

THE PERNICIOUS CONSEQUENCES OF POLITICAL CORRUPTION IN INDONESIA

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Abstract

Political corruption is an ethical and juridical deviation committed by people with positions of political power. Political corruption has a more structured system than general corruption cases, because political corruption is committed to satisfy the interests of political parties. Political corruption cases are commonplace in a country where political corruption is rampant. This is a normative legal research, using a case approach, conceptual approach, and statutory approach, as well as qualitative analysis. Based on this analysis, it is conclusive that political corruption is an action carried out by political elites or state government officials that has an impact on the country's political and economic situation. People and or parties who have political positions usually commit these acts. Political corruption can be in the form of abuse of authority, granting influence, lobbying, self-enrichment, vote-buying, and election fraud. In terms of effectiveness of the law, the pervasive political corruption in Indonesia is attributed to ineffective law enforcement related to political corruption. In fact, some former corruption convicts may become a corruption recidivist simply because the law enforcement of political corruption fails to have any deterrent effect due to the disharmony between laws and regulations related to political corruption. The rampant political corruption practices result in violations against the principles of good governance.

Keywords: *Legal consequences, political corruption.*

A. Introduction

As one of the largest democracies in the world, Indonesia is facing the persistent problem of corruption. Conceptually, any democratic country shall always have a small number of corruption cases. However, the implementation of Indonesian democracy seems

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to deviate from the ideal concept of democracy, which has resulted in rampant political corruption. Democracy afflicted by corruption eventually creates high cost and risky politics, but such corrupt political practices are tempting because the perpetrators may reap big. This is a clear explanation why the political stage is never free from political elites despite the fact that many of them are imprisoned for committing political corruption.²

Political corruption is one form of corruption³ stemming from an ethical or juridical deviation committed by parties who hold political power. The study of political corruption in various countries worldwide reveals that political corruption has a more devastating impact than general corruption committed by people with no position of political power. Political corruption is attached to and intertwined with power. Political corruption is commonly committed to maintain and expand power. This tug-of-war between the abuse of power and the need for socio-political order demands a role of equal control over the exercise of power.

Regarding political corruption, The Americana Encyclopedia has an interesting statement: "Political corruption concerns the illegal pursuit or misuse of public office. Electoral corruption includes purchase of votes with money, promises of office or special favors, coercion, intimidation and interference with freedom of election."

This definition delineates political corruption and electoral corruption,⁴ where political corruption pays attention to illegitimate livelihoods or misuse of government positions, while electoral corruption or general election corruption involves vote buying with money, promising positions or facilities, special gifts, coercion, intimidation and interference in free election. Even though there is a difference between political corruption and election corruption, both equally have a political impact. This troubled political situation is one element of political corruption.

² Donal Fariz, 'Lingkaran Korupsi Politik' (*Indonesia Corruption Watch*, 24 May 2018) <<https://antikorupsi.org/id/opini/lingkaran-korupsi-politik>> accessed 24 April 2019.

³ Political corruption is defined as a distortion of the performance of people in the political system, and the purpose of their corrupt behavior is to maintain the grip of power they hold. Therefore, political corruption aims to accumulate wealth, both for personal and group interests to reduce power. This form of corruption always involves two entities that need each other. Some of the bigger and more serious scandals in political corruption include the process of wealth accumulation and financial abuse for public spending used for political purposes. Farida Patittingi and Fajlurrahman Jurdi, *Korupsi Kekuasaan Dilema Penegakan Hukum Di Atas Hegemoni Oligarki* (PT Raja Grafindo Persada, 2016) 63.

Political corruption contains elements of political exploitation in an effort to gain political advantage. As quoted by Menachen Hopnuy in describing political corruption, Joseph Lapalomkara points out that: "behavior by a public servant, whether elected or appointed, which increases a devaluation from his or her public duties because of personal gain to himself or to other private person with whom the public servant is associated". Artidjo Alkostar, *Korupsi Politik Di Negara Modern* (FH UII Press, 2008) 38.

⁴ Ibid 16.

Normatively, the Law on corruption eradication has never formally stated the formulation of the term political corruption. However, in the development of law enforcement, this type of political corruption is clearly seen in a number of corruption case decisions as an incriminating matter from a conviction. This will be a problem considering that normative instruments are apparently not enough to eradicate corruption.

Political corruption is defined as the use of political position to improve personal well-being. Public office that should provide public welfare is used to merely increase personal coffers through receiving bribes or other indirect forms of remuneration.⁵ There are many cases of corruption in Indonesia, especially those committed by members of political parties who hold political positions in parliament and in government. An example is the corruption case involving 41 of the 45 members of the Malang City DPRD, which was handled by the Corruption Eradication Commission (KPK). The group of suspected corrupt officials was arrested in the bribery case of the 2015 APBD-P discussion on Malang City Government Fiscal Year. Former Chairperson of Malang City DPRD, Moch Arief Wicaksono, became the first person who was sentenced with imprisonment for five years.⁶

The author was encouraged to examine the consequences of political corruption in Indonesia because political corruption has a more structured system than general corruption, because political corruption is committed to satisfy the interests of political parties. The crime of political corruption is controlled and protected by party elites who control all aspects of the state.

Corruption is a universal problem faced by all countries and a complex problem that is hard to eradicate. This is because corruption is not only related to economic problems, but also related to political problems, power, and law enforcement. The fact is that corruption will never disappear in a country with rampant political corruption.

In Indonesia, the problem of corruption has tainted all aspects of Indonesians' lives. Moreover, corruption in Indonesia occurs systematically and extensively so that it not only harms the country's finances, but also violates the social and economic rights of the community at large, thus, it is necessary to eradicate corruption through extraordinary means.⁷

⁵ Harun al-Rasyid, *Fikih Korupsi, Analisis Politik Uang di Indonesia dalam Perspektif Maqashid al-Syari'ah* (Kencana, Jakarta, 2016) 4.

⁶ Michael Hangga Wismabrata, 'Kasus Korupsi Massal di DPRD Kota Malang, Ini Sejumlah Faktanya' (*Kompas*, 4 September 2018) <<https://regional.kompas.com/read/2018/09/04/15100021/kasus-korupsi-massal-di-dprd-kota-malang-ini-sejumlah-faktanya?page=all>> accessed 16 July 2019.

⁷ Commentary of Law No. 20 of 2001 on the Amendment of Law No. 31 of 1999 on Eradication of Corruption.

Given the above problem, the researcher formulated the research problem related to the legal consequences of political corruption in Indonesia. This research journal is written to identify and analyze the legal consequences of political corruption in Indonesia.

This study addressed the research problems using normative legal research, namely legal research carried out by examining literature or secondary data.⁸ The object of normative legal research focuses on the principles of law, legal systematics, the extent of legal synchronization, the history of law, and comparative law.⁹

The study was conducted using a case study, conceptual, and statutory approaches¹⁰ by studying documents. The collected data were analyzed using qualitative analysis.

B. Discussion and Result

1. Conceptual Framework of Political Corruption

In the new era of globalization, corruption has become a serious crime that affects multilateral international relations. The impact is even worse when the corruption involves political elites than the general corruption cases committed by those who do not hold any political power. Political corruption committed by high officials in a country is commonplace in various countries worldwide. Political corruption has a pernicious impact on state governance and violates the basic rights of the people of the country.

Substantially, the formulation of the political corruption offense is not formally regulated in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption. However, the development of law enforcement of political corruption in Indonesia, based on a number of court decisions, has raised the term political corruption as an aggravating circumstance in the formulation of a criminal offenses, which has been regulated in the Law on the Eradication of Corruption.

Another opinion states that political corruption is an act of corruption by an entity, which happens to be a political party. This is based on the term "other relations" used in Article 20 paragraph 2 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of

⁸ Soejono Soekanto and Sri Mamuji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (PT. Raja Grafindo Persada, 2010) 13-14.

⁹ Ibid 14.

¹⁰ Peter Mahmud Marzuki, *Penelitian Hukum* (11th edn, Kencana, 2011) 94.

Corruption.¹¹ In defining criminal acts of corruption by entities, or “enterprise” corruption, it is undeniable that political parties are entities that are not business oriented, but are more politically oriented, because political parties are a form of enterprises among many people in an institution. The phrase “other relations” in Article 20 paragraph 2 indicates that there is a relationship between people who commits corruption with a political party, that is, his position within the institution. In this case, it is clear that the alleged perpetrator should be investigated based on the utilization of the corruption assets, whether solely for personal gain or for the interests of his political party, or both.¹²

The following are various laws and regulations related to corruption eradication:

1. MPR Decree No. XI / MPR / 1998 concerning Clean and Corruption, Collusion, and Nepotism Free State Administrators;
2. Law Number: 24 / Prp / 1960 concerning the Investigation, Prosecution and Examination of Corruption;
3. Rule of War Rule Number: Prt / Perpu / 013/1958 dated 16 April 1958;
4. Law Number 3 of 1971 concerning Eradication of Corruption;
5. Law Number: 28 of 1999 concerning State Administrators that are Clean and Corruption, Collusion, and Nepotism Free;
6. Law Number: 31 of 1999 concerning Eradication of Corruption;
7. Law Number: 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption;
8. Law Number: 30 of 2002 concerning Corruption Eradication Commission;
9. Law Number 07 of 2006 concerning Ratification of the United Nations Convention against Corruption; and
10. Presidential Decree (Keppres) Number 127 of 1999 concerning the Commission for Inspecting the Wealth of State Officials.

To understand the corruption offenses stipulated in the laws on corruption eradication, it is necessary to review the background of the provisions of the offense. In

¹¹ Article 20 paragraph 2 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on the Amendment to Law Number 31 of 1999 on Eradication of Corruption Crimes “*Corruption is committed by a corporation if the criminal act is committed by persons both based on work relationships and based on other relationships, acting within the corporate environment both alone and together*”.

¹² Eko Suwarni, ‘Penegakan Hukum atas Korupsi Politik’ (2018) 4(3) Seminar Nasional Hukum Universitas Negeri Semarang 956.

general, the corruption offenses in corruption legislation can be divided into 2 (two) main parts, namely:¹³

a. Corruption offense formulated by lawmakers.

According to various literature, corruption offenses formulated by lawmakers only cover four articles as stipulated in Article 2, Article 3, Article 13, and Article 15 of Law Number 31 of 1999, in conjunction with Law Number 20 of year 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption Crimes. However, by taking a closer look to what is regulated in Article 15 of the law, it is not merely based on the formulation of the legislators, but it takes the concept as stipulated in the Criminal Code.

b. Corruption offense taken from the Penal Code, which is divided into 2 parts as in the followings:

1) Corruption offense drawn solely from the Criminal Code.

What is meant by the corruption offenses absolutely taken from the Criminal Code are offenses of the Criminal Code that were transformed into corruption offenses so that the offenses in the Criminal Code are no longer valid. In other words, if someone's actions meet the formulation of the offense, he will be charged with corruption offense as regulated in the law on corruption eradication and no longer be based on the offense of the Criminal Code. Corruption offense drawn absolutely from the Criminal Code is Article 5 to Article 12 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption.

2) The corruption offense that was not solely drawn from the Criminal Code.

Corruption offenses that are not drawn absolutely from the Criminal Code are offenses taken from the Criminal Code which, under certain conditions related to the examination of corruption, are adopted into corruption offenses, but in other circumstances remain offenses regulated by the Criminal Code. Unlike absolute withdrawal, the provisions of this offense in the Criminal Code still apply and can be used to charge a perpetrator whose actions meet the elements of the statute, but if the action is related with the examination of corruption offenses, the perpetrator will be charged with an offense as regulated under the corruption eradication law. The offenses of corruption which are not drawn absolutely from the Criminal Code are contained in Article 23 of Law Number 31 of 1999 Eradication of Corruption, derived from Article 220, Article 231, Article 421, Article 422, Article 429, and Article 430 of the Criminal Code.

Political corruption is distinguished by the fact that the perpetrator is a person or body that has political power and violates the law. The act invokes legal, political, economic, human rights and moral consequences. Perpetrators of such offenses intend to benefit themselves, other people, or bodies by abusing their authority, opportunities and facilities because of their position or political position.¹⁴

¹³ Nanang T. Puspito et.al. *Pendidikan Anti-Korupsi Untuk Perguruan Tinggi* (Kementerian Pendidikan dan Kebudayaan RI Direktorat Jenderal Pendidikan Tinggi, 2011) 128-130.

¹⁴ Artidjo Alkostar, 'Korelasi Korupsi Politik dan Pemerintahan di Negara Modern (Telaah tentang Praktek Korupsi Politik dan Penangulangannya)' (DPhil dissertation, Universitas Diponegoro 2007) 35.

Political corruption can take the form of abuse of authority, using influence, lobbying, vote buying, and fraud in elections. Thus, political corruption is essentially the vanishing ability to stay loyal, both to the people, the state, regulations or principles. Such actions commonly result from political temptations and challenges making the perpetrators ignore or betray the trust, the mandate or hope of the people, the state duties, and morality.

According to Heidenheimer, political corruption is corruption that occurs in societies with a nature of patron-client relationships. It is different from the common corruption occurring in societies with familial nature of community relations, which is only characterized by a small bribe or “food allowance.” Political corruption has a broad impact in various fields of public service because it is committed by those with high levels of authority.¹⁵

Political corruption is an action committed by political elites or government officials who have an impact on the political and economic environment of a country. Such acts are commonly committed by people and / or parties who hold political power, such as the president, the heads of government, the cabinet ministers, and members of parliament. These government authorities can use political facilities they possess despite the fact that the misused facilities are entrusted to them by the people.¹⁶

Political corruption not only adversely impacts politics, but also on the economy. Theoretically, no one is immune from the repercussions of any violations against the law and the dangers of misuse of political power or economic power and political corruption that damages state institutions. A good economic system is closely related to good legal structure. Robert Dahl, an American political expert, stated:

“The best economic order would help generate a distribution of political resources favorable to the goals of voting equality, effective participation, enlightened understanding, and final control of the political agenda by all adults subject to the laws”.¹⁷

A functioning economic order will help produce a distribution of political resources, effective participation, and well-settle control of the political agenda by all parties who are subject to the law. However, problems arise because Indonesia does not yet have a strong legal basis with which to develop the national economy. Unfortunately, this gap provides opportunities for political corruption with various features such as the abuse of authority or the granting of influence from political offices.

¹⁵ Arnold J. haidenheimer, *Political Corruption, Readings in Comparative Analysis* (Rinechart and Winston, 1970) 15.

¹⁶ Artidjo Alkostar, ‘Korelasi Korupsi Politik (n.14) 37.

¹⁷ Robert A. Dahl, *A Preface to Economic Democracy* (University of California Press, 1985) 80.

2. Enforcing Laws to Combat Political Corruption

The impact of political corruption is extraordinarily pernicious in Indonesia, especially when the political elites use their offices or influence attached to their positions. Political corruption occurs through various avenues, not only in the many political parties, but also in many individual leaders of political institutions. The government in the reform era has promised to consider corruption as a serious problem, but in fact, until now, it has been hard to eradicate.

It is possible to observe the development of prosecution related to political corruption in Indonesia from several cases of corruption. Political corruption can be in the form of abuse of authority, granting influence, illegal lobbying, enrichment, vote buying, and fraud in elections.

One example of political corruption is illustrated in Decision No. 1195 K / Pid.Sus / 2014 Corruption Case in the name of the defendant Lutfi Hasan Ishaq. In that case, the court found that Defendant Luthfi Hasan Ishaq was proven legally and convincingly guilty of committing the crime of "Corruption and Money Laundering." As a result, the Defendant was sentence to imprisonment for 18 (eighteen) years fined of Rp1, 000,000,000.00 (one billion rupiah) provided that if the fine is not paid, it is replaced with imprisonment for 6 (six) months. The Defendant's right to be elected to a public office was also revoked.

Incriminating matters in Lutfi Hasan Ishaq's decision included:

1. The criminal act committed by the Defendant as a member of the Republic of Indonesia DPR which undermined the public's trust in the House of Representatives;
2. The Criminal Act of the Defendant as the President of the Prosperous Justice Party (PKS) which undermined the pillars of democracy through Political Party Institutions;
3. Defendants as State Administrators and Political Party Officials should be a role model to the public who behave honestly in reporting their assets in the State Organizers' Asset Report (LHKPN) and report any emolument enrichment that they have received. However, the Defendant has done acted contrary to the ideal goal of realizing a State Institution that is clean and free of Collusion, Corruption, and Nepotism;

Another example is PN Decision Number: 72 / Pid.Sus-TPK / 2018 / PN Jkt.Pst Date. December 3, 2018. This corruption case against the defendant Zumi Zola Zulkifli who was sentenced to six years in prison plus a fine of Rp. 500 million in three months' confinement. He was proven to have violated Articles 12 B and 5 Paragraph 1 letter (a), Act Number 31 of 1999, as amended by Law Number 20 of 2001 concerning Eradication of Criminal Acts in conjunction with Article 55 Paragraph 11 of the Criminal Code Article

65 Paragraph 1 of the Criminal Code. The Panel of Judges found Zumi to have given and promised something to civil servants or state administrators with the intention to get the Jambi Province RAPBD (regional budget) approved for Fiscal Year 2017 and 2018. The panel of judges also imposed additional penalties in the form of revocation of the right to be elected in public office for 5 years after serving the criminal sentence. The incriminating matter is that Zumi's actions were contrary to government programs that are aggressively aimed at eradicating corruption and his actions harmed people's trust as a state administrator.

Political corruption is also illustrated by PN Decision Number: 112/Pid.Sus/TPK/2016/PN.Jkt.Pst dated February 20, 2017. This Corruption Case is was against defendant Irman Gusman related to a state organizer who received a gift or promise even though it was known or should be suspected that the gift or the promise was given as a quid pro quo to do something or to refrains from doing something based on his official position, contrary to his obligations related to the management of imported sugar quotas given by Bulog to CV Semesta Berjaya in 2016.

The Panel of Judges found that Irman Gusman was legally and convincingly proven to violate Article 12 letter b of Law Number 31 of 1999 as amended in Law Number 20 of 2001 concerning Eradication of Corruption. It imprisoned Irman Gusman for four years and six months and a fined him Rp 200 million, provided that if he did not pay, he would be imprisoned for three more months. Besides being sentenced to prison, Irman was deprived of his political rights for three years as an additional sentence. Some considerations that incriminated Irman were the fact that he did not carry out his mandate as Chairman of the DPD, not supporting the government's program in eradicating corruption, and not being frank in admitting mistakes.

Based on some descriptions of the corruption case above, we can understand the importance of law enforcement of political corruption related to the abuse of authority, granting influence and enrichment characterizes the pattern of political corruption committed by the political elite in Indonesia. Imprisonment penalties and fines imposed on the defendants also varied. In addition to imprisonment and fines, additional penalties were also imposed for revocation of political rights in accordance with Article 18 paragraph 1 letter d of the Law on corruption eradication.

Imposing additional punishment in the form of revocation of the political right to run in an election aims to protect the public or community from the possibility that these

corruption convicts will be re-elected and occupy a public office, such as a member of the MPR, DPR, DPD, and DPRD or other public offices. This is harmful because members of the MPR, DPR, DPD, and DPRD are representatives of the people who shall accommodate people's aspirations. Therefore, the members of the MPR, DPR, DPD, and DPRD should not behave in a corrupt manner.

The incriminating matter in the political corruption ruling had a clear adverse impact on state administration. Political corruption leads to state administration that benefits only certain groups and provides opportunities for the growth of political corruption. To create a state that is clean and free of corruption, it is necessary to apply general principles of state administration, which include legal certainty, orderly state administration, public interest, openness, proportionality, professionalism, and accountability in a consistent manner.

These principles are realized by requiring state officials to disclose and report their assets before taking office during their tenure, as a preventive and prophylactic effort against political corruption. It also aims to ensure the state officials' compliance with the provisions of general principles of state administration, the rights and obligations of State Administrators, and other provisions. Compliance with the general principles will strengthen institutional, individual, moral, and social norms as mandated by Law of the Republic of Indonesia Number 28 of 1999, concerning the Organization of a state that is clean and free of corruption, collusion and nepotism.

3. The Legal Consequences of Political Corruption in Indonesia

Corruption is a commonplace problem in Indonesia and should be addressed as a serious problem because it has penetrated all walks of life in a systematic way. History reveals that corruption has existed a long time ago, both before and after independence. It was rampant during the old order era, rampant in the new order era, and persists in the reform era.¹⁸

The currently pervasive corruption has increasingly devastated the nation, since it is a type of social disease, which inevitably will drive the country to the brink of bankruptcy. The massively practiced corruption in all lines of government agencies and even in law enforcement agencies has turned into a corrupt system that make people deem the phenomenon as something normal. This shared belief, in consequence, will make the

¹⁸ Rudi Pardede, *Proses Pengembalian Kerugian Negara Akibat Korupsi* (Genta, 2016) 1.

perpetrators no longer be ashamed in committing corruption. Even worse, they may take pride in the assets of corruption.¹⁹

Jhon S.T. Quah, a corruption eradication expert, identified three patterns of corruption eradication initiatives in Asian countries. The first pattern is that the state has an applicable corruption eradication law but does not have an independent corruption eradication body. In the second pattern, the state has a corruption eradication law with many corruption eradications bodies. In the third pattern, the state has a corruption eradication law with an independent corruption eradication body. He argues that the third pattern is the most effective model of corruption eradication because an independent body that solely focuses on eradicating corruption will not be deflected by other priorities.²⁰ However, adopting the third pattern alone cannot guarantee the success in eradicating corruption. As seen from various cases in Hong Kong and Singapore, political support is very important in supporting corruption eradication bodies with adequate resources, competent staff, and extensive authority to investigate and reveal corruption cases.²¹

Corruption eradication policies must also be supported by the principles of good governance and the principles of sustainable development. This can be done through the following steps or conditions:²²

1. A regular inspection on the executive, legislative, and judicial powers;
2. A clear line of accountability between political leaders, the bureaucracy and the people;
3. An open political system involving active civil society;
4. An impartial legal system, criminal justice and public order that upholds fundamental political and civil rights, protects personal security and provides consistent, transparent rules for transactions needed in modern economic and social development;
5. Professional, competent, capable and honest public servants that work within an accountable and governing framework with rules and in principles of merit and prioritizing the public interest;
6. Capacity to carry out fiscal plans, expenditures, economic management, financial accountability systems and evaluation of public sector activities;
7. Attention not only to the institutions and processes of the central government but also to the attributes and capacities of sub-national and local government authorities and issues of political transfer and administrative decentralization; and
8. Every effective anti-corruption strategy must recognize the relationship between corruption, ethics, good governance and sustainable development.

¹⁹ Harun al-Rasyid, (n.5) 114-115.

²⁰ Vishnu Juwono, *melawan Korupsi sejarah pemberantasan korupsi di Indonesia 1945-2014* (Kepustakaan Populer Gramedia, 2018) 13.

²¹ Ibid.

²² Andi Hamzah, *Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional* (PT Raja Grafindo Persada, 2005) 251-252.

Corruption eradication policies that are not supported by the principles of good governance and the principles of sustainable development will lead to the emergence of political corruption with various modes of corruption.

The parameters of the legal consequences of political corruption as one of the factors inhibiting the eradication of corruption in Indonesia, is apparent from the Corruption Perception Index and the National Law Enforcement Index of corruption.

1. Corruption Perception Index

Political corruption is a type of corruption, which contains elements of political exploitation in an effort to gain political advantage. The perpetrators are people who have political power and occupy a position in government. The table below shows the top rank of political position with the highest number of political corruptions.

Corruption Crimes Based on Profession/Position

POSITION	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	Amount
Member of DPR and DPRD	0	0	0	2	7	8	27	5	16	8	9	19	23	20	61	205
Head of Institution/Minister	0	1	1	0	1	1	2	0	1	4	9	3	2	0	0	25
Ambassador	0	0	0	2	1	0	1	0	0	0	0	0	0	0	0	4
Commissioner	0	3	2	1	1	0	0	0	0	0	0	0	0	0	0	7
Governor	1	0	2	1	1	2	1	0	0	2	3	3	1	1	1	19
Major/Regent and Vice	0	0	3	6	6	5	4	3	3	3	12	4	9	13	16	87
Echelon I / II / III	2	9	15	10	22	14	12	15	8	7	2	7	10	43	15	190
Judge	0	0	0	0	0	0	1	2	2	3	2	3	1	3	1	18
Attorney	0	0	0	0	1	0	0	2	0	0	0	0	3	1	0	7
Police	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0	2
Lawyer	0	2	0	0	0	0	1	0	0	0	0	2	1	0	3	10
Private Parties	1	4	5	3	12	11	8	10	16	24	16	18	28	28	22	204
Others	0	4	1	2	3	4	8	1	2	8	8	3	21	13	7	85
Corporation	0	0	0	0	0	0	0	0	0	0	0	0	0	1	3	4
Total Number	4	23	29	27	55	45	65	38	49	59	61	62	99	123	129	867

The data indicates that since 2004-2018 the professions/positions of DPR and DPRD members ranked as the profession with the highest level of corruption, followed by private parties and echelon I / II / III were followed in sequence. This means that corruption

committed by members of the DPR and DPRD is related to their political powers/positions.

In the context of state administration, DPR and DPRD members should represent the interests of the people and protect the people. However, in fact, they are the group with the most frequent arrests for bribery/ enrichment cases. Top echelon officials who should be responsible for the effectiveness and efficiency of government projects, in fact, become one of the largest numbers of group to receive bribery/ enrichment, and thus hampering the efficiency and effectiveness of the project.²³

2. National Law Enforcement Index

The National Law Enforcement Index illustrates the effectiveness of the Law Enforcement on political corruption. Law enforcement measures are said to be effective when the number of political corruptions revealed from time to time decreases and even leads to zero cases. However, the facts say that the quantity of corruption increases from day to day. One of the following cases of political corruption is evidence that corruption law enforcement has not been effective, and thus has led to many cases of political corruptions with various modes.

A noteworthy case is the political corruption in the city of Malang, East Java, which suddenly became a national concern, because of the mass corruption involving 41 out of 45 members of DPRD of Malang City, who were named as corruption suspects by the KPK. These 41 local parliament members were allegedly receiving bribes from the Malang Mayor (non-active) Moch Anton, who was also a suspect. The bribes worth IDR 12.5 million to IDR 50 million for each member were intended to facilitate the approval of the 2015 Malang City Budget changes. The mass corruption committed by the representatives of the people of Malang is ironic and concerning. The DPRD members, who should monitor the executive work have collaborated with the executive to commit corruption. This event not only affected Malang City, but also led to people's distrust in almost all regional parliaments. Unfortunately, such mass corruption involving multiple DPRD members is not the first time to happen in history. In April 2018, the KPK named 38 North Sumatra DPRD members as corruption suspects. In addition to the Corruption

²³ Jonasmer Simatupang, 'Analisis Hukum Fenomena Tindak Pidana Korupsi Massal Anggota Dewan dan Pertanggung Jawaban Pidana' (2019) 5(1) Seminar Nasional Hukum Universitas Negeri Semarang 83-92.

Eradication Commission, the prosecutor's office has also assigned the status of corruption suspects to 44 members of the West Papua provincial DPRD for the 2009-2014 period.²⁴

There are at least five modes of corruption that commonly committed by DPRD members. First, accepting bribes to facilitate the accountability reports of regional heads or the approval of the Regional Budgets (APBD). Bribes in this way are often called “ketok palu” (money to influence decision making). In this way, to prevent rejection from the legislature, the regional head must issue bribes to the leaders as well as all members of the DPRD. Second, illegally increasing the income of members and leaders of the House through the DPRD budget process. Third, inserting a project or special allocation through the budget proposed by the government. Fourth, APBD fund users are not in accordance with the allocation and without supporting evidence. Fifth, bribery in the process of drafting and ratifying a regional regulation.²⁵

In addition, the high political costs in Indonesia is also potential to cause political corruption. An example of this was the corruption case in Malang. Out of 41 Malang DPRD members who were named as suspects, 20 people ran again in the 2019 election. To fund their political campaigns, for example, each party must spend billions of rupiah. This is the driving factor why government officials and DPR or DPRD members are corrupt. No wonder after winning the office, they will have to earn money to recoup the costs for their campaigns. The only way to do this is by trading their political power for profit, such as through the budgeting processes that involves the DPR or the government, or the appointment of governors and regents that always require money politics. These appointed executive officials, in turn, will seek money illegally²⁶ when elected to the board or active in the government. A repeated pattern of corruption arising from several cases now being handled by the KPK or other law enforcement agencies is by way of giving bribes or enrichment indirectly to the related party of the authority or gift intended to the closest circle of the authority. This close relationship with the authority is expected by the bribe giver to influence the authority to do or not do something in his authority that benefits the bribe giver in a quid pro quo. It is in this context that influence trading occurs.²⁷

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Donal Fariz et.al. *Kajian Implementasi Aturan Trading in Influence Dalam Hukum Nasional* (Indonesia Corruption Watch, 2014) 27-28.

In addition, the consequences of political corruption when viewed from the effectiveness of the law in eradicating corruption in Indonesia can be measured from the extent to which the rule of law regarding corruption is obeyed or disobeyed. According to Soerjono Soekanto, legal effectiveness is determined by the level of community compliance with the law, including law enforcers, so that it is possible to assume that, “a high level of compliance is an indicator of a functioning of a legal system. And the functioning of the law is a sign that the law has achieved the sociological goal of defending and protecting the community in the association of life.”²⁸

Furthermore, according to Soerjono Soekanto, the effectiveness of the law is closely related to the efforts made so that the law truly lives in society, in the sense that it applies philosophically, juridically, and sociologically. Philosophically applicable means that the law is valid as desired or that aspired by the existence of the law. Applied legally means that it applies according to what has been formulated and applied sociologically means that the law is obeyed by the community members.²⁹

Referring to the effectiveness of the law according to Soerjono Soekanto, the facts indicate that the deterrent effect has not yet been achieved in the enforcement of political corruption law and there is a disharmony between laws and regulations related to political corruption. An example of this is discriminatory and unjust rules; non-explicit certifications (*non-lex certa*), or vague and ambiguous laws that lead to multiple interpretations; and contradictions and overlap with other regulations (both equal and superior). Other examples are sanctions that do not redress the violations or that are not on target and are considered too light or too heavy; the use of different concepts for the same case, all of which allows a regulation to be incompatible with the existing condition making it not functional or unproductive and experience resistance. Many legal products are a place for the struggle for legitimacy of various political power interests to maintain and accumulate power.³⁰

A clear example of this is the debate about the Supreme Court Decision (MA) which abrogated KPU Regulation Number 20 Year 2018 regarding the candidacy requirements for the DPR, DPRD, Provincial/Regency DPRD, which explicitly prohibits the nomination of those convicted drug cases, sexual crimes against children and corruption. The Supreme Court stated that the prohibition of ex-convicts in corruption cases from becoming

²⁸ Soerjono Soekanto, *Efektivitas Hukum dan Peranan Saksi* (Remaja Karya, Bandung, 1985) 7.

²⁹ Soerjono Soekanto, *Kesadaran Hukum dan Kepatutan Hukum* (Rajawali, 1982) 43.

³⁰ *Ibid.* 41-42.

legislative candidates in KPU Regulation Number 20 of 2018 is contrary to Law Number 7 of 2017 concerning Elections.

Technically the prohibition of those convicted of corruption from running for office in the DPR and Provincial and/or City DPRD is regulated in PKPU Number 20 of 2018 concerning the Nominations of Members of the House of Representatives, the Regional House of Representatives and the Regency/City People's Representative Council, in Article 4 paragraph (3) which states; "In the selection of prospective candidates in a democratic and open manner as referred to in paragraph (2), excluding former drug traffickers, sexual crimes against children and corruption convicts." The provisions of Article 4 paragraph (3) PKPU No. 20 of 2018 then become the basis for legal arguments for the KPU and the Provincial and District/City KPUs to ban former corrupt officials from the ballot for legislative candidates (DPR, Provincial and Regency/City DPRD). Whereas, Law Number 7 Year 2017 concerning Elections, Article 240 paragraph (1) letter g states; "Prospective members of the DPR, Provincial DPRD and Regency/City DPRD are Indonesian citizens and must meet the requirements; g. have never been imprisoned based on a court decision that has obtained permanent legal force due to a criminal offense threatened with imprisonment of 5 (five) years or more, unless openly and honestly telling the public that he was a former convict."

This decision immediately triggered piercing criticism of the Supreme Court, which was considered to distance itself from progressive law, no longer upholding the principle of justice, and "approving" the return of corrupt officials to legislative bodies. However, despite this particular ruling, the Supreme Court remains consistent and persistent in eradicating corruption in Indonesia. The Supreme Court is of the opinion that it is only to straighten out for the sake of the law according to its content that a lower regulation must not conflict with a higher one. However, when viewed from the logic of the law, the substance of the law also contradicts the principles of justice, which currently strive to eliminate corruption that is increasingly pervasive. The example of disharmony between the laws and regulations above results in the legal ideals of the law enforcement goals of political corruption and the deterrent effect that has not been achieved because various interpretations arise between related regulations and even recidivists of political corruption.

As written in the ICW release by Tribunnews.com, it is illustrated that the deterrent effect of political corruption has not been achieved, citing recidivist political corruption

officials, including:³¹ Abdul Latif (Regent of Hulu Sungai Tengah) who, on January 4, 2017, was arrested in a KPK sting operation (OTT) over the bribery case of the Damanhuri Regional Hospital construction project. He was suspected of receiving bribes of IDR. 3.6 billion. Previously, while serving as an entrepreneur in 2005-2006, Abdul Latif was involved in a corruption case of the construction of a New School Unit (USB) for State Senior High School 1 Labuan Amas Utara with a budget of IDR. 711 million. On June 8, 2008, the Barabai District Court sentenced Abdul Latif one year to six months in prison and fined IDR 50 million and 2 months' imprisonment, and ordered paid restitution of Rp 37,636,500. At the appeal and cassation level, the verdict was upheld. Another political corruption recidivist, Mochammad Basuki (Chairperson of East Java DPRD) was appointed as suspect of bribery case related to budgeting and revision of regional regulations (perda) in East Java Province in 2017 by the KPK on 6 June 2017. He was the Chairman of Commission B of the East Java DPRD Gerindra Party Faction. Basuki was said to receive bribes from several Head of Office (Kadis) of the Government of East Java Province (East Java). The legal process against M. Basuki still continues at the KPK. Earlier in 2002, Basuki while serving as Chair of the Surabaya Regional House of Representatives had been involved in a corruption of health benefits and the operational costs of the Surabaya Regional House of Representatives, which cost the state Rp. 1.2 billion in 2002. The Surabaya District Court sentenced Basuki one year to five months in prison and a fine of Rp. 20 million in one month's allowance and to pay a replacement money of Rp. 200 million. However, the sentence was reduced to 1 year in prison and a fine of Rp 50 million in one-month imprisonment after filing an appeal. Basuki was released from prison on 4 February 2004.

Another recidivist political corruption figure is Aidil Fitra (Chair of KONI Samarinda). In 2016, he was named by the Attorney General's Office (AGO) as a suspect in a case of misuse of the Samarinda V/ 2014 Provincial Sports Week (Porprov) funds. On 5 May 2017, the Banjarmasin Corruption Court sentenced 1 year in prison and paid a replacement money of Rp. 772 million. Not satisfied with the light sentence, the Prosecutor appealed to the East Kalimantan High Court and was granted by the panel of judges by adding Aidil's sentence to five years in prison. Earlier in 2010, Aidil Fitri while serving as a member of the Samarinda DPRD had been involved in corruption of social assistance funds (bansos) from the Samarinda APBD to the Persisam Putra soccer club in

³¹ Donal Fariz (n.2).

2007–2008, which cost the state finances up to Rp 1.78 billion. And most recently Kudus Regent, Muhammad Tamzil was arrested in a sting operation (OTT) for being allegedly involved in bribery transactions related to the sale and purchase of positions within the Kudus Regency Government. Tamzil, who was also the regent of Kudus in the period 2003 - 2008, was once entangled in a corruption of aid funds and educational facilities for the Kudus Regency 2004-2005. The corruption crime was carried out by Tamzil along with former Head of the Kadispora Kudus Ruslin and PT Ghani & Son Director Abdul Ghani. In February 2016, Tamzil was convicted by the Semarang Corruption Court and sentenced to 22 months in prison for a fine of Rp 100 million in three months' imprisonment. Tamzil was proven to have violated Article 3 of Law Number 31 of 1999, which was amended by Law Number 20 of 2001, concerning Eradication of Corruption.

The government must prioritize resolving corruption cases because the problem of corruption is always related to the basic economic and economic life of the nation. There must be a joint commitment in the spirit to eradicate corrupt behavior between the community and the government, both on national and international scope to overcome the problem. There should be a priority to pay attention to corruption handling because it may disrupt and inhibit the development of nations, hinder the achievement of national goals, undermine the optimal use of national resources, threaten the entire social system, damage the fostering of state apparatus and clean and authoritative government and damage the trustworthiness and authority of the nation environmental quality.³²

Corruption by politicians always hides behind the cover of official policy that inhibits the process of democratization. Political corruption is an abuse of public trust for private gain or related to the interests of perpetuating power. This is due to a sense of obligation to pay back to the party and its supporters who have served to position themselves in the power elite.

C. Conclusion

Based on the given description, it is concluded that political corruption is an action carried out by the political elite or government officials of the State that has an impact on the political and economic situation of the State. This act is usually carried out by people and or parties who have political positions or power. The political corruption pattern may take the form of abuse of authority, granting influence, lobbying, enrichment, vote buying,

³² Barda Nawawi Arief, *Bunga Rampai Hukum Pidana* (Alumni, 1992) 133.

and election fraud. The legal consequences of political corruption in Indonesia can be seen from the achievement of legal effectiveness related to political corruption. In fact, there are former corruption convicts who repeat the political corruption crime since they do not receive any deterrent effect of law enforcement for political corruption. In addition, there remains a disharmony between the laws and regulations related to political corruption. The rampant political corruption practices result in violations of the principles of good governance.

It is necessary to reinforce the laws, and regulations related to political corruption because the existing legal instruments regarding corruption are not yet able to provide a deterrent effect for corruptors. Therefore, we need to consistently implement the principles of good governance.

References

Books

- Alkostar, Artidjo, *Korupsi Politik Di Negara Modern* (FH UII Press, 2008)
- Andi Hamzah, *Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional* (PT Raja Grafindo Persada, 2005)
- Arief, Barda Nawawi, *Bunga Rampai Hukum Pidana* (Alumni, 1992)
- Dahl, Robert A., *A Preface to Economic Democracy* (University of California Press, 1985)
- Fariz, Donal et.al. *Kajian Implementasi Aturan Trading in Influence Dalam Hukum Nasional* (Indonesia Corruption Watch, 2014)
- Haidenheimer, Arnold J, *Political Corruption, Readings in Comparative Analysis* (Rinechart and Winston, 1970)
- Hamzah, Jur. Andi, *Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional* (PT. Raja Grafindo Persada, 2006)
- Harun al-Rasyid, *Fikih Korupsi, Analisis Politik Uang di Indonesia dalam Perspektif Maqashid al-Syari'ah* (Kencana, Jakarta, 2016)
- Harun, Al-Rasyid, *Fikih Korupsi, Analisis Politik Uang di Indonesia dalam Perspektif Maqashid al-Syari'ah* (Kencana, 2016)
- Juwono, Vishnu, *Melawan Korupsi Sejarah Pemberantasan Korupsi Di Indonesia 1945-2014* (Kepustakaan Populer Gramedia, 2018)
- Marzuki, Peter Mahmud, *Penelitian Hukum* (11th edn, Kencana, 2011)
- Pardede, Rudi, *Proses Pengembalian Kerugian Negara Akibat Korupsi* (Genta, 2016)
- Patittingi, Farida and Jurdi, Fajlurrahman, *Korupsi Kekuasaan Dilema Penegakan Hukum Di Atas Hegemoni Oligarki* (PT Raja Grafindo Persada, 2016)
- Puspito, Nanang T, et.al. *Pendidikan Anti-Korupsi Untuk Perguruan Tinggi* (Kementerian Pendidikan dan Kebudayaan RI Direktorat Jenderal Pendidikan Tinggi, 2011)
- Soekanto, Soerjono, *Kesadaran Hukum dan Kepatutan Hukum* (Rajawali, 1982)
- _____, *Efektivitas Hukum dan Peranan Saksi* (Remaja Karya, Bandung, 1985)
- _____, and Mamuji, Sri, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (PT. Raja Grafindo Persada, 2010)

Journals

- Lestari, Yeni Sri, 'Kartel Politik dan Korupsi Politik di Indonesia' (2016) 2(1) Seminar Nasional Hukum Universitas Negeri Semarang
- Simatupang, Jonasmer, 'Analisis Hukum Fenomena Tindak Pidana Korupsi Massal Anggota Dewan dan Pertanggung Jawaban Pidana' (2019) 5(1) Seminar Nasional Hukum Universitas Negeri Semarang
- Sjafrina, Almas Ghaliya Putri, 'Dampak Politik Uang terhadap Mahalnya Biaya Pemenangan Pemilu dan Korupsi Politik' (2019) 5(1) Integritas
- Suwarni, Eko, 'Penegakan Hukum atas Korupsi Politik' (2018) 4(3) Seminar Nasional Hukum Universitas Negeri Semarang

Dissertation

- Alkostar, Artidjo, 'Korelasi Korupsi Politik dan Pemerintahan di Negara Modern (Telaah tentang Praktek Korupsi Politik dan Penanggulangannya)' (DPhil dissertation, Universitas Diponegoro 2007)

Legislation

- Commentary of Law No. 20 of 2001 on the Amendment of Law No. 31 of 1999 on Eradication of Corruption
- Law No. 20 of 2001 on the Amendment of Law No. 31 of 1999 on Eradication of Corruption
- Law No. 28 of 1999 on Free of Corruption, Collusion and Nepotism State Administration. The 1945 Constitution of the Republic of Indonesia.

Website

- Fariz, Donal, 'Lingkaran Korupsi Politik' (*Indonesia Corruption Watch*, 24 May 2018) <<https://antikorupsi.org/id/opini/lingkaran-korupsi-politik>> accessed 24 April 2019
- Wismabrata, Michael Hanga, 'Kasus Korupsi Massal di DPRD Kota Malang, Ini Sejumlah Faktanya' (*Kompas*, 4 September 2018) <<https://regional.kompas.com/read/2018/09/04/15100021/kasus-korupsi-massal-di-dprd-kota-malang-ini-sejumlah-faktanya?page=all>> accessed 16 July 2019