

LEGAL REVIEW OF INDEFINITE REVOCATION OF THE POLITICAL RIGHT TO HOLD PUBLIC OFFICE AGAINST CORRUPTION CONVICTS

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Abstract

To break the vicious cycle of corruption in the society and maintain social order, revocation of political rights for public officials' candidacies is considered an appropriate punishment for corruption convicts. This is a form of corruption eradication that prioritizes the achievement of legal goals. Between 2013-2017, 26.9% of corruption convicts had their political rights revoked. This study aims to determine the accuracy of the verdicts for their legal objectives. The study used a normative method with the approach of statutory norms and examples of cases of corruption, described and analyzed critically. The study shows that such verdicts are in accordance with the objectives of the law, because acts of corruption harmed the mandate and public trust.

Keywords: *Corruption convicts, legal objectives, revocation of political rights.*

A. Introduction

This study is motivated by a polemic shared by the community and anti-corruption activists ahead of the 2019 General Election, which questions the appropriateness of those convicted of corruption from running for legislative offices in the general election. Public uproar was addressed by the General Election Commission of the Republic of Indonesia (KPU RI), which issued Regulation of the General Election Commission of the Republic of Indonesia Number 20 of 2018 concerning the Nominations of Members of the House of Representatives, Provincial Regional House of Representatives and the Regency/City Regional People's Representative Council, prohibiting those convicted of corruption from becoming a legislative candidate. This was also reinforced by the Republic of Indonesia Election Commission Regulation Number 14 of 2018 concerning the Nomination of

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Individual Participants in the General Election of Members of the Regional Representative Council in article 60 paragraph (1) letter "j," which regulates those convicted of corruption. However, this provision was challenged by some former corruption convicts who were candidates for the DPR RI and DPRD legislative candidates. Sarjan Tahir, a DPR RI legislative candidate from South Sumatra; Darmawati Dareho, a legislative candidate for DPRD of the North Sulawesi Manado; Patrice Rio Capella, a prospective DPR RI candidate from Bangka Belitung Province; and Al Amin Nur Nasution, a prospective candidate from Jambi Province² petitioned the Indonesian Supreme Court for a judicial review of the KPU regulations. On September 13, 2018, the Supreme Court through its rulings Number 46 P / HUM / 2018 and Number 30 P / HUM / 2018 decided to grant the request for judicial review so that candidates for legislative members and/or government institutions that had been convicted of corruption within the five years prior to the registration could still nominate themselves or be elected as members of the legislative and/or government institutions.

The state administration is carried out by executive, legislative and judiciary institutions, where officials or state administrators are elected democratically for the positions of head of state, regional head, and members of the Legislature as public officials.³ Some state administrator positions in the executive institutions are the Head of State and Regional Heads such as Governors, Mayors, Regents, while some positions in the legislative institutions are members of the DPR, DPD and DPRD.⁴ These positions are open to all Indonesian citizens, because the political right has been guaranteed in the 1945 Constitution of the Republic of Indonesia Article 28 D paragraph (3) stating that, "Every citizen has the right to have the equal opportunity in government."

However, this political right has been the source of an endless debate among the public, anti-corruption activists, academics, politicians, and law enforcement officials who are concerned with equality before the law. They have constantly questioned whether all

² Ayu Cipta, '4 eks Napi Korupsi gugat peraturan KPU ke Mahkamah Agung' *Tempo* (Jakarta, 9 July 2018) <<https://nasional.tempo.co/read/1105127/4-eks-napi-korupsi-gugat-peraturan-kpu-ke-mahkamah-agung>> accessed 13 December 2018.

³ Public officials is defined as everyone who holds an executive, legislative or administrative or judicial position. They are appointed or elected, permanently or temporarily, paid or unpaid, regardless of one's seniority. It refers to anyone who carries out a public function, including a public agency, or public company, or that provides a public service, as stipulated in the national law of a State, and which is applied in law, and any person designated as a public official in a State.

⁴ Dhani Irawan, 'Sejak KPK berdiri, ada 220 wakil rakyat Korup di jerat' *Detik News* (Jakarta, 18 September 2018) <<https://news.detik.com/berita/d-4216860/sejak-kpk-berdiri-ada-220-wakilrakyat-korup-dijerat>> accessed 11 December 2018.

citizens without exception retain their political rights, including those who have been convicted of corruption and have their criminal sentences?

The Corruption Eradication Commission of the Republic of Indonesia (KPK) released information about the arrests of countless public officials, mostly from the DPR and DPRD. There was a total of 220 people, consisting of 74 officials from the DPR and 146 officials from the DPRD. The total number of DPRD members who have been investigated by KPK was 146 people. The following details describe the number of officials arrested by KPK from its initial establishment until the period of September 2018:

- | | | | |
|--------------------|-------------|-------------------|-------------|
| - Bengkulu | : 4 people | - North Sumatera | : 50 People |
| - DKI Jakarta | : 1 person | - South Sumatera | : 13 People |
| - Jambi | : 1 person | - Riau | : 13 People |
| - West Java | : 5 people | - North Maluku | : 1 Person |
| - Central Java | : 5 people | - Lampung | : 3 People |
| - East Java | : 47 people | - East Kalimantan | : 1 Person |
| - South Kalimantan | : 2 people | | |

As for the DPR members, a total of 74 people was arrested since the initial establishment of KPK until the period of September 2018 as follows:

- | | | | |
|--------|-------------|---------------------|------------|
| - 2007 | : 2 people | - 2013 | : 3 People |
| - 2008 | : 6 people | - 2014 | : 2 People |
| - 2009 | : 8 people | - 2015 | : 4 People |
| - 2010 | : 27 people | - 2016 | : 5 People |
| - 2011 | : 3 people | - 2017 | : 6 People |
| - 2012 | : 5 people | - 2018 (until Sept) | : 3 People |

Corruption is one of the crimes that has become a worldwide concern, including in Indonesia. It is also considered a public enemy and an extraordinary crime requiring extraordinary measures to eradicate. Law enforcement has taken many actions against corrupt individuals, including an additional verdict in the form of revocation of political rights. According to a study by Indonesia Corruption Watch (ICW), of the 576 corruption cases leading to conviction in 2016, there were only seven sentences that imposed additional verdicts revoking political rights. Such sentences were given to former Constitutional Court Chief Akil Mochtar, former Indonesian Police Traffic Corps Chief Djoko Susilo, former President of the Prosperous Justice Party (PKS) Lutfi Hasan Ishaq, and former member of the House of Representatives Dewi Yasin Limpo.

Of concern, according to ICW research, the average corruptor was only sentenced to 26 months in prison in 2016. In 2013, the average sentence was 35 months; in 2014, 32 months; and in 2015, 26 months. With the low verdict, an additional sentence in the form of permanent revocation of political rights provides new hope as a progressive step in eradicating corruption.⁵

According to the Corruption Eradication Commission through its spokesman Febri Diansyah, during 2013-2017, the corruption court (tipikor) had revoked the political rights of 26 individuals who were proven to be involved in corruption cases. “There are 26 people who serve as chairmen and administrators of political parties, members of the DPR and DPRD, regional heads and other positions that will pose threats to public if they are elected as political leaders,” said Febri in his written statement, Tuesday (09/18/2018). He explained that the revocation of political rights is necessary to reduce the potential for future corruption. “After the discussion and analysis by the KPK at the moment, we take note that there is a high-risk concern for the public if the convicted in certain cases serves as political leader,” he said. It was also explained that the KPK had the authority to submit demands in the form of revocation of political rights against politicians who were entangled in corruption cases.⁶ Throughout the period of 2016-2018, based on the ICW monitoring, the KPK prosecuted at least 88 politicians as defendants. However, the KPK only demanded that 42 of those defendants be stripped of their political rights.⁷

Additional punishment in the form of political rights revocation to serve in public office is facultative in nature,⁸ deterring the original perpetrators and other political officials and the general public from committing similar crimes. This is also a means to achieve criminal law objectives both specifically and generally, so that the consequences of imposed penalties have an impact on justice, expediency and legal certainty for the entire community.

Revocation of the right to serve in public office for former corruption convicts is the correct solution to break the vicious cycle of corruption cases commonly committed by the political elite. The regional heads or people’s representatives are political positions. Thus, it is

⁵ Mimin Dwi Hartono, ‘Pencabutan Hak Politik Koruptor’ (*Indonesia Corruption Watch, 17 March 2017*) <<https://antikorupsi.org/id/news/pencabutan-hak-politik-koruptor>> accessed 11 December 2018.

⁶ Dylan Aprialdo Rachman, ‘KPK: Hak Politik 26 Koruptor dicabut’ *Kompas* (Jakarta, 18 September 2018) <<https://nasional.kompas.com/read/2018/09/18/13252541/kpk-hak-politik-26-koruptor-dicabut-sepanjang-2013-2017>> accessed 11 December 2018.

⁷ Indonesia Corruption Watch, ‘Tren Vonis Kasus Korupsi 2018’ (*Indonesia Corruption Watch, 28 April 2019*) <<https://antikorupsi.org/id/tren/tren-vonis-kasus-korupsi-2018>> accessed 15 May 2019.

⁸ Judges have the discretion whether to impose these penalties.

necessary to take measures to prevent those convicted of corruption from running for public office for fear that they will repeat their crimes. In doing so, it is hoped that the community will have leaders and representatives of high integrity who prioritize the public interest.

However, some judges may have different views on the revocation of political rights for corruption convicts. Some judges have imposed time limits on the political right revocation, varying from 2 (two) to 5 (five) years, while others imposed indefinite revocation. In the following decisions, the various courts did not set a limitation on the revocation of the defendants' political rights:

- 1) Decision of the Supreme Court of the Republic of Indonesia Number 537 K / Pid.Sus / 2014 dated June 4, 2014 regarding the Defendant, Inspector General of Police Drs. Djoko Susilo, SH., M.Sc; which imposed an additional punishment of political rights revocation, prohibiting either voting or holding public office;
- 2) Decision of the Supreme Court of the Republic of Indonesia Number: 1195 K / Pid.Sus / 2014 dated 15 September 2014 regarding the Defendant Lutfi Hasan Ishaq, which decided to Revoke the Defendant's political right to be elected to public office;
- 3) Decision of the Supreme Court of the Republic of Indonesia Number: 1648 K / Pid.Sus / 2014 dated 17 November 2014 regarding the Defendant H.M. Rusli Zainal, which decided to Revoke the defendant's political right to be elected to public office;
- 4) Decision of the Supreme Court of the Republic of Indonesia Number: 285 K / Pid.Sus / 2015 dated February 23, 2015 regarding the Defendant Hj. Ratu Atut Chosiyah, SE, which decided to revoke the defendant's political right to be elected to public office;
- 5) Decision of the Supreme Court of the Republic of Indonesia Number: 1261 K / Pid.Sus / 2015 dated June 8, 2015 regarding the Defendant Anas Urbaningrum, which decided to Revoke the defendant's political right to be elected to public office; and
- 6) Decision of the Supreme Court of the Republic of Indonesia Number: 2864 K / Pid.sus / 2015 dated January 13, 2016 regarding Defendants Ade Swara and Nurlatifah, which decided to Revoke the political rights of the defendants to be elected to public office.

The lack of judges' decision to revoke political rights permanently can be due to limited understanding about the impact of corruption on social conditions, or it can also be attributed to fear of violating the law regarding revocation of political rights in corruption cases under the provisions of Article 17 juncto Article 18 paragraph (1) letter d of Law number 31 of 1999 concerning Eradication of Corruption Crimes juncto Article 35 paragraph (1) juncto Article 38 paragraph (1) of the Criminal Code (KUHPidana), which

provides a sentencing range on the revocation of political rights for a minimum of 2 (two) years and a maximum of 5 (five) years. Whereas the verdict in the 6 (six) cases above does not state the time limit for revocation. Some experts consider this as derogable right, which is a right that can be violated in the context of law enforcement.

In general, those corruption convicts who are stripped of their political right to occupy a public position can no longer be elected for a public position. Some considerations for sentencing them with additional punishment include: *First*, judges consider that corruptors have abused their rights and authority as public officials, thus causing widespread hardship to society. *Second*, the corrupt officials' actions have undermined people's trust in their representatives. *Third*, corrupt officials have tarnished the good reputation of the pillars of democracy through political institutions. *Fourth*, corrupt officials as state administrators should be role models for the people in realizing governance that is free from corruption, collusion, and nepotism.

Given the introduction, it is possible to formulate the research problems in the following questions: Is a judge's decision to permanently revoke the political right of those who have been convicted of corruption to be elected in a public office for based on legal legitimacy and in accordance with legal objectives?

B. Research Method

In this study, the researchers used normative legal research methods or literature studies. They also used the legal approach, analysis of legal concepts and case approaches. The collected data were secondary sources consisting of primary legal materials, secondary legal materials, and tertiary legal materials, which were analyzed using qualitative analysis.

C. Discussion and Result

1. Legal Objectives

According to Gustav Radbruch,⁹ the law is purported to achieve justice and legal certainty, and to provide benefits to the community. Therefore, the law must be dynamic and adjust to current developments to achieve the intended legal purpose of benefitting the society and maintaining social order.

⁹Ahmad Zaenal Fanani, *Teori Keadilan dalam Perspektif Filsafat Hukum dan Islam* (Liberty 2006) 51.

Gustav Radbruch¹⁰ describes the principle of priority, which is made into three basic values of legal objectives, namely: justice; expediency; and legal certainty. These three basic values are orientated to create harmonization of law enforcement.

The realization of Gustav Radbruch's concept of three basic legal values of justice, expediency, and certainty may in practice contradict each other. There are times when justice contradicts expediency, or other times when justice contradicts legal certainty. It is also possible that there is tension between expediency and justice. To anticipate these conditions Gustav Radbruch provides a "way out" through the standard priority concept, by providing a benchmark in deciding a case, where the first priority is justice, the second is expediency, and the third is legal certainty. The standard priority concept is relatively wiser and more sensible than extreme concepts such as the Ethical Law School that only focuses on justice, the Utilitarian school that only focuses on the use of law, and the Legalistic Dogmatic School (legal positivism) that only focuses on legal certainty.¹¹

Gustav Radbruch views *sein* and *sollen*, "matter" and "form" as the two sides of the same coin. "Material" fills "form," and "form" protects "material." According to Radbruch, the value of justice is "material," which must be the content of the rule of law, while the rule of law is the "form" that must protect the value of justice.¹²

To realize the objectives of the law, the principle of priority is used based on the order of priority with legal justice as the first order, legal expediency as the second order, and legal certainty as the third order. The principle of priority harmonizes laws to avoid internal conflicts.

2. Legal Review of Judicial Decisions on Permanent Revocation of Political Rights to Hold Public Office.

Gustav Radbruch denounced that "recht ist wille zur gerechtigkeit" (law is the will for justice).¹³ Law is a tool to enforce justice as its ultimate goal. The law is not an arbitrary tool of authorities or the majority against the minority. Good law is when the law contains the values of justice, legal certainty, and expediency.

¹⁰ A legal philosopher as well as a German bureaucrat and politician from the school of Relativism (1878-1949) at the same time the originator of three basic values of law.

¹¹ M. Muslih, 'Negara Hukum Indonesia Dalam Perspektif Teori Hukum Gustaf Radbruch (Tiga Nilai Dasar Hukum)' (2013) 1-4 *Legalitas: Jurnal Hukum Program Magister Ilmu Hukum Universitas Batanghari Jambi* 149.

¹² Bernard L Tanya *et.all*, *Teori Hukum, Strategi Tertib Manusia Lintas Ruang dan Generasi* (Genta Publishing 2013) 116-117.

¹³ Sakhiyatu Sova, 'Tiga nilai dasar Hukum menurut Gustav Radbruch' (Bachelor thesis, Diponegoro University 2013).

At first, Gustav Radbruch subordinated justice to legal certainty in his concept of legal objective priority. However, when confronted with the fact that Germany under Nazi rule legalized inhumane practices by making laws, Gustav finally revised his theory by putting justice above other legal objectives. To Gustav, justice is the paramount objective of law, because it is in accordance with the nature of the ontology of the law itself, where the law is made to create order through fair rules. This is done to enable everyone to have rights. If the existence of law gives birth to injustice, it is not in essence law. Thus, law and justice are embedded in each other (united as one unit).

Justice is an abstract concept. However, the concept of justice implies the protection of rights, equality and position before the law, and the principle of proportionality between individual interests and social interests. The nature of justice is abstract because justice cannot always be born from rationality, but it is also determined by the social atmosphere that is influenced by other values and norms in society. Therefore, justice also has a dynamic nature which sometimes cannot be contained in positive law.¹⁴

The word justice can be an analogy that gives birth to other related terms such as procedural justice, legalist justice, commutative justice, distributive justice, vindictive justice, creative justice, substantive justice, and so on. Justice can only be understood if it is positioned as a state that is intended to be realized by law. The effort to bring about justice in the law is a dynamic process that develops over time. This effort is often also dominated by contradicting forces within the general framework to actualize political order.¹⁵

Gustav Radbruch does not provide a clear definition of the terminology of justice. Likewise, legal experts do not have the same definition of the meaning of justice. Gustav said that the law is a tool to enforce justice. Thus, according to the author's analysis, it is implied that the law is just if it can protect social interests, individual interests, and pay attention to the conditions required by the community.

The KPU-RI regulations that prohibit the corruption convicts from running for public office is a way to accommodate the people's anxiety over untrustworthy leaders. Likewise, a judge's decision to impose the additional punishment of permanent revocation of political rights is a protection and deterrent against repetition of acts, both for the same perpetrators and others who have the potential to commit corruption. The substance of the

¹⁴ Moh. Mahfud MD, 'Penegakan Hukum Dan Tata Kelola Pemerintahan Yang Baik' (National Seminar Saatnya Hati Nurani Bicara, Jakarta, 8 January 2009).

¹⁵ Carl Joachim Friedrich, *Filsafat Hukum Perspektif Historis* (Nusamedia 2004) 239.

rules and judges' decisions concerning the public interest in justice are inseparable from the process of making a decision, which must be done carefully and pay attention to the values that have the potential to cause legal phenomena in the community, formulated in a result aimed to satisfy the public interest.

Legal results can take the form of judges' decisions, because the judge can also establish a law that formulates general rules that are generally accepted by everyone. In examining and deciding corruption cases, judges should also consider that the defendants had inherent political rights, but they forfeited their rights by committing evil acts of corruption. On the other hand, the community has the right to elect leaders or regional heads or legislative members who have moral integrity.

The judges' decisions on revocation of permanent political rights to nominate for public office for convicted corruptors Police Inspector General Drs. Djoko Susilo, SH., M.Sc; Lutfi Hasan Ishaq; H.M. Rusli Zainal; Hj. Ratu Atut Chosiyah, SE; Anas Urbaningrum; Ade Swara and Nurlatifah were actually a way to fulfil the community will as accommodated by the KPU in a regulation prohibiting ex-convicts of corruption from running in general elections, although finally the regulation was declared invalid by the decision of the Supreme Court of the Republic of Indonesia. A good decision is one that can reflect a change, in the dynamics of community life towards a better direction or at least can prevent community actors from violating the law, enabling a ruling to be an effective media in creating law and order in the community.

On a smaller scale, the decision is the media to settle the prosecuted case, but in a broader sense, the consideration of the decision will be polarized into a rule that is generally accepted in society because it contains good values for people's lives. A criminal verdict will have a deterrent effect if the conviction outweighs the benefit of the crime. This will affect the mental atmosphere of the community at large to refrain from committing the same crime.¹⁶

Normally, a law is promulgated by legislators. However, judges can contribute to law making if their legal findings are permanently enshrined as jurisprudence, referred to by other judges as a guideline for the community. This is known as the decisions containing legal principles formulated in discrete events but gaining general force of law.

¹⁶ Syaiful Bakhri, *Sistem Peradilan Pidana Indonesia (Dalam Perspektif Pembaruan, Teori dan Praktik Peradilan)* (Pustaka Pelajar 2014) 224.

Thus, one decision can at the same time contain two elements namely the decision as the settlement or resolution of a discreet event and a legal regulation for the future events.¹⁷

The legal holding by a judge is the law because it has binding effect as a law contained in the form of a decision. In addition, the legal holdings by judges are a source of law as well. Accordingly, the Judges' decisions on permanent revocation of political rights to nominate for public office against the convicted corruptors Police Inspector General Drs. Djoko Susilo, SH., M.Sc; Lutfi Hasan Ishaq; H.M. Rusli Zainal; Hj. Ratu Atut Chosiyah, SE; Anas Urbaningrum; Ade Swara and Nurlatifah form the framework of fulfilling community justice based on the facts revealed in court, because judges are required to explore, follow, and understand the legal values and sense of justice that lives in society as stipulated in Article 5 paragraph (1) of Law number 48 years 2009.

In carrying out their duties, judges must refer to the applicable law, and the law must be interpreted broadly, not only as a law, but also as the law and values that live in society. Consequently, a judge has responsibility for the law, because all law enforcement processes culminate in the court and the judge will determine the law. The law must be a benchmark, as long as the law can provide justice. Otherwise, a judge can make new law by expanding the interpretation on the meaning and statement of the legislation.¹⁸

Law as the bearer of the value of justice, according to Radbruch, is a measure for both the fairness and unfairness of the rule of law. In addition, the value of justice also forms the basis of law as law. Thus, justice has both a normative and constitutive nature for law. It is normative, because it functions as a transcendental precondition that underlies every dignified positive law. It becomes the moral basis of law and at the same time a benchmark for a positive legal system. The positive law originates from justice. Meanwhile, it is constitutive in nature because justice must be an absolute element of law as law. Without justice, a rule does not deserve to be law.¹⁹

Thus, it is interesting to consider about the decisions of judges in cases of convicted Inspector General of Police Drs. Djoko Susilo, SH., M.Sc; Lutfi Hasan Ishaq; H.M. Rusli Zainal; Hj. Ratu Atut Chosiyah, SE; Anas Urbaningrum; Ade Swara and Nurlatifah, revoking their political rights to hold public office without indicating a time limit as stipulated in Article 38 paragraph (1) of the Criminal Code which provides a maximum

¹⁷ Sudikno Mertokusumo, *Penemuan Hukum* (Cahaya Atma Pustaka 2014) 48.

¹⁸ Darmoko Yudi Witanto and Arya Putra Negara Kutawaringin, *Diskresi Hakim Sebuah Instrumen Menegakkan Keadilan Substantif Dalam Perkara-perkara Pidana* (Alpabeta 2013) 39.

¹⁹ Bernard L Tanya et.al. (n. 12) 117.

limit of 5 years. Such decisions are efforts to protect broad public interests and promote justice for the community by preventing the convicts from occupying public positions that had been available to them previously. They violated the public trust by committing corruption while serving as the public officials. In the researcher's opinion, the Judges' decisions here were in accordance with Article 24 paragraph (1) of the 1945 Constitution and Article 5 paragraph (1) of Law Number 48 of 2009. Therefore, in making decisions, Judges must explore and follow the legal values based on a sense of justice that lives in the community that required the corrupt officials to be severely punished without any chance of repeating their actions. In essence, state institutions must function based on ethics, integrity, and morals, which prioritize the values of common interests.

3. Review of the Legal Expediency of Judges' Decisions on the Indefinite Revocations of Political Rights

Gustav Radbruch stated that ideally a decision must contain "idee des recht," which includes three elements, namely justice (Gerechtigkeit), legal certainty (Rechtsicherheit) and expediency (Zweckmassigkeit). These three elements should be considered by any Judge and proportionally accommodated to make quality decisions that meet the expectations of justice seekers.²⁰

Gustav Radbruch places expediency as one of the goals of justice. Expediency is defined as a tendency to hold to the value of utility. As a utility value, it will provide value if the law is able to encourage and regulate social behavior in a better direction. Expediency will shift the value of legal certainty and the value of justice in certain circumstances, because what is important for the expediency value is the fact that the law is useful and beneficial for the community.

A judge's decision to revoke the political right to public office for someone convicted of corruption is certainly based on morals and the spirit of thought in the law, which favors the community by demonstrating the real impact of corruption on the society. Such verdict is aimed at maintaining public morality by protecting the public interests to prevent corruption convicts from serving in public office.²¹

The verdict in the political right revocation against Inspector General of Police Drs. Djoko Susilo, SH., M.Sc; Lutfi Hasan Ishaq; H.M. Rusli Zainal; Hj. Ratu Atut Chosiyah, SE; Anas Urbaningrum; Ade Swara and Nurlatifah in the decision of the cassation in the

²⁰ Bernard L Tanya et.al. (n. 12) 74.

²¹ Ibid.

Supreme Court is a responsive decision that dared to defy Article 38 paragraph (1) of the Criminal Code. This is in accordance with the independence structure of judicial power, which is in line with the legal objectives of providing benefits by considering the community hardship caused by corruption.

Article 5, paragraph (1) of Law Number 48 of 2009, states that judges and constitutional court justices are obliged to explore, follow, and understand the legal values and sense of justice that exists in society. Thus, judges are granted the discretion to revoke the political rights of corruption convicts for an indefinite period. This rule shows that Indonesia, in addition to adopting a civil law system, is also influenced by the common law system. Essentially, the decision shows that Article 5 Paragraph (1) of Law Number 48 Year 2009 states that judges and constitutional justices are obliged to explore, follow, and understand the legal values and sense of justice that exists in the community. This decision aims to protect the community and prevent those who have betrayed public trust and have used the public office to commit corruption from regaining their position.

In the spirit of protecting the interests of the people, guarding the spirit of the rule of law, protecting the honor of the rule of law, maintaining public morality through the operation of the law through decisions, the verdicts are actually influencing the behavior of the whole community. In addition, the judge has contributed in maximizing his duties and authority to find, interpret and make laws to regulate public behavior and to provide guidance for other law enforcement officials in the context of the examination and settlement of corruption criminal cases. As explained above, legal findings by judges are also a source of law.

4. Legal Certainty and a Review of Judge's Decision on Political Rights Revocation of Corruption Convicts to Nominate for Public Position without Time Limits

Indonesia is a state of law, not a state based on power. Thus, based on the provisions of Article 1 paragraph (3) of Law D 1945, official actions of government other institutions, including citizens must be subject to and based on law.²²

Gustav Radbruch stated 4 (four) underlying things related to the meaning of legal certainty. First, the law is positive, meaning that positive law is legislation. Second, the law is based on facts, meaning that it should be based on reality. Third, facts must be formulated in a clear manner to avoid errors in meaning, as well as to make it easier to implement. Fourth, the positive law cannot be easily changed. Gustav Radbruch's opinion

²² Prayitno Iman Santosa, *Pertanggungjawaban Tindak Pidana Korupsi* (Alumni 2015) 54.

is based on his view that legal certainty is certainty about the law itself. Legal certainty is a product of law or more specifically from legislation. According to Gustav Radbruch, positive law governing human interests in society must always be obeyed even though positive law is sometimes unfair.

Legal certainty is the certainty in a law or regulation. It is various ways, methods and the like that are based on a law or regulation. Legal certainty relies on positive, written law. Written law is promulgated by the competent institution, has strict sanctions, valid by itself, and marked by official announcement at the State Institution. Legal certainty is a question that can only be answered normatively, not sociologically. Normative legal certainty is a rule made and promulgated with certainty because it regulates behavior clearly and logically.²³

Legal certainty as well as justice and legal benefit is actually a doctrine. The doctrine of legal certainty guides every law enforcer to (for the sake of controlling the obedience of citizens to participate in maintaining order in life) to apply the law uniformly. This doctrine stipulates that every legal expert, especially those who serve judges, do not use normative references other than those that are considered legal norms to prosecute a case. For the sake of compliance, only the legal norms that have been promulgated are purely and consequently allowed to result in punishment. It is not permissible for this legal norm to interfere with considerations that refer to other normative sources; such as moral norms, a sense of justice, political ideology, or personal beliefs. It is believed that by obeying doctrines like legal certainty. The law (as an institution) will be a powerful force to make effective rules to organize life and maintain social order.²⁴

Legal certainty is needed to guarantee peace and order in society, because legal certainty (general rules / regulations) has the following characteristics:

- a. Coercion from outside (sanctions) from the authorities in charge of maintaining and fostering public order using the instruments;
- b. The nature of the law is one that applies to everyone. However, it is necessary to realize that prioritizing the element of legal certainty can violate community justice because legal certainty will never consider whether a judge's decision fulfills a sense of justice or not. The most important point is to make it in accordance with the underlying provisions.²⁵

²³ Sakhiyatu Sova (n.13).

²⁴ Soetandyo Wingjosoebroto, 'Terwujudnya Peradilan Yang Independen Dengan Hakim Profesional Yang Tidak Memihak' (National Seminar of Problem Pengawasan Penegakan Hukum di Indonesia, Jakarta 8 September 2006).

²⁵ Ibid.

On this basis, legal certainty must be clear and able to be implemented. To understand the meaning of legal provisions, the law must be resolute and transparent. The legal certainty in a decision cannot be separated from the facts of the trial, which is legally relevant with consideration of conscience. The application of the law must be in accordance with the case, so that in rendering a decision, the judge can construct the case as a whole, justly, wisely, and objectively.

Judges' decisions that have permanent legal force are no longer the opinions of the judges themselves who decide the case, but they are rather the opinions of the judiciary and become a reference for the community in daily interactions. These decisions contain elements of legal certainty, which will contribute to the development of science in the field of law. Therefore, Judges are always required to interpret the meaning of the laws and other regulations as the basis for the law's application.

Revocation of the political right to be elected in a public position has been regulated in the provisions of Article 17 juncto Article 18 paragraph (1) letter d of Law Number 31 of 1999 concerning Eradication of Corruption, and the provisions of Article 10 juncto of Article 35 in conjunction with Article 38 of the Criminal Code and also in the Constitutional Court Decision Number 4 / PUUVII / 2009 dated March 24, 2009, which provides a maximum time limit of 5 (five) years. In the context of legalism, Judge will be faced with reconciling both justice and legal certainty. Combining justice and legal certainty is not easy. Therefore, they must always consider these two perspectives in making decisions.

Judicial decisions on indefinite revocation of the political rights of corruption convicts without the time limitation is part of a criminal case. Thus, it is necessary that the law enforcers prioritize the principle of legal certainty, especially the judges. Only in very exceptional cases, the interpretation of an existing legal role can be stretched. This is in accordance with the function of judges who are not merely mouthpieces of the law, but judges are obliged to seek the value of justice in the application of progressive and responsive laws. A good ruling is one that can reflect a change, in the dynamics of community life towards a better or at least the ruling can prevent community actors from breaking the law to be an effective media in creating law order in the community.

D. Conclusion

Based on the explanation and analysis, it is conclusive that the political rights revocation to nominate for public office without a time limit of the convicted Police

Inspector General Drs. Djoko Susilo, SH., M.Sc; Lutfi Hasan Ishaq; H.M. Rusli Zainal; Hj. Ratu Atut Chosiyah, SE; Anas Urbaningrum; Ade Swara and Nurlatifah is in accordance with the elements of legal objectives of justice for the Indonesians to protect the public interest. The decision becomes the domain of judges who explore the values of justice applicable in society as stipulated by the will of Article 5 paragraph (1) Law No. 48 of 2009. Political Rights Revocation of corruption convicts to prevent them from running for public office is still effective in achieving the legal objective of justice and legal expediency, protecting wider social rights of the community. It is timely to revise the time limitation for the political rights revocation to run for a public office for a maximum of 5 years, by considering the criminal law goals and philosophical objectives of establishing a law on corruption eradication. This is based on the fact that corruption in Indonesia occurs systemically and extensively, not only harming the country's finances, but also the social and economic rights of the community at large. The eradication of corruption justifies extraordinary measures. Thus, it takes courage of the law enforcers to punish the perpetrators. Public Prosecutors and judges should enforce the law in progressive and responsive ways by revoking the political rights of corruption convicts to nominate in public office positions permanently or without any time limit through a judge's decision. In addition to being realized in the form of laws and regulations, it is necessary to realize it in the form of judges' decisions, which will limit the political rights of corruption convicts that have harmed state finances. This will make it possible to realize social justice as demanded by the community.

The judge's decisions on political right revocation to be elected in public office without a time limit for the convicted Police Inspector General Drs. Djoko Susilo, SH., M.Sc; Lutfi Hasan Ishaq; H.M. Rusli Zainal; Hj. Ratu Atut Chosiyah, SE; Anas Urbaningrum; Ade Swara and Nurlatifah are the best practice of judicial institutions that fulfill the awakening social demand for justice in the community. Such decisions should be followed by law enforcement officials as a source of jurisprudential law. This criminal punishment should be used as an alternative punishment for corrupt officials, providing a deterrent effect in the hope that it will reduce the occurrence of corruption.

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