PalArch's Journal of Archaeology of Egypt / Egyptology

THE IMPOSITION OF ADDITIONAL PENALTIES FOR RIGHTS REVOCATION TO BE ELECTED IN CORRUPTION CASES

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Fikri Adiyasa Rosidin, Iqbal Felisiano. The Imposition Of Additional Penalties For Rights Revocation To Be Elected In Corruption Cases--Palarch's Journal Of Archaeology Of Egypt/Egyptology 17(4), 2311-2319. ISSN 1567-214x

Keywords: Corruption; Public Position; Revocation of Election Rights; Additional Criminal; Criminal act

ABSTRACT

Background: Law enforcement against criminal acts of corruption or white collar crime is conducted through *systemic approach*. One of them, namely the imposition of additional crimes in the form of right revocation of to be elected in a public office as regulated in Article 18 of Law Number 31 Year 1999 concerning Eradication of Corruption Crimes. ***Aim:*** This study examines the additional crimes accommodated by the Supreme Court in the Supreme Court Decision No. 1195 K/Pid.Sus/2014 on behalf of the convicted person, *Lutfi Hasan Ishaaq*. Afterward, it also examines the Supreme Court Decree No. 1261 K/Pid.Sus/2015 on behalf of the convict *Anas Urbaningrum*.

Method(s): This research is conducted using literature study and legal research. Several approaches are implemented in the process: Legislative, Conceptual and Case Approaches. Primary data includes the 1945 Constitution of the Republic of Indonesia, various laws, and court decisions that are relevant to the issue of this study. Meanwhile, secondary legal materials come from literature studies.

Result(s): The study results show that both decisions are based on *preventive* (prevention from committing corruption or becoming a recidivist), *deterrence* (deterrent effect for perpetrators of corruption), and *reformative* (maintaining a consistent attitude not to commit corruption) objectives. Meanwhile, the criteria for the Defendant were based on evidence of corruption and money laundering.

Discussion: The defendant was liable and sentenced to in the imprisonment form to the main crime for a certain period of time. However, judging from the age comparison of the Defendant, the duration of the sentence is possible to still exist for the person concerned to hold a public office in the future.

Conclusion: *Decidendi Ratio* of the court decision in imposing additional crimes is the right revocation to be elected in public office related to the corruption case of *Lutfi Hasan Ishaaq* and *Anas Urbaningrum* as the convicts as they are found guilty of corruption and money laundering.

INTRODUCTION

Corruption is categorized as a white collar crime. Eddy OS Hiariej stated that there are at least four characteristics and characteristics of the criminal act of corruption, namely (Mulyadi, 2013, p.8): organized systematic crime, committed in the modus operandi, closely correlated with power, and is related to the fate of many people. According to the data from *Transparency International*, Corruption Perception Index (GPA) Indonesia is in the 90th rank with a score of 43 in 2017 which has reached the chronic limit and is far below some other Southeast Asian countries (Hariyono, 2013, 351).

Corruption as a *white collar crime* has its own consequences towards law enforcement. Law enforcement against acts of corruption requires extraordinary handling because corruption has become a part of the existing system, so a systemic approach is needed in this context and the judiciary is chosen as the final process of eradicating it (Mulyadi, 2013, p. 8). In addition, corruption, which is difficult to prove, also affects law enforcement. This is because corruption has flourished in line with economic, legal and political power (Adji, 2014, p. 72-73).

Considering this background, the systemic approach must be supported by a criminal law system which includes material criminal law and formal criminal law (Mulyadi, 2013, p.9). Material criminal law is all the provisions existed in the Criminal Code and the Criminal Law outside that concerned Criminal Code. Meanwhile, formal criminal law is a dimension that has aprominent role in upholding and maintaining material criminal law which is sourced from Law Number 8 of 1981 regarding Criminal Procedure Law or the Criminal Procedure Code (CPC) as well as laws outside the CPC (Ali , 2012, 169)**.**

Both material criminal law and corruption have been regulated in Law Number 31 of 1999 regarding Eradication of Corruption as amended by Law Number 20 of 2001 regarding Amendments to Law Number 31 of 1999 regarding Eradication of Corruption Crimes (hereinafter in writing it will be called the Corruption Crime Law). Meanwhile, the formal criminal law provisions for criminal acts of corruption have also been regulated in the CPC, the Corruption Crime Law, and Law Number 46 of 2009 regarding the Corruption Crime Court (hereinafter referred to as the Corruption Criminal Court Law).

The criminal law system in the practice of eradicating corruption can be seen from the punishment or imposition of criminal sanctions against perpetrators of corruption. The criminal sanctions referred to are in line with the provisions of Article 10 of the Criminal Code which consists of the Main Criminal and Additional Criminal. Particularly with regard to additional crimes, the Corruption Crime Law adds several additional forms of crime as regulated in Article 18 Paragraph (1) of the Corruption Crime Law as follows:

1) Apart from additional penalties as referred to in the Criminal Code,

2) The additional penalties are:
a) Confiscation of movable property (be it tangible or intangible) or immovable property that is used for/or obtained from a criminal act of corruption, including the company owned by the convict in which the criminal act of corruption was committed, as well as from the goods that are replaced;
b) Payment of replacement money in an amount equal to the assets obtained from the criminal act of corruption.
c) The 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 removal of all or part of certain benefits that have been or can be given by the Government to the convicted person.

The majority of perpetrators of criminal acts of corruption come from various government powers including the Law Enforcement Corps (Police, Attorney General's Office and Judges), Central and Regional Government Corps (Ministers, Regional Heads, etc.), even to the Legislative Domain. This can be seen through a number of members of the People's Representative Council (DPR) who have been found guilty of committing corruption. Of the several cases, one of them involved several high-ranking political parties, namely the convict Luthfi Hasan Ishaaq as the former chairman of the Partai Keadilan Sejahtera (PKS) and Anas Urbaningrum as Former Chairman of the Democratic Party.

In additional criminal points, the form of revocation of all or part of certain rights has been concretized in the form of punishment in the form of revocation of the right to be elected in public office. This can be seen through the Supreme Court Decision Number 1195 K/Pid.Sus/2014 on behalf of the convicted Luthfi Hasan Ishaaq and the Supreme Court Decision Number 1261 K/Pid.Sus/2015 on behalf of the convict Anas Urbaningrum. Thus, the imposition of a criminal deprivation of the right to be elected in public office requires exposure and a criminal law system from a normative point of view.

MATERIALS AND METHODS

This study belongs to the type of or *legal research* which aims to produce legal arguments, legal theories or new concepts as prescriptions in resolving legal issues that have been formulated (Marzuki, 2005, 50)**.** Then this research also uses several approaches, including Conceptual, Statute, and Case Approaches.

There are two sources of legal material used in this study. Primary legal materials, namely the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 1946 regarding the Criminal Procedure Code, Law Number 8 of 1981 concerning Criminal Procedure Law, Law Number 31 of 1999 Regarding the Eradication of Corruption Crime, as well as various court decisions that are relevant to the issue of this study. Furthermore, secondary legal materials come from literature studies, such as books, journals, and articles both online and offline (print media). These materials are correlated and able to support the issues contained in this study.

Literature studies is applied in various libraries and by *browsing* from websites on the internet. This method begins by selecting laws and regulations relating to

subjects, literature, articles, research, theses and journals. Then, the collected data were analyzed descriptive-qualitatively through inductive thinking, namely by describing theories related to research. Thus, conclusions on the issues of this study can be obtained.

RESULTS

Additional Crimes in the Corruption Act

Additional penalties in the construction of Law Number 31 Year 1999 regarding the Eradication of Corruption Crime or the Corruption Crime Law, cannot be separated from the additional criminal regulations set out in the Criminal Law Act (CLA). Additional penalties referred to is as regulated in Article 10 of the Criminal Code, which is in the form of punishment for someone who has been proven in committing a criminal act. The judge cannot impose additional criminal offense against the defendant before the principal has been imposed. Then, punishment is also facultative in which the sentence can be carried out by the judge at the same time as the basic sentence, but it is not mandatory.

Based on the provisions of Article 10 of the Criminal Code, the additional criminal nature as described above consists of several types of criminal acts including the following:

1. Certain Rights Revocation

Certain rights revocation has the meaning of rights that have been regulated and confirmed by law to be revoked based on a court decision. The scope of the revocation of certain rights can be referred to in the provisions of Article 35 Paragraph (1) of the Criminal Code which reads: The right to enter the armed forces; the right to hold any appointed position or position; the right to be an advisor or administrator on court decisions; the right to vote and be elected in elections held based on general rules; the right to exercise the power of the guardianship, father, or custody of his own child; the right to become a supervisory guardian, guardian, supervisor or supervisor of a person who is not his own child; and the right to exercise certain livelihoods. However, it should be noted that in relation to the implementation of certain rights revocation, it starts not when the sentence is read out, but from the time the judge's decision can be implemented (Soesilo, 1988, 57)**.**

2. Confiscation of Certain Items

Referring to the provisions of Article 39 Paragraph (1) of the Criminal Code, confiscation of property of the defendant, namely a) obtained by crime, for example, falsified goods or bribes or b) used to commit crimes on purpose (Prodjodikoro , 1986, 175). There are two possibilities for the implementation of the punishment of confiscation of goods if the said goods are determined to be confiscated for the state, namely if at the time of the verdict the goods declared confiscated have previously been placed under confiscation *(beslag)*, and the goods that have been declared to be seized has not been confiscated (Soesilo, 1988, 55)**.** In the first provision based on Article 42 of the Criminal Code, the execution of the confiscated goods will be auctioned in public according to the applicable regulations and then the results will belong to the state treasury. Meanwhile, if the second possibility occurs, the execution is based on Article 41

of the Criminal Code, namely the convict may choose whether to keep the confiscated items or money worth the judge's interpretation in the decision.

3. Announcement of Judge Decisions
This last type of criminal action has the meaning of an action to convey to the public regarding the decision of a case that is financed by the convict and has a preventive purpose (Hamzah, 1994, 198). Judges in this context are free to determine how decisions will be implemented, for example, through newspapers; radio streaming; plaque affixed to the wall of the government building, cinemas, etc. (Sianturi, 1996, 340). Therefore, the criminal implementation of the announcement of a judge's decision in the Criminal Code has the characteristic of being a form of extra publication which only applies specifically to crimes that are expressly stated in the Criminal Code or other statutory regulations.

Right Revocation to Be Elected in Public Position as an Additional Criminal Based on the Decision on the Corruption Case of *Lutfi Hasan Ishaaq* and *Anas Urbaningrum*

A corruption case involving *Lutfi Hasan Ishaaq* started when there was a beef import quota policy by the Ministry of Agriculture (Shah 2013). PT. Indoguna and company, as a beef importer, applied for additional beef import quota. However, the plea was not responded by the Ministry of Agriculture. PT. Indoguna then asked *Lutfi Hasan Ishaaq* to aid their petition for the addition of quota. In connection with the request for assistance, *Luthfi Hasan Ishaaq* had given money in the amount of Rp.1.3 billion in order to provide recommendations on the request for an additional quota of beef imports of 8,000 tonnes, which was submitted by PT Indoguna Utama and its subsidiaries to the Ministry of Agriculture.

Referring to the aforementioned brief chronology, the Supreme Court of the Republic of Indonesia judges the case itself by declaring the Defendant *Lutfi Hasan Ishaaq* has been proven legally and convincingly guilty of committing the crime of "Corruption and Money Laundering Conducted Together." Imprisonment for 18 years and a fine of Rp. 1,000,000,000.00 is imposed on the condition that if the fine is not paid, then it is replaced by imprisonment for 6 months and determines to revoke the Defendant's right to be elected to public office. In relation to the cassation decision, one of the things that distinguishes it from the court ruling below is the sentence number 3 in relation to the imposition of additional crimes in the form of revocation of the Defendant's right to be elected to public office. The imposition of additional penalties is a logical consequence of *Lutfi Hasan Ishaaq*'s action who is proven in committing a criminal act. Normatively, the verdict on the imposition of additional crimes against *Lutfi Hasan Ishaaq* in the form of revocation of the right to be elected in public office is to justify an opinion with the Public Prosecutor (Kasasi No. 1195 K/Pid.Sus/2014, p. 127)

Furthermore, for *Anas Urbaningrum*, his involvement in corruption cases started with the construction of the National Sports School (P3SON) project in Hambalang. *Anas Urbaningrum* received money or gratuities related to efforts to win PT Adhi Karya as the tender for P3SON Hambalang. PT Adhi Karya has

spent Rp.14.601 billion. The source, among others, came from PT Wika, which amounted to Rp.6.925 billion. The money then flowed to Anas for Rp. 2,210 billion which would then be used for the nomination of the General Chairperson in the 2010 Democratic Party Congress. In connection with the flow of funds, the Corruption Eradication Commission named Anas as a suspect.

In its verdict, the Supreme Court of the Republic of Indonesia has judged itself by stating that the Defendant *Anas Urbaningrum* has been legally and convincingly proven guilty of committing the crime of "Corruption and Money Laundering." (BBC News Indonesia 2014). Regarding this criminal act, the defendant was sentenced to 14 years in prison; criminal fine of Rp.5,000,000,000.00 provided that if the fine is not paid, then it will be replaced by imprisonment for 1 year and 4 months; pay a replacement money of Rp.57,592,330,580.00 and USD 5,261,070 provided that if the Defendant has not paid the replacement money within 1 month after the verdict, the Court will have permanent legal force and the property is confiscated and auctioned to cover the replacement money. However, if the property is insufficient to pay the replacement money, then he will be punished with imprisonment for 4 years and additional punishment against the Defendant in the form of revocation of his right to be elected to public office;

Decidendi Ratio Decision No. 1195 K / Pid.Sus/2014 on the convict Lutfi Hasan Ishaaq and No. 1261 K/Pid.Sus/2015 on the convict Anas Urbaningrum

After reviewing the annotation of the cassation decision No. 1195 K/Pid.Sus/2014 on the convict *Lutfi Hasan Ishaaq* and No. 1261 K/Pid.Sus/2015 on the Convict *Anas Urbaningrum*, then it is known that the two decision has defined the terms "public official" This means that the purpose of imposing additional penalties is in the form of revocation of the right to be elected to public office cannot be released from the purpose of imposing the main punishment and the purpose of the punishment itself. Van Bemmelen stated that the purpose of the conviction was to prevent vigilante *from happening (vermijding van eigenrichting)* (Nawawi and Nawawi, 1984, 15). Besides that, the existence of criminal law is intended to maintain the order of the society, and have the combined goal of correcting and destroying certain crimes. Thus, the purpose of the criminalization policy, namely to determine a crime so that it is inseparable from the political goals of the criminal that contribute to society protection**.**

Hence, the punishment, especially the imposition of additional penalties in the form of revocation of the right to be elected against the perpetrator of corruption, is part of the objective of the law itself. In detail, the purpose of the punishment in question is *preventive*, *deterrence*, and *reformative* (Nawawi and Nawawi, 1984, 18-19). Based on the description of *decidendi ratio* from the Supreme Court decisions and the purpose of imposing the additional punishment, then it has become obligations for the Panel of Case Examining Judges at any level to impose additional punishment in the form of revocation of the right to be elected against perpetrators of corruption. Nevertheless, The Panel of Judges Examining Corruption Cases must pay attention to the requirements and the procedure for imposing additional penalties in the form of revocation of rights to be elected**.**

DISCUSSION

Additional punishment in the form of revocation of election rights is unsynchronized with various provisions of other statutes. This can be seen in the Constitutional Court Decision Number: 42/PUU-VII/2009 which stipulated that the sentence of revocation of political rights is considered constitutional with the limitation on revocation of rights is only valid for five years after the convict has finished carrying out the sentence. Based on the decision of the Constitutional Court, it is very clear that the additional punishment in the form of revocation of the right to be elected is only valid for five years after the convict has finished serving the punishment. After this period is over, the Defendant can occupy a position elected by the people other than the position won because of appointment.

In addition, there are still differences in the provisions of Article 38 of the Criminal Code which states that "revocation of rights will take effect on the day the court's verdict starts to run." Meanwhile, through the Constitutional Court decision No. 4/PUUVII/2009, it has been determined that the sentence for revoking political rights is considered constitutional with the limitation that revocation is only valid for up to five years after the convict has finished carrying out his sentence. This regulation means that for those who are sentenced to prison, for example, the period of deprivation of political rights will be counted at the start of serving the sentence (imprisonment). Meanwhile, the Constitutional Court Decision has also stipulated its limits, namely since the convicted person has completed his main sentence.

Like the imposition of crimes in general, there are two aspects of the requirements for the imposition of additional penalties in the form of revocation of the right to be elected in public office, namely requirements relating to actions (legality principle) and requirements relating to people (principle of culpability) (Nawawi and Nawawi, 1984, 127)**.** Examining the two cases of corruption, *decidendi ratio* of the Panel of Judges in imposing basic and additional crimes in the form of revocation of the right to be elected to public office due to the Defendants being declared legally and convincingly proven to have committed the criminal acts of corruption and money laundering. Apart from that, the position of the Defendants as an influential person in a political party is considered to have the potential to fill public office in the future and/or at least have great potential to repeat the crime of corruption again *(recidivist)*.

This consideration is very much in line with the objective of establishing a law to eradicate corruption. From this, it is known that the circumstances for the conviction for additional penalties in the form of revocation of rights to be elected are the types of criminal acts proven to have been committed by the Defendant and the conditions concerned are related to the opportunity to occupy public office after completing a criminal offense.

The Supreme Court decision related to this corruption case has new consequences. The consequence is that there are new legal principles related to the imposition of additional crimes against defendants who are found guilty of

committing corruption and money laundering collectively, and disparities in criminal decisions related to the implementation of the corruption trial. The imposition of this additional sentence against the Defendant was in accordance with the purpose of the punishment, namely to provide a deterrent effect, both for the perpetrator and the community.

CONCLUSION

The conclusion of this study, namely *Decidendi Ratio* of the Court decisions in imposing additional crimes in the form of revocation of the right to be elected is related to the Supreme Court Decision in case Number 1195 K/Pid.Sus/2014 on behalf of the convict Luthfi Hasan Ishaaq, and Case Number 1261 K/Pid.Sus/2015 on behalf of the convict Anas Urbaningrum was found guilty. This was because the defendants were proven to have committed crimes of corruption and money laundering. The legal basis for the imposition of additional penalties refers to Article 18 of Law Number 31 of 1999 concerning Eradication of Corruption Crimes, as well as the previous Supreme Court decision, namely the Supreme Court Decision No.537 K/Pid.Sus/2014 dated July 4, 2014, the convict, Inspector General Djoko Susilo. Apart from that, this also aims as a *preventive* (prevention from committing corruption or becoming a recidivist), *deterrence* (deterrent effect for perpetrators of corruption), and *reformative* (maintaining a consistent attitude not to commit corruption) efforts. Meanwhile, the criteria for the Defendant were based on evidence of corruption and money laundering.The defendant was liable and sentenced to the main crime in the form of imprisonment for a certain period of time. However, judging from the age comparison of the Defendant, the duration of the sentence is still possible for the person concerned to hold a public office in the future.

ACKNOWLEDGEMENT

Type the authorities or persons who contribute to funding or assistance in your research if any.

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