

Additional Criminal Impositions in Corruption Crimes

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Abstract

The crime of corruption is one of the criminal offenses and unlawful acts committed by a person or corporation with the aim of benefiting themselves or corporations, by abusing the authority, opportunity or means attached to their position and having an impact on state losses. Additional punishment in the crime of corruption is given by the judge because the convict has committed an extraordinary crime. The imposition of additional punishment in the crime of corruption is facultative where this additional punishment can only be imposed together with the main punishment. The judge is not required to impose additional punishment (the judge may choose). Deprivation of certain rights, forfeiture of certain goods, and announcement of the judge's decision are additional punishments given by the judge.

Abstrak

Tindak pidana korupsi merupakan salah satu tindak pidana dan perbuatan melawan hukum yang dilakukan oleh seseorang atau korporasi dengan tujuan untuk menguntungkan diri sendiri atau korporasi, dengan cara menyalahgunakan wewenang, kesempatan atau sarana yang melekat pada jabatannya dan berdampak pada kerugian negara. Pidana tambahan dalam tindak pidana korupsi diberikan hakim karena memandang terpidana telah melakukan kejahatan yang luar biasa. Penjatuhan pidana tambahan dalam tindak pidana korupsi bersifat fakultatif dimana hukuman tambahan ini hanya dapat dijatuhkan bersama- sama dengan hukuman pokok. Hakim tidak diharuskan untuk menjatuhkan hukuman tambahan (hakim boleh memilih). Pencabutan hak- hak tertentu, perampasan barang- barang tertentu, dan pengumuman putusan hakim merupakan pidana tambahan yang diberikan hakim.

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1. INTRODUCTION

The crime of corruption is a criminal act and unlawful act committed by a person or corporation with the aim of benefiting themselves or the corporation, by abusing the authority, opportunities or facilities attached to their position and resulting in loss of state money.

Additional penalties such as revocation of political rights, confiscation of goods obtained from corruption, are basically additions to existing penalties. With this decision, corruption convicts usually lose the right to vote and be elected apart from holding public office and lose the assets obtained from the proceeds of corruption. The explanation we heard regarding the basis for the additional sentence was imposed was because the judge believed that the convict had abused his rights and authority as a public official. This creates widespread misery in society.

Legal basis for revocation of rights- certain rights, confiscation of certain items, and announcement of the judge's decision in Article 10 of the Criminal Code which regulates the main punishment and additional punishment. Likewise, Article 18 of the Corruption Law Paragraph 1 regarding additional penalties can take the form of revocation of certain rights.

Meanwhile, corruption itself is regulated in Law Number 31 of 1999. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes is regulated in Article 2 Paragraph 1 which reads:

“Any person who unlawfully commits an act of enriching himself or another person or a corporation which can harm state finances or the state economy, shall be sentenced to imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years with a fine of at least Rp. 200,000,000 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000

(one billion rupiah)".

Based on the explanation of Article 2 Paragraph 1 of Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, it can be seen that the criminal sanctions imposed include fines and sanctions in the form of relatively long prison terms.

Recently, there have been several corruption cases which were sentenced to additional criminal penalties in the form of revocation of certain rights as regulated in Article 35 Paragraph (1) of the Criminal Code (KUHP), confiscation of certain items is regulated in Article 39 of the Criminal Code (KUHP), announcement of the judge's decision is regulated in Article 43 of the Criminal Code (KUHP).

The imposition of additional punishment is facultative in nature where this additional punishment can only be imposed together with the main sentence. The judge is not required to impose additional sentences (the judge may choose). Additional penalties cannot be imposed except after the main penalty has been imposed, meaning that the main penalty can stand alone while additional penalties cannot stand alone.

Currently the eradication of corruption is not going well, this can be seen from the many complaints from the public about cases that are suspected of being acts of corruption but the handling process is very slow and in the end the cases just disappear without a trace. Ideally, law enforcement officials are people who should enforce the law as mandated by law, but many state officials abuse their inherent authority to obtain state money.

State officials in any region who are proven to have committed criminal acts of corruption or misappropriation of the state's financial budget should be given strict sanctions in the form of criminal penalties, both based on the provisions of the Criminal Code (KUHP) and based on the regulations or conditions stipulated regarding criminal acts of corruption as regulated in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes.

Perpetrators of criminal acts of corruption who are receiving additional criminal sentences, in the form of revocation of political rights to elect and be elected to public office, confiscation of goods from the proceeds of criminal acts of corruption based on court verdicts include Joko Susilo in the case of procuring Driving Simulators for Driving License Clinical Tests (vide Decision Supreme Court No. 537 K/ Pid.Sus/2014), Lutfi Hasan Ishaq in the beef import bribery case (vide Supreme Court Decision No. 1195 K/ Pid.Sus/2014), Anas Urbaningrum in the Hambalang project corruption case (vide Supreme Court Decision No. 1261 K/Pid.Sus/2015), and finally Irman Gusman over the sugar import quota bribery case.

In practice, the implementation of this Additional Penal Code has different meanings, some have a limited meaning and some have a permanent meaning. Considering that acts of corruption are extraordinary crimes that are systemic and widespread. Therefore, many people are of the view that those convicted of corruption should be sentenced to permanent deprivation of certain rights, such as political rights, and all goods resulting from corruption should be confiscated. However, on the other hand, the application of the additional punishment of permanent deprivation of political rights is contrary to various aspects.

Formulation of the problem

1. Based on the background of the problem described above, the problem formulation is drawn as follows:
2. How is the revocation of certain rights and confiscation of certain items involved in a criminal act of corruption?

2. RESEARCH METHOD

To find, describe, or study a truth of knowledge, research was generally carried out. To discover means to try to obtain something to fill a void or deficiency, to describe means to expand deeper into something that already exists, and to test the truth is to do something that already exists/still exists, or to be doubtful about its truth. In this research, the author used normative

research method, namely by using several regulations to determine additional penalties for revoking political rights and confiscation of certain items in criminal acts of corruption. The type of data used in this research was secondary data, namely data originating from literature studies, both legal literature, statutory regulations and related literature materials.

3. RESULTS AND DISCUSSION

Analysis

Revocation of certain rights is the revocation of all or part of certain rights or the removal of all or part of certain benefits that the Government has or can provide to convicts. Revocation of certain rights is regulated as stated in Article 35 of the Criminal Code, namely:

1. The right to hold office in general or certain positions
2. Right to enter the Armed Forces (AB)
3. The right to vote and be elected in elections held based on general rules
4. The right to be a legal advisor or administrator based on a court order, the right to be a guardian, supervisory guardian, guardian or supervisory guardian, for a person who is not one's own child
5. The right to exercise the authority of the father, exercise guardianship or pardon over one's own children
6. The right to pursue a certain livelihood.

The word certain in revocation of rights means that revocation cannot be carried out on all rights, only certain rights can be revoked. If all rights are revoked, it will result in the convict losing all his rights, including the chance to live. Regarding how long the revocation of certain rights can be carried out by a judge, Article 38 Paragraph (1) of the Criminal Code has determined that the length of time for revocation of rights is:

- a. If the principal sentence imposed by the judge is death or life imprisonment, then the duration of the deprivation of certain rights is for life
- b. If the main sentence imposed by the judge is in the form of temporary imprisonment or imprisonment, then the duration of the deprivation of rights is the same as the length of the main sentence, that is, at least two years and a maximum of five years longer than the main sentence.
- c. If the main penalty imposed is a fine, then the revocation of certain rights is a minimum of two years and a maximum of five years.

The legal basis used by the Corruption Eradication Commission (KPK) demanded the revocation of Lutfi Hasan's political rights over the meat import bribery case, Anas Urbaningrum over the Hambalang project case, and the judge granted this. This is a legal breakthrough in reforming Indonesian criminal law, considering that the crime of corruption is an extra ordinary crime.

Additional punishment in the form of revocation of certain rights does not mean that all of the convict's rights can be revoked. This revocation does not include revocation of the right to life, civil (civil) rights and constitutional rights. There are two things regarding the revocation of certain rights, namely:

- a. It is not automatic, it must be determined by a judge's decision
- b. It is not valid for life, there is a certain period of time according to applicable laws and regulations with a judge's decision.

Revocation of certain rights is only for criminal offenses which are expressly determined by law that the criminal offense is punishable by additional penalties. The length of time for revocation of certain rights is a life sentence, the term is life imprisonment. The prison sentence or imprisonment is a minimum of two years and a maximum of five years longer than the basic sentence. According to the definition above, the status of public officials who commit corruption do not necessarily have their rights revoked before a judge's decision is made. The judge's decision must clearly state in his ruling that apart from the main punishment, additional punishment is also given in the form of revocation of certain rights. Here the active role of judges is needed, to immediately impose additional penalties in each decision, especially to perpetrators of criminal

acts of corruption,

Additional criminal impositions in the form of revocation of certain rights in the form of revocation of the right to hold public office are carried out based on a number of things. Some of the reasons include:

1. The juridical basis is clear, namely regulated in Article 18 letter d of the Corruption Law and Article 10 point b number 1 of the Criminal Code.
2. There is a relationship between public office and political power, because political power is used as a vehicle to gain power, for example running for office as a member of the People's Representative Council, Regional People's Representative Council and Regional Representative Council.

This was done to prevent them from sitting in government, namely as public officials. It would be ironic if perpetrators of public crimes were still given space to become rulers. However, in the 2019 legislative elections, many former corruptors had their political rights revoked but were still allowed to run again as legislative candidates to be elected in legislative elections. In this case, the General Election Commission (KPU) has actually made a rule prohibiting former corruptors whose political rights have been revoked from running as legislative candidates, this is stated in KPU Regulation (PKPU) Number 20 of 2018 concerning Nomination of Members of the People's Representative Council, People's Representative Council Provincial Regions, and Regency/City Regional People's Representative Councils. This PKPU has attracted polemics because it is considered to deviate from the Election Law.

Law Number 7 of 2017 concerning general elections does not contain any prohibitions on former corruptors whose political rights have been revoked. This rule is considered detrimental to some parties. This is because they cannot run in the 2019 elections because the KPU did not pass them as legislative candidates. Some of them sued Bawaslu. By Bawaslu, these former corruptors were actually declared qualified as legislative candidates. Bawaslu is guided by Law Number 7 of 2017 which does not regulate the prohibition of former corruptors whose political rights have been revoked. Meanwhile, the KPU is guided by PKPU Number 20 of 2018 which is legally valid. These two different decisions by election organizers gave rise to legal uncertainty.

At the same time, some parties who felt disadvantaged also challenged the KPU's decision to the Supreme Court (MA). The Supreme Court granted the lawsuit and asked the KPU to remove the ban on former corruptors whose political rights had been revoked from running for office. The KPU then canceled the ban. In other words, former corruption convicts whose political rights have been revoked may run for office again.

Confiscation of certain goods is the confiscation of tangible or intangible movable goods or immovable goods used for or obtained from criminal acts of corruption, including companies owned by convicts where the criminal act of corruption was committed, as well as goods that replace those goods. In Article 39 of the Criminal Code it is determined that:

1. The convict's possessions, which were obtained from a crime or which were intentionally used to commit a crime, may be confiscated.
2. In the event of a conviction for a crime that was not committed intentionally or because of a violation, a confiscation decision can also be imposed based on the matters specified in the Law.
3. Confiscation can be carried out against guilty people who are handed over to the government, but only for goods that have been confiscated.

According to Article 39 of the Criminal Code above, there are 2 types of goods that can be confiscated, namely:

1. Items confiscated from a crime, for example counterfeit money obtained as a result of a crime, these items are called *Corpora Deliari*
2. Items used for a crime, for example a knife/gun used to kill, these items are called *Intrmenta Deliari*.

With Thus Article 39 of the Criminal Code has 3 data guidelines, namely:

1. What can be confiscated are items obtained from crime and items used for crime

2. Only for crimes, not for violations
3. The items confiscated belonged to the convict only.

As is the general principle of additional punishment, the crime of confiscation of certain goods is facultative, it is not mandatory to be imposed. However, there are also criminal confiscations of certain goods which are mandatory (imperative), for example in Article 250 bis (counterfeiting currency), Article 205 (dangerous merchandise), Article 275 (keeping materials or objects, such as letters and debt certificates, letters trade).

For the implementation of the crime of confiscation of goods if the goods are determined to be confiscated for the state, and not to be destroyed, there are two possibilities for implementation, namely whether at the time the decision is read:

1. The goods have previously been placed under confiscation, or;
2. There was no confiscation of these items.

The first provision means that the execution of the confiscated goods is carried out at public auction according to applicable regulations, and the proceeds are transferred to the state treasury (Article 42 of the Criminal Code). Meanwhile, if the second possibility occurs, the execution is based on Article 41 of the Criminal Code, namely that the convict can choose whether to continue handing over the confiscated items or handing over money according to the judge's interpretation in the decision. If the convict does not want to hand over one of the two, then imprisonment must be served as a substitute. Regarding the penalty of imprisonment as a substitute for confiscation of goods, it is further explained in Article 30 Paragraph (2) of the Criminal Code, which reads: "If the fine is not paid, it will be replaced by imprisonment."

In practice, what is called an additional crime in the form of a statement that certain items have been confiscated is often just a mere preventive measure, which is carried out by damaging or destroying objects that have been declared confiscated, whether they are objects that have been produced by a crime, or is an object that has been used to commit a crime.

The process of confiscating certain items for perpetrators of criminal acts of corruption is carried out in accordance with Article 54 of Law no. 48 of 2009 concerning Judicial Power. Implementation of the judge's decision no later than a month after the decision of a case. Corruption proceeds that have been used and the value of the suspect's assets that cannot cover the amount that has been corrupted are replaced with imprisonment.

However, there are several obstacles in the process of confiscating certain items belonging to suspects who have committed criminal acts of corruption, this is because the owner has moved to another residence, the objects have been used or sold, and other obstacles.

For people who die during a corruption offense before an irreversible decision is made, who is suspected of having committed corruption, the judge, at the request of the public prosecutor, can decide to confiscate the items that have been confiscated (Article 23 Paragraph (5) of the Corruption Eradication Law in 1971). There is no opportunity to appeal this decision. A person who dies is not capable of committing an offense. The offense was committed while he was still alive, but his liability after his death is limited to the confiscation of the goods that have been confiscated.

4. CONCLUSION

Revocation of certain rights in criminal acts of corruption is an additional crime. The revocation of political rights or other rights carried out by judges is not without basis. Article 10 of the Criminal Code states that additional punishment consists of the deprivation of certain rights. As an additional punishment, revocation of certain rights only means adding to the main punishment imposed, this punishment cannot stand alone. Revocation of certain rights is regulated in Article 35 of the Criminal Code and the duration of the revocation of these rights is regulated in Article 38 of the Criminal Code. In the additional crime of confiscation of certain items, there are two types of items that can be confiscated, namely items obtained through corruption and items that were intentionally used to commit a crime. Even if the items are already owned by someone else, The goods will be confiscated because they are the proceeds of the perpetrator of

a criminal act of corruption. Confiscation of certain items is regulated in Article 39 of the Criminal Code. The process of confiscating certain items for perpetrators of criminal acts of corruption is carried out in accordance with Article 54 of Law no. 48 of 2009 concerning Judicial Power. Implementation of the judge's decision no later than a month after the decision of a case. Corruption proceeds that have been used and the value of the suspect's assets that cannot cover the amount that has been corrupted are replaced with imprisonment. 48 of 2009 concerning Judicial Power. Implementation of the judge's decision no later than a month after the decision of a case. Corruption proceeds that have been used and the value of the suspect's assets that cannot cover the amount that has been corrupted are replaced with imprisonment. 48 of 2009 concerning Judicial Power. Implementation of the judge's decision no later than a month after the decision of a case. Assets resulting from corruption that have been used and the value of the suspect's assets that cannot cover the amount that has been corrupted are replaced with imprisonment.

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