

Additional Criminal Implementation in The Form of Revocation of All or Part of Certain Rights Granted by The Government to Those Convicted in Corruption Crimes from a Human Rights Perspective

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Abstract. *It is necessary to revoke certain rights for perpetrators of criminal acts of corruption, because the perpetrators of corruption have made a big mistake by harming the public mandate, and closing the door to committing corruption crimes again through the use of their political rights. The aim of this research is to determine and analyze the urgency of additional punishment in the form of revocation of all or part of certain rights granted by the government to convicts of criminal acts of corruption from a human rights perspective; and to find out and analyze the application of additional punishment in the form of revocation of all or part of certain rights granted by the government to convicts of criminal acts of corruption from a human rights perspective. This research uses a normative juridical approach. The urgency of additional crime in the form of revoking all or part of certain rights granted by the government to those convicted of criminal acts of corruption from a human rights perspective is because corruption is a criminal act that not only harms the state, but also hinders the government's efforts to improve the welfare of its people, and harms the rights of the government. -human rights of the Indonesian people. Revoking certain rights from those convicted of criminal acts of corruption is very important to prevent repeated corrupt practices by public officials or state administrators. Revocation of all or part of certain rights of those convicted of criminal acts of corruption is implemented based on the provisions in the constitution of the 1945 Constitution of the Republic of Indonesia and related statutory regulations, accompanied by requirements and implementation.*

Keywords: *Additional; Corruption; Human; Penalty.*

1. Introduction

The state's position as a victim of corruption crimes is because the object of this crime is state finances and the state economy," so that the formulation of this criminal act of corruption emphasizes whether or not there are losses to state finances. Corruption is understood as an act

of public officials misusing authority for personal, family, crony and group interests which results in state losses.¹

The greater a person's power and authority, the greater the opportunity for corruption. This is as stated by the British historian Lord Acton, that power tends to corrupt, absolute power corrupts absolutely. Power tends to deviate, especially with great power the deviation is guaranteed to be even greater. This corruption is dangerous for the country, so this crime must be eradicated and the law must be enforced. Eradicating criminal acts of corruption is part of criminal law enforcement activities, namely an activity of operationalizing criminal laws and regulations by law enforcement officials.²

Law enforcers in law enforcement efforts are required to carry out their duties in accordance with the mandate of statutory regulations, which leads to decisions with substance in the form of justice for the parties.³ The community hopes for benefits in implementing or enforcing the law. The law is for humans, so the implementation of the law or law enforcement must provide benefits or usefulness for the community, in this case what must be paid attention to is not to let the law be implemented or enforced, instead unrest will arise in society.⁴

Against perpetrators of corruption, the criminal sanctions that can be imposed or applied are regulated in Article 10 of the Criminal Code (KUHP), in the form of basic penalties or additional penalties. Provisions of Article 18 paragraph (1) of Law Number 31 of 1999 concerning Eradication of Corruption Crimes jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, also states that in addition to the main crimes as intended in the Criminal Code, perpetrators of criminal acts of corruption can be subject to additional criminal sanctions. Additional penalties cannot be imposed independently without the main penalty,⁵ Because additional punishment is additional to something basic, the additional punishment is used to add to the main punishment, so it cannot be imposed alone. One form of additional punishment is the revocation of certain rights.

Revocation of certain rights in one part of the criminal law regulated in the Criminal Code, including revocation of life rights as well as civil rights and constitutional rights.⁶ The criminal

¹ Gomgom T.P Siregar dan Rudolf Silaban, *Hak-hak Korban Dalam Penegakan Hukum Pidana*, Cetakan Pertama, Manhaji Medan, Medan, 2020, p. 86.

² Alvi Syahri, Law Enforcement Against Policies Who Breached the Code of Conduct, *Jurnal Daulat Hukum*, Vol. 3 No. 3, 2020, p. 313-320

³ Iwan Setiadi dan Sri Kusriyah, Law Enforcement Process Analysis By Agencies Of Provos Indonesian National Police On Discipline Violation In The Form Of Crime By Police Members (Case Study In National Police Headquarter), *Jurnal Daulat Hukum*, Vol. 2 No. 2, Juni 2019, p. 203-207

⁴ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, Liberty, Yogyakarta, 1993, p. 2.

⁵ Syaiful Bakhri, *Perkembangan Stelsel Pidana Di Indonesia*, Total Media, Yogyakarta, 2009, p. 216.

⁶ Andi Hamzah, *Asas-asas Hukum Pidana*, Jakarta, Rineka Cipta, 2010, p. 211.

rights that can be revoked by a judge's decision are as stipulated in Article 35 of the Criminal Code (WvS), namely the right to hold all positions in general or certain positions, the right to serve in the armed forces, the right to vote and be elected in an election conducted according to regulations. - the law, the right to be a guardian, custodian or supervisor over someone who is not his own child, the right to exercise the authority of a father, the power of guardian and guardian over one's own child, and the right to carry out certain work based on statutory powers, whereas in the Law -Law Number 1 of 2023 concerning the Criminal Code (hereinafter referred to as the Criminal Code) is regulated in Article 66 paragraph (1) letter a of the Criminal Code.

On the other hand, it is very necessary to revoke certain rights for perpetrators of criminal acts of corruption, because the perpetrators of corruption have made a big mistake by injuring the public mandate, and closing the door to committing corruption crimes again through the use of their political rights. Revocation of certain rights granted by the government to corruption convicts is a progressive step taken by judges, because this step will greatly support efforts to prevent and eradicate criminal acts of corruption.⁷ Restrictions on human rights through criminal revocation of certain rights, can only be carried out on the basis of provisions that have been regulated in law, and have the aim of respecting the good name of other people, protecting national security or public order, the benefit of society or general morals.⁸

Previous research from Chintya Devi in a journal entitled "Legal Study of Revocation of Political Rights for Perpetrators of the Crime of Bribery Corruption Based on the Theory of Legal Certainty," stated that additional criminal sanctions in this case cannot stand alone but there must be basic criminal sanctions first in accordance with statutory regulations. -invitation, only certain basic criminal sanctions, one of which is the crime of corruption, bribery. Imposition of additional criminal sanctions.⁹

Other previous research from Juliani Grace Rori in a journal entitled "Imposing Additional Criminal Sentences, Revocation of Certain Rights by Judges in Corruption Cases," found that the legal basis for imposing additional criminal penalties is in the form of revocation of political rights and revocation of the right to hold public office for criminals. Corruption in Indonesia is due to the revocation of certain rights only for criminal acts which are strictly determined by law that these criminal acts are threatened with additional penalties. The Criminal Code clearly regulates additional penalties in the form of revocation of certain rights. Among them are often used by judges in imposing additional crimes in the form of revocation of political rights and revocation

⁷ Dina Fajar Indah (et. al), Pencabutan Hak Politik Pelaku Tindak Pidana Korupsi dalam Perspektif Hak Asasi Manusia. *Risalah Hukum*, Vol. 16, No. 2, 2020, p. 68-82.

⁸ Ramadani dan Mamonto. Legalitas Sanksi Pidana Pencabutan Hak Politik Bagi Terpidana Korupsi: Perspektif Hak Asasi Manusia. *Petitum*, Vol. 7, No. 2, 2019, p. 63-71.

⁹ Chintya Devi, Kajian Hukum Pencabutan Hak Politik Pada Pelaku Tindak Pidana Korupsi Suap Berdasarkan Teori Kepastian Hukum, *Yustisia Tirtayasa: Jurnal Tugas Akhir*, Vol. 1 No. 1 Agustus 2021, p. 13-21

of the right to hold office. Apart from that, there are also other additional penalties such as paying replacement money and others as regulated in Article 18 paragraph (1) of the Corruption Law, Article 35 of the Criminal Code, Articles 413-436 of the Criminal Code, the ASN Law and PP No. 32 of 1979 concerning Dismissal of Civil Servants.¹⁰

Based on the above background, the aim of this research is to find out and analyze the urgency of additional punishment in the form of revoking all or part of certain rights granted by the government to convicts of criminal acts of corruption from a human rights perspective; and to find out and analyze the application of additional punishment in the form of revocation of all or part of certain rights granted by the government to convicts of criminal acts of corruption from a human rights perspective.

2. Research Methods

The approach method used in this legal research is normative juridical. Normative research method, namely by conducting a literature study of primary legal materials in the form of; statutory regulations related to the issues to be discussed, and secondary legal materials in the form of; literature, books written by experts, journals, other scientific works as well as tertiary legal materials in the form of; dictionaries and encyclopedias.¹¹

3. Results and Discussion

3.1. Additional Criminal Urgency in the Form of Revocation of All or Part of Certain Rights Granted by the Government to Those Convicted of Corruption Crimes from a Human Rights Perspective

Violations and crimes/criminal acts will exist and will occur throughout human life for generations. The development of human life will give birth to a human civilization which from time to time, era to era, will develop towards modernity of life. The dynamics of the development of human civilization will have logical consequences for the development of crimes that occur in society, because basically crime itself is a form of human behavior and is one of human traits, namely the nature of aluamah (human nature or desires that always want and invites courage, evil and cruelty, such as: killing, rebelling, etc.). It can even be said to be part of human product itself.¹²

Corruption has now become a social disease that is dangerous for human life. According to Transparency International, corruption has a negative impact on people's lives in various ways,

¹⁰ Juliani Grace Rori, Penjatuhan Hukuman Pidana Tambahanpencabutan Hak-Hak Tertentu Oleh Hakim Dalam Kasus Korupsi, *Lex Crimen*, Vol. 7, No. 9, 2018, p. 62-69

¹¹ Jhonny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia, Malang, 2011, p. 295.

¹² Sadjijono, *Hukum Pidana Dalam Jabatan; Perspektif Terbentuknya Delik*, Laksbang Justitia, Yogyakarta, 2021, p. 2.

such as political, economic, social and environmental. From a political perspective, corruption is a major obstacle to democracy and law enforcement. The principle of the people, by the people, and for the people, will not happen because power and the results of development are mostly enjoyed by the corrupt.¹³

The effect of criminal acts of corruption which even further fuels and justifies this action can be seen that almost all matters rely on the influence of money to solve a problem, and even rely on "insiders" to get a job or promotion without looking at a person's quality or ability. Everything is always measured by money and having connections with "insiders". This is already a reality in Indonesia. Money and connections are considered the most powerful, without money civil servants are not willing to serve sincerely, without money private business permits are not issued. It would be even worse if the influence of money shaped the mindset and poisoned the minds of many executive officials, legislative and judicial officials so that they allowed inflated government budgets, bribery, kickbacks and giving tribute, all of which are forms of corruption, then this would be very detrimental to the state.

In addition, the sentencing of perpetrators of criminal acts of corruption also does not show enough efforts to eradicate criminal acts of corruption. On average, the verdicts and sentences handed down to perpetrators of criminal acts of corruption are very light and will have an impact on ineffectiveness in the process of eradicating criminal acts of corruption. This is because giving a very light sentence, instead of providing awareness and action efforts, will actually give rise to many perpetrators committing criminal acts of corruption, especially since the amount of corruption committed is not commensurate with the sentence imposed, so that breakthroughs are really needed in deciding what to do. sanctions against perpetrators of criminal acts of corruption so that the hope of deterring these perpetrators can be carried out properly,¹⁴ one of which is by imposing additional penalties in the form of revoking certain rights for those convicted of corruption cases.

Additional criminal sanctions that can be imposed or applied to perpetrators of corruption are regulated in Article 86 of Law Number 1 of 2023 concerning the Criminal Code (hereinafter referred to as the Criminal Code) and Article 18 paragraph (1) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, which states that in addition to the main punishment, perpetrators of criminal acts of corruption may be subject to additional criminal sanctions, one of the additional crimes being the revocation of their rights. certain. Regarding the revocation of certain rights in one part of the criminal law

¹³ Eka Adhi Wibowo dan Heru Kristanto, Korupsi dalam Pelayanan Gereja: Analisis Potensi Penyimpangan dan Pengendalian Internal, dalam *Jurnal Integritas*, Vol. 3 No. 2, Desember 2017, p. 106-107.

¹⁴ Hamidah Abdurrachman (et. al), *Palu Hakim Versus Rasa Keadilan Sebuah Pengantar Disparitas Putusan Hakim Dalam Tindak Pidana Ringan*, Deepublish, Yogyakarta, 2020, p. 61.

regulated in Article 66 paragraph (1) letter a of the Criminal Code, which includes the revocation of life rights as well as civil rights and constitutional rights.

Criminal imposition in the general concept of punishment has the aim of achieving justice, benefit and certainty, both for the perpetrator, the victim and the community. The aim of modern punishment is to use an integrative model of criminal prosecution. According to Muladi, the reason for implementing the integrative model is because of the complexity of the problem of punishment as a result of efforts to pay more attention to factors relating to human rights and to make crime operational and functional, therefore the approach taken is a multidimensional approach. This approach emphasizes the effects of punishment, both on the perpetrator, victim and society. The impact of criminal acts can be individual or social. This approach is in accordance with the modern nuances of social defense punishment, which does not emphasize punishment, but seeks to create conditions of balanced justice for perpetrators of criminal acts and victims, which will also influence the condition of society. The interests of the victim or society are a concern.¹⁵

Additional criminal impositions in the form of revocation of certain rights are carried out based on several reasons or considerations. The juridical basis is clear, namely regulated in Article 18 letter d of Law Number 31 of 1999 jo. Law Number 20 of 2001 and Article 66 of the Criminal Code, apart from that, also because of the relationship between public office and political power, because political power is used as a vehicle to gain power, for example running for regional head, or running for membership. People's Representative Council, Regional People's Representative Council and Regional Representative Council. This is done in order to prevent perpetrators of criminal acts of corruption from sitting in government, namely as public officials, even though the perpetrators of criminal acts of corruption have made very big and fatal mistakes, the perpetrators of criminal acts of corruption still have the right to justice. Don't let demands for punishment or conviction be based solely on feelings of hatred and ignoring justice.¹⁶

Revocation of certain rights granted by the government to corruption convicts is a progressive step taken by judges, because this step will greatly support efforts to prevent and eradicate criminal acts of corruption, and can realize the intended legal objectives, despite efforts to eradicate Corruption is not just a legal problem, but also a government problem because many sources of corruption come from government problems. Without commitment and high morality from government officials, it is impossible for corruption to be resolved. The

¹⁵ Mohd. Yusuf (et. al), Pemberian Pidana Tambahan Terhadap Pencabutan Hak-Hak Politik Terpidana Kasus Korupsi Berdasarkan Per-aturan Perundang-Undangan, dalam *Jurnal Ilmu Hukum The Juris*, Vol. VI No. 2, Desember 2022, p. 154-165

¹⁶ Rustini dan Iza Rumesten, Penerapan Penjatuhan Sanksi Pidana Tambahan Pen-cabutan Hak Politik Terhadap Pelaku Tindak Pidana Korupsi Dalam Perspektif Hak Asasi Manusia, *Lex Lata, Jurnal Ilmiah Ilmu Hukum*, Vol. 2, No. 3, 2022, p. 623-641,

government must start implementing the principle of transparency and open public transparency and abandon the procedural vertical accountability system which contains many diversions of public funds. Likewise, the system of primordialism and collusion needs to be immediately removed so that it does not become an obstacle in enforcing the law within the government. In addition, law enforcers must be role models for all parties in eradicating corruption, must be in a neutral position and uphold morality, be honest, and respond to the needs of the community so that they are not trapped in the cycle of corruption.¹⁷

The additional criminal urgency in the form of revoking all or part of certain rights granted by the government to convicts of criminal acts of corruption from a human rights perspective, is basically to provide and protect the rights of society and the state as victims of criminal acts committed by convicts, considering the The crime of corruption is very detrimental to the state and detrimental to the rights of the Indonesian people to obtain prosperity because money that should be enjoyed by the people is stolen and used by a few people for the benefit of themselves, their families and their cronies, thus revoking their rights. Certain rights for those convicted of criminal acts of corruption are very appropriate to break the series of criminal acts of corruption in the bureaucracy and administration of government in Indonesia, so that there are no repeated corrupt practices by public officials or state administrators who abuse the power or authority they have. Additional punishment in the form of revocation of all or part of certain rights is imposed within certain limits while still applying human rights, so that its application does not exceed the limits and violate the rights of the convict.

3.2. Application of Additional Crimes in the Form of Revocation of All or Part of Certain Rights Granted by the Government to Those Convicted of Corruption Crimes from a Human Rights Perspective

Application of Additional Crimes in the Form of Revocation of All or Part of Certain Rights Granted by the Government to Those Convicted of Corruption Crimes from a Human Rights Perspective.¹⁸

As a country of law, Indonesia always upholds human rights, which always guarantees all citizens' rights along with their position in law and government with no exceptions.¹⁹ Revocation of rights reminds us of the existence of punishments that degrade human dignity (onterende straffen). International agreements have confirmed the elimination of punishments that degrade human

¹⁷ Romli Atmasasmita, *Sekitar Masalah Korupsi, Aspek Nasional dan Internasional*, Mandar Maju, Bandung, 2004, p. 1.

¹⁸ Ivon Rista Veranda, *Urgensi Pencabutan Hak Menduduki Jabatan Publik Bagi Pelaku Tindak Pidana Korupsi*, Artikel Ilmiah, Kementerian Riset Teknologi dan Pendidikan Tinggi, Universitas Brawijaya Fakultas Hukum, Malang, 2015, p. -5.

¹⁹ Bambang Waluyo, *Pidana dan Pemidanaan*, Cetakan Kedua, Sinar Grafika, Jakarta, 2004, p. 33

dignity. Nullifying or reducing the human rights of those convicted of corruption cases is an arbitrary act of discrimination and is contrary to the principles of human justice.²⁰

The rights that can be revoked are only rights in certain fields, so their application is also limited, including the revocation of the right to vote and be elected to public office as in the case of criminal corruption with convicted Inspector General of Police Drs. DS, S.H., M.Si. and LHI. Revocation of the right to vote and be elected to public office for life is contrary to the constitution, especially human rights contained in the constitution and as regulated in statutory provisions. Revocation of the right to vote or be elected cannot be taken away forever or for life, can only be limited to a maximum period of 5 (five) years.

The imposition of additional criminal penalties through the revocation of certain rights, is basically a form of restriction on human rights, which can only be carried out on the basis of provisions that have been regulated in law, and has the aim of respecting the good name of other people, protect national security or public order, public benefit or general morals. Human rights according to Leah Levin are: "Human rights meaning moral claims which are indispensable and inherent in all human individuals by virtue of their humanity alone".²¹

The application of additional punishment in the form of revocation of all or part of certain rights granted by the government to convicts of criminal acts of corruption from a human rights perspective, is carried out with certain restrictions and requirements as regulated in statutory regulations. Revocation of certain rights is an appropriate crime, but not all rights can be revoked, but only certain rights which are limitedly stated in the law, as is the case in criminal acts of corruption which are very dangerous and can threaten the life of the nation. and country.

Eliminating or reducing the human rights of those convicted of corruption cases is basically an arbitrary act of discrimination and is contrary to the principles of human justice, however considering the negative impact of corruption, and the perpetrators who should hold the people's trust, but take advantage of their position or power to obtain profit, then the imposition of additional punishment in the form of revocation of all or part of certain rights does not conflict with human rights, and the crime is carried out on the basis of provisions that have been regulated in law, and has the aim of respecting the good name of other people, protect national security or public order, public benefit or general morals.

Restrictions and reductions in human rights, as well as additional penalties in the form of revocation of all or part of certain rights, must be carried out with certain conditions and must not endanger the meaning of human rights themselves. This is as stated in the Siracusa Principles

²⁰ Bagir Manan, *Perkembangan Pemikiran dan Pengaturan Hak Asasi Manusia di Indonesia*, Alumni, Bandung, 2001, p. 5.

²¹ Firdaus Arifin, *Hak Asasi Manusia; Teori, Perkembangan dan Pengaturan*, Cetakan Kesatu, Thafa Media, Yogyakarta, 2019, p. 1-2.

where restrictions on rights must not be imposed arbitrarily and if they meet the conditions that have been determined.

4. Conclusion

The urgency of additional crime in the form of revoking all or part of certain rights granted by the government to convicts of criminal acts of corruption from a human rights perspective is because corruption is a criminal act that not only harms the state, but also hinders the government's efforts to improve the welfare of its people, and harms the rights of the government. - the human rights of the Indonesian people (the right to prosperity), so the revocation of certain rights for those convicted of criminal acts of corruption is very important so that there are no repeated corrupt practices by public officials or state administrators; The application of additional punishment in the form of revocation of all or part of certain rights granted by the government to convicts of criminal acts of corruption from a human rights perspective must be carried out with certain requirements and must not jeopardize the essence of rights as stated in the Siracusa Principles. Revocation of all or part of certain rights of those convicted of criminal acts of corruption is implemented based on the provisions in the constitution of the 1945 Constitution of the Republic of Indonesia and related statutory regulations, accompanied by requirements and implementation.

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