The reconstruction of revocation against the rights to vote or to be voted in public post for those who are found guilty in corruption case in Indonesia from a progressive legal perspective

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Abstract. Revocation of the right to vote and elected in public office for corruption convicted by the court is absolutely necessary, but in view of the limitations amongst them, the judge shall state how long the right is revoked, and provide a detailed reason why the relevant person shall be subject to an additional penalty of revocation, the non-regulation of the criteria of corruption convicts as to which additional crimes of impunity may be imposed and elected in public office in law. The removal of the right to vote and to be elected in public post is coherent with the progressive law conception that promotes the integration of law and the values of justice in society. The progressive step by the judge in the revocation of the right to vote and elected to the corruption convicts is absolutely necessary, with the legal pluralism approach to encourage pro justice and progressive law enforcement. Revision to the Criminal Code and Law no. 31 of 1999, especially regarding the criteria of what corruption convicts who can be sentenced to additional revocation of the right to vote and be elected is a necessity.

1. Introduction
After the 1998th reformation the constitutional paradigm demanded a total change of chaotic and corrupt system of administration in the previous era. The change begins with the post-32-year system of corruption handled by the government slumped by ingrained corruption. The rule of law began to be established to deal with the problem of corruption, namely with Law No. 28 of 1999 on the Implementation of Clean and KKN (Corruption, Collusion and Nepotism)-Free Governments followed by Law no. 31 of 1999 on the Eradication of Corruption which was later amended by Law no. 20 of 2001 on Amendment to Law No. 31 of 1999 on the Eradication of Corruption. The lack of public confidence on the Police and Prosecutor's Office in dealing with the problem of corruption, finally was born an independent anti corruption institution through Law No. 30 of 2002 on the Corruption Eradication Commission (KPK).

Facts that happened just the opposite, although the Commission has been established, corruption is more down to earth, the majority hit the public officials and political figures. Data released by the anti-corruption clearing house as of December 31, 2016, shows that the total handling of corruption cases from the years 2004-2016, investigation of 848 cases, investigation 567 cases, prosecution 465 cases, 390 incracht cases, and executed reached 414 cases. The case of corruption that infects the position of public office selected, there are
about 199 with details of members of DPR (Central Parliament) and 124 DPRD (Regional Parliament on Province Level or Regency/City Level), 17 Governor, 9 Mayor / Regent and Deputy. The Constitutional Court of The Republic of Indonesia (MKRI) in Decision Number 4 / PUU-VII / 2009 distinguishes public office into 3 (three) categories (MKRI Decision No. 4/PUU-VII/2009): (1) elected officials and appointed officials; (2) public positions in the executive sector that are more serving and public office in the field of legislature that is channeling the aspirations of the community; and (3) public positions whose duties require very high trust, such as judges and other law enforcement officers, as well as officials who manage state finances.

The emergence of legislators’ candidates and regional leader candidates who have been convicted to participate in the General Elections raises various views on the rights of ex-convicts in public office.[1] The community urges for the application of additional penalties for corruption convicts with the removal of political rights (voting rights and elections). The insistence of the public receives the attention of the tipikor (Corruption Criminal Act) Court Judge in his decision on several cases of corruption convicts. It becomes a consequence that must be accepted by the convict of corruption as a deterrent effect and the prevention of criminal acts of corruption.[2]

The additional penalty is the revocation of the right to vote and to be elected in public office, because the penalty of fine and the return of state asset is not yet accommodating the sense of community justice especially when the corruption convict then nominate to be legislative member and head of region and elected in general election. The legal basis for the revocation of the right to vote and to be elected is provided in Article 10 letter b number 1 and Article 35 paragraph (1) point 3 of KUHP (Codified Criminal Code) Jo. Article 18 paragraph (1) letter d of Law No. 39 of 1999 on Human Rights, Law No.12 of 2005 on the ratification of ICCPR (UU ICCPR), as well as other national legislation, where the judiciary should act passively.[3]

Jimly Asshiddiqie mentioned the groups of political rights guaranteed by the 1945 Constitution of the Republic of Indonesia, including the right to association, assembly and peaceful expression, the right to vote and to be elected within the framework of the representative body of society, as well as the right to be elected in public office positions.[4] According to the Indonesia Corruption Watch (ICW) study, out of a total of 576 Decisions of corruption cases until 2016, there are only seven decisions that impose additional criminal sanctions in the form of revocation of the right to vote and the election and the removal of the right to be elected. The decisions were dropped to Akil Mochtar, Djoko Susilo, Anas Urbaningrum, Lutfi Hasan Ishaq, Ratu Atut Chosiyah, Dewi Yasmin Limpo and Rahmat Yasin. Political figures who recently revoked the right to vote and choose are former Chairman of DPD (State Senate) Irman Gusman who uses his influence to BULOG (Logistic State Agency) to provide quota of sugar import distribution to CV Semesta Jaya.

That phenomenon indicates a shift of paradigm in related to punishment to the corruption convicts where the people want a revocation of the right to vote and to be elected in public office as a corresponding additional penalty. A paradigm shift in the revocation of the right to vote and elected in public office as an additional punishment of corruption convicts shows that the law is bound to the ultimate goal of state and community life that can not be separated from the values and philosophy of life of the society, namely justice.[5]

Guided by the Constitutional Court Decision No. 4 / PUU-VII-2009 Jo. Decision No. 42 / PUU-XIII / 2015, the revocation of a person’s right to vote and election may only be made by having a permanent legal force of court decision as an additional penalty, where the revocation of the right shall come into force on the day the judge's judgment may take place.[6] The law can not revoke a person’s right to vote, but only gives the restrictions as described in Article 28J Paragraph (2) of the 1945 Constitution of the Republic of Indonesia.[7] The problems that arise are what limit the application of additional criminal revocation of the right to vote and to be elected in public office for convicted corruption. Is the lifting of the right to vote and elected in public office as an additional criminal in corruption already reflects a progressive and just law enforcement? Thus, a reflection is needed to examine the problem in the form of reconstruction of revocation to vote and to be elected rights on public post for indonesians corruption act convicts in progressive law perspective.

2. Methods
The type of research used is normative legal research or doctrinal study with several research approaches such as legislation and conceptual approach. The collection of legal materials is done by literature study method in accordance with the approach used. The entire legal materials that have been collected and inventoried will then be processed and analyzed in depth so as to obtain a ratio legis of the legal issues studied. Primary and secondary legal materials that have been systematically synchronized and then studied further based on existing legal theories to obtain scientific formulation to answer the legal issues discussed in this legal research.[8]
3. Results And Discussion

3.1. Limitation on the Revocation of Right to Vote and to be Elected in Public Post.

The removal of the right to vote and elected in public office against convicted corruption is a warm phenomenon discussed by society, mainly academics, practitioners, law enforcers and political elites. This phenomenon is actually a public longing for the objectivity of a judge's decision, which usually only adds fines and loot to goods, now shows its progressiveness by revoking the right to vote and be elected.[9]

The legal basis for the revocation of certain rights for convicted corruption is regulated in Article 18 paragraph (1) letter d of Law no. 31 of 1999 on the Eradication of Corruption. Certain rights that can be revoked by a judge's decision are, among other things, the right to vote and to be elected in elections held under general rules provided for in Article 35 paragraph (1) letter c of the KUHP. The duration of revocation of rights is regulated in Article 38 paragraph (1) of the KUHP while the revocation of rights is imposed in Article 38 paragraph (2). Some practices that occur, the removal of the right to vote and elected by the judge against the convicted corruption is not applied simultaneously, but only sentenced in addition to the removal of the right to be elected in public office. It is not just about the practice of lifting the right to vote and to be elected which is often not applied simultaneously. Another problem is related to what the limitation should be used as guidance for judges in applying additional penalty in the form of revocation of right to vote and to be elected to corruption perpetrators.

Limitations in the application of an additional penalty in the form of revocation of the right to vote and elected in public office by the judge shall have a clear final objective of bringing justice to the people and the truth in order to create social integration.[10] These restrictions may be specified in two main areas; first, the judge in imposing an additional penalty in the form of revocation of the right to vote and elected in public office shall state how long the right is revoked. This shall be done in the light of the provisions of Article 38 paragraph (1) of the KUHP clearly stipulating the matter. In the Djoko Susilo case, the consequences of not mentioning the duration of the right are revoked, the concerned can not exercise the right for the rest of his life even after completion of the sentence.[11]

Secondly, the judge in imposing additional penalty to the decision in the form of revocation of the right to vote and elected in public office to the convicted of corruption shall give a detailed reason why the concerned shall be subject to additional criminal repeal of such right. Does not the criteria of corruption criminals be regulated in the form of additional criminal sanction of improper right to vote and to be elected in public office, does he corrupt intentionally, by force or by procedural error? this is where the judge is obliged to make a legal breakthrough. The judge may use braveness, moral reading on law, discretion, rule breaking in his decision related corruption cases to be able to provide jurisprudence regarding criteria of corruption convicts as to what can be deprived of their right to vote and vote by sticking to legal and human rights.

Article 43 Paragraph (1) of Law No. 39 of 1999 concerning Human Rights states that every citizen shall have the right to be elected and to vote in General Election, based on equality of rights through direct, public, free, secret, honest and fair voting accordingly with the provisions of legislation. Whereas in Article 73 of Law No. 39 of 1999 on Human Rights stated that the rights and freedoms provided for in this Law can only be limited by and based on law, solely to guarantee the recognition and respect for human rights as well as basic freedoms of others, morals, public order, and the interests of the nation. The provision is very clear that to limit the rights and freedoms of a person must be regulated in the law, while the criteria of corruption as to what can be sentenced to additional revocation of the right to vote and to be elected in public office until now still not regulated in law. Nevertheless, although the criteria of corruption such as which may be granted an additional penalty for the removal of the right to vote and elected in public office are not yet regulated in law, the judge shall continue to explore, follow and understand the values of law and justice values living amongs the community.

Corruption which is an extra ordinary crime must be understood as the common enemy of the nation, although the criteria of corruption as to which the additional sentence can not be determined. The judge who sentence the corruption case should dare to begin to change the paradigm from simply solving the case to the settling paradigm. For that reason, the judge's punishment should not be static but must move forward abandoning conventional means toward a progressive punishment in order to bring substantive justice to society.[10] The correlation of this with the revocation of the right to vote and to be elected to the corruption convicts is that the judge in sentencing every perpetrator of corruption acts indiscriminately shall impose revocation of the right to vote and to be elected in public office. Such revocation shall be within the limits prescribed in the KUHP and the principles of human rights and justice. At that point, the judge in court has placed the community as amicus curiae as a matter of consideration to be able to provide substantive justice.[10]
3.2. Revocation of Right to Vote and to be Elected Right for Corruption Convicts in Progressive Law Perspective

Law for man, not man for law.[10] The law served the community not the other way around. That is the legal philosophy according to Satjipto Rahardjo which is given the term Progressivity of Law (Progressive Law). In the context of combating corruption in Indonesia, the progressive legal paradigm is inseparable. Since it was stipulated as an extraordinary crime, corruption should have been handled progressively either by the police, prosecutors, judges, prison officers or by law advocates and public law advocates. The six components of law enforcement should be shoulder to shoulder in eradicating corruption through four enforcement components namely substance (Law), structure (Institution), legal culture and leadership. The court has so far changed philosophy, from the last bastion of the quest for justice to the last bastion of quest to win and lose.[10] The framework of the application of additional penalties in the form of revocation of the right to vote and elected to the convicted corruption must be viewed holistically and not partially.

The revocation of the right to vote and vote for convicted corruption in some circles recalls the existence of a punishment that degrades human dignity. The international convention has affirmed the abolition of punishment that degrades human dignity. Reducing the human rights of convicted corruption cases is an act of arbitrary discrimination and against the principle of human justice. The revocation of the right to vote and elected in public office for convicted corruption as an additional punishment is contrary to Article 23 paragraph (1), Article 26 paragraph (2), Article 43 paragraph (1), Article 73 and 74 of Law No. 39 of 1999 concerning Human Rights.

Additional penalties in the form of revocation of the right to vote and elected in public office are overwhelming and do not show any respect for ex-prisoners. Law No.12 of 1995 on Penitentiary, outlining prisons has a function of guidance on prisoners. A person who has been imprisoned in prisons has undergone a coaching program implemented in prisons in order to return to being a good citizen. The administrative requirement that prohibits ex-inmates from running for candidacy as a legislative candidate can be interpreted as a distrust of a coaching system in penitentiary (Yeni Handayani, :4).

On the other hand, people who are embarrassed by corrupt behavior of officials in this republic, demanding the removal of the right to vote and be elected to continue. Evidenced by the breaking up of several corruption cases by the court that befell public officials with additional penalties in the form of revocation of the right to vote and be elected. It shows the law is always closely related to the social environment so that the law can not be separated from the state of society (Satjipto Rahardjo, 2009:167).

The court's progressivity in applying an additional penalty in the form of revocation of the right to vote and to be elected to the convicted corruption must be encouraged. This progressive step is to protect society toward the ideal of law and to reject the status quo, and not to make law as technology that is not conscientious, but a moral institution (Abdul Mukthie Fajar, 2013:123). Revocation of the right to vote and be elected in public office can only be done through a judge's Decision. In the development of several laws such as the President Election Law (UU Pilpres), Legislative Election Law, until the Regional Election Law therein explicitly prohibits an inmate who has ever been imprisoned for committing a crime punishable by imprisonment of 5 (five) years or more, in order to participate. Not only in Indonesia such provisions also exist in Russia (Anonymous, 2016:56).

It is very discriminative, because the law should not be able to deprive someone's right to vote but only give restrictions according to Article 28J of the 1945 Constitution. Rule breaking was also taken by the Constitutional Court in the end of Decision No. 4 / PUU-VII / 2009 reinforced in the Decision No. 42 / PUU-XIII / 2015, requires for a person who will fill a public office or political office to fill it by elections, namely: a) not applicable to elected officials, as long as not subject to additional criminal sanction in the form of revocation of right to vote a court that has had permanent legal force; b) is limited to a period of only 5 (five) years from the time the convicted person finishes his sentence; c) are exempted for ex-convicts who openly and honestly disclose to the public that the concerned ex-convicted person; d) not as perpetrators of repeated crimes. A quo Constitutional Court's decision further reinforces that the revocation of the right to vote and to be elected shall be through judgment. The judges in deciding cases of corruption must be progressive to bring about justice and provide benefits to the community (Otje & Anton, 2015:157). The legal pluralism approach is absolutely necessary, in order for the judge to impose a final and additional Decision on the convicted corruption, to continue to promote laws to pro-people, pro-justice and progressive.

4. Conclusion

Based on the description above, the removal of the right to vote and elected in public office for corruption convicts by the court is absolutely necessary, but still must pay attention to the limitations among them, the
judge shall state how long the right is revoked, and provide a detailed reason why the relevant criminal is charged additional right retraction, because it has not been regulated the criteria of corruption convicts as to what can be imposed additional criminal deprivation of the right to vote and to be elected in public office within the law. The removal of the right to vote and to be elected in public office is coherent with the conception of progressive law that promotes the integration between law and the values of justice in society. The progressive step by the judge in the revocation of the right to vote and to be elected for the convicted of corruption is absolutely necessary with the legal pluralism approach so that law enforcement is still pro-justice and progressive. Revision to the KUHP and Law No. 31 of 1999, especially regarding the criteria of what corruption convicts who can be sentenced to additional revocation of the right to vote and choose is a necessity.

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