criminal punishment in the form of revocation of political rights to the accused in the hope of realizing a legal certainty in the midst of middle people.
3. It is necessary to change the location of the Detention Center so that corrupt convicts are moved to Nusakambangan so that there is an element of deterrence.

ADVANCED RESEARCH

Hopefully further research will be better and useful as a reference for dealing with corruption.

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