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When Criminal Liability Leads to Political Parties in Criminal Acts of Corruption in Indonesia

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This paper discusses criminal liability of three parties in Indonesia, namely the Democratic Party, the Prosperous Justice Party, and the Party of Functional Group. The three political parties committed criminal acts of corruption through their administrators or organs. This research used socio-legal methodology. The question is which theory can be used to hold the three parties? There are two theories that I used, namely identification and vicarious theory. The results are the Democratic Party and the Party of Functional Group Case could be applied based on the identification theory and vicarious liability theory. And then, with the Prosperous Justice Party, identification theory could be used. The types of criminal sanctions against the three political parties were payments of compensation for the proceeds of the criminal act of corruption.

Key words: *Criminal liability theory, political parties, corporation, and criminal act of corruption.*

Introduction

Indonesia as a democratic state experiences the important and strategic roles of political parties. Political parties exist as the manifestation of human rights for the freedom of association, assembly, and speech. Political parties are a means for citizens to participate in the state management process. (Meriam Budiardjo: 2008, 395). In such a context, political parties have a great impact on accommodating and managing public aspirations through public policies. However, political parties also have a negative impact considering their extremely great power which makes them difficult to control. This condition has encouraged political parties to become superior in the current pillars of democracy. (Saldi Isra: 2017, 101). The Report of the Corruption Eradication Commission of the Republic of Indonesia: 2017 mentioned that over the 2004-2016 period, out of 500 perpetrators of criminal acts of corruption, 32% of them were politicians from political parties.

This scientific paper studies the existence of criminal acts of corruption by political parties through their administrators or organs. The proceeds of criminal acts of corruption were used or enjoyed by political parties to finance various party activities. An example was the Hambalang criminal act of corruption committed by the Democratic Party. A number of legal facts indicated that the proceeds of Hambalang corruption were used for financing the event of the 2010 Democratic Party congress in Bandung. In the same manner, in the case of Electronic ID corruption, the perpetrator was the chairman of the Party of Functional Group. The indictment as well as the verdict stated that there was some fund of five billion rupiah from the proceeds of Electronic ID corruption used for financing the National Leaders' Meeting of the Party of Functional Group. Although later stated that the money had been returned to Corruption Eradication of Commission investigators, it did not eliminate the unlawful nature of such an act. This refers to the norm of Article 4 Law Number 31 Year 1999 concerning Eradication of Criminal Acts of Corruption which states that, “the return of losses to the state or state economy shall not eliminate the criminal sanction of such an act”.

The same legal fact was also found in the case of the criminal act of corruption of added quota of beef imports. The perpetrator of the criminal act of corruption was the chairman of the Prosperous Justice Party. With the added beef import quota, the Prosperous Justice Party gained a gift or promised gift for the beef sale profit in the amount of IDR.40,000,000,000. Observing a number of cases of criminal acts of corruption committed by party administrators or organs, there was found a legal fact that political parties gained benefits to finance party activities. However, in court practices, the criminal liability was still limited to the administrators, not yet reaching political parties as private legal entities.

Political parties as private legal entities do not perpetrate criminal acts of corruption physically. The organic theory proposed by Otto Von Gierke states that a legal entity is like a natural human being, having the same personality as natural human, having the rights and obligations in legal association. (Munir Fuady: 2012, 4). A political party as an organ comprises mutually supporting parts for the continuity of party activities. Therefore, the deeds of administrators constitute the deeds of the party so that political parties may also be imposed with criminal liability.

This paper will study how the theory of criminal liability in cases of criminal acts of corruption committed by political party administrators or organs led to the criminal liability of political parties. This scientific paper will also present a number of court decisions imposing corporate criminal liability for criminal acts of corruption committed by corporation administrators.

Literature Review

A political party meets the criteria as a corporation, being a group of people or assets. Such a construction is found in Article 1 sub-articles (1) and (3) of Law Number 31 Year 1999 concerning Eradication of Criminal Acts of Corruption. Muladi and Dwidja Priyatno (1991, 18, 20) confirm that legal entities are often referred to as corporations, as derived from the word *corporate.* Corporation is defined as an entity having a group of members who have their own rights and obligations separately from the rights and obligations of each member (Muladi and Dwidja Priyatno: 1991, 18.20).

The placement of political parties as corporations which can be imposed with criminal liability is found in the study of Rusel Butar-Butar (2016, 357, 359). Political parties are legal entities categorised as corporations by considering the norm formulation in the Political Party Law. The norm formulation in Article 3 paragraph (1) of Law Number 2 Year 2008 in conjunction with Law Number 2 Year 2011 concerning Political Parties, regulates the requirements for registration of political parties with the Ministry of Law and Human Rights in order to become legal entities. All the aforementioned requirements comprise the following; a) having a notarial deed of political party establishment, b) having the name, symbol or picture mark having no similarity substantially or wholly to the name, symbol or picture mark which have been officially used by other political parties in accordance with the Laws and Regulations, c) having administrators in each province and a minimum 75% of the number of the relevant regencies/municipalities, d) having permanent offices at the Central, Provincial and regency/municipal levels up to the last stage of general elections and e) having an account in the name of the political party. Butar-Butar did not describe the mechanism of criminal liability of political parties as legal entities in criminal acts of corruption (Butar-Butar (2016, 357, 359). Results of the study by Wahyu (2014, 260) described similar characteristics between a political party and a legal entity so that a political party can be imposed with criminal liability, namely:

a) Having interests of the members and administrators as set out in the Articles of Association or Bylaws of the Party or Legal Entity;
b) Members as well as administrators hold the supreme control as regulated in the Articles of Association and Bylaws of the Party or Legal Entity;
c) Having sources of assets for organising activities of the political party or legal entity;
d) The members and administrators of the political party or legal entity shall determine the purposes and objectives of the political party or legal entity.

A political party as a legal entity can be held liable under criminal law under a number of conditions, namely; a) the administrators of the political party commit a criminal act, b) they commit a criminal act within the scope of the organisation, c) in the interest of the political

party (Wahyu: 2014, 260). Wahyu added that with the fulfillment of the criterion (a), it would not be difficult to accept the application criteria (b) and (c). Upon the fulfillment of all the aforementioned criteria, a political party as a legal entity can be imposed with criminal liability. Observing the study by Maria Silvya Wangga (2018, 262), a political party as a corporation can be held criminally liable by the judges by assessing the fault of the political party based on Article 4 paragraph (2) of the Regulation of the Supreme Court of the Republic of Indonesia Year 2016 concerning the Procedures for Handling Cases of Criminal Acts by Corporations.

Zainal Arifin Mochtar (2019, 160, 172) in his study confirmed that a political party categorised as an incorporated corporation could be imposed with criminal liability for committing criminal acts of corruption. For Mochtar (2019, 172) a political party which has been declared guilty of committing a criminal act of corruption can be dissolved by submitting an application to the Constitutional Court. The writers share the idea in the studies conducted by Butar-Butar, Wahyu and Mochtar that as legal entities, political parties can be imposed with criminal liability in cases of criminal acts of corruption. Meanwhile, this paper is to study how the criminal liability theory leads to political parties in a number of criminal acts of corruption committed by political party administrators or organs.

Method

This scientific paper is a socio-legal research. Arief Sidharta explains that a socio-legal research is a normative legal research which must be based on facts and values (Wiratman: 2017). Facts are studied through a number of cases of criminal acts of corruption committed by political party administrators by exploring values and norms through the laws and criminal liability theories. The issues in the research are analysed and discussed by using theoretical approaches and case approaches.

Data Analysis

The data presented in this scientific paper include the three verdicts on cases of criminal acts of corruption committed by the administrators or organs having the positions and authority in the three political parties.

Table 1.1: Describes the facts in court hearings presenting the profits or benefits gained by political parties.

No	Verdict Number	Party Name	Profits/Benefits for Political Parties
1	Verdict No. 1261K/Pid.Sus /2015	The Democratic Party	(1) Receiving money from several stages for financing the congress of the Democratic Party at Bandung in 2010 as well as financing the nomination of candidate chairman of the Democratic Party. (2) The proceeds of corruption crime by Anas Urbaningrum (Chairman of the Democratic Party) were used to finance the accommodation of members of the Branch Leaders' Board/Regional Leaders' Board before, during and after the 2010 Democratic Party congress in Bandung in 2010. (3) Conducting visits to the regions for disseminating work activities of the Democratic Party using the proceeds of the criminal act of corruption.
2	Verdict Number 1195K/PID.SUS/2014	The Prosperous Justice Party	(1) Gaining the fund/commitment support for the Prosperous Justice Party from Maria Elisabet Liman for the increased quota of beef imports in the amount of IDR. 40,000,000,000.- (2) Conducting work visits to and meetings in South Sumatra with the fund aid from Maria Elisabeth Liman
3	Verdict Number 130/PID.SUS/ TPK/2017/PN. JKT. PST	The Party of Functional Group	(1) The Party of Functional Group received fund aid in the amount of Rp5 billion for the 2010 National Leaders' Meeting of the Functional Group (the fund has been returned to the Corruption Eradication Commission). (2) The Party of Functional Group received the funds from Electronic ID corruption in the amount of IDR.150.000.000.000;

The aforementioned three cases of criminal acts of corruption describe that the criminal conduct or act of corruption were not physically committed by the political parties, but they were committed by the party administrators or officials in performing the duties and authorities provided for in accordance with the Articles of Association and Bylaws of their respective parties. Although the political parties enjoyed the profits or benefits of the criminal acts of corruption, only the administrators of the parties should be held liable for such criminal acts of corruption. Quoting Cristina De Maglie (2005, 543) a political party as a corporation is criminally liable if, a) an agent of the corporation commits a crime; b) while acting at the scope of employment; C) with the intent to benefit the corporation, in this case, the political party.

Table 1.2: Presents the application of the criminal liability theory against corporations in Indonesia for the criminal acts of corruption committed by corporate administrators:

No	Verdict Number	Name of Defendant		Articles Violated	Criminal Sanctions	
1	Number 01/Pid. Sus/TPK/PN.JKT. PST as confirmed by Verdict Number 33/Pid./TPK/2013/PT .DKI	Defendant	Limited Company	Article 2 paragraph (1) in conjunction with Article 18 paragraphs (1), (3) of Law No.31 Year 1999 in conjunction with Law No.20 Year 2001 in conjunction with Article 55 paragraph 1 sub-paragraph 1 of the Criminal Code	Defendant	IM2 (Indosat Mega Media) of Limited Company
		Indar Atmanto, President Director of Limited Company (IM2) Indosat Mega Media	IM2 of Limited Company Media was not made as a suspect or defendant but it was also sued		Verdict of the District Court: Criminal sanction of imprisonment for 4 years Verdict of the High Court: Criminal sanction of imprisonment for 8 years	Payment of compensation money in the amount of IDR 1,358,343,346,674. -
2	Number 2239K/Pid. Sus/2012	Defendant	Asian Agri	Article 39 paragraph (1) sub-paragraph c in	Defendant	Asian Agri
		Suwir Laut,	Asian Agri was			

		Manager of Asian Agri	neither made as a suspect nor a defendant, and he was not sued, either	conjunction with Article 43 paragraph (1) of Law No.6 Year 1983 in conjunction with Law No.16 Year 2000 in conjunction with Article 64 paragraph (1) of the Criminal Code	Criminal sanction of imprisonment for 2 years	Criminal sanction of fine 2 times the payable taxes: 2 x IDR.1,259,977,695,652. - to become IDR.2,519,955,391,304. -
3	Number 1577/Pid.Sus/2016	Defendant	Adhi Karya, Public Legal Entity	Article 2 paragraph (1) in conjunction with Article 18 paragraphs (1), (3) of Law No.31 Year 1999 in conjunction with Law No.20 Year 2001 in conjunction with Article 55 paragraph 1 sub-paragraph 1 of the Criminal Code	Defendant	Adhi Karya, Public Legal Entity
		Wijaya Imam Santoso, Head of Division VII of Adhi Karya public legal entity	Adhi Karya public legal entity was neither made as a suspect nor a defendant but it was also sued		Criminal sanction of imprisonment for 2 years b. Criminal sanction of fine in the amount of IDR.200,000,000. -	Payment of compensation money in the amount of IDR.3,339,242,402. -
4	Number 03/Pid.sus-TPK/2018	Dudung Purwadi	Duta Graha Indah public legal entity	Article 2 paragraph (1) or Article 3 in conjunction with Article 18 of Law No.31 Year 1999 in conjunction with Law No.20 Year 2001 in conjunction with Article 55 paragraph (1)	Dudung Purwadi	Duta Graha Indah Public Legal Entity
		Director of Duta Graha Indah public legal entity			Criminal sanction of imprisonment for 4 years and 8 months. Criminal sanction of fine in the amount of IDR.250,000,000.-	Payment of compensation money in the amount of IDR.14,487,659,605. - for the project of development of special hospital for infection and tourism of

				sub-paragraph 1 of the Criminal Code in conjunction with Article 64 paragraph (1) of Criminal Code		Udayana University, Bali, year 2010; payment of compensation money in the amount of IDR.33,426,717,289.- for the project of development of the athlete's homestead and the multi-purpose building of the Government of South Sumatra Province year 2010-2011; Revocation of the right to participate in government auctions for six months.

Result and Discussion

The Urbaningrum Case

Anas Urbaningrum as member of the People's Legislative Assembly of the Republic of Indonesia and Chairman of the Democratic Party Faction, had authority in the administration of the discussions on the projects financed by the State Revenues and Expenditures Budget. The examples were the project at the Directorate of Higher Education of the Ministry of National Education of the Republic of Indonesia and involved Muhammad Nazaruddin (general treasurer of the Democratic Party), Angelina Sondakh (administrator of the Democratic Party), Mahfud Suroso as the President Director of limited Company. Duta Graha Indah limited of company, and the project of Hambalang. The legal facts described that all the funds received from the projects financed by the State Revenues and Expenditures Budget projects were not used only for personal interests of Anas Urbaningrum but also for the Democratic Party which also gained the profits or benefits. The proceeds of the criminal act of corruption were used for financing activities before, during and after the 2010 Democratic Party congress in 2010. Based on the judicial facts in the Urbaningrum criminal case of corruption, the criminal liability theory could be applied in analysing the fault of the Democratic Party through the identification theory and the vicarious liability theory.

a. Identification Theory

The identification theory imposed the liability on the Democratic Party for the conduct or fault committed by Anas Urbaningrum as a high official or senior official being the directing mind of the Democratic Party. Anas Urbaningrum was declared as a high official and senior official because he had the position and authority in the Democratic Party. Lord Diplock, whose thought was quoted by Barda Nawawi (2003, 234, 235) explained that senior officers are those who, based on the memorandum and foundation provisions or resolution of the directors or the resolution of the corporate general meeting, have been entrusted with exercising the corporate power. Anas Urbaningrum was entrusted by the Democratic Party as the head of the Democratic Party faction at the People's Legislative Assembly for exercising the power of the Democratic Party. The power of Anas Urbaningrum was regulated in the Articles of Association and Bylaws of the Democratic Party. As provided for in Article 10 of the Articles of Association/Bylaws of the Democratic Party, "*the faction at the People's Legislative Assembly) shall be stipulated by the General Chairperson, the Faction at the People's Legislative Assembly being the extension and instrument of struggle of the party*".

The power was gained by Anas Urbaningrum, who was a member of the People's Legislative Assembly and head of Democratic Party faction at the People's Legislative Assembly so that he was considered as the directing mind of the Democratic Party based on the rules in the Articles of Association/Bylaws of the Democratic Party. The application of criminal liability to the Democratic Party in the criminal acts of corruption referred to *The Supreme Court of Canada* (1985, 662 & Akbari & Reza, 2017, 36) concerning the three conditions for the application of the identification theory which described the directing mind, namely (a) being part of employment; (b) not being manipulated; (c) being committed with the intent to benefit the corporation (the Democratic Party). All these conditions were fulfilled to make the Democratic Party criminally liable. As to condition (a), the conduct of discussing the budgets for projects in the People's Legislative Assembly was part of his authority as member of the People's Legislative Assembly and chairman of the Democratic Party Faction in the People's Legislative Assembly rather than as an individual person of Anas Urbaningrum. Whereas in connection with conditions (b) and (c), the conduct of Anas Urbaningrum was not manipulation for himself personally but for giving profits and benefits to the Democratic Party. The act of Anas Urbaningrum minimised the expenditure/budget of the Democratic Party for the congress.

In determining the Democratic Party as the directing mind, some facts can be explored, such as the position of Anas Urbaningrum as chairman of the Democratic Party Faction in the People's Legislative Assembly, or his authority in discussing various project budgets financed by the State Revenues and Expenditures Budget, so that it can be viewed as political conduct. The authority of the administrators is regulated in the Articles of Association and Bylaws of

the Democratic Party. Considering that the criminal act of corruption was committed by Anas Urbaningrum as the directing mind of the Democratic Party, then criminal liability should not be limited only to Anas Urbaningrum but also to the Democratic Party.

b. Vicarious Liability Theory

The application of criminal liability through the identification theory can also be followed by the theory of vicarious liability. Both theories require the employment relationship between the Democratic Party and perpetrator serving as the basis for the fault. The application of vicarious liability to the Democratic Party is emphasised with the work and employment relationship. The employment relationship between the Democratic Party and Anas Urbaningrum is found in the provision of Article 10 of the Articles of Association/Bylaws of the Democratic Party stating that: "*the faction at the People's Legislative Assembly shall be stipulated by the General Chairperson, the Faction at the People's Legislative Assembly being the extension and instrument of struggle of the party"*. The formulation of Article 10 of the Articles of Association and Bylaws of the Democratic Party points to "*The delegation principle"* being one of the principles of vicarious liability. The delegation of authority or obligations to Anas Urbaningrum as the chairman of the Democratic Party Faction in the People's Legislative Assembly constitutes the fault or guilty mind of the Democratic Party. Therefore, the criminal liability of the Democratic Party by the vicarious liability theory is limited to the fault committed by Anas Urbaningrum within the scope of employment and authority as chairman of the Democratic Party Faction in the People's Legislative Assembly.

Based on the two theories above, the identification theory and the vicarious liability theory, the Democratic Party can be criminally liable for the criminal act of corruption committed by Anas Urbaningrum. The political party can also be imposed with Article 12 sub-article a in conjunction with Article 18 paragraph (1) sub-paragraph b of Law Number 31 Year 1999 concerning Eradication of Criminal Acts of Corruption in conjunction with Article 64 of the Criminal Code, in conjunction with Article 3 of Law Number 8 Year 2010 concerning Prevention and Eradication of Criminal Acts of Money Laundering in conjunction with Article 3 paragraph (1) sub-paragraph c of Law Number 15 Year 2002, in conjunction with Law Number 25 Year 2003 concerning Prevention and Eradication of Criminal Acts of Money Laundering. Considering that the Democratic Party is a corporation, the type of criminal sanction which can be imposed by the judges on the Democratic Party shall be the payment of compensation in the amount equivalent to the proceeds of the criminal act of corruption received by the Democratic Party.

The Ishaaq Case

The Prosperous Justice Party may also be imposed with a criminal sanction for the act committed by its administrators or officials. In the indictment and verdict of the judges, the defendant being the President of the Prosperous Justice Party had influenced the decision of the Minister of Agriculture of the Republic of Indonesia who was also member of the Shura Council of the Prosperous Justice Party for the increase in beef import quota. When carefully observed, Lutfhi Hasan Ishaaq influenced the Minister of Agriculture because of having the position as the president of the Prosperous Justice Party correlated to the duties and authority as member of People's Legislative Assembly. By the conduct of Lutfhi Hasan Ishaaq, the Prosperous Justice Party gained the benefit or profit as promised by Maria Elisabeth Liman. The benefit or promised fee was five thousand rupiah for each kilogram of the quota or forty billion rupiah upon the recommendation of the Ministry of Agriculture of the Republic of Indonesia led by Suswono.

The act of Lutfhi Hasan Ishaaq influencing the Minister of Agriculture who was member of the Shura Council of the Prosperous Justice Party fulfilled, to a greater extent, the formulation of the *United Nations Convention Against Corruption* (2003) as an act of trading in influence as the President of the Prosperous Justice Party. Article 18 (a) asserts trading in influence occurs when there is any promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuses his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person.

Law Number 31 Year 1999 in conjunction with Law Number 20 Year 2001 concerning the Eradication of Criminal Acts of Corruption in Indonesia does not have any Article formulation on trading in influence. However, the defendant was still imposed with Article 12 sub-article a of Law Number 31 Year 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 Year 2001, concerning the Second Amendment to Law Number 31 Year 1999 concerning Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) sub-paragraph 1 of the Criminal Code and Article 3 paragraph (1) sub-paragraphs a, b, and c of the Law of the Republic of Indonesia Number 15 Year 2002, concerning Criminal Acts of Money Laundering as amended by Law No.25 Year 2003 concerning Amendment to the Law of the Republic of Indonesia Number 15 Year 2002, concerning Criminal Acts of Money Laundering in conjunction with Article 65 paragraph (1) of the Criminal Code in conjunction with Article 6 paragraph (1) sub-paragraphs b and c of the Law of the Republic of Indonesia No. 15 Year 2002, concerning Criminal Acts of Money Laundering in conjunction with Article 55 paragraph 1 sub-

paragraph 1 of the Criminal Code in conjunction with Article 65 paragraph (1) of the Criminal Code.

Based on the judicial facts in the aforementioned case of criminal acts of corruption, the criminal liability theory could be applied in analysing the fault of the Prosperous Justice Party through the identification theory. This theory imposes liability for the commission of a criminal act on the Prosperous Justice Party. The act as the basis for the fault was committed by a high official or senior official as the directing mind of the Prosperous Justice Party. Lutfhi Hasan Ishaaq as the President of the Prosperous Justice Party was a high official or senior official being the directing mind of the Prosperous Justice Party. Lutfhi Hasan Ishaaq was declared as a high or senior official because he had the position and authority in the Prosperous Justice Party, namely as the President of the Prosperous Justice Party who could influence the Minister of Agriculture who was an administrator of the Prosperous Justice Party.

Lord Diplock, whose thought was quoted by Barda Nawawi (2003, 234, 235) explained that senior officers are those who, based on the memorandum and foundation provisions or resolution of the directors or the resolution of the corporate general meeting have been entrusted with exercising the corporate power. Lutfhi Hasan Ishaaq who was a member of the People's Legislative Assembly also serving as the President of the Prosperous Justice Party, received such position and authority based on the session of the Shura Council of the Prosperous Justice Party on June 16-20, 2010 in Jakarta. Observing the involvement of Luthfi Hasan Ishaaq who influenced the Minister of Agriculture to increase the beef import quota, the authority was gained as the President of the Prosperous Justice Party rather than as an individual person of Luthfi Hasan Ishaaq.

The identification theory could also be applied to the Prosperous Justice Party based on *The Supreme Court of Canada* (1985, 662 & Akbari & Reza, 2017, 36) concerning the three conditions for the application of the identification theory which described the directing mind, namely (a) being part of employment (Lutfhhi Hasan Ishaaq as the President of the Prosperous Justice Party); (b) not being manipulated; (c) being committed with the intent to benefit the corporation (the Prosperous Justice Party). All these conditions are fulfilled to make the Prosperous Justice Party criminally liable. As to condition (a), the act of influencing the Minister of Agriculture who was member of the Shura Council of the Prosperous Justice Party, was part of the power possessed as the President of the Prosperous Justice Party concurrently as member of the People's Legislative Assembly from the Prosperous Justice Party Faction. Whereas in connection with conditions (b) and (c), the act of Luthfi Hasan Ishaaq was not manipulation for his personal benefit, but also for the Prosperous Justice Party which received the profit and benefit with the fee of five thousand

for each kilogram of the beef quota or forty billion rupiah received upon the recommendation of the Ministry of Agriculture of the Republic of Indonesia led by Suswono.

In determining the Prosperous Justice Party as the directing mind, some facts can be explored, such as the position of Lufhi Hasan Ishaaq as the President of the Prosperous Justice Party and also as a member of the People's Legislative Assembly, or his authority as the President of the Prosperous Justice Party who was able to influence the Minister of Agriculture, so that it can viewed as the act or fault of the Prosperous Justice Party. Considering that the criminal act of corruption was committed by Lutfhi Hasan Ishaaq as the directing mind of the Prosperous Justice Party, then criminal liability should not be limited to only Lutfhi Hasan Ishaaq but also to the Prosperous Justice Party.

Based on the identification theory, the Prosperous Justice Party can be criminally liable for the criminal act of corruption committed by Lutfhi Hasan Ishaaq in accordance with Article 12 sub-article a in conjunction with Article 18 paragraph (1) sub-paragraph b of Law Number 31 Year 1999, concerning Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph 1 sub-paragraph 1 of the Criminal Code in conjunction with Article 3 and Article 5 of Law Number 8 Year 2010, concerning Prevention and Eradication of Criminal Acts of Money Laundering in conjunction with Article 3 sub-articles a, b, c and Article 6 of Law Number 15 Year 2002 in conjunction with Law Number 25 Year 2003, concerning Prevention and Eradication of Criminal Acts of Money Laundering.

Considering that the Prosperous Justice Party is a corporation, then the type of criminal sanctions which could be imposed by the judges against the Prosperous Justice Party was the one regulated in Article 18 Law Number 31 Year 1999 concerning Eradication of Criminal Acts of Corruption in the form of payment of compensation for the proceeds of criminal acts received by the Prosperous Justice Party.

The Novanto Case

Setya Novanto was a member of the People's Legislative Assembly of the Republic of Indonesia and the chairman of the Functional Group Faction in the People's Legislative Assembly, concurrently as the General Chairman of the Party of Functional Group having authority to discuss the budgets for projects financed by the State Revenues and Expenditures Budget in the People's Legislative Assembly. One of the project discussions held was the budget for the Electronic ID Card. According to the hearing facts, the indictment as well as the verdict of the judges declared that the Party of Functional Group gained profit in the amount of five billion rupiah which was used for the Leaders' Meeting of the Party of Functional Group from the Electronic ID corruption. The facts in the hearings indicated that the money had been returned to Corruption Eradition of Commision investigators. Based on

Article 4 of Law Number 31 Year 1999 concerning Eradication of Criminal Acts of Corruption, "the return of losses to the state or state economy shall not eliminate the criminalisation of the perpetrator of the criminal act Party of Functional Group.

Based on the judicial facts in the aforementioned case of criminal act corruption, the criminal liability theory could be applied in analysing the fault of the Party of Functional Group through the following theory:

a. Identification Theory

According to this theory, liability would be imposed on the Party of Functional Group if the act serving as the basis of fault was committed by a high official or senior official as the directing mind of the Party of Functional Group. Setya Novanto as the general chairman of the Party of Functional Group in the People's Legislative Assembly, was a high or senior official, thus serving as the directing mind of the party. Lord Diplock, whose thought was quoted by Barda Nawawi (2003, 234, 235) explained that senior officers are those who, based on the memorandum and foundation provisions or resolution of the directors or the resolution of the corporate general meeting, have been entrusted with exercising corporate power. Setya Novanto was the general chairman of the Party of Functional Group, concurrently serving as member of the People's Legislative Assemby and chairman of the Party of Functional Group Faction in the People's Legislative Assembly.

Setya Novanto gained the position and authority based on the Articles of Association and Bylaws of the Party of Functional Group. As provided for in Chapter XIII section (2), "*the faction shall be the executing board for the policies of* the Party of Functional Group, *Party in the People's Consultative Assembly, the Peoples Legislative Assembly and the Regional People's Legislative Assembly".* If carefully observed, Setya Novanto was involved as a member of the People's Legislative Assembly, faction chairman in the People's Legislative Assembly and General Chairman of the Party of Functional Group and he was involved as the directing mind of the Party of Functional Group rather than as an individual Setya Novanto. The identification theory could also be applied to the Party of Functional Group based on *The Supreme Court of Canada* (1985, 662 & Akbari & Reza, 2017, 36) concerning the three conditions for the application of the identification theory which described the directing mind, namely (a) being part of employment; (b) not being manipulated; (c) being committed with the intent to benefit the corporation. All these conditions were fulfilled for the Party of Functional Group. As to condition (a), the conduct of discussing the budget for the Electronic ID project was part of his authority as a member of the People's Legislative Assembly and chairman of Golkar Party Faction in the People's Legislative Assembly. Whereas in connection with conditions (b) and (c), the conduct of Setya Novanto was not manipulation for himself personally but for gaining profits and benefits. As described as a

legal fact, the proceeds from the criminal act of ID Card corruption in the amount five billion rupiah were used for the National Leaders' Meeting of the Party of Functional Group. Such an act minimised the expenditures/budget of the Party of Functional Group. Although already returned to Corruption Eradition of Commision investigators, referring to Article 4 of Law Number 31 Year 1999 concerning Eradication of Criminal Acts of Corruption, "the return of losses to the state and state economy shall not eliminate the criminalisation of the perpetrator of the criminal act (Party of Functional Group).

In determining the Party of Functional Group as the directing mind, some facts in the hearings can be explored, such as the position of Setya Novanto as the General Chairman of the Party of Functional Group and also as chairman of the Party of Functional Group Faction in the People's Legislative Assembly or his authority as the chairman of the Party of Functional Group Faction in the People's Legislative Assembly in discussing the budget for the Electronic ID project so that it could be viewed as the conduct or the fault of the Party of Functional Group. Since the criminal act of corruption was committed by Setya Novanto as the directing mind of the Party of Functional Group, the criminal liability was not be limited to Setya Novanto only but was also extended to the Party of Functional Group.

b. Vicarious Liability Theory

The application of criminal liability to the Party of Functional Group through the identification theory can also be followed by the vicarious liability theory. Both theories require the employment relationship between the Party of Functional Group and perpetrator serving as the basis for the fault. The application of vicarious liability to the Party of Functional Group is emphasised with the work and employment relationship. The employment relationship between the Party of Functional Group and Setya Novanto is found in the provisions in Chapter XIII of the Articles of Association/Bylaws of the Party of Functional Group stating that: "*the faction shall be the executing board for the policies of* the Party of Functional Group, *Party in the People's Consultative Assembly), the Peoples Legislative Assembly and the Regional People's Legislative Assembly.* The formulation of provisions in the Articles of Association and Bylaws of the Party of Functional Group points to "*The delegation principle",* being one of the principles of vicarious liability. The delegation of authority or obligations to Setya Novanto as the chairman of the Democratic Party Faction in the People's Legislative Assembly constitutes the fault or guilty mind of the Party of Functional Group. Therefore, the criminal liability by vicarious liability could be applied as a fault committed by Setya Novanto within the scope of employment and authority as the chairman of the Party of Functional Group Faction in the People's Legislative Assembly and as the general chairman of the Party of Functional Group.

With the application of the criminal liability theory through the identification theory and vicarious liability theory, the Party of Functional Group could be criminally liable for the criminal acts of corruption committed by Setya Novanto based on Article 3 and Article 18 paragraph (1) sub-paragraph b of Law Number 31 Year 1999 as amended by Law Number 20 Year 2001 concerning Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph 1 sub-paragraph 1. Article 18 paragraph (1) sub-paragraph b was applied to the Party of Functional Group considering the Party of Functional Group as a corporation. The type of criminal sanction provided for in Article 18 paragraph (1) sub-paragraph b of the Law on the Eradication of Criminal Acts of Corruption was the payment of compensation for the proceeds of the criminal act of corruption received by the Party of Functional Group.

Conclusion

Political parties play an important and strategic role in the democratic life in Indonesia. On the one hand, political parties have positive impacts as they are a manifestation of human rights to the freedom of association, assembly, and speech. On the other hand, political parties have a negative impact considering their extremely great power which makes them difficult to control. Abuse of authority by political parties is committed by political party administrators or organs, leading to criminal liability for a criminal act of corruption. This is found in three (3) verdicts on cases of criminal acts of corruption committed by political party administrators or organs. *Firstly*, Verdict Number. 1261K/Pid.Sus/2015 concerning the Hambalang criminal act of corruption committed by Anas Urbaningrum as member of the People's Legislative Assembly serving as chairman of Democratic Party faction. *Secondly,* Verdict Number 1195K/PID.SUS/2014 concerning the criminal act of beef imports committed by Lutfhi Hasan Ishaaq, chairman of Prosperous Justice Party. *Thirdly,* Verdict Number 130/PID.SUS/TPK/2017/PN.JKT. PST concerning the criminal act by Setya Novanto, chairman of the Party of Functional Group serving as member of the People's Legislative Assembly and chairman of the Party of Functional Group faction.

The political parties in the three cases are corporations so that they could be held liable for the criminal acts of corruption committed by the party organs or administrators. The results are the Democratic Party and the Party of Functional Group Case could be applied based on the identification theory and vicarious liability theory; then with the Prosperous Justice Party the identification theory can be used. The types of criminal sanctions against the three political parties were payments of compensation for the proceeds of the criminal act of corruption they had received.

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