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# THE APPLICATION OF ARTICLE 52 OF THE CRIMINAL CODE IN CORRUPTION DECISIONS (DECISION NUMBER 438K/PID. SUS/2021)

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**Abstract**
The one-third criminal penalty according to Article 52 of the Criminal Code against Civil Servants who abuse their positions is an essential but often neglected criminal law instrument in Indonesian corruption justice practice. This normative research analyzes the application of Article 52 of the Criminal Code in the imposition of corruption crimes through a study of Decision Number 438 K/Pid.Sus/2021. The results of the study show that although the defendant, a functional prosecutor, is proven to have committed corruption by abusing his position and authority, the provisions of Article 52 of the Criminal Code are not applied to all levels of justice—from district courts, appeals, to cassation. The absence of the application of this article weakens the deterrent effect and is contrary to the principle of accountability of public officials. The findings indicate systematic errors in the implementation of the law that have an impact on the legitimacy of the decision. The application of Article 52 of the Criminal Code must be an imperative juridical obligation, not a facultative option, to realize substantive justice and proportionality of criminal sanctions against state apparatus who abuse their positions.
**Keywords:** Criminal Charges, Abuse Of Office, Corruption Crimes.

## A. Introduction

This research aims to discuss the legal issue of the imposition of Prison Sentences without an additional third in Decision Number 438 K/Pid.Sus/2021 which is contrary to the concept of Additional Crimes regulated in Article 52 of the Criminal Code. In *the Aquo case* , the defendant Eka Safitra is a Civil Servant in Yogyakarta who was charged with violating Articles 11 and 12a of the Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Crimes (hereinafter referred to as the Corruption Law) as amended by the Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to the Law of the Republic of Indonesia *in conjunction with* Article 55 paragraph (1) 1 of the Criminal

Code in conjunction with Article 55 paragraph (1) 1 of the Criminal Code *in conjunction with the Criminal* CodeArticle 64 paragraph (1) of the Criminal Code which is a criminal act of corruption.

Many professions in Indonesia abuse their authority by accepting bribes from other parties for personal or group gain. This act of bribery is contrary to the norms of morality and the values of Pancasila, and can endanger the lives of the community and the nation. Facts show that the practice of bribery has emerged in various forms in society, so it needs to be eradicated immediately. Basically, bribery is a form of corruption. Therefore, anyone involved in bribery practices can be categorized as committing the crime of bribery. According to Poerwandidi asked in a book by Dirjo Sisworo, corruption is a despicable act related to the practice of bribery.[1]

Criminal acts of office, which in legal terms are known as *"ambtsmisdrijven"***,** is a form of crime that has been specifically determined and regulated by lawmakers in laws and regulations, especially listed in the Criminal Code (KUHP).[2] precisely in Book II Chapter XXVII. This crime is committed by Civil Servants (PNS) who abuse the authority, facilities, and facilities inherent in their positions. As a mandate holder from the state, an official is not allowed to use his position to commit unlawful acts.[3]

A Civil Servant (PNS) who commits a criminal act can be subject to a criminal charge in the form of an additional third of

[1] Adinda Febriana and Viona Salsabila, 'Regulation of Corruption Crimes (Bribery) According to Indonesian Criminal Law and Malaysian Criminal Law' (2020) 1 (1) Datin Law Journal 1,2.
[2] Bayu Montana and others, 'Criminal Imposition of State Officials Proven to Commit Corruption Crimes of Abuse of Authority Reviewed from Article 52 of the Criminal Code (KUHP)' (2023) 3 (1) Journal of Ikamakum 291, 296.
[3] *Ibid.297.*

the principal penalty due to abuse of office. The legal basis for this charge is regulated in Article 52 which states: "If a civil servant for committing a crime violates a special obligation of his position or at the time of committing a crime uses the power, opportunity, or means given to him because of his position, his penalty may be increased by one-third."

The defendant Eka Safitra, who has the status of a Civil Servant in Yogyakarta, was brought to trial on charges of violating the provisions of Articles 11 and 12a of Law No. 31/1999 concerning the Eradication of Corruption Crimes which has been amended through Law No. 20/2001, associated with Article 55 paragraph (1) 1 of the Criminal Code and Article 64 paragraph (1) of the Criminal Code in corruption cases. In his indictment, the Public Prosecutor applied Article 11 which stipulates that a civil servant or state administrator can be sentenced to a minimum of 1 year in prison and a maximum of 5 years and/or a fine ranging from Rp 50 million to Rp 250 million if proven to have received a gift or promise, while he is aware or should suspect that the gift was given in connection with his position or authority. or according to the perception of the gift-giver there is a relationship with the position of his position.

Article 12a provides for sanctions for a government official or state administrator who accepts a gift or promise, when he knows or should have suspected that the gift is intended to influence him to commit or neglect an act in the capacity of his office contrary to his official responsibilities. This provision is linked to Article 55 paragraph (1) 1 of the Criminal Code which stipulates that a person can be sentenced as a criminal perpetrator. Furthermore, it is also associated with Article 64 paragraph (1) of the Criminal Code which regulates continuing criminal

acts, namely when several acts are interconnected and considered as a series of continuous actions, only one punishment provision is applied even though each of these acts can be categorized as a separate crime or offense. If there is a difference in the threat of punishment, then what will be applied is the provision with the heaviest sanction.

However, in the indictment filed, the Public Prosecutor did not include Article 52 of the Criminal Code as the basis for prosecution. The article contains the provision that if a civil servant violates the special obligations attached to his position by committing a criminal act, or uses the power, opportunity, or means obtained from his position to commit a criminal act, the punishment imposed can be aggravated up to one-third of the maximum penalty threat. Because there is no discussion about the application or consideration of Article 52 of the Criminal Code in the legal consideration of the panel of judges. This means that from the beginning, indictments, demands, and decisions of the court of first instance (Yogyakarta District Court) did not include Article 52 of the Criminal Code as the basis for criminal charges.

As a result, the panel of judges at the cassation level also did not discuss it because it focused on the material submitted in the cassation memory. Then Article 52 of the Criminal Code has never been filed or considered as part of this case since the beginning of the trial at the Yogyakarta District Court. The Public Prosecutor did not charge with the article, and the judge of the court of first instance did not include the article in his consideration.

In the context of the state of law, the principles of professionalism, integrity, and moral and legal responsibility are very basic and non-negotiable for every individual who

carries out his duties as a servant of the state. A state apparatus is required to carry out its functions with full dedication, uphold professional ethics, and comply with applicable legal rules in order to maintain public trust and the authority of state institutions. Professionalism reflects ability and expertise in carrying out tasks, while credibility indicates a trustworthy attitude in acting honestly.

In the context of the criminal justice system in Indonesia, regulations related to criminal liability imposed on state officials have been clearly stipulated in the Criminal Code (KUHP), especially those listed in the provisions of Article 52. This article emphasizes that criminal threats are not only limited to basic criminal sanctions, such as imprisonment or confinement, but also include the imposition of additional penalties. Thus, a person who is proven to have abused the authority of his position as a state servant can be subject to heavier punishments, both in the form of a main crime and other additional sanctions, as a form of accountability for his unlawful actions. This shows that the legal system in Indonesia takes seriously the role and responsibility of public officials in maintaining integrity and upholding the principles of the rule of law.[4]

The provisions of Article 52 of the Criminal Code stipulate that if an official is proven to have committed an unlawful act by ignoring the special responsibilities attached to his position, or by taking advantage of the authority, opportunities, or facilities he obtains based on his position to commit a criminal act, then the legal sanctions imposed on him can be aggravated by adding one-third

[4] Putra Grandy Imanuel Imbang, 'Criminal Responsibility of Perpetrators of Criminal Acts of Abuse of Office Based on the Criminal Code' (2019) 8 (10) *Lex Crimen* 45.51.

of the threat of basic punishment.[5] The addition of the punishment is based on the status or capacity of the perpetrator as a public official or state civil servant. There are four criteria that are used as a basis for consideration for the application of weighting:

1. There is a violation of specific responsibilities related to his official position.
2. Abuse of authority inherent in his position.
3. The use of opportunities that arise as a consequence of the position they have.
4. The use of facilities or instruments obtained based on his status as an official.[6]

Thus, the addition of one-third of the penalty for civil servants who commit criminal acts is a form of aggravation because they have abused their positions that should have responsibilities for the interests of the state and society. Additional penalties are a type of punishment that can only be given if accompanied by a principal penalty. The application of additional penalties is optional or not mandatory, but cannot be imposed independently. In other words, additional penalties are only valid if they are accompanied by a principal criminal verdict, so both must be handed down simultaneously in one legal decision. [7]

According to Marjane Termorshuizen in *the Dutch-Indonesian Dictionary of Law*, the term additional criminal in Dutch is

[5] Article 52 of the Criminal Code (KUHP); Law Number 1 of 1946 concerning Criminal Law Regulations.

[6] Adami Chazawi, *Criminal Law Studies; Interpretation of Criminal Law, Basis of Punishment, Aggravation & Mitigation, Crime of Complaint, Accompaniment & Doctrine of Causality* (Raja Grafindo Persada 2002), 73

[7] Darlinanto Tomy, 'Additional Criminal Punishment in the Form of Behavior Change Counseling for Husbands as Perpetrators of Domestic Violence in Gunungkidul Regency' (Atma Jaya University Yogyakarta 2014) 25

known as *bijkomende straf*, which refers to a type of punishment that cannot stand alone, but can only be imposed together with the main penalty as the main punishment.[8]

Additional sanctions consist of various types, including the removal of certain rights owned by convicts, the expropriation or confiscation of specific objects related to criminal acts, and the publication of court decisions for the public to know. The determination of additional penalties as a form of sanction is part of the legal strategy chosen as one of the alternatives in efforts to deal with crimes more effectively.

According to Hermin Hadiati's view, regulations regarding additional sanctions have different characteristics compared to the provisions for the application of the main sanctions, with the following principles [9] :

1. Additional sanctions cannot be imposed independently, but must be imposed in conjunction with the main sanctions. In other words, it is not permissible to impose additional sanctions as the only punishment.
2. The imposition of additional sanctions is only possible if the legal formulation of a criminal act has explicitly included it as a threat, which means that additional sanctions do not automatically accompany every criminal act.
3. Additional sanctions are not imposed on all categories of criminal offences, but are only intended for certain violations of the law.

[8] *Ibid.26.*
[9]Hermien Hardiati Koeswadji, *Crimes Against Life, The Principles of Cases and Their Problems* (Sinar Wijaya 1984) 56

4. Although it has been clearly stated in the formulation of certain criminal acts, the application of additional sanctions is optional. This means that the decision to impose or not impose sanctions is entirely up to the judge.

Basically, additional crimes have a preventive nature. Due to its very specific characteristics and limited to certain conditions, its criminal element often becomes less prominent, while its preventive function is more visible. In addition, additional crimes are also often included in the category of punishment that can be considered to obtain clemency or pardon from the government.[10]

According to Article 52 of the Criminal Code (KUHP), if a civil servant is proven to have violated a special obligation attached to his position, or when committing the criminal act he uses the powers, opportunities, or facilities obtained from his position, then in addition to being subject to the principal penalty, the punishment imposed on him can be increased to one-third of the principal penalty. In other words, if a state apparatus abuses his authority or uses his position to commit a violation of the law, then the sanctions given can be aggravated as a form of accountability for the abuse of the position.[11]

In the application of additional penalties, there are elements that must be met, namely the perpetrator must be proven to have violated the special obligations inherent in his position. In addition, when committing the criminal act, the perpetrator must also use the powers, opportunities, or

[10] Amir Ilyas, *Principles of Criminal Law* (Rangkang Education Yogyakarta & Pukap-Indonesia 2012) 115

[11] Frezcilia Dewi Daleda, 'Juridical Study of Premeditated Acts as Incriminating Elements' (2017) 6 (5) Lex Crimen 116,117

facilities obtained from his position. This special obligation refers to certain duties officially assigned by the state to a civil servant, which is currently better known as the main duties and functions (tupoksi) of the civil servant. Thus, these violations are not only general, but are directly related to the responsibilities and roles inherent in the position held.

A civil servant has a very large authority and position, so he has a considerable opportunity to commit a criminal act if he abuses his power. If the civil servant is proven to have violated the law by using his position and authority, then in accordance with the provisions of Article 52 of the Criminal Code, the punishment imposed on him can be aggravated. This objection to this punishment is in the form of an additional criminal penalty of one-third of the main punishment that should be received, as a form of affirmation of the seriousness of the violation involving the abuse of public office.[12]

Article 52 of the Criminal Code states that: "If a civil servant, because of committing a criminal act, violates a special obligation of his position, or at the time of committing a criminal act uses the power, opportunity or means given to him because of his position, then the penalty can be increased by one-third". According to Jonkers, Article 52 of the Criminal Code serves as a basis for aggravating the punishment (*strafverhogingsgronden*) imposed, especially because of the perpetrator's status as a civil servant. In other words, this criminal charge is based on the fact that the

[12] Righen Kere, Veibe Vike Sumilat, and Wilda Assa 'Juridical Review of the Imposition of Criminal Penalties for the Perpetrator of a Civil Servant Who Commits the Crime of Forgery of Letters' (2022) 10 (4) Lex Administratum 1,7.

perpetrator is a state apparatus, so his position is the main factor in determining the severity of the sentence imposed.[13]

In Decision Number 438 K/Pid.Sus/2021, the imposition of a prison sentence without the addition of one-third of the sentence is contrary to the additional criminal principle stipulated in Article 52 of the Criminal Code. This is because a Civil Servant (PNS) who is legally proven to have committed a corruption crime should be subject to an additional penalty of one-third of the main penalty. This addition is given based on the position of position and subjective status of the perpetrator as a state official or civil servant, which makes the act more severe and requires stricter punishment. Thus, ignoring this provision means that it is not in accordance with the applicable legal rules regarding the imposition of punishment for perpetrators who have the status of state apparatus.

## B. Problem Formulation

is the absence of the application of one-third criminal imposition in Decision Number 438 K/Pid.Sus/2021 contrary to the principle of substantive justice in Article 52 of the Criminal Code? and What is the additional penalty of one-third in the crime of corruption based on Article 52 of the Criminal Code?

## C. Research Objectives

Providing an argument that Decision Number 438 K/Pid.Sus/2021 is not in line with the principle of Additional Sanctions as stipulated in the provisions of article 52 of the Criminal Code which stipulates that when a government official/ASN is proven to have committed a criminal act by utilizing the authority, opportunities, or facilities obtained

[13] Andi Hamzah, *The Principles of Criminal Law in Indonesia and Its Development* (Sofmedia 2012) 324

by him based on his position, then his legal sanctions should be aggravated by adding one-third of the threat of basic punishment. However, in the referred decision, the application of sanctions does not reflect the imposition of punishment as it should be applied.

## D. Research Methods

This type of research uses a normative research method, namely by analyzing literature materials with the aim of solving the legal problems raised by the author

The research in this study will use the statute *approach*, conceptual *approach*, and *case approach* to analyze legal problems. The Legislative approach is carried out by examining relevant legal rules, the Conceptual approach reviews the opinions of scholars and the doctrines of experts, while the Case approach is carried out to analyze and as a guideline for legal problems to resolve legal cases.

## E. Research Results and Discussion

### 1. The Judge's Considerations in Decision Number 438 K/Pid.Sus/2021

The judicial process for corruption crimes involving the defendant EKA SAFITRA has gone through three levels of courts that show consistency in the application of the law and the assessment of facts. The three court decisions are the Yogyakarta District Court Decision Number 1/Pid.Sus-TPK/2020/PN Yyk, the Yogyakarta High Court Decision Number 6/PID. SUS-TPK/2020/PT YYK, and Supreme Court Cassation Decision Number 438 K/Pid.Sus/2021, together provide a comprehensive overview of the legal consideration process in handling corruption cases involving law enforcement officials.

In the first level, the Yogyakarta District Court conducted an in-depth analysis of all legal and factual aspects that emerged

during the trial. The panel of judges determined that all elements of corruption regulated in Article 12 letter a of the Corruption Law, which is associated with Article 55 paragraph (1) 1 of the Criminal Code and Article 64 paragraph (1) of the Criminal Code, have been fulfilled juridically and factually. The defendant, who has the status of a civil servant with the functional position of a prosecutor, is proven to have continuously received gratuities in the form of gifts or promises related to the implementation of his duties in handling government projects.[14]

The Yogyakarta High Court in its decision conducted a thorough evaluation of the legal facts that had been revealed and reassessed the strength of the evidence. In this case, the defendant together with Satriawan Sulaksono were proven to have received money of Rp221,740,000.00 from Gabriella Yuan Anna Kusuma, Director of PT Manira Arta Rama Mandiri. The provision of money was intended for the defendant to use his influence and authority to help PT Widoro Kandang win the auction of the Rainwater Drainage Rehabilitation (SAH) project on Supomo CS Street at the Yogyakarta City PUPKP Office in 2019.[15]

The Supreme Court in its cassation decision strengthened the lower court's decision after conducting a thorough evaluation of the application of the law and the assessment of facts. The Supreme Court considered that the two previous courts had carried out their judicial functions properly and correctly in applying relevant legal provisions and conducting an accurate

[14]Decision of the Yogyakarta District Court, Court of First Instance, Public Prosecutor v. Eka Safitra, Decision Number 1/Pid.Sus-TPK/2024/PN Yyk, p. 33.

[15] Decision of the Yogyakarta High Court, Public Prosecutor v. Eka Safitra, Number 6/Pid.Sus-TPK/2020/PT Yyk, p. 3.

assessment of the legal facts revealed during the trial process.[16]

The evidentiary strength in this case is supported by various comprehensive and complementary evidence. The three levels of court consistently examine testimony from various parties including expert witnesses, defendants' confessions, written documentation, and various physical evidence including employment contracts, bookkeeping records, evidence of financial transactions, and bank account data. All of these pieces of evidence form a coherent unity and do not show fundamental contradictions.

The aspect of unlawful acts is a special concern in the consideration of the three levels of court. The defendant's actions are considered to have violated various provisions of the law, including Article 5 numbers 4 and 6 of Law No. 28 of 1999 concerning the Implementation of a Clean and Free State from KKN (Corruption, Collusion, and Nepotism), Article 23 letters a, d, e, and f of Law No. 5 of 2014 concerning the State Civil Apparatus, as well as the applicable civil servant disciplinary regulations and the applicable prosecutor's code of conduct.[17]

In determining the severity of the lightness of the sanction, the three levels of the court conduct a balanced evaluation of the aggravating and mitigating factors. A weighting factor that received special attention was the position of the defendant as part of the law enforcement system which should be the vanguard in eradicating corrupt practices, but instead was involved in corrupt

[16] Supreme Court Decision, Public Prosecutor v. Eka Safitra, Number 438 K/Pid.Sus/2021, p. 7.
[17] Firdaus Patombongi, "The Obligation of a Clean State Administrator to Be Free from Corruption, Collusion and Nepotism," (2016) 4 (5) Lex and Societatis 18.

acts. As a member of im Guard and Security of the Government and Regional Development, the defendant was proven to have actively contacted relevant parties in the auction process, arranged the terms of the auction, and sought out contractors who could be directed to win the project.

On the other hand, mitigating factors also receive proportionate attention, including the cooperative and polite attitude shown by the defendant during the trial process, a clean track record of previous criminal offenses, and the burden of family dependents that must be carried. Based on careful and proportionate considerations, the three levels of courts consistently impose a prison sentence of six years accompanied by a fine of three hundred million rupiah, with an alternative sentence of imprisonment for five months if the fine cannot be met.

The consistency of the verdict from the first level to the cassation shows that the judicial process has been carried out by following the applicable legal principles. The Supreme Court in its decision did not find any errors in the application of the law or errors in the assessment of facts that could affect the correctness of the decision. This reflects the quality of scrutiny and careful consideration from all levels of the court.

Overall, the judges' considerations in these three rulings show a comprehensive and fair approach in handling corruption cases involving law enforcement officials. These rulings not only provide sanctions commensurate with the actions committed, but are also intended as an instrument to uphold the rule of law, realize justice, and provide a deterrent effect for other law enforcers who may be tempted to abuse the authority and trust that has been given to them by the state and society.

2. **Additional criminal liability of one-third in decision Number 438 K/Pid.Sus/2021**

Based on the analysis of the Supreme Court's rulings, the application of Article 52 of the Criminal Code in corruption cases has a fundamental and strategic legal basis. This article serves as an instrument of enforcement of the principles of legality and legal certainty by affirming that every verdict must be based on a legally and convincingly proven error, which is very important given the complexity of proof in corruption cases that require high precision in connecting legal facts with related criminal elements.

The use of Article 52 of the Criminal Code in corruption verdicts plays a vital role in ensuring justice in sentencing proportionate to the level of guilt of the defendant, especially in the face of the characteristics of corruption crimes that often involve collective or ongoing actions that require careful judgment to reflect substantive and procedural justice. This article also serves as a liaison and support for the interpretation between the special provisions of the crime of corruption and general articles in the Criminal Code, such as Articles 55 and 64 of the Criminal Code which regulate the inclusion and repetition of criminal acts, thus creating a comprehensive and coherent legal construction. From a judicial technical perspective, the implementation of Article 52 of the Criminal Code in *the Aquo decision* has not shown that the court has fulfilled its obligation to fulfill the formal element in the form of correct procedures and the material element in the form of adequate evidentiary substance in determining a criminal verdict, because in determining the prison sentence, fines, and detention orders are in accordance with the evidence and facts of the trial that are revealed but not applied. Thus, the use of

Article 52 of the Criminal Code in the verdict of corruption is not only a legal obligation, but also a guarantee that the resulting verdict has strong legal legitimacy by considering the level of error of the perpetrator and the impact of the perpetrator's actions, this is to reflect substantive material justice, and meet appropriate and accountable law enforcement standards.

The legal framework for the criminalization of corruption crimes in Indonesia is built on the basis of a combination of provisions in the Criminal Code (KUHP) and special laws and regulations that regulate the eradication of corruption. Article 12 letter a of Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption provides a comprehensive definition and formulation of delinquents regarding acts that can be qualified as criminal acts of corruption.

The provisions in the article explicitly state that a state official or state administrator who receives a gift or promise, who is known or reasonably suspected that the gift or promise is given to move him to do or not do something in his position that is contrary to his obligations, can be sentenced to life imprisonment or imprisonment for a minimum of 4 years and a maximum of 20 years and a fine of at least Rp200,000,000 and a maximum of IDR 1,000,000,000.

In addition to these material provisions, the aspect of participation in corruption crimes is also regulated through the application of Article 55 of the Criminal Code which regulates participation or participation. This provision is relevant considering that corrupt practices often involve multiple actors who play roles in various capacities, ranging from those who commit, those who order to commit, those

who participate in committing, to those who mobilize others to commit corruption crimes.

Meanwhile, Article 64 of the Criminal Code on continuing criminal acts (*voortgezette handeling*) provides a criminal framework for corruption cases that are committed repeatedly over a certain period of time as a unit of interrelated acts. The implementation of this provision is important to provide a maximum deterrent effect and prevent corrupt practices that are carried out systematically and sustainably.

Although the available legal framework is quite comprehensive, in the practice of law enforcement of corruption crimes, there are still various significant problems, especially related to the application of additional crimes as stipulated in Article 52 of the Criminal Code. This article stipulates that in the event of criminalization for a crime of office, the rights of the convict can be revoked based on Article 35 of the Criminal Code, which includes the right to hold office in general or certain positions, the right to enter the Armed Forces, the right to vote and be elected in elections held based on general rules, the right to become a legal advisor or administrator upon the determination of the court, and the right to exercise the power of the father, carry out guardianship or guardianship of one's own child.

The provisions of Article 52 of the Criminal Code have a very important significance in the context of criminalizing corruption, because it not only provides retributive sanctions in the form of imprisonment and fines, but also provides preventive sanctions in the form of revocation of certain rights that can prevent convicts from abusing their public position or position again in the future. Thus, the application of this additional penalty is in line with the goal of punishment which is not only

oriented towards retribution (*vergeldingstheorie*), but also on prevention (*preventietheorie*) and restorative justice (*restorative justice*).

The problem of applying Article 52 of the Criminal Code becomes even more complex when it is associated with the position of the prosecutor as a legal subject who can be subject to these provisions. Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, especially in Article 19 paragraph (1),[18] expressly states that the Attorney General is a state official. Although this provision does not explicitly state that all prosecutors are state officials, but considering that prosecutors are an integral part of the Prosecutor's Office institution led by the Attorney General, and have special authority in the exercise of judicial power in the field of prosecution, prosecutors can be categorized as state officials who are subject to the provisions of Article 52 of the Criminal Code.

The position of the prosecutor as a state official has very significant implications in the context of criminal accountability, because the prosecutor not only carries out the mandate to uphold law and justice, but is also the last goalkeeper in the criminal justice system. When a prosecutor commits a criminal act of corruption, this not only damages the personal integrity of the person concerned, but also undermines the quality and authority of the entire criminal justice system.

Therefore, the application of additional criminal penalties in the form of revocation of office rights for prosecutors who are proven to have committed corruption crimes

[18] Law of the Republic of Indonesia, "Law of the Republic of Indonesia Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia," .

is very urgent and strategic, not only to provide a deterrent effect to the person concerned, but also to restore public trust in the institution of the Prosecutor's Office and the judicial system as a whole.

From the perspective of criminal theory, the non-optimal application of Article 52 of the Criminal Code in cases of corruption reflects the dominance of the retributive paradigm in the Indonesian criminal justice system. Retributive theory that emphasizes retribution (*vergeldingstheorie*) does have an important place in the penal system, because it provides moral satisfaction to the community and the victims of crime that the perpetrator has received a commensurate retribution for his actions. However, in the context of corruption crimes that have an overall impact and many aspects, a retributive approach alone is not enough. It is necessary to integrate with preventive theory *(preventie theorie*) which is oriented towards the prevention of crimes in the future, both special prevention (*speciale preventie*) aimed at perpetrators so that they do not repeat their actions, and general prevention (*generale preventie*) aimed at the wider community so that they do not commit similar acts.

Moreover, in the context of corruption crimes that result in state losses, a *restorative justice approach* is also needed that is oriented towards recovering losses and reconciliation between perpetrators, victims, and the community. The application of additional penalties in the form of revocation of office can be seen as one of the instruments to implement this restorative approach, as it prevents the perpetrator from returning to a position that allows him to abuse public power.

The non-optimal application of Article 52 of the Criminal Code in the criminalization of corruption crimes has very

broad and profound systemic implications for efforts to eradicate corruption in Indonesia. First, from the deterrent effect, the absence of the threat of revocation of office rights makes the cost-benefit analysis carried out by potential offenders unbalanced. Officials who have the potential to commit corruption may find that the risk of imprisonment and fines is still tolerable compared to the benefits that can be gained from corrupt acts, especially if they still have the opportunity to return to public office after serving their sentences.

Regarding the integrity of the state civil service system, the absence of a mechanism for revoking office rights can result in convicts in corruption cases still having the opportunity to return to occupy strategic positions in the government bureaucracy. This not only has the potential to pose a moral hazard to the convicts concerned, but can also damage the work ethic and integrity of other civil servants who see that the consequences of corrupt acts are not significant enough to hinder a career in the public sector.

Public trust in the government system, and the imoptimal application of additional penalties can result in public doubts and distrust in the government's commitment to eradicating corruption. The public may view that the criminal justice system is not firm enough in handling corruption cases, so that it can reduce public support and participation in efforts to prevent and eradicate corruption

## F. Conclusion

1. Article 52 of the Criminal Code requires judges to give heavier punishments (plus one-thirds) to civil servants who commit crimes in their positions. However, in Decision Number 438 K/Pid.Sus/2021, this burden is not applied even though the defendant is a prosecutor who is proven to have committed corruption.

This neglect creates injustice because it creates unfair sentencing disparities, reduces the deterrent effect, and undermines public trust in the law enforcement system in Indonesia.

2. The corruption penal system must be improved so that the application of criminal punishment for civil servants no longer depends on the judge's consideration alone, but is applied consistently. By improving the understanding of law enforcement officials through training, creating clear technical guidelines on the integration of the Criminal Code with the Corruption Eradication Law, and establishing a supervisory system to ensure uniform implementation. By applying Article 52 of the Criminal Code optimally, punishment will provide a more deterrent effect, restore public trust, and realize a fair and effective corruption law enforcement system.

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