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Additional Punishment for Revocation of Political Rights to Corruption Prisoners in The Purpose of Punishment In Indonesia

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Abstract

The application of additional punishment of the revocation of political rights in the form of voting and/or voting rights elected in the elections to the corruption convicts was as an attempt to eradicate the extraordinary Corruption of crime and part of severe punishment and a charge of corruption convicts. The purpose of this research, namely: first, to know and analyze the implementation requirements of additional punishment of revocation of political rights to corruption prisoners in the perspective of human rights; Second, to know and analyze the position of additional penalty for the revocation of political rights in the purpose of punishment in Indonesia. The type of research used is normative juridical research with a legal approach, conceptual approach, a case approach approach, and a comparative approach. The results of the study proved that: first, political rights can be classified in the right to freedom of thought and a conscience that is unable to be reduced under any circumstance and attached to the status of citizens. The application of the additional penalty was the act of degrading and dignity of corruption prisoners as citizens because of the impact on the elimination of Rights and the disclosure of political rights of corruption prisoners until its application does not meet the requirements of the restriction on human rights in the perspective of the relative-particulate matter; Secondly, the theory of the goal of punishment in accordance with Indonesian philosophy is correctional which is also a rationality of the implementation of prison sentence as does Law No. 12 of 1995 about Correctional. The position of additional penalty for revocation of political rights is as an instrument of conforming or contrary to the purpose of punishment in Indonesia, namely correctional throughout its application to open an opportunity for the elimination of rights and not accompanied by an attempt to recover the rights that have been revoked.

Keyword: Revocation; Political Rights; Prisoners; Purpose of Punishment

INTRODUCTION

The issue of political corruption eradication has always been the central theme of law enforcement in Indonesia. This phenomenon is understandably given that political corruption has a broader impact than the corruption of people who do not have a political position (Alkostar, 2008). In the criminal justice system, the judge in dealing with corruption, examining, prosecuted and severing a case involving public officials or

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political figures is given the authority to drop one of its penalties, which is an additional criminal revocation of political rights in the form of voting and voting rights.

The basis of the revocation of political rights dropped by the Tribunal is governed in Article 10 the Penal Code of Indonesia which mentions that the basic punishments consists of capital punishment, capital punishment, light imprisonment, fine, tutupan and for the additional punishments i.e One of the revocation of certain rights is in Article 35 of the Penal Code of Indonesia (1) Number (3) i.e. voting and elected right in elections held under the general rules. Law No. 20 Year 2001 concerning amendment to Law Number 31 Year 1999 about the Eradication of Corruption Crimes (hereinafter referred to as Corruption Eradication Act) also confirms in article 18 clause (1) Letter (d), revocation of all or part of certain rights or deletions of all or part of a certain profit, which has or may be granted by the government to the convicted criminal.

The application of additional penalties in the form of revocation of political rights will be criminogen when there are inconsistent practices in the criminal justice system. Criminal justice system problems that are Criminogen one of which is the purpose of the punishment is unclear (Muhammad, 2011). The goal of punishment is not a problem that is not important in the application of a sentence considering the impact of the punishment concerning the sustainability of human rights of convicts. The Penal Code as a material criminal law does not include the definitive purpose of the application of a penalty. Shifting theories of purpose of punishment has always evolved with the development of mankind. Starting from the meaning of punishment means retributive to mean prevention and social defence and repair individual and social damages.

In general, the application of a criminal has a purpose to achieve justice, benefit, and legal certainty for both the perpetrator and the victim and the community. The purpose of modern pipetting using integrative model of criminal prosecution (Kristiarso, 2018). According to Muladi (Muladi, 2004) the reason for the integrative model for the complex is the problem of punishment as a result of efforts to pay more attention to factors involving human rights and to make the criminal is operational and functional. A set of goals of punishment is intended for prevention (general and special), community protection, have Community solidarity and remuneration or counterbalancing (Muladi, 2004).

From the explanation above, when the integrative model of the purpose of the sentence was correlated with Law No. 12 of 1995 on Correctional (hereinafter referred to as the Law on Correctional), this gives the point that the goal of Indonesian punishment is no longer the goal-oriented retributive but is oriented towards prevention, rehabilitation (repair, recovery, healing) and social reintegration that is framed in the correctional system. In Article 2 of the Correctional Law, the purpose of the correctional system is to form a correctional community to become a whole person, aware of mistakes, self-repair, and not repeat a criminal offense so that it can be reaccepted by the community, can actively play a role in development and can live reasonably as a good and responsible citizen.

In principle the goal of Indonesia's punishment is to prevent the occurrence of criminal acts and also to nurture the perpetrators so that they can be accepted again into the whole social order of society. In that context, if the convicts have been subjected to penalties given, then prisoners are again the ordinary/legal subject which must be returned all rights and obligations to be able to play an active role in development and live reasonably as a good and responsible citizen. This is, of course, without exception to the corruption convicts, even if corruption has been categorized into extraordinary crimes so that it must be faced with extraordinary means (Alkostar, 2008). The

application of additional penalties against corruption convicts that have political positions or occupy public office, tends to be oriented towards retaliation. According to Karl O. Christiansen The purpose of the sentence is not to repair, educate or socialize the transgressor (Muladi dan Nawawi Arief, 2005).

During the years 2013 to 2018, the corruption criminal Court had revoked the political rights of 35 of the corrector which proved to be involved in corruption cases (Heri CS, 2018). Of the 35 people who served as a member of the House of Representatives, the House of Regional Representatives, and the Regional House of Representatives, head of the district, and other public offices and also have been sentenced to the limit and no time limit of revocation. The application of political rights revocation for the first time applied to former head of traffic Corps Djoko Susilo involved corruption cases in the driver's driving licence project. Djoko Susilo was dropped by the revocation of his vote and chosen without the revocation period based on the decision of the Supreme Court Decree No. 573K/Pid. Sus./2014. In 2019 the revocation of political rights was still applied, one of them in the case of corruption Taufik Kurniawan deputy chairman of the House of Representatives of Republic of Indonesia period 2014-2019 that revoked the rights for 3 years (Galih, 2019).

In Article 1 figure (7) Correctional Law, convicts are convicted who undergo a loss of independence in correctional institutions. Moving on from that, even though the constitutional rights of convicts remain to be protected primarily relating to the continuity of rights that could not be reduced under any circumstances (non derogable rights). One part of the rights in Article 28I clause (1) of the Constitution of the Republic of Indonesia Year 1945 is the right to freedom of mind and conscience. These rights can be interpreted that everyone is entitled to personal freedom to think according to conscience in determining an option according to his or her political beliefs and to nominate himself as a public official to occupy a political position. The problem that will be discussed and examined in this study is how the application of the additional penalty for the revocation of political rights in the perspective of human rights and the position of punishment in the purpose of punishment in Indonesia

RESEARCH METHOD

The type of research used is a type of normative juridical study. Normative juridical research is one type of legal research that examines the implementation or implementation of the law in reality in the social life of the community. Normative juridical research discusses doctrines or principles in legal sciences (Ali, 2010). The nature of the research used in this study is a prescriptive trait. As a prescriptive science, law studies study the purpose of law, the values of justice, vasilidity, rules of law, concepts of law and legal norms (P. M. Marzuki, 2011).

This research uses a method of statutory approaches and methods of conceptual approach as well as case approach. Data collection techniques, using library research methods or library studies, are data collection techniques that use legal materials such as books, journals, and other literature related to this research. Data analysis is done with a descriptive analytical, analytical data used is a qualitative approach to primary data and secondary data. The descriptive, including the content and the structure of positive law, that is an activity conducted by the author to determine the content or meaning of the rule of law that is used as a reference in resolving legal issues that become the object of study (Ali, 2010)

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FINDING AND DISCUSSION

Terms of Application for Additional Punishment for Revocation of Political Rights Against Corruption Convicts In Human Rights Perspectives

Political corruption began to be publicly known through several corruption criminal proceedings, one of which was in the Supreme Court ruling No. 1261K/Pid. Sus/2015 on behalf of the defendant Anas Urbaningrum, the judge mentions that the defendant's deed was political corruption. PL Liu in his book The Politics of Corruption in The People's Republic of China, stating political corruption is a corruption that is committed and concerns the subject of the position or status of political power (Alkostar, 2008). Artidjo Alkostar, explained that political corruption paid attention to the unauthorized livelihood or abuse of government departments with the intent to benefit oneself, others, or legal entities by abusing the authority, opportunity, and means that existed for political office or position (Alkostar, 2008).

Political corruption is a morally and legally unlawful act of public officials and affects the integrity of the public officials in question. Public officials in question include officials who hold power through the electoral process (elections), the power gained through the election process is political power. The position held by the person who assumed political power was the political office (Alkostar, 2008).

In the Bahasa Indonesia dictionary, public office is a person appointed and given the task to occupy a specific position or title on the public agency, then the public agency is the executive, legislative, judicial, and other agencies whose functions and duties are related to the implementation of the State (Kementerian Pendidikan dan Kebudayaan Republik Indonesia, 2016).

Referring to the consideration of the letter (a) The law on the Eradication of corruption crimes, corruption crimes that have been widespread, not only detrimental to the state's finances, but also a form of violations of the social and economic rights of the Community broadly, so that criminal acts of corruption are classified as Pemberantasannya crimes must be done amazingly. The adoption of additional criminal sanctions on the revocation of political rights (voting and elected rights) against prisoners of corruption was a new breakthrough that was deemed able to prevent corruption crimes. The implementation is intended to prevent people from corrupt public officials in the future, to provide a deterrent effect on the corruptors, and to give fear to the public or public officials who have the opportunity to conduct corruption

Febri Diansyah as spokesman for the Corruption Eradication Commission explained the revocation of political rights for all important political actors conducted for having betrayed the people's beliefs and aimed to suppress the potential for future corruption practices, as well as to provide a deterrent effect to politicians who were corrupt (Makki, 2018). The above is similar to the purpose of the assembly of judges in punitive against corruption convicts, so that the judicial process is able to provide a dissenting effect by punitive a severe punishment against corruption inmates as stated in the Supreme Court Circular Letter No. 12 of 2010 about the Rationing of Severe Penalties and Equal in Corruption Acts.

Throughout the year 2013-2018, the corruption criminal Court had revoked 35 the political rights of corruption convicts which 34 were applied to convicts who held

political offices. The rationing of additional penalties for revocation of voting and/or the right to be elected against inmate-oriented corruption convicts who have held political offices or active in political activities. The allotment of these additional punishment as a step in the effort to eradicate the extraordinary Corruption of crime and is part of a severe and responsible punishment to be dropped against the corruption convicts so that the criminal justice process can be a remedy capable of incurring effect for the perpetrator.

The application of additional penalties for revocation of voting and voting for corruption inmates, may be categorized as a restriction of human rights granted by State/Government (law enforcement officials) to corruption convicts. Restriction is a lubricant for the human rights system that allows the country to flexibly regulate the kinds of conflicts of interest occurring within a democratic country, which can be applied for a long period of time (temporary), even permanent (Sefriani, 2012). The deadline for revocation, has been stipulated in Article 38 Paragraph (1) of the Penal Code of Indonesia stating that:

1. In the case of death punishment or life imprisonment, the duration of a lifetime revocation;
2. In the case of imprisonment within a certain time or sentence of confinement, the duration of the withdrawal is at least two years and at most five years longer than the term punishment;
3. In the case of fine punishment, the length of the withdrawal is at least two years and at most five years.

In its implementation refer to the Supreme Court ruling No. 573K/Pid. Sus./2014, stated that the defendant corruption criminal in the name of Djoko Susilo was dropped the revocation of voting and elected right without the deadline for revocation. Based on the verdict of the Constitutional Court No. 4/PUU-VI/2009 on the Examination of Law No. 10 of 2008 on the Elections of Members of the House of Representatives, the House of Regional Representatives, and the Regional House of Representatives and the Law Number 12 Year 2008 on the Second Amendment of the Law 32 Year 2004 on Local Government, which was subsequently reaffirmated at the verdict of the Constitutional Court No. 42/PUU-XIII/2015 on the Examination of Law No. 8 of 2015 concerning the Amendment of Government Regulations in lieu of Law No. 1 of 2014 on the Election of Governors, Regents and Mayors Into Law. The court argued that the norm was never sentenced to imprisonment based on a court ruling that had a fixed legal force for committing a criminal offence that was threatened by a prison of 5 (five) years or more as a conditional unconstitutional legal norm. The legal norm is unconstitutional if it is not fulfilled the following conditions:

1. Not applicable to the selected public office (elected officials) as long as no additional punishment for revocation is chosen by a court ruling that has had a fixed legal force;
2. Limited to the duration of the term only for 5 (five) years since the convicted completion of the penalty;
3. Excluded for the former convicted who openly and honestly expressed to the public that the concerned ex-convicts;
4. Not as repeated perpetrators of criminals.

Departing from that, it can be stated that the characteristic of the revocation of voting and selected against prisoners of corruption is either dropped along with prison sentence, confinement and fines are as follows:

1. is temporary, i.e. at least 2 years and at least 5 years, as well as provisions of the revocation period of selected rights can be excluded for ex-convicts who openly and honestly convey to the public that concerned are ex-convicts, but not repeated

perpetrators of criminals;
2. It is permanent, which is valid for ever since the convicts have spent the penalty period or until completion of the sentence period, so that the application is the same as the corruption convicts sentenced to death or imprisonment for life.

Discussing the impact of the application of a penalty, of course, is closely related to the constitutional protection arrangement of citizens in a country. Protection of the political rights of the corruption prisoners in the elections, has a close relationship with the democracy and the state of law. The implementation of elections in a democratic country must be guaranteed to protect the participatory values and political sovereignty of the citizens so that their position within the law and the Government remains the equivalent of other citizens and not discriminatory.

The relationship between citizens and countries can be facilitated by the freedom of all parties to engage in the implementation of the elections, so that citizens are given the space to advance themselves in defending their rights collectively in building communities, nations, and their countries through the elections, although substantially his sincerity is still likely to be procedural and momentum. Sri Hastuti Puspitasari explained that the sovereignty of the people materialized through the elections because the people's election implemented political sovereignty so that the realization of the principle of people's sovereignty through elections is the reality of implementing the political (Huda, 2015). A. Appadorai stated also that the people's main means of running its sovereignty is through voice and election (Gaffar, 2013).

Associating elections with a democratic country and a legal state can be seen from the opinions of Moh. Mahfud MD on the close relationship of elections with democratic principles and state of law. The elections are closely related to democracy as elections are one of the ways of implementing democracy while in terms of the law, elections is a representation of the implementation of other legal States, namely the implementation of human rights protection, especially the right to choose and selected, and the manifestation of the equation before the law and government (Gaffar, 2013).

Departing from that, then in the implementation of the democratic elections there must be protection of voting rights and elected to the citizens. The protection of elected and elected rights to the citizens is also affirmed in the Universal Declaration on Democracy document. In Part Two Numbers (12) The Universal Declaration on Democracy, stating that the elections organized to run democracy must fulfill some principles, i.e. free, fair, periodic, general, equality, and confidential as well as there should be respect for voting and voting rights, freedom of expression and assembly, access to information, and freedom of organization.

Respect for voting and elected rights to former corruption prisoners as citizens can only be realised, if the elections conducted have fulfilled the principles of free, fair, general, and equality. The state affirmation in respect of the voting and selected rights can be seen from Article 1 Number (1) Law on Elections, stating that elections are a means of sovereignty of the people. It is a conditio sine quanon for a state of law and democracy, which means that the participation of citizens in the state's organization is to have the freedom to determine a choice according to political beliefs to choose and run for elected as public officials through elections. The involvement of former corruption convicts in the elections is an expression of the effort to enforce its political sovereignty, considering the elections as a process of submission while the political rights of the State are procedural and momentum.

The exercise of such rights is based on Article 1 Paragraph (2) of the Indonesian Constitution of 1945, that sovereignty is in the people's custody and implemented under the Constitution. The principle of sovereignty of the people is a very basic principle and

is seen as the morality of the Constitution that gives color and nature to the overall laws in the field of politics (Gaffar, 2012). Under Indonesian Constitution 1945, the political sovereignty of the citizens in the elections has got a guarantee in Article 2 Paragraph (1) about the members of the People's Consultative Assembly consisting of a member of the House of Representatives and the Regional Representative Council elected through the elections, Article 6A Paragraph (1) on the presidential election, Article 18 Paragraph (3) on the Regional Representative council elections, Article 18 Paragraph (4) , Regent and mayor, article 19 sentence (1) on the elections of the House of Representatives, and Article 22C Paragraph (1) on the elections of the Council of regional representatives and Article 22E Paragraph (1) which contains the provisions that the elections shall be held directly, public, free, confidential, honest and fair.

The protection, advancement, enforcement, and fulfillment of human rights against citizens is the responsibility of the country, especially the government. The right to elect and elected citizens in the elections are secured in the Indonesian Constitution 1945, namely:

1. Article 27 Paragraph (1), all citizens concomitantly within the law and government and obliged to uphold the law and the Government with no exceptions;
2. Article 28C Paragraph (2), each person has the right to advance himself in defending his rights collectively to build his society, nation, and country;
3. Article 28D Paragraph (1), every person is entitled to a fair confession, assurance, protection, and certainty of the law and the same treatment before the law;
4. Article 28D Paragraph (3), every citizen has the right to obtain equal opportunity in government;
5. Article 28I Paragraph (1), the right of freedom of mind and conscience categorized as a right which cannot be mitigated under any circumstance (non derogable rights)

Law number No. 39 Year 1999 of Human Rights, govern the voting and elected right in Article 43 Paragraph (1) specifying that every citizen is entitled to choose and elected in the elections based on the equality of rights through direct voting, general, secret, honest, and fair in accordance with the laws and regulations, as well as in article 4 the right to freedom of thought and conscience. The right to vote and be elected in public office can also be classified in the right to freedom of thought and conscience because choosing and chosen means to use the mind and conscience independently without any intervention, so the right to vote and elected in public office including one of human rights whose nature is not subject to restriction.

Voting and elected rights are also listed in the International Convenant on Civil and Political Right (ICCPR) which has been ratified by Indonesia by Law No. 12 of 2005 on ICCPR certification. This gives the consequence that the Indonesian Government has a responsibility to fulfill the implementation of political rights to every citizen including ex-convict corruption. Article 4 Paragraph (2) mentions one of the rights of non derogable rights, namely the right to freedom of thought and Srticle 25 states that every citizen must have the right and opportunity without distinction and limitation is not feasible to:

1. Participate in government administration, either directly or through freely chosen representatives;
2. Selected and elected in honest elections, with universal suffrage and equivalent, and carried out with a secret vote that guarantees the freedom of voters to declare his desire;
3. Gain access, based on the general requirements, on government service in the country.

In fact, political rights do not differ from civil rights, only rights which belong

to the political rights greater means for the establishment of a legal order of civil rights, so that citizenship is a condition of political rights, not from civil rights (Kelsen, 2006). The fundamental difference between citizens and foreigners is that only citizens have the right to vote and choose (Tutik, 2006). The statement is affirmed in the Constitution of Indonesia Year 1945 that article 27 clause (1) is not listed in Chapter XA on human rights but in Chapter X of citizens and residents. The article confirms that all citizens have the same position in the law and the Government with no exceptions, so the right to choose and be elected is the political rights inherent in the status of citizens or the very principle of existence.

The revocation of voting and/or the right to be elected to the corruption convict either temporarily or permanently is a restriction of the implementation of the sovereignty of the very principle so that if the application does not have a balance between the impact of restrictions on the rights and objectives to be achieved from the restriction, then it is not justified because it will implicate the action that de That is because the implementation of additional criminal sanctions has an impact on the change in the position of corruption convicts as citizens become as if foreigners/not as a wholly citizen.

Moving on from the above, it is the obligation of the State/Government (law enforcement officials) to further protect (obligation to protect) the rights that can be enjoyed or run by citizens including ex-convict prisoners. The role of the country in this matter is to keep no other party from violating the rights, or although the punishment is applied which must be done by the State is also facilitating the restoration of the rights and still provide an opportunity for the equality of access between citizens in exercising its rights to the implementation of the elections. Compared with the German and Dutch countries that also embraced the continental European legal system as well as Indonesia. In terms of punishment relating to the political rights of citizens, the two countries are more to protect (obligation to protect) the rights that can still be enjoy or run by citizens. This is evident from the implementation of the enforcement of additional punishment for the revocation of political rights in both countries, which does not waive the position of convicts as people in society, nation, and state.

In Germany, it refers to Sections 45 and 45b Penal Code of Germany 2013 (*strafgesetzbuches*). The application of such additional punishment may cause inmates to forfeit the right to choose and/or the rights chosen temporarily, but still open the opportunity to reinstate the rights that have been revoked by the court during the period of its basic punishment. In the Netherlands, considering the Penal Code of Indonesia is the codification form of the Penal Code of Dutch so that the regulation of the additional punishment of revocation of political rights tends to be not much different, but its application is temporary and can only be dropped when prisoners are sentenced to prison at least one year, this refers to Article 31 Paragraph (1) and Article 28 Paragraph (3) of the Penal Code of Dutch 2014 (*Wetboek van Strafrecht*).

In the conception of human rights, although the protection, advancement, enforcement, and fulfillment of human rights against every citizen is a state/government responsibility, but the existence of the restrictive principle of human rights in a country can not be denied considering the restriction is a lubricant for the human rights system that permits the country to flexibly arrange various conflicts of interest occurring within a democratic state, which can be applied for a temporary period, even permanent, but in this case the law enforcement officers must not necessarily act arbitrarily in the restriction.

State or citizen is the subject of the law that has the rights and obligations so lest the limitation of abolishing the rights of citizens or national rights, meaning that

citizens have the purpose and function that must be achieved so that the restriction should not be such that cause citizens can not perform its functions and achieve its objectives, as well as the state. The involvement of citizens in a country to achieve its objectives and to carry out its functions should be more secure given that the participation of the individual is the involvement of its rights (Kaligis, 2006).

Starting from the above statement, the restriction may only be justified if it is in accordance with the terms of the right to restrict the human rights perspective adopted in a country when the application of criminal sanctions is undertaken. In the practice of human rights implementation is always colored by the debate between using the notion of a universal human rights perspective or a participatory human rights perspective. Muladi states the theory of human rights thinking is divided into 4 (four) groups, namely the perspective of universal-Absolute, Universal-relative, particularic-Absolute, and particularic-relative (S. Marzuki, 2013).

In determining the perspective of human rights, may refer to legal considerations in the jurisprudence of the Constitutional Court ruling No. 2-3/PUU-V/2007, which emphasizes the systematic interpretation that human rights stipulated in Article 28A-Article 28I the Constitution of Indonesia Year 1945 is subject to the restrictions set out in Article 28J of the Constitution of Indonesia Year 1945, which is also reinforced with the original intent that the placement of these restrictions as the conclusion of all human rights provisions governing human rights in Chapter XA of the Indonesian Constitution Year 1945. The regulatory systematics of human rights are also in line with the regulatory systematics of the Universal Declaration of Human Rights which also place restrictions on Section 29 Paragraph (2).

Through that judicial interpretation, it provides a new constitutional rule that rights belonging to a non derogable right in Article 28I Paragraph (1) of the Indonesian Constitution of 1945, are not absolute. It was reaffirmed through the jurisprudence of the decision of the Judicial Court No. 18/PUU-V/2007, that for human rights that are categorized non derogable right, such as the right to not be prosecuted in retroactive legal basis can be ruled out. Thus it can be stated that the human rights perspective applied when faced with the restriction of rights that are non derogable right is a relative participatory human rights perspective. Particularized-relative, human rights, in addition to Universal is also a national problem of the nation so that the validity of international documents must be harmonised, serially and balanced (S. Marzuki, 2013).

It indicates that the right to choose and selected which belongs to the right of freedom of mind and conscience is not absolute, but the limitation can only be justified if it meets the requirements of the restrictions contained in Article 28J Paragraph (2) of the Indonesian Constitution of 1945. In the same respect, also stipulated in Article 70 of the Human Rights Act that in exercising its rights and freedoms, each person shall be subject to the limitation set by law with the sole intent to ensure recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with moral considerations, religious values, security and public order in a democratic society.

These restrictions are in line with the Siracusa Principles on the Limitation and Derogation of Provisions in the International Convenant on Civil and Political Rights. This principle mentions that rights restrictions should not harm the essence of rights and also restrictions on rights should not be enforced arbitrarily. Restrictions on human rights can only be done if they meet the following conditions (Matumpo, 2014):

1. Prescribed by Law;
2. in a democratic society;
3. Public Order;
4. Public Health;

5. Public Morals;
6. National;
7. Public Safety;
8. Rights and freedoms of others, or rights and reputations of others.

The principle is governed by any article in the ICCPR which contains the rights restriction and when associated in Article 2 Paragraph (1), Paragraph (2), and Paragraph (3) ICCPR, it may be stated that there are some State obligations if the rights restriction, namely:

1. Each of these convening States promises to respect and guarantee the recognised rights in this convenence for all individuals residing within its jurisdiction, without distinction of any kind, such as race, color, gender, language, religion, political view or other views, national or social origin, title, birth status or other status;
2. Each country on the conventant promises to take the necessary measures in accordance with its Constitution and in accordance with these provisions to take legislative action or other acts that may be necessary for the implementation of the recognised rights in this conventant;
3. Each State party on the Covenant promises to guarantee that any person whose right or freedom as recognized in this convenant is violated, will obtain effective recovery efforts, even if the breach is committed by a person acting in a capacity as a state official.

Following up, some conditions for obtaining the validity of the right to vote and elected against a corruption prisoner may be described as follows:

1. The limitation of the exercise of a right or freedom shall be with the appropriate reasons in the relevant human rights agreement. Human rights perspectives adopted in Indonesia when restrictions are faced on the rights of non-derogable rights referring to the perspective of particularic-relative, so that the revocation of voting rights and elected to the corruption convicts may be justified if it meets the conditions of the limitation of Article 28J Paragraph (2) of the Indonesian Constitution 1945. These restrictions are divided into 2 (two), namely:
   a. Restrictions are made to ensure recognition and respect for the rights and freedoms of others. These additional punishment are as criminal instruments used by the State (law enforcement authorities) to ensure recognition and respect for the rights and freedoms of others or communal human rights. Moving on from that, without such restriction there will be no rights and freedoms of other people or communal human rights guaranteed in the positive legal regulations will be broken if the former prisoners of corruption using the right to vote and chosen in the elections.
   b. Restrictions are made to meet fair demands in accordance with moral considerations, religious values, security, and public order in a democratic society. The right to vote and be elected is the political rights of citizens who are also in the right to participate in the Government specifically stipulated in Chapter X of Article 27 Paragraph (1) of the Indonesian Constitution of 1945 concerning citizens and residents.

      The application of the additional additional punishment, does not meet the fair demands in accordance with the above considerations. The first reason, the right to vote and choose is a political right that is the principal because it adheres to the status as a citizen. Secondly, the principle of sovereignty of the people (political sovereignty) is a very basic principle and is seen as a morality of the constitution. Thirdly, the application of the additional additional punishment could have an impact on changes in the position of corruption convicts as citizens become as if

foreigners/not citizens because the corruption convicts could lose the political rights either while, even permanent and the last implementation of the additional additional punishment could be expressed as a form of state of the action against the right to elect or the rights of elected prisoners of corruption.

2. Restrictions must be set by lawful legal rules based on legislation and necessary in a democratic society. The implementation of additional criminal sanctions revocation of voting and/or selected rights has been governed by valid regulations, but the revocation of selected temporary rights does not reflect a necessity because the revocation of selected rights may be excluded for ex-convicts who publicly and honestly convey to the public that concerned are ex-corruption convicts, but also if the revocation of such rights is permanently committed, there is no balance between the effect of limitation on the rights and objectives to be attained from the restriction.

   It is because the country seems to ensure that the former corruption convicts who later occupied the public office of the corruption are also a form of distrust of the State on the role of the correctional facillty as a tool of state to build inmates so as not to repeat the criminal act. On the other hand the revocation of voting rights either temporarily or permanently, there is no significant relevance to the purpose of implementing that additional criminal sanction if its purpose is aimed at the community to be spared from corrupt public officials in the future, providing a deterrent effect on the corruptors, and giving fear to the community including public officials who have the opportunity to conduct corruption.

   It is due to several reasons. *Firstly*, the application of revocation of voting for corruption convicts has no impact on the inevitable community of corrupt public officials in the future. *Secondly*, in order to provide a deterrent effect on the corruption convicts, the right to vote is not a means that can be used to commit corruption. *Thirdly*, when releasing the annual report data on the Corruption Eradication Commission from 2014-2016, a corruption criminal act based on the department experienced a sharp increase of 54 in 2014, 63 of the 2015 and 99 things in 2016 and criminal acts of bribery are also experiencing the same thing that is 20 things in the year 2014, 38 matters 2015 and 79 matters in 2016. The Data indicates that within two years since the additional criminal sanction was applied, its application has no impact on giving the community fear of not committing corruption (Komisi Pemberantasan Korupsi, 2016).

3. There must be an effective right to remedy when restriction of rights is made. The application of additional punihsment must be accompanied by an attempt to recover rights despite the corruption convicts. The implementation of these additional criminal sanctions is contrary to the conditions of restriction on this right, as there is no regulation aimed at restoring the political rights of a revoked corruption prisoner.

Compared to the German state, the implementation of the additional criminal sanctions despite causing inmates to only lose political rights temporarily, but still open up the opportunity to reinstate the rights that have been revoked by the court during the period of its principal punishment, provided that the loss or period of the criminal principal has been running for half and the convicts assessed will not commit a deliberate offence for further. This refers to the section 45b (1) of the Penal Code of German 2013, i.e. the court may reinstate the lost abilities in accordance with section 45 paragraph (1) and (2), and the rights lost in accordance with Article 45 paragraph (5), if:

a. the lost has been in effect for halt of its duration; and
b. it can be expected that the convicted person will commit no further intentional offences

Position of Additional Punishment on Revocation of Political Rights Against Corruption Prisoners in the Purpose of Punishment in Indonesia

The punishment itself is a tool for achieving goals (Arief, 2005). The central problem of criminal law, if associated with the penalty in this study is about the relevance of the punishment as a means to achieve the goal of punishment, given the purpose of the punishment departs from the thought that the criminal law system is a unified system of aiming. One of the functions of the criminal justice system, which is to punish criminals in accordance with the philosophy of punishment adopted. This indicates that the sentence should have relevance to the principles of the sentence to provide benefits and fairness in its application, in addition to the foundation of legal certainty (Muhammad, 2011).

Determining the ideal purpose of pipetting to be applied in accordance with Indonesian sentence philosophy, may refer to the policy approach and value approach in applying a punishment sanction. In the policy approach, Barda Nawawi said that the purpose of the policy of establishing a punishment could not be removed from criminal political objectives in the overall sense of community protection to achieve prosperity (Setiady, 2010). In modern conception, social defence is interpreted as the prevention of crimes and the treatment of offenders (Arief, 2010). One conclusion of the 3rd Criminology Seminar in 1976 formulated that criminal law should be maintained as one means for social defence in the sense of protecting the public against crime by repairing or restoring the makers without compromising the balance of individual interests of the Community (Setiady, 2010).

In addition, criminal policy cannot be waived at all from the issue of value. Christiansen stated that the conseption of problem crime and punishment is an essential part of the culture of any society (Arief, 2010). Because Indonesia is based on Pancasila, the National Development Policy line aims to form the Indonesian people in the whole (Muladi dan Nawawi Arief, 2005). Explanation of policy approach and value approach in applying a penalty, indicating that the purpose of punishment in accordance with Indonesian philosophy is to depart on balance with two protection objectives, namely public protection and individual protection. The principle of the balance has actually been realized in the purpose of the sentence formulated in the Draft of the Penal Code Year 2019.

Article 52 of the Draft of the Penal Code Year 2019, stating that the penalty is not intended to degrade human dignity, then in Article 51 mentioned that the sentence aims as follows:

1. Preventing criminal acts by enforcing legal norms for the protection and Pengayoman of society;
2. Socialize convicted by conducting coaching and mentoring in order to be a good and useful person;
3. Resolving conflicts caused by criminal acts, restoring balance, and bringing security and peace to the community;
4. Foster a sense of regret and liberate guilt on the convicted.

Based on the idea of the balance, from several theories of sentence purpose such as absolute theory, integrative, and correctional. The objective theory of punishment is ideal to be applied as the goal of Indonesian punishment is correctional theory, with the following reasons:

1. The absolute theory, punishment is the absolute consequence that must exist as a vengeance to the one who commits evil (Muladi dan Nawawi Arief, 2005);

2. The integrative theory aims to remedy the individual damage and community caused by criminal acts (Muladi, 2004), but does not provide a clear mechanism to achieve the goal of his sentence, so that it can be declared not aimed at rehabilitation and social reintegration of prisoners to become the whole person;
3. In correctional theory there is an equation closer to the principle of balance on the purpose of punishment formulated in the Draft of the Penal Code Year 2019, when compared with other theories, moreover, the theory has become the rationality of the implementation of prison sentence in Indonesia.

Departing from the 3rd point above, the equation of correctional theory with the purpose of the penalty formulated in the Draft of the Penal Code Year 2019, can be seen in the table below:

No	The Draft of the Penal Code Year 2019	Correctional Theory (Law on Correctional)	Similarity
1	a. Social reintegration and rehabilitation b. Socialize return convicts by conducting coaching and mentoring to be a good and useful person (Article 51 Paragraph (2))	Preparing prisoners to be able to integrate healthily with the community (Article 3) and improve inmates (Article 2)	Social reintegration and rehabilitation
2	Preventing criminal acts by enforcing the legal norm (Article 51 Paragraph (1))	Preventing unrepeated criminal acts (Article 2) and principles of protection in the coaching system	Prevention of crimes and social defence
3	Restoring balance (Article 51 Paragraph (3))	Making prisoners a whole person (article 2)	Restoring balance
4	Coaching and Mentoring (Article 51 Paragraph (2))	Coaching and mentoring (Article 5)	Coaching and mentoring
5	Cultivating a sense of regret and freeing guilt on inmates (Article 51 Paragraph (4))	Unaware of convict errors (Article 2)	Cultivating a sense of regret
6	Enforcing the legal norm (Article 51 Paragraph (1))	Loss of Independence (Article 5)	Sufferings
7	Punishment is not intended to degrade human dignity (Article 52)	The principle of reverence for human dignity (Article 5)	Reverence for human dignity

Source: Law on Correctional and Draft Penal Code Year 2019, Processed in Year 2020

In the Indonesian punishment system, the revocation of voting and/or the right to be elected against a corruption prisoner is a additional punishment. The existence of additional punishment in addition to basic punishment is factative, i.e. can be given or not. This is except for the crimes stipulated in the provisions of Article 250 bis, Article 261, and Article 275 of the Penal Code of Indonesia which become imperatives or imperative (Setiady, 2010). The sanction of the additional punishment for revocation of voting and/or the right to be elected against a corruption prisoner is a factative that may be dropped or not. An additional punishment is a supplement criminal in order for the purpose of punishment can be achieved (Leonard, 2016).

The ideal sentence objective theory as the goal of Indonesian punishment is correctional theory. In the general explanation of the Correctional Law on Corrections is a punishment is an attempt to resusct prisoners in order to regret his actions, and return it to a good community, obey the law, uphold moral, social, and religious values so that

the life achieved a safe, orderly, and peaceful society. Correctional as a destination is not separated from the principle of remuneration for the act of violating criminal law but prisoners are still treated as human beings have been lost. In addition, Bassiouni also stated that one of the objectives that the punishment wanted to accomplish was the resocialize (resosialization) of the lawbreakers (Arief, 2010). Correctional characteristics as the aim of Indonesian punishment are as follows:

1. Forming inmates to become a whole man, that is an effort to restore prisoners to his fitrah in a relationship with his God, man with his personal, man with his neighbor, and man with his environment;
2. Improve inmates so that they can actively play a role in development and live reasonably as a good and responsible citizen (rehabilitation);
3. Forming inmates to be aware of their mistakes and not repeating criminal acts so that they can be re-accepted by the Community Environment (crime prevention);
4. Correctional as a pengayoman that protects the public against the possibility of a criminal offence by conducting coaching to prisoners (social defence);
5. Correctional works to prepare prisoners to be able to integrate well with the community which means that the pipetting is aimed at recovering conflicts or reuniting convicts with the community (social re-integration);
6. The loss of independence is the only suffering;
7. Punishment is not oriented to retaliation but rather to the construction of prisoners as a form of respect for the human dignity.

The application of the additional punishment for the revocation of voting and/or the right chosen against the corruption convicts will inhibit the formation of inmates into the whole human being, which is an attempt to restore inmates to his fitrah in a relationship with his God, man with his personal, human beings with his neighbor, and man with his environment. It can be explained as follows:

1. Penalties are aimed at improving inmates so that they can actively participate in the development and live naturally as a good and responsible citizen (rehabilitation). Without the re-regulation of the political Rights of revoked corruption prisoners, the state's actions to improve and the behavior of corruption convicts in correctional facility is a hopeless matter. Without that regulation, active involvement of ex-convict corruption in political development will be obstructed or unable to be fully engaged.

   In addition, the former corruption convicts cannot live reasonably as a good and responsible citizen, because his position seems not to be a whole citizen but a foreigner. In addition, such additional penalties may be expressed as a form of sanctions on the political rights of the citizens either temporarily or permanently;
2. The punishment is to form inmates to be aware of their mistakes and not repeat the crime so that it can be reaccepted by the community. The application of the additional punishment will precisely give further stigmatization to ex-prisoners of corruption so that his position as a human being of society, nation, and state will be intimidated;
3. Correctional serves to prepare prisoners to be able to integrate healthily with the community, which means that punishment is aimed at recovering conflicts or reuniting convicts with the community (social re-integration). The application of the additional punishment will also not recover the conflict because in addition to the guarantee of implementation of political rights of corruption prisoners become unprotected, also because the additional penalty regulation opens opportunities at the elimination of rights, from it will certainly trigger a new conflict in the community;
4. Punishment is not oriented to retaliation but rather to the construction of prisoners as a form of reverence for human dignity. Referring to the 3 (three) statements

above, the application of the additional punishment was dropped as if not intended for ex-convict prisoners not to repeat criminal acts but as a form of retaliation. Plato and Aristotle declared that the punishment was dropped not by committing evil, but lest it be made evil (Setiady, 2010). Karl O. Christiansen also expressed the purpose of a retaliatory-oriented punishment, not aimed at repairing, educating, or socialize the transgressors (Miller, 2018)(Muladi dan Nawawi Arief, 2005).

In essence, punishment is a tool to achieve the goal of additional punishment and punishment as a supplement sentence for the purpose of punishment can be achieved. Departing from that, an additional punishment for revocation of voting and/or the right chosen against a corruption prisoner may be expressed as an immature punishment instrument to be applied. This is due to the absence of further regulation explaining the mechanism of application of the additional punishment so that it becomes biased about the aspects of benefits/needs and aspects of justice/human rights. Muladi also stated that the form of criminal law and the implementation of punishment should be seen from the social context because the nature of the too excessive, if based only for the sake of legal certainty, it will bring disaster in the form of Injustice (Susanto, 2004). In addition, it may be stated that the position of additional punishment for the revocation of voting and/or chosen is as a means of punishment that is contrary or incompatible with the correctional principles, provided that the application opens an opportunity for the elimination of rights and does not result in the reinstatement of the revoked rights.

CONCLUSION

Political rights in the form of voting and/or rights elected in addition to the right to participate in law and government, but also classified as the right of freedom of mind and conscience that can not be reduced under any circumstances (non derogable rights). In national law, the restriction on the right is based on a particularically-relative human rights perspective which means the restriction of human rights can be performed if it meets the terms of the rights restrictions listed in Article 28J Paragraph (2) Law of the Indonesian Constitution of 1945 and section 70 of the Human Rights Act as well as referring to the requirements of the restriction on human rights in the ICCPR because that has been ratified into national law. The application of additional criminal Sanki the revocation of political Rights has an effect on the permanent elimination of rights, which can even be expressed as a form of sanctions of the political rights of citizens. The implementation of the sanctions on the revocation of political rights against the corruption convicts did not meet the rights restriction requirements so that it could be declared as a form of human rights violations.

The theory of the purpose of punishment in accordance with the philosophy of punishment in Indonesia is the correctional theory which is the rationality of the execution of prison sentence. The allotment of additional punishment will impede the formation of corruption prisoners into the whole person. The position of the additional punishment in the purpose of Indonesian punishment is as a means of pemiaan that contradicts or does not align with the correctional principles throughout its application to open an opportunity for the elimination of rights and not accompanied by an attempt to recover the rights that have been revoked.

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