

8-1-2013

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### Recommended Citation

Aritonang, Dinoroy Marganda (2013) "The Model of Public Official Dismissal to Eradicate Corruption in Indonesia," *BISNIS & BIROKRASI: Jurnal Ilmu Administrasi dan Organisasi*: Vol. 20 : No. 1 , Article 4.

DOI: 10.20476/jbb.v20i1.1863

Available at: <https://scholarhub.ui.ac.id/jbb/vol20/iss1/4>

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# The Model of Public Official Dismissal to Eradicate Corruption in Indonesia

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**Abstract.** The problem of corruption in Indonesia is related to the opportunities of public officials to abuse the authority in their own scope of position. In Indonesia, this condition exists at every level of public administration and public position. In order to reduce abusive and corruptive behavior, Parliament (DPR) and President through legislation have made some standard procedures to temporarily remove public officials accused of having committed corruption. But in many cases, practically, this problem amounts some legal difficulties. One of which is related to the constitutionality of the dismissal norm. In legal culture perspective, resigning temporarily when being accused for doing a shameful behavior is not a popular option; this is because of the presumption of innocent principles' requirement of the legal basis in criminal law. This article tried to analyse some parts of these problems.

**Keywords:** public officials, corruption, dismissal

**Abstrak.** Masalah korupsi di Indonesia berkaitan dengan peluang pejabat publik dalam menyalahgunakan kewenangan didalam lingkup posisi mereka sendiri. Di Indonesia, kondisi ini ada pada setiap tingkat administrasi publik dan jabatan publik. Dalam rangka untuk mengurangi perilaku koruptif, Parlemen (DPR) dan Presiden melalui undang-undang telah membuat beberapa prosedur standar untuk sementara memberhentikan pejabat publik yang dituduh melakukan korupsi. Namun dalam banyak kasus, praktik, masalah ini dalam jumlahnya mengalami beberapa kesulitan hukum. Salah satunya berkaitan dengan undang-undang norma pemecatan. Dalam perspektif budaya hukum, mengundurkan diri sementara ketika dituduh untuk melakukan perilaku memalukan bukanlah pilihan yang populer, karena kebutuhan dari prinsip praduga tak bersalah sebagai dasar hukum dalam hukum pidana. Artikel ini mencoba untuk menganalisis beberapa bagian dari masalah ini.

**Kata Kunci:** penjabat publik, korupsi, pemecatan

## INTRODUCTION

Corruption is one of the most complex problems we're facing today. Corruption affects all aspects in our governmental system and also people's life. In Indonesian itself, corruption has become very severe; and to deal with the issue we certainly need more powerful legal instruments to manage such situation (Muladi, 2005). From the highest rank public officials to the lowest, we assume that these officials might have been contaminated by corruption. Therefore *Bung* Hatta once said that corruption has been rooting in Indonesian's culture (Supeno, 2009).

Corruption forms in many shapes; and it ranges from common and usual things to extraordinary ones. It could be related to violations of public policy or to several simple procedures. It happens everywhere in private and public sectors (Kurniawan, 2009).

From this standpoint, we can conclude that corruption could be connected to everyone either the government or the private sector. However, as the prominent actor in providing the public needs, government is in the first

place to be blame related to the corruptive behaviors, particularly the top management which is the public official.

In the present time, international society has also agreed to consider corruption as part of the extraordinary crimes. The extraordinary status gives a significant encouragement for government to take action and to handle corruption cases extraordinarily. But the process cannot be undertaken recklessly out of the principle of the rule of law. That principle was integrated into a penal system and has to be put in the first place (Thontowi, 2008).

Actually, a set of procedures used in order to prevent public officials from committing corruption has started at the beginning of the reformation era in 1998. At first, it was showed by stipulating TAP MPR No. XI/MPR/1998 about Clean Government from Corruption, Collusion, and Nepotism. TAP MPR declares that public officials either in executive, legislative, or judicial branches have to manage their functions and duties in a good manner and be responsible and transparent to the public or society. In doing so, public officials are supposed to be honest, fair,

transparent, reliable, and also have to evade themselves from doing corruptive, collusive, and nepotism behaviors.

The process to prevent corruption cannot be run arbitrarily, or, without rules. Principles of due process of law and rule of law have to be considered as the most important thing among all of the process. It has been regulated in Article 4 TAP MPR No. XI/MPR/1998, which states that the attempts to combat corruption, collusion, and nepotism must be applied firmly to everyone without any exception including the former or presiding public officials, their family including relatives, and also to private sectors, while still upholding the principle of presumption of innocence and the protection of human rights.

Basically, public officials were also accused for committing corruption; and they could be imposed with a set of legal procedures related to his/her position. One of them is by removing him from his office. We may consider removal from the office as a mechanism to pursue the transparency and accountability of public official.

By removing the public official from the office, there is an intention that the investigation's procedure for the corruption he was accused for can be managed fairly and independently. Independent means that public official will not interfere investigation process on him directly or indirectly. Fair process is guaranteed because the investigation for a certain public official is not treated differently from any other public officials, but all are the same before the law.

There are two types of removal for public official, the permanent removal and temporary removal. Each type is treated differently according to the level of the cases which is related to the public official. The details of the procedure between the two removals will be explained more in the next chapter.

Conceptually, the removal is intended to be one of the significant keys to ensure that the investigation for public official will be done fairly and independently. It can be viewed as a way and method to demand the public official to be more responsible when the public officials are assumed or charged for committing corruption. In the moral context, he is supposed to voluntarily resign from the office; but in Indonesia, resigning from office is not a popular option for public officials.

The removal process, apparently, has brought many impacts for public officials. In reality, the process itself cannot be implemented smoothly because there is a few problems arose during the process, especially related to the temporary dismissal. The majority of public officials who are accused for committing corruption have been questioning about the temporary removal model, because they conclude that some principles of due process

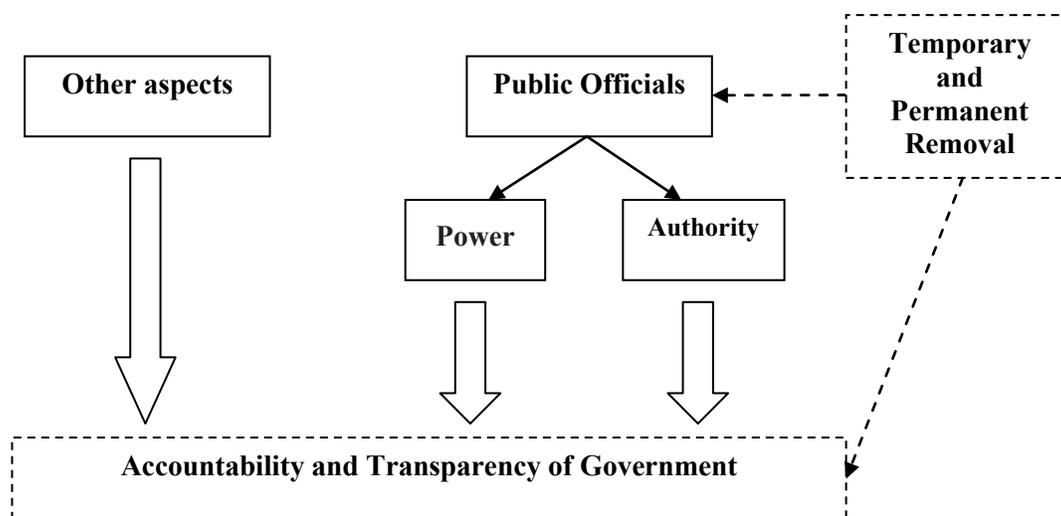
have been infringed. One of the latest examples is the temporary dismissal of two commission members of KPK (Corruption Eradication Commission) – Bibit Samad Riyanto and Chandra Hamzah who were dismissed by the President. The dismissal was related to a bribery case which the two commission members were suspected for. The dismissal process taken after both members were declared as suspects and arrested by the police. The other examples are the removal process for the head of local government and the member of Indonesian House of Representative.

## RESEARCH METHODS

The removal process in terms of good governance has to be seen as a standard and procedure to enhance and ensure the public accountability and transparency of public official. In some corruption cases, the accountability and transparency should be seen from two perspectives, moral and legal. In moral reading, the public official will feel responsible when the people or his constituent is no longer supporting him, either politically or socially. It is shown in mass media, public debates, or demonstration on the road. For this case, public official generally, will voluntarily resign from his office and he does not have to wait for a legal procedure to prove what crime or bad behavior he has been accused for. On the contrary, public official, who highly considers his responsibility from legal perspective, will stick to the legal process. This option brings two considerations: our respect for due process of law and in another side, it will reduce his popularity as well as his legitimacy which will decrease people's trust to public official (Bovens, 2006).

Related to the concept of accountability, it is a good thing for the government system and the public officials personally (Bovens, 2006). When it is connected to the concept of democracy, as Bovens (2006) says that public accountability is not just the hall mark of democratic governance, it is also a *sine qua non* for democratic governance. Accountability is a desirable quality of public officials and public organizations which is used as a normative concept, as a set of standards for the behavior of public actors, or as a desirable state of affairs (Bovens, 2006).

As a mechanism is in fact instrumental to achieve an accountable governance, accountability arrangements assure that public officials or public organizations remain on the virtuous path. Therefore, ultimately, accountability as a mechanism is also important because it contributes to the legitimacy of public governance (Bovens, 2006). Public accountability is an evocative political words that can be used to patch up a rambling argument, to evoke an



**Figure 1. The Influence of Temporary Removal to the Accountability and Transparency of Government**

image of trustworthiness, fidelity, and justice, or to hold critics (Bovens, 2006).

Public accountability, in the sense of transparency, responsiveness, and answerability is meant to assure public confidence in government and to bridge the gap between citizens and representatives and between people and government (Bovens, 2006).

Apart from consideration that temporary removal process as to be one of the effective ways to eradicate corruption, there are arguments coming upto deny procedures. Some arguments say that temporary dismissal of public officials should be in line with the law process and principle. The two related principles are the presumption of innocence and equality before the law. These two principles are adopted in the Indonesian constitution and legal system; the dismissal process is not supposed to be taken seriously because of any political interests circled around the legislative process. Any legal procedures in any related regulation should be arranged according to the right principles of law making process and not on the basis of any kind of political interests; the temporary dismissal does seem like a punishment or sanction, though it is simply an administrative procedure, but the negative social impacts coming out of the process are immensely aggravating; there is no guarantee about timelimit of the temporary dismissal while the public officials still have many responsibilities concerning his/her position to the public and not only handing it over to a temporary public official. In this case, a temporary dismissal may have ended up to a permanent dismissal.

## RESULT AND DISCUSSION

In Indonesia there are several ways to dismiss a public official. However, concerning the corruption cases, it

can be concluded that Indonesia uses two type of stages to remove the officials, (i) temporary removal, and (ii) permanent removal. Temporary removal will be applied if the public official is being charged by the public prosecutor before the court or in the trial process. This mechanism is usually regulated specifically in an act concerning the public official. It is a subject to permanent removal if the court imposed the public official for committing corruption and the court declares that he/she is guilty. This mechanism has been also regulated in a specific act.

In the constitutional law, we know that there is an “impeachment” process to remove public officials permanently. In Indonesia, we cannot execute impeachment for all public officials, it can only be applied for the President and the Vice President. Impeachment is one of type of permanent removal.

From both types, temporary removal is apparently inviting more debates and legal discussions related to its effectiveness and support to due process of law than the permanent removal. Until now, there are many judicial review decisions made connected to the legality and constitutionality of temporary removal. One of them is the removal of head of local government through Law No. 32 Year 2004 concerning Local Government.

Most of the public officials are questioning the validity and constitutionality of the temporary dismissal clause through constitutional review. Therefore, the legality and validity of the law or the act is still questionable.

Temporary dismissal of public official is a process of temporarily removing a public official caused by several legal reasons according to the law or regulation concerning the position. This procedure is written in laws which regulate the position and function of the related public official.

Basically, before the temporary dismissal has been practiced vastly and accepted as a standardized model in every legislation process, this standard is already exercised, at least from the year of 1966, nevertheless this process was only used for civil servant. It is regulated in Government Regulation No. 4 Year 1966 on Permanent or Temporary Dismissal for Civil Servant. Furthermore, the Law No. 43 Year 1999 on Amendment of Law No. 8 Year 1974 is also accommodating Civil Servant Affairs.

Normatively speaking, the constitution (UUD 1945) does not regulate specifically about the temporary dismissal of public officials indeed. Thus, if we conceptually understand the whole process of public official appointment, we will understand that the dismissal process is an integrated part at every public official, and it is as important as the evaluation phase and the appointment of each public official.

The appointment and dismissal of public officials are also influenced by governmental system in that country. In Indonesia, the appointment and dismissal of public officials are conferred upon the President, but the procedure cannot be undertaken automatically without the consent and the advice of the parliament. The procedure of public official appointment and dismissal fully depends on the law and regulation method about public official position (Asshiddiqie, Jimly, 2005).

The issue of validity and constitutionality of public official dismissal is also related to the violation of human rights mainly in the context of presumption of innocence at criminal law. Constitutionally, that principle is shown in Article 28D UUD 1945-verse (1) which claims that every person shall have the right to the recognition, the guarantee, the protection and the legal certainty of just laws as well as equal treatment before the law. And also, it can be interpreted from the Article 1 verse (3) UUD 1945 mentioning that the state of Indonesia shall be a law-based state. Those verses mean that all of the process of upholding the law should be in line with the principle of due process of law and rule of law.

In relation with the problems on the temporary dismissal cases, Constitutional Court (Mahkamah Konstitusi/MK) has declared its legal considerations on decision in No. 024/PUU-III/2005 (constitutional review on Law No. 32/2004). In its decision, MK holds that temporary dismissal for public officials is only an administrative action in order to give a guarantee to public prosecutor, so that the investigation process for public officials would be more effective and facile. Related to the principle of presumption of innocence, MK says that the principle is only applicable at criminal law process especially to support the upholding of due process of law principle. Moreover, the presumption principle is mostly related to

the implementation of the burden of proof which most of the task and the obligation are imposed to the state prosecutor and not the defendant; unless, the concept of reversible burden of proof has been legally adopted.

To consider it from the side of criminal law process, procedural criminal law was actually more repressive and violates the human rights slightly. That is why, we should fully respect the principle of procedural due process of law in order to evade more severe criminal violations.

Moreover, the public officials who are removed temporarily still received several rights. Those rights are monthly salary and facilities or another funding support. Functional allowances are not included. On the case of the regent temporary dismissal, functional allowance is excluded, because while that public official is dismissed from the office, he/she cannot undertake his/her tasks as a regent normally.

Consequently, if we see this situation from the perspective of protection of financial rights, then the status of the temporary dismissal is only a matter of upholding the law so the law enforcement process would not be hampered and would be obtained as smooth and effective as possible. Another important thing is that none of any political influences will be standing among the law enforcement process.

Constitutionally, a loss caused by the temporary dismissal cannot be considered as a constitutional loss; however, it is only a matter of risk and condition for every public official, as explained in the following arguments, i.e.: The temporary dismissal imposed to the public officials is only a matter of administrative procedure for the effectiveness of criminal investigation process and generally for the stability of the government; Status or position of public officials is still prevented except the temporary restrictions to exercise the occupational authority. The dismissal process will be closed if court's decision has declared that the public official is not guilty. Thus, the rights and the responsibilities will be rehabilitated; In the context of human rights, the protection is not absolute but relative on certain purposes. It means that, there are numerous possibilities to make any kind of interpretations on how to protect human rights, especially in the context of effectiveness of law enforcement (procedural due process of law) without violating the principle of due process; To any kind of public officials, a similar procedure could be implemented except for President and Vice President.

The situation above might be different when it comes to KPK's case related to the temporary dismissal of two commission members who demanded constitutional review on Law No. 30 Year 2002 concerning KPK. That is because the arrangement of dismissal clause in

related law is basically different from the other public official dismissal. In law concerning KPK, the permanent dismissal shall be taken if one or more of the commission members have been accused for committing a crime, as regulated in Article 32 verse (1c). And the temporary dismissal will be effective immediately when one or more of the commission members have been suspected of committing a crime as stipulated in Article 32 verse (2).

This is the main reason why the constitutional review on that law was taken. The defendant argued that a set of restraints at someone's rights through a law has to be arranged proportionally according to the purposes or the interests intended by the law shall be protected. As such, they assumed that the terms and conditions for KPK commission members are very unfair and unconstitutional.

From the constitutional perspective, such arrangement on permanent and temporary dismissal to KPK commission agents is against the principle of rule of law and due process of law indeed in the same manner as guaranteed in UUD 1945. There is a chance for dominant political power to tweak and to use that clause in a wrong direction intentionally as happened recently in 2009.

There are several analyses or explanations that we can conclude for such problems:

Premature temporary dismissal when the commission agent is suspected of committing a crime is very susceptible to break the principle of due process of law, since it is very easy for public prosecutor to decide someone as a suspect even without a clear and right judgment. As long as the prosecutor has gathered several presumptive evidences related to the case (Salam, 2005). Further, he/she can assume that the commission agent is eligible to be a suspect.

Moreover, seeing from the equality of the law perspective, temporary dismissal for KPK commission agent was not proportional and reasonable compared to other public officials. Even when it is compared to the President or Vice President, that kind of arrangement is very unfair.

If a political interest was the reason why KPK commission agents were supposed to be fired temporarily, then the process itself was absolutely against the principle of law supremacy expressed in UUD 1945. It can also be assumed that there might be a constitutional loss for KPK commission members and that loss was the deprivation of rights of KPK commission agents which was caused by an unfair procedure and a wrong reason which were not certainly based on the principle of due process of law, but mostly because of the political interest judgment and false procedure of law enforcement.

The appointment and dismissal of public officials must be executed proportionally and based on a legal and

reasonable consideration. Temporary dismissal of KPK commission agents for being a suspect is not proportional and procedural. There is no guarantee that the decision is taken truthfully.

UUD 1945 has guaranteed that every person shall be treated fairly or indiscriminately, especially when it comes to public matters. An article 28 D verse (2) says that every person shall have the right to work and to receive fair and proper remuneration and treatment in work relationships. And verse (3) also states that every citizen shall have the right to obtain equal opportunities in government. Moreover, Article 28I verse (2) expresses that every person shall have the right to be free from discriminatory treatment at any basis and shall have the right to obtain protection against any such discriminatory treatment.

## CONCLUSION

The model of public official dismissal is one of the main instruments or procedures to enhance the public accountability and transparency. It is one way that could protect the system and bureaucracy from public officials' corruptive behaviour. Apart from its legal controversies, we should consider temporary dismissal as one of the effective ways to push public official to be more responsible both morally and legally. Temporary dismissal can also be considered as an administrative procedure and it is frequently related to the administrative law.

Temporary dismissal is aimed at ensuring all law process principles and law enforcement in general is well implemented. This is also in line with the principles of due process of law.

From the concept of Good Governance, this model is used to guarantee the implementation of accountable and transparent government; and now it is vastly recognized as one of the most important principles in the Indonesian governmental system (principle of good governance). In a broad meaning, it can be used to eradicate illegal behaviors related to corruption.

The fact is, problems on public official's accountability cannot only be relied on ethical and moral matter, and however we also need several legal instruments. Moral system is only applied internally to touch one person's feelings or consideration without any practical or legal sanction. In this context, temporary removal is to ensure that the accountability system will work and it can also ensure that the moral and ethical principle is supported by a legal system.

To be in line with the principles of due process of law, temporary dismissal will be more accurate if public officials is already accused for committing a crime, this

means that he/she is strongly considered as the actor. The dismissal will bring constitutional and juridical problems when the dismissal is imposed on someone who is already suspected. The first arrangement seems to be just and fair to guarantee the principle of the due process of law. This mechanism is one of the most intense part debated by scholars and public officials.

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