International Journal of Engineering & Technology, 7 (3.21) (2018) 491-496

International Journal of Engineering & Technology

Website: www.sciencepubco.com/index.php/IJET

Research paper

The Revocation of Corruptors' Political Rights in Indonesian Legal System

Imawan Sugiharto[1]*, Imam Asmarudin[2]

[1,2]Universitas Pancasakti Tegal
**Corresponding author E-mail: imawan.sugiharto57@gmail.com*

Abstract

The Indonesian government experiences constant shocks as some state actors at central and regional levels, either of executive, legislative or judicative bodies, are adjudicated for corruption cases. As it is considered as an extraordinary crime, the Corruption Eradication Commission (Komisi Pemberantasan Korupsi or KPK) made a legal breakthrough by imposing punishment in addition to principal punishment for a deterrent effect. The said additional punishment is in the form of revocation of corruptors political rights as conducted by Criminal Corruption Judge and confirmed by Decision of the Supreme Court of the Republic of Indonesia. However, this decision creates a polemic because of the existence of Decision of Constitutional Court of the Republic of Indonesia which cannot annul punishment in the form of revocation of citizens political rights, for it is considered contradictory to the 1945 Constitution of the Republic of Indonesia. There is an overlapping between the Decision of the Supreme Court of the Republic of Indonesia with the Decision of the Constitutional Court of the Republic of Indonesia stating that such revocation of political rights violates the human rights. Our contention is that overlapping authorities and impacts of revocation of political rights require an additional legal instrument. This is important to ensure the mechanism of the revocation aligns with the human rights and exhibits a progressive legal movement in eradicating corruption.

Keywords: *Revocation of Political Rights; Corruption; Legal System*

1. Introduction

The government respects individuals' rights which, among others, are Indonesian citizens' political rights to vote or to be voted as a member of legislative and executive body, the right to convey opinion, the right to organize, the right not to vote, and the right to establish political parties.

Citizens' political rights as mentioned above are universal rights as confirmed by the International Covenant on Civil and Political Rights, ratified by the Republic of Indonesia through Law No. 12 of 2005, Article 25 of the Covenant on Civil and Political Rights confirming that:

"Every citizen must have his/her right and opportunity without discrimination of any kind as referred to in Article
2 and without inappropriate limitation to:

a. Participate in performance of governmental affairs, directly or through representative chosen in a free manner.

b. Vote and be voted in pure, periodical general election, using universal and the same voting right, and made through voting in a confidential manner in order to guarantee freedom to express voters wish.

c. Obtain access to public service in their country on the basis of equality in general meaning."

The protection and fulfillment of citizens' rights aim to give sense of justice and welfare to Indonesian people, which will be met when the government fulfills its citizens rights. In addition, the government must perform clean governance as mandated by the people. Clean governance must be complying with general governance principles that are free from corruptive, collusive and nepotistic practices. However, there are many cases that prove the involvement of public officials in misusing their authorities to engage in corruption (1).

The Indonesian Reformation movement since 1997 demands major reforms to create a constitutionally better governance, in terms of economy, politics, law, and social culture. One of the initial demands is to change the head of the state. This signifies a new meaning of Reformation, that is a movement that pushing for structural change in the order of life and the governance system to create a new order; a legally better order (2). Since the Reformation era, the issue of eradicating corruption becomes the central theme in Indonesian law enforcement. This trend is sensible considering the negative impacts arising from this crime. Corruption is considered as a serious problem which can endanger the stability and security of the people, endanger social, economic and political developments, and it can impair democracy and moral values when this act turns into a common practice. According to Danil (3), the common practice of corruption that is often heard in Indonesia mostly occurred in public sectors involving those who hold public power or government officials, which is referred to as occupational crime (p.14). The most commonly practiced forms of corruption are bribery and the misuse of public authorities by public officials with specific authorities.

The fact that many public officials and political figures are proven to be involved in corruption cases pushes the law enforcement agencies to come up with various efforts to eradicate them. From the political perspective, such phenomenon indicates that betrayals have taken place against the peoples' mandate. Therefore, acts which results in deterrent effect on corruptors are highly necessary. However, the measures made by aggravating criminal punishment have not been effectively implemented, since corruption committed by public officials and political figures has not decreased.

Copyright © 2018 Authors. This is an open access article distributed under the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

With the growing corruption cases, the Indonesian Government is forced to make various efforts to eradicate corruption. The efforts varied from preventive efforts, curative (prosecution) efforts, and educational efforts. In implementing curative efforts, especially in terms of punishment, the Corruption Eradiation Commission has made various breakthroughs in handling Corruption Acts, among others, maximum criminal prosecution against corruptors and claim for payment of compensation to the maximum possible to the State as additional punishment set forth in Law Number 31 of 1999 regarding Eradication of Corruption Acts.

Although the efforts to eradicate corruption by applying additional criminal punishment have been made, there is no indication of decreasing number of corruption cases until now. In contrary, they increase both in numbers and quality (4). To the more severe extent, corruption is now at the level of political corruption crime. Indonesia is figuratively under attacks from political and economic dimensions, like a cancer spread. The malignant cancer of corruption continuously eats away the vital nerves of the body of the Republic of Indonesia, resulting in an institutionally critical condition.

Considering the complex corruption issue in Indonesia, the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi* - KPK) has made new breakthrough in eradicating corruption cases, being prosecuting to revoke corruptors right to vote and be voted for public position, as set forth in Article 18 Law Number 31 of 1999 regarding Eradication of Corruption Acts.

Criminal sanction can also be imposed with additional criminal sanction in the form of revocation of certain rights. Those are the right to hold position in general or certain position set forth in Article 35 paragraph (1) point 1 or active and passive voting right in election held under general rules as referred to in Article 35 paragraph (1) point 3 of Criminal Code. Revocation of certain rights such as active and passive voting right in public position can actually be a means of giving deterrent effect to the convicted in corruption cases as well as inflicting fear for public officials and political figures.

According to (5), circa 2013-2014, there were two verdicts which were the milestones of beginning of revocation of political rights of citizens involved in corruption practices. Below are the two notable cases that show the verdicts of sentencing revocation of active and passive voting rights under the indictment of the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi* - KPK):

1. *The revocation of active and passive voting right sentenced by the High Court of Criminal Acts of Jakarta against the Former Head of Traffic department, Indonesian Police, Inspector-General (*Irjen*) Djoko Susilo in the corruption case of driving license (SIM) simulator. Djoko Susilo is also sentenced principal criminal imprisonment for 18 years, fine 1 billion rupiahs and additional criminal sanction in the form of payment of compensation for 32 billion rupiahs.*
2. *The decision on appeal of additional criminal sanction in the form of revocation of passive voting right or the right to be voted in general election sentenced by the Supreme Court (*Mahkamah Agung - *MA) on the politician of Partai Keadilan Sejahtera (PKS) Luthfi Hasan Ishaaq. Here, Luthfi Hasan Ishaaq still has the right to vote. Such decision is imposed because Luthfi is proven as being bribed in the beef import case of the Ministry of Agriculture. The Panel of Judges also sentences criminal sanction on Djoko Susilo consisting of principal criminal imprisonment for 18 years and fine for 1 billion rupiahs with criminal imprisonment in substitution (subsidair) for one year of imprisonment if the fine is not paid.*

The legal basis for revocation of certain rights as additional criminal sanction is set forth in Article 10 item b Criminal Code, and in Article 18 item d Law No. 31 of 1999 regarding Eradication of Corruption Acts. However, Law No. 39 of 1999 regarding Human Rights, in addition to Law of the Supreme Court, Structure and Position of the People's Consultative Assembly (Majelis Permusyawaratan Rakyat), House of People's Representative (*Dewan Perwakilan Rakyat*), Leadership of Political Party at Provincial (*Dewan Perwakilan Daerah*), and Assembly at Provincial (*Dewan Perwakilan Rakyat Daerah*) give protection on citizens' civil rights. From the Human Rights perspective, the revocation of active and passive voting rights remains polemic because of an overlap between the Decision of the Constitutional Court and the Decision of the Supreme Court that contradict to each other.

2. Literature Review

2.1. Public Position

Public official or state administrator is defined is Law number 28 of 1999, article 1, under the heading of Administering Clean State, Free from Corruption, Collusion, and Nepotism (Anti-Corruption Law) as heads of region, such as Regent, Mayor, Governor, members of the House of People's Representatives (*Dewan Perwakilan Rakyat*), Assembly at Provincial (*Dewan Perwakilan Rakyat Daerah*), Ministers, Officials Echelon I, and officials of other bureaucracies whose primary tasks are related to state administration according to the rule of Law. According to the article 2 of Law Number 28 of 1999 (2008), state administrator are public officials in State Higher Institutions, Ministers, Governors, Judges, and other public officials with strategic functions in state administration according to the rule and regulation of Law (2008, p. 121 – 123).

State administrative official or public official who run the state administrative function encompasses those who work in political institutions and those who are known as public servant. Those named public officials in political institutions are members of House of People's Representatives, members of Assembly at Provincial, Presidents, Governor, Regent, and Mayor. However, some public positions imply two simultaneous functions. Positions such as President, Governor, Regent, and Mayor are not only stand as public officials, but also state administrator (p.7).

Public official can also be understood as a governmental employee holding important position as leader organizing people's interests. State administrator's primary duty is administering public service which is essentially related to the state's obligation to serve their citizen, including delivering their basic needs as defined according to the framework of public service. According to article 1, Law number 25 of 2009 on Public Service, it is stated that public service is an activity or a series of activity to deliver services to citizens in the form of goods, services, and/ or administrative service that is served by public service administrator.

Article 1, verse 2 (UU RI 25, 2009) of the Law stated that public service administrator is every state administrative institution, corporation, and independent institution that is established based on the rule of Law for public service activities, and other legal organizations that are established for public service activities (p. 4).

Based on the official adoption of the welfare state concept, the scope of state administration tasks is wide and varied. This is in agreement with the development of social dynamic that requires regulation and engagement from state administrators. Hence, the public positions for public service tasks are also varied. In practice, some state administrative tasks are not exclusively administered by public officials from well-known state institutions (p. 79).

State administrators that occupy public positions in executive, legislative, and judicative institutions, or other public institutions, have a commitment to be a good public servant (6) Namely, an official pledge to work as 'civil servant' and 'public servant'. This commitment has been socialized and heavily emphasized in every state bureau since one officially become a Civil Servant or occupy other public positions. This effort aims to make 'giving a service' a prominent attitude across state bureaucracies and hopefully will become an 'organizational culture' of the state.

From various definitions related to the definition of public official, the term "Public Official" means a person occupying a position of governmental or non-governmental body, of which primary duties and functions are related to administering the state, and in implementing such duties and functions, in which the fund being used is originated from the state finance (state budget (APBN) and/or regional budget (APBD), in part or in full.

2.2. Limitation of Political Rights in Indonesian legislation

Limitation to the human rights may also be made by law, but the rights that might be limited should only be Civil and Political Covenants in Article 19 (freedom to express opinion), Article 21 (right to gather in peaceful manner), Article 22 (freedom of association), and Article 25 (participate in governance and right to vote and be voted). Limitation of rights must be pursuant to the national law and in the community as a necessary step to ensure national security and public safety, public order, protection of public health and morality, or protection on others' rights and freedom. Limitation or waiver of citizens constitutional rights is regulated under a constitutional basis of article 28 J paragraph (2) of the 1945 Constitution and article 70 of the Law of Human Rights.

Since the independence in 1945, Indonesia has been committing to upheld the Human Rights (p. 66). Such attitude is reflected from Pancasila (the five principles of state ideology) and the 1945 Constitution which contain various provision of respect towards citizens' human rights. This way, during the state administering practice, the protection or guarantee of the human rights and citizens' rights or citizens constitutional rights can be implemented. Right to vote is the basic right of each individual or citizen of which fulfillment must be guaranteed by the state. Citizens' political rights include the right to vote or be voted, the guarantor of the right to be voted is written in the 1945 Constitution of the Republic of Indonesia from Article 27 paragraph (1) and (2), Article 28, Article 28D paragraph (3), and Article 28E paragraph (3). While the right to vote is set forth in Article 1 paragraph (2), Article 2 paragraph (1), Article 6A (1), Article 19 paragraph (1), and Article 22C (1) of the 1945 Constitution. Based on the formulation of the articles, it is very clear that discriminating race, wealth, religion and descent is unjustifiable. Every citizen has the same rights and the implementation of rights and obligations must also go together. The provisions of the 1945 Constitution of the Republic of Indonesia above command the state to fulfill all forms of its citizens' human rights, especially those related to citizens' political rights and more specifically those related to citizens' voting right in general elections in Indonesia.

In Law Number 39 regarding Human Rights, Citizens political rights are regulated in the chapter of the right to participate in governance, being set forth in Article 43 paragraph (1), (2), and (3) and article 44 as follows (UU HAM, 2001):

Article 43

(1) Every citizen has the right to vote and be voted in general election based on equality of rights through direct, general, free, secret, honest, and justice voting pursuant to the provisions of legislation.

(2) Every citizen has the right to participate in governance directly or through representative he/she votes freely, in a manner provided by the legislation.

(3) Every citizen can be appointed for any governmental position.

Article 44

Every person, individually or mutually, has the right to submit his/her opinion, application, complaint, and or proposal to the Government in the implementation of clean, effective and efficient governance orally or in writing pursuant to the provisions of legislation (p. 17 – 18).

According to all of the concepts of protection of political rights as discussed above, in general, political rights are protected by international and national legal instruments, which cover the rights as follows:

1. Peoples right to vote and be voted in general election.
2. Right to participate in governance directly or through representatives being voted.
3. Right to submit opinion, application, complaint, and or proposal to the Government orally or in writing.
4. Right to hold and appointed for any public position in the Government.

The right to vote and be voted in general election is reflected in people's participation to vote in election and to become candidates of public official in general election. More specifically, the political right to vote is a political practice to vote for available political positions, including the President and Vice President positions in which election is regulated under the Law Number 42 Year 2008 regarding General Election for President Vice President; the Governor, Regent, and Mayor positions that are regulated under Law of Regional Government; and the positions of Member of House of People's Representative (Dewan Perwakilan Rakyat), Leadership of Political Party at Provincial (Dewan Perwakilan Daerah), and Assembly at Provincial (Dewan Perwakilan Rakyat Daerah) that are regulated under Law of General Election of Members of the House of People's Representatives, Regional House of Representatives, and Regional House of Peoples Representatives.

In implementing the rights and freedom, the Indonesian Law regulates limitation of rights. Based on the provisions of Article 28J paragraph (2) the 1945 Constitution of the Republic of Indonesia, it is stated that (UUD 1945, 2007):

"In the implementation of rights and freedom, every person must comply with limitation stipulated by the Law on the sole purpose to guarantee acknowledgement and respect of the rights and freedom of others and to fulfill justice claim in consideration of moral, religious values, security and public order in a democratic community"

(p. 52).

The provisions of Article 28J paragraph (2) The 1945 Constitution of the Republic of Indonesia indicate that in the implementation of rights and freedom, limitation is made possible (7):

"Such limitation referring to the provisions of the articles must be regulated by the Law, which means that without regulation of such limitation, such a limitation is not possible on the implementation of rights and freedom inherent to every person and the Indonesian. Such a legal frame should be understood together to define the "right" acknowledged and regulated under the law in Indonesia. The condition above, when referring to the provisions regulated in Law Number 39 of 1999 regarding Human Rights, indicates that there is violation of law against guarantee of right to vote and be voted inherent to every Indonesian. The existing chance to limitation as described above results in regulation that the right to vote and be voted is made possible not to be inherent to every Indonesian. This means that limitations are placed to the right to vote, so that citizens given with the right to vote and be voted are those who have fulfilled the established requirements" (p. 23).

As a law-based state, any issues with regard to the law in Indonesia shall be referring to the law regulated and stipulated in its constitution.

3. Methodology/Materials

This research is conducted by using a juridical-normative study with statute approach by studying all laws related to the revocation of corruptors' active and passive voting rights. The approach is used for study cases taking place in Indonesia and under a Court Decision, since it is not well-known that the revocation of rights as additional criminal sanction is regulated in the Criminal Code and the Law of Corruption Acts and that human rights regulate active and passive voting rights. All collected documents are further

analyzed using descriptive and qualitative analysis to describe the existing legal issues.

4. Results and Findings

4.1. Limitation of Passive Voting Rights According to Convicted Corruptors Position:

a. The Limitation of Elected Official

Elected official is a public position of which direct or indirect procedures of fulfillment needs people's participation or support. This position, elected directly by the people, can be found in General Election and General Election of Head of Region (*Pemilukada*). The following is limitation of rights as set forth by the legislation in Indonesia:

- *Article 5 item n Law number 42 of 2008 regarding Election of President and Vice President (*Pilpres*), limitation of former convicted person to hold the position of President and Vice President.*
- *Provisions of article 45 paragraph 2 item b point 3 of Law number 10 of 2016 regarding the Second Amendment to Law number 1 of 2015 regarding the Stipulation of Government Regulation in Lieu of Law number 1 of 2014 regarding Election of Governor, Regent, and Mayor to be Law, being: "of which right is not being revoked under a final and binding legal decision of a District Court with jurisdiction area includes the candidates residence, as evidence of fulfillment of requirements for candidate as referred to in Article 7 item h".*

B. The Limitation of Appointed Official

Appointed official is a position of which selection is made by an official authorized to select, for instance position of candidate for Supreme Court Judge selected by Supreme Court Judges and ministers selected by the President. The following is limitation of rights of convicted person including convicted corruptor as regulated in the legislation:

- Article 7 item b point 4 Law number 3 of 2009 regarding the Supreme Court of the Republic of Indonesia.
- Article 26 item i Law number 18 of 2011 regarding Judicial Commission.
- Article 21 item g Law number 25 of 2003 regarding Money Laundering Criminal Acts.
- Article 13 Law number 15 of 2006 regarding Finance Auditor Body.
- Article 22 paragraph (2) item f Law number 39 of 2008 regarding State Ministries.

4.2. The Basis of the Judges' Consideration in Sentencing Additional Criminal Sanction through the Revocation of Convicted Corruptors' Active and Passive Voting Rights

Quality Judge Decision is a decision which is based on legal consideration pursuant to evidence obtained from results of investigation and facts exposed in the proceedings. Judge decision must also be pursuant to the law and the judges' confidence must be free from intervention from any parties and be accountable professionally to the public. Sudikno Mertokusumo stated (8) that the judge's decision is a statement of judge, in his/her capacity as official given with that authority by the law, in the form of speech in the proceeding and on the purpose to end or settle a case or dispute between parties (p. 6).

Every criminal sentence must be considered thoroughly and any judge decision without careful consideration can be cancelled by the Supreme Court, as set forth in Article 39 paragraph (1) Law number 48 of 2009 regarding Judicial Authority that the highest supervision on the implementation of judicial proceedings in all judicial bodies under the Supreme Court in the implementation of judicial authority is at the hand of the Supreme Court.

According to Arief (2002), corruption is considered as an extraordinary crime. The judge's participation in adjudicating a Corruption Act case must consider the cause and effect of the decision to be sentenced. Hence, the basis of justification for criminal sanction, according to this theory, is the purpose. Essentially, the punishment theory is transformed through criminal policy of legislative policy (p. 128).

In order to achieve a more effective means to prevent and eradicate corruption acts, Corruption Acts Law regulates a type of punishment, being additional punishment as set forth in article 18 paragraph (1) item d in the form of revocation of certain rights, in full or in part, or revocation of certain benefit, in full or in part, which has been or can be given by the Government to convicted person. One of revocations sentenced by the judge to a convicted corruptor is the revocation of active and passive voting rights. This punishment is known more in the community with revocation of political rights, where such additional punishment in the form of revocation of political rights is adapted from Criminal Code article 35 regulating more clearly on the additional punishment of revocation of rights.

Arief (9)argued that philosophically speaking, sentencing additional criminal punishment in the form of revocation of active and passive voting rights onto convicted corruptor is a preventive measure. It is the manifestation of law enforcers' efforts to achieve the noble ideal of justice through punishment and giving sanction for criminals. The criteria for sentencing additional criminal punishment in the form of revocation of active and passive rights can be found in the decision of the Constitutional Court number 14-17/PUU-V/2007 regarding the examination of article 58 item f Law number 32 of 2004 regarding Regional Governmental Affairs against the 1945 Constitution of the Republic of Indonesia regulating revocation of voting rights. The Constitutional Court narrows the enforcement of such decision which previously contains two requirements, being not applicable for light crime (*culpa levis*) and not applicable to crime for political reason, of which enforcement is narrowed by the Constitutional Court only to elected officials.

The criteria for revocation of additional criminal punishment in the form of revocation of active and passive voting rights can be concluded as being sentenced to convicted person with political position where such convicted person has committed corruption acts by misusing his/her authorities or powers. This is referred to as political corruption, which has more extensive impact than corruption in general.

Within the period of 2013-2014, there were two big cases on which additional punishment in the form of revocation of active and passive voting rights has ever been sentenced, without rejecting the fact that there are many other cases which will surely be sentenced with additional punishment in the form revocation of active and passive voting rights.

The first case is that of Inspector-General (*Irjen*) Drs. Djoko Susilo that is proven as committing corruption acts in the project of procurement of driving license simulator for two-wheeled and four-wheeled vehicles, and committing money laundering criminal acts (10). This case starts with news in Tempo magazine titled "Simsalabim Simulator SIM" and then an investigation is conducted by the Police. Djoko Susilo has violated article 2 and article 3 Corruption Acts Law and Article 3 paragraph (1) and article 6 paragraph (1) Law number 15 of 2002 regarding Money Laundering Criminal Acts.

The second case is that of Luthfi Hasan Ishaaq that commits bribe corruption act in beef import project (11). Luthfi Hasan Ishaaq has violates article 12 item a and b and or article 5 paragraph 2 and article 11 Corruption Acts Law. Appeal Tribunal sentencing additional criminal punishment in the form of revocation of passive voting right on Luthfi Hasan Ishaaq is contained in Decision 14/PID/TPK/2014/PT.DKI.

The basis of consideration for the judge to sentence additional criminal punishment in the form revocation of passive voting right to the convicted person, Luthfi Hasan Ishaaq, is not considered in a written decision but in a magazine. In *Forum Keadilan* magazine, the judge, The judge has considered sociological aspect where the convicted person's act is an irony to democracy, because he does not protect the interest of national stock farmers. The transactional relationship between Luthfi Hasan Ishaaq and Maria Elizabeth Liman is considered as a political corruption, thus the revocation of active and passive rights is a logical consequence of a person with such political position and power (p. 16).

Meanwhile, in the case of Inspector-General Djoko Susilo, the Supreme Court has published its decision as follow (12):

"it can be concluded that the additional punishment in the form of revocation of rights to vote and be voted for public position is sentenced to give deterrent effect for other corruptors and to act as a preventive effort, in order to decrease the number of corruption cases in Indonesia. In essence, a convicted person who has served a sentence, especially in corruption act case, cannot use his/her right to hold a public position anymore. It should be known that the judge's consideration in the High Court of Jakarta states that the Accused Person's act among the community is very extensive, being falling of dignity of the law enforcement institution Based on the two decisions, there is no non-uniformity in revoking convicted corruptors' political rights in relation to the provisions of legislation" (p. 286 – 289).

In the Constitution of the Republic of Indonesia, citizens' political rights include the right to vote and be voted. The guarantor of right to be voted is written in the 1945 Constitution of the Republic of Indonesia from Article 27 paragraph (1) and (2), Article 28, Article 28D paragraph (3), and Article 28E paragraph (3). While the right to vote is regulated in Article 1 paragraph (2), Article 2 paragraph (1), Article 6A (1), Article 19 paragraph (1), and Article 22C (1) of the 1945 Constitution. The formulation of the articles is very clear in asserting that discriminating race, wealth, religion, and descent is unjustifiable. Every citizen has the same rights and the implementation of rights and obligations must also go together. The provisions of the 1945 Constitution above commands the state to fulfill all forms of its citizens' human rights, especially ones related to political rights and more specifically, to citizens' voting right in Indonesian general elections.

In Law number 39 regarding Human Rights, Citizens' political rights are regulated in the chapter of the right to participate in governance, being set forth in Article 45 paragraph (1), (2), and (3) and article 44. In addition to regulation of the revocation of political rights, there is a similar regulation in criminal law as contained in the Criminal Code. In principle, the drafter of our Criminal Code has rejected revocation of rights. More specifically, they only want to revoke rights according to the nature of criminal act committed by the convicted person to see if they had misused them. It is inappropriate for such person to be given a right which is in fact used falsely by him/her (p. 87).

According to the provisions of Article 35 paragraph (1) Criminal Code, the rights which can be revoked by judge in a court decision are:

1) Right to occupy a position in general or certain position;
2) Right to join the armed forces;
3) Right to vote and be voted in election organized under general rules;
4) Right to be advisor or administrator of court decision, right to be guardian, supervising guardian, custodian, or supervising custodian of person other than his/her own children;
5) Right to operate fathers power, custodianship, or guardianship of his/her own children;
6) Right to operate certain livelihood.

In case of revocation of rights, article 38 paragraph (1) Criminal Code regulates that judge determines the duration of revocation of rights as follows (13):

1) "In case of death penalty or lifetime imprisonment, the duration of revocation shall be the lifetime.
2) In case of imprisonment for specific period, the duration of revocation shall be minimum two years or maximum five years longer from the principal punishment.
3) In case of criminal fine, the duration of revocation shall be minimum two years and maximum five years (p. 144)".

Such revocation of rights shall come into full force and effect on the date the judges' decision can be implemented. In this case, judge does not have the right to terminate an official's position if another authority is stipulated for such termination in special rules. In recent election system of Head of Region, revocation of a person's political rights makes such person cannot be a candidate of the Head of Region, of which matters are regulated in the provisions of article 45 paragraph 2 item b point 3 Law number 10 of 2016 regarding the Second Amendment to Law number 1 of 2015 regarding the Stipulation of Government Regulation in Lieu of Law number 1 of 2014 regarding Election of Governor, Regent and Mayor to be Law, being (14): *"of which right is not being revoked under a final and binding legal decision of a District Court with jurisdiction area includes the candidates residence, as evidence of fulfillment of requirements for candidate as referred to in Article 7 item h"* (p. 19).

However, limitation is placed on the revocation of certain rights under criminal law, where additional criminal punishment in the form of revocation of certain rights is temporary. For more detailed accounts, the Criminal Code regulates the time limit for revocation of rights which can be imposed to a convicted person. As set forth in Article 38 paragraph (1):

(1) In case of revocation of rights, judge determines the duration of revocation as follows:
1. In case of death penalty or lifetime imprisonment, the duration of revocation shall be the lifetime;
2. In case of imprisonment for specific period, the duration of revocation shall be minimum two years or maximum five years longer from the principal punishment;
3. In case of criminal fine, the duration of revocation shall be minimum two years and maximum five years.

(2) Revocation of rights shall come into full force and effect on the date the judges' decision can be implemented.

Such provisions indicate that revocation of rights cannot be sentenced for a non-limited period or permanently, except when the convicted person is sentenced with lifetime imprisonment or death penalty. Additional criminal punishment in the form of revocation of certain rights does not mean that the convicted persons rights can be revoked entirely. According to Hartanti (2009) in Darmastuti and Nurhidayah (15), such revocation does not include revocation of the right to live, civil right, and constitutional rights. There are two matters regarding revocation of certain rights, being:

a. It does not apply automatically, but it applies under judges' decisions.
b. It does not apply for lifetime, but there is certain period according to legislation applicable under judges' decisions (p. 65).

Besides, in contrary to Article 38 Criminal Code, sentencing additional criminal punishment in the form of revocation of the right to vote and be voted in is not consistent to Decision of the Constitutional Court number 4/PUU-VII/2009 related to requirements for general election, being "*...has never been sentenced for criminal imprisonment under a final and binding court decision because of committing criminal act which is subject to 5 (five) or more years of criminal imprisonment...*" (2009) which is conditionally unconstitutional norms. Such legal norms are unconstitutional when the following requirements are not fulfilled:

1. Applicable not for elected official to the extent no additional criminal punishment is sentenced in the form of revocation of voting right by a final and binding court decision;
2. Applicable limited for 5 (five) years after the former convicted person has finished his/her criminal imprisonment under a final and binding court decision;
3. Honesty or openness of background as former convicted person;

4. Not repeated criminal actor.

Referring to decision of the Constitutional Court above, point 2 states that after the convicted person has finished his/her 5 or more years of punishment, he/she can become a candidate in a general election after such 5 (five) years of pause. This means that the revocation of rights of convicted person who has finished his/her period of punishment shall be limited only to 5 (five) years. This is in line with Article 38 Criminal Code, where an accused person may only be sentenced with additional punishment in the form of revocation of rights for maximum five years longer than the principal punishment.

Furthermore, in the Constitutional Court issues court No. 42/PUU-XIII/2015 on judicial review against Article 7 item g Law number 8 of 2015 regarding the Stipulation of Government Regulation In lieu of Law number 1 of 2014 regarding Election of Governor, Regent and Mayor, it is stated as conditionally unconstitutional to the extent the concerned convicted person acts honestly in front of the public (2015). The Constitutional Court also removes explanation of Article 7 item g containing 4 (four) requirements for former convicted person to become candidate of head of region pursuant to decision of the Constitutional Court No. 4/PUU/VII/2009.

There are indeed pros and cons against the revocation of political rights, especially sentencing the revocation of the right to vote and be voted for public position to convicted corruptor. Those who are against it, stating that it is a violation of human rights. While those who are in agreement with the revocation view that every punishment is a violation of human rights in principal, but some violations are allowed, to the extent that they are regulated under the Law. This also applies in terms of additional punishment in the form of revocation the right to vote and be voted for public position, which is justified under Article 10 item b, Article 35, and Article 38 Criminal Code. In a manner of *lex specialis* (short for *lex spesialis derogat leg generalis*, it is the principle of law interpretation that emphasize its distinctive or special characteristic rather than its general characteristic also known as *lex generalis*), it is also set forth in Article 18 paragraph (1) item d Law number 31 of 1999 Jo. Law number 2001 regarding Eradication of Corruption Acts.

The Republic of Indonesia as a democracy state highly respects its citizens' rights, including in case of general election, the right to vote and be voted (referred to as active and passive voting rights). Active voting right is a decision to vote which is actively made by the people in determining the form of governance and this is achieved through General Election (referred to as *Pemilu*). Active voting right is cross-bordered; therefore, every citizen has the right to vote in *Pemilu.*

It should be known that the revocation of any rights owned or obtained by a person as citizen which may result in civil death (*burgelijke daat*) is not allowed by the Law. This is regulated in article 3 BW and Article 15 paragraph (2) Constitution of the Federal Republic of Indonesia (KRIS) as follows: *"There is no single punishment to result in civil death or loss of all rights of citizenship."*

As Manan (2001) has stated, civil rights acknowledge and protect the most fundamental rights of human in relation to their dignity as individual creature, while political rights are related to public life. With non-uniformity of regulation in regard to sanction of the revocation of political rights, the Indonesian legal system needs uniformity of law for judges in rendering decisions so that they are not contradictory, since it is expected to be made as part of jurisprudence (p. 101).

5. Conclusion

In agreement with Fuady (2011), in a law-based state, the law plays a very crucial role. It is above both state and political power where the term of 'government under the law' arises (p. 101). Hence, any actions conducted by the government and the people should be based on law in order to prevent arbitrary acts of its ruler and people who act according to their own wishes.

As a state which follows mixed law system, the revocation of political rights in the state administration system in Indonesia is regulated by some regulations. However, synchronization is critically needed among those regulating laws, where assertiveness and clarity are necessary for them not to be deemed as violation of Human Rights. With well-expressed regulation, there will be no pros and cons towards the revocation of political rights especially for public positions. A clearer and better expressed specific legal instrument is also needed for judges in rendering decision of claim for the revocation of accused persons' political rights. This will ensure that the decision has a strong juridical foundation.

The efforts undertaken by the Corruption Eradication Commission and Public Prosecutor to give deterrent effect to corruptor through the revocation of political rights which is then made by the Decision of the Supreme Court as a jurisprudence is a legal decision which should be supported. According to various legislations that regulate the revocation of political rights of public officials in the Indonesian legal system, the Decision of the Supreme Court can be considered as lex spesialis derogat leg generalis. Hence, sentencing the revocation of political rights shall have a stronger foundation.

Legislation

CRIMINAL CODE

Law No. 31 of 1999 regarding Eradication of Corruption Acts

Law No. 39 of 1999 regarding Human Rights. LN no 165 of 1999. TLN. No 3886.

Law No. 10 of 2016 regarding the Second Amendment

Law No. 1 of 2015 regarding the Stipulation of Government Regulation

Law No. 1 of 2014 regarding Election of Governor, Regent and Mayor to be Law

References

[1] Online H. Korupsi Politik, Jenis Korupsi Paling Berbahaya. (2011). 2009.

[2] Suwandi. Reformasi Indonesia. 2009.

[3] Danil E. Korupsi: konsep, tindak pidana, dan pemberantasannya: RajaGrafindo Persada; 2011.

[4] Statistik BP. Indeks Perilaku Anti Korupsi (IPAK) 2013. Berita Resmi Statistik. 2013(07/01):1-4.

[5] DAMANG S.H. MH. Tumpang Tindih Pencabutan Hak Politik. 2014.

[6] Basuki J. Budaya Pelayanan Publik. Jakarta: Hartono Media Pustaka; 2013.

[7] Febriyanto N. Studi perbandingan karakteristik airfoil naca 0012 dengan naca 2410 terhadap koefisien lift dan koefisien drag pada berbagai variasi sudut serang dengan CFD: Universitas Muhammadiyah Surakarta; 2014.

[8] Gultom B. Kualitas Putusan Hakim Harus didukung Masyarakat. Suara Pembaruan. 2006;20.

[9] Nawawi Arief B. Bunga Rampai Kebijakan Hukum Pidana, Bandung. Citra Aditya. 1996.

[10] RASTIKA I. Irjen Djoko Susilo Divonis 10 Tahun Penjara, Denda Rp 500 Juta. Kompas. 2013.

[11] Wedhaswary ID. Hak Politik Luthfi Hasan Ishaaq Dicabut, Hukumannya Diperberat Jadi 18 Tahun. Kompas. 2014.

[12] JAKARTA PP. Irjen Djoko Susilo (Supreme Court Decision Number 537K/2014 on Inspector-General Djoko Susilo). . 2014.

[13] Pidana KU-uH, Pidana A. Perdata (KUHP, KUHAP & KUHPdt), 2008. Jakarta, Visimedia.

[14] Nomor U-U. Tahun 2015 tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 2015 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 tentang Pemilihan Gubernur. Bupati, dan Walikota Menjadi Undang-Undang.

[15] Darmastuti DM, Nurhidayah LA. TINJAUAN TENTANG UPAYA HUKUM KASASI PENUNTUT UMUM TERHADAP PUTUSAN BEBAS DALAM PERKARA KORUPSI (Studi Kasus dalamPutusan Mahkamah Agung Nomor1366K/Pid. Sus/2013). VERSTEK. 2015;3(3).