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Political Party's Vicarious Liability in Political Corruption Cases in Indonesia

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ABSTRACT

Corruption in Indonesia is distinctive in itself because of the involvement of politicians who sit as state administrators, then from various anti-corruption community groups in Indonesia, this type of corruption that contained political dimension is known as political corruption in terms of national criminal law happened frequently in Indonesia, and since it is done by the power holders, the state financial losses caused by political corruption are relatively huge in number, and the factual fact of the state financial losses in major political corruption cases could not be recovered by the Indonesian General Attorney as the party representing the state, this situation represents a violation of the social and economic rights of the Indonesian people, and one of the objectives of the Anti-Corruption Law for various reasons according to Article 18 paragraph (1) letter b of the Anti-Corruption Law, is the recovery of state financial losses.

Keywords: Political Corruption, state financial losses, vicarious liability, Corruption Law, Sate Financial Losses.
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1. Introduction

The intensity of the civil supremacy in the era of reformation during the democratic process in Indonesia is encouraging, but on the other hand democracy also produces corrupt politicians through

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general elections, attributable to the failure of the Political Parties to give out an ideal political education to their politicians who are assigned as state administrators, until they are trapped even deliberately trapped themselves in political oligarchs and in political cartel circles, until this situation justifies Lord Acton's statement "that power tends to corrupt".

The truth of this statement from the outcome of a survey conducted by the Indonesian Institute of Sciences (LIPI) released on August 7, 2018 on "Mapping of Political, Economic, Socio-Cultural, Defense and Security Conditions ahead of 2019 Concurrent Elections", with 145 objects in political, economic, social, cultural, defense and security experts in 11 Provinces, concludes that the House of Representatives of the Republic of Indonesia (DPR) and the Political Party being the democratic institutions get the worst perception, and according to the survey the House of Representative and the Political Parties did not function properly, to the extent the lack of regeneration and the poor system of political parties are the root of all problem, more than that the political parties are declared incapable to act as a means of public political education, instead they prefer the instant fast path to win in every election, or like a company where a Political Party has gone bankrupt, and it needs injection of corrupted funds (CNN Indonesia, 2018), as well as the previous outcome of the 2017 Global Corruption Barometer Transparency International survey, showing the public perception that the House of Representative is the most corrupted institution (CNN Indonesia, 2018), as it is also confirmed by the Minister of Home Affairs Tjahjo Kumolo at the National Conference Corruption Eradication at Bidakara Hotel Jakarta (11/12/2017), he mentioned that in 2004 to 2017 there were 392 Regional Chiefs involved in criminal cases, and the largest number of them were involved in corruption cases, which were 313 cases (Jawa Pos, 2017), so it is not surprising if the Corruption Eradication Commission of the Republic of Indonesia (KPK) mentions that the most corrupted institutions are the House of Representative and DPRD (Regional People's Representative Council) (17/7/2019) (Salam & Heryanto, 2019), by stating "more than 60 percent of all corruptions handled by the KPK are political corruptions or collaborated with these political actors", Firman Noor, the Head of LIPI Center also stated that "many corruptors now committing corruption not to enrich themselves but they did it for their political parties ((CNN Indonesia, 2019), and according to Danang Widoyoko (2013: 91), the Indonesian Corruption Watch (ICW) Workers' Coordinator stated in his book that "from the scandal that was revealed in 2011, it seems that most of the cases lead to political corruption cases, especially related to funding the political parties",where some of the proceeds of corruption were used for political activities including financing political parties then as in various cases of corruption with political dimension like the Century Bank Bail Out or in the Electronic Indonesian Citizenship Identity Card Project (E-KTP), and in political corruption cases, the state financial losses tend to be greater than in non-political criminal acts, and the most alarming thing is that political corruptors always refuse to pay extra criminal indemnification as referred to in Article 18 paragraph (1) letter b of the Corruption Law, and this situation according to the Anti- Corruption Act "constitutes an offence of the social and economic rights of the wider community. e.t.c.", as it is emphasized in the RI Law No. 19 of 2019 on the Second Amendment to Law No. 30 of 2002 concerning the Corruption Eradication Commission (LNRI 2019 No. 197) abbreviated as the KPK Law states "constitutes a violation of social and economic rights of the community".

In facing this problem, law enforcers must re-collect the norms in the Anti-Corruption Law, in order to seek the recovery of the state financial losses as one of the goals of the Anti-Corruption Law itself, and the alternatives that are legally possible to deal with this situation are, to retract or positioned the Political Party as corporate criminal responsibility, using the doctrine of vicarious liability by implementing the Article 20 paragraph (2) of the Anti-Corruption Law, but before using this article it is necessary to conduct a research on the corporate criminal liability system adhered to in this article, or clarify the understanding of other relationships too and the scope of the actors in the corporation as well as the meaning of the word "if" in the article referred thereto, that all these queries indicate the existence of vaguely norm (vage normen), resulting in the waiver of article 20 paragraph (2) of the Corruption Act in all political corruption cases; To answer these questions the writer will narrow it down to a formulation of the problem, by first asking a basic question of what is the meaning and nature of the vicarious liability of political parties in the political corruption case? Followed by a question on the application of norm that is whether the Political Corruption is recognized in the national criminal law? and whether the Political Party could be vicariously liable in a political corruption case according to the

Corruption Act? you will find the answers to the above questions in a legal argumentation containing " a description of explanation, a series of logical statements to confirm or reject an opinion, standpoint or idea, relating to the principles of law, legal norms and concrete legal rules and the legal system and finding the law" (Prakoso, 2015: 163).

Based on searches from previous studies of criminal law studies in several studies, although discussing the recovery of state financial losses in corruption cases involving corporations, this research has fundamental differences both in conceptual and theoretical and practical foundations. Studies through previous research, discuss corporate criminal liability as a company in general types of corruption, whereas in this study are the vikarius accountability of political parties specifically in political corruption cases, using corporate criminal liability through Article 20 paragraph (2), and encourage the imposition of Article 18 paragraph (1) letter b of the Anti-Corruption Law on political parties, as a consequence as the person responsible for vicarius in the crime of political corruption, as an effort to encourage the eradication of corruption that is oriented to the recovery of state financial losses.

The comparative studies include research by Budi Suhariyanto (2018) that discusses the problematics of applying criminal money to corporations for corruption, in which there are several cases of criminal acts of corruption where the defendant/convict is a corporation manager, but the Court imposes criminal sanctions for replacement money to the corporation, while the status of the corporation when it is not a defendant (IM3 case), of course, the decision triggers pros and cons, so for that it is necessary to have a common understanding, regarding the imposition of additional criminal sanctions in exchange for corporations in criminal acts of corruption. The second is Maria Silva E. Wangga's research (2018) which discusses the weaknesses in the regulations of political parties criminal liability for corrupt acts committed by members, administrators, or party cadres by emphasizing that accountability can occur due to the flow of corruption funds to parties politics, if this happens then political parties may be subject to additional fines and criminal sanctions.

Studies by Erma Rusdiana (2016) that discuss the formulation of criminal liability of political parties as legal entities using the doctrine of identification or vicarious liability or strict liability to ensnare for the future, and concluded that current legislative policy in Indonesia does not regulate criminal liability political parties, whereas, from the Nazzarudin case study the fact is that there is a flow of funds resulting from corruption flowing into the congress of the democratic party, it can be concluded in this case that political parties are involved in political corruption committed by their cadres, thus political parties should be held liable for criminal liability, and for the future corporations and legal entities of political parties need to be distinguished because in normative concepts have differences as a criminal law subject, and need to be regulated in the Criminal Code. Fourth, namely research by Bettina Yahya (2017) that discusses the difficulties of law enforcers in proving the involvement of corporations as legal subjects in criminal acts of corruption as stipulated in Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning Eradication of Corruption due to lack of clarity in its regulation, even though by placing the corporation as the defendant and can prove the results of corruption included in corporate assets, the criminal procedure law can seek to recover state financial losses, due to positive legal constraints. law enforcement officials should be able to rely on several institutional policies.

2. Methodology

This study uses a normative method that is "by examining existing library materials" (Soeanto & Mamudji, 2009), to produce legal opinions (Muhjad & Nuswardani, 2012), through a legal approach, conceptual approach and historical approach. Sources of legal materials in the study consisted of primary legal materials and tertiary legal materials. Primary legal materials consist of the MPR stricture, the 1945 Constitution of the Republic of Indonesia, the Republic of Indonesia Law, the Ministry of Law and Human Rights Regulation of the Republic of Indonesia, the Republic of Indonesia Supreme Court Regulations relating to criminal acts of political corruption, vicarious accountability, and the position of political parties as legal issues in this study. Tertiary legal material that is the material used, to provide an explanation of the materials that are not clear to need to be explained again, tertiary materials used include a legal dictionary written by Setiawan Widagdo, M.Pd (2012). Legal materials are collected by

library research and internet searching. Legal material analysis techniques are carried out with four types of analysis, namely: description by describing a legal event, comparison by comparing one opinion with another opinion, evaluating legal material using a variety of interpretations and legal constructions, and arguments made to answer problems the study.

3. Results & discussion

This discussion will be held in a legal argument that is built on factual facts and not from a vacuum based on "ius in causa positum" principle deriving from the concepts and theories of criminal jurists, as the authors' says that "a research should lean on the shoulders of a giant", but still refers to positive law as a normative research characteristic. In this paper in order to enrich the insight of this legal argumentation, the writer uses the Rotterdam school of thought, that "the law is not rigidly fixed (gefixeerde essenties) but empty spaces (lege plekken), open (open ruimen) and not a determined domain (gedetemineerde plaatsen)" (Rahardo, 2016: 87).

3.1 The significance and essence of the political party's criminal liability

Significance is the meaning or intention of the speaker or writer, and the understanding given to a linguistic form (KBBI), and the meaning will come into existence if a certain action has been materialized, but also before that particular action is materialized even the form of the meaning can already be predicted of its form, through the process of reasoning and logic as a clue to the accuracy of the mind to find a scientific answer, for the necessity in implementing the criminal liability of Political Parties by using the doctrine of vicarious liability in political corruption cases in Indonesia, by reasoning that factual facts show that the Corruption Act is not capable to recover the state financial losses in cases of corruption with political dimension, and if the state's financial losses continue to occur unstoppably, meaning the state has committed by omission an offence of social and economic rights of the people of Indonesia, since the Corruption Act as referred to in the consideration paragraph letter a, and then repeated in Paragraph 2 the General Explanation of Corruption Eradication Committee Act that " corruption is an offence against the social and an economical rights of the people". Which in truth those two rights must be protected by the state according to the RI Law. No. 11 of 2005 concerning the Ratification of the International Covenant on Economic, Social and Cultural Rights (LNRI 2005 No. 118), and if the State failed in recovering the state financial losses, then it could be interpreted that the state did it by omission (deliberately), because criminal law still provides space to seek the recovering of the financial losses of the state by using the vicarious liability doctrine on the basis of a legal relationship between the political party as the employer or the task/work provider being the superior party to the politicians to occupy positions as state administrators, then it is legally correct if a political party is held liable for corporate criminal liability, and because Political Parties are inanimate objects given corpus and animus by law, the penalties that can be imposed are only material, such as fines (Article 20 paragraph (7) of the Anti-Corruption Law) and additional indemnification (Article 18 paragraph (1) letter b of the Anti-Corruption Law), and if the convicted property is not sufficient to pay the additional indemnification for state financial losses due to the corrupt behavior of the accused, this legal system applies because the criminal law will still criminalize anyone who commits or participates in committing, and in corruption usually confiscate all of the assets of the corruptor related to the case, and if the corruptor could not pay the additional indemnification, then the criminal law will then enforce the doctrine of vicarious liability, wherein the Political Party will be held in charge, including repaying state financial losses in cases of political corruption due to its legal status as vicarious liability. The purpose in applying this vicarious liability is to recover state financial losses, and with the recovery of the state's financial losses, the state will be able to return the social rights and economic rights of the Indonesian people, so the meaning of the implementation of vicarious liability of the Political Parties in political corruption cases is to restore state financial losses.

Other than the factual facts mentioned above, there is also the fact that the Anti-Corruption Act has not been successful so far in reducing the corrupted behavior of Indonesian politicians, in addition to being greedy, another factor is because the state through a law enforcement is still trapped in the principle of Article 2, 3, 4, and 5 of RI. Act No. 8 of 1981 concerning the Criminal Code (LNRI. 1958 No. 127) that "he who does is responsible"

Getting these factual facts, all parties in general especially law enforcers need to look back to the norms in the Anti-Corruption Law, such as maximizing the application of the Article 20 paragraph (2) of the Anti-Corruption Law in political corruption cases, as an entry to hold the Political Party accountable as the vicarious person- in-charge to repay the state debt that has not been repaid by their politicians as convicted political corruptor, and with this system of accountability, the Political Parties will be more selective in selecting good recruitment for their politicians who are assigned as state administrators, because if a political party does not seriously carry out its duties and functions as required by RI. Law. No. 2 of 2011 regarding the Amendments to the RI Law. No. 2 of 2008 concerning the Political Parties (LNRI. 2011 No. 8) concerning the Political Parties abbreviated as the Political Party Act against their politicians, Political Parties may be subject to vicarious liability in political corruption cases and this is certainly not what any Political Party desires, thus the other significance in applying the vicarious liability of the political parties in political corruption cases, is in the framework of criminal law to make political parties sound as pillars of democracy, while the ontology nature of applying vicarious liability of political parties in political corruption cases is to establish justice in the legal community, as the justice described by Aristotle in his book titled Nicomachean Ethnics by saying:

"Fair according to the law is what is comparable that is what it should be, someone is not fair when someone takes more than what he should, and people who ignore the law are also unjust, because all things based on the law can be considered as fair, then according to him the law can only be established in its relation to justice" (Darmodiharjo & Shidarta, 2006: 156).

In the context of political corruption it can be interpreted that the perpetrators of political corruption are those who attack justice and the criminal law must react to uphold that justice, by providing criminal sanctions to corrupt politicians including providing additional indemnifications, and if it is not paid by the perpetrator then according to the doctrine of vicarious liability Political Party can be held as the vicarious party responsible, because Political Parties are parties who assign corrupt politicians to occupy positions in government, the ontology nature of applying vicarious liability of the Political Party in political corruption cases is to materialize the Third Precepts of Pancasila "fair and civilized humanity "and the 5th Precepts of Pancasila" social justice for all Indonesian people", while from the point of the axiological view on the implementation of political party's vicarious liability in political corruption case is to provide future welfare for the Indonesian people, namely anticipating the inception of apathetic and transactional communities on political issues, and protect the manipulation of politicians as well as political parties towards the political ideals of the Indonesian people within the state, as well as the application of the criminal liability to correct the ethics of those politicians and their aesthetics in politics all this time.

3.2 Political corruption in national criminal law

Political corruption has different character and nature from petty corruption and grand corruption, where for Yosep Lapalomkara political corruption is principally committed only by public officials, where the position he is holding is obtained through a process of being elected or appointed, then the proceeds of the corruption is used for political purposes, Alkostar (2008:38) explained that political corruption is not merely exchanging money, but is also a form of trading influence or providing facilities that poison politics and threaten democracy, therefor this corruption is different than a bureaucratic corruption or petty corruption in public services, political corruption is committed by political officials who are elected through an electoral process, and elections that have the authority to allocate public resources and are responsible for representing the public interest (Widoyoko, 2013:13), and are topologically top had crime as the meaning contained in Professor Dionysios Spinellis's opinion (1994:20), says that it is not appropriate if the crime of politicians in the office is a white-collar crime, that is because: ". . . offences against the public property or the public revenue, such as embezzlement of public property, use of public means for personal or in general for private purposes, to which the profit of a political party should be included" the top had crime doer is identified as a respectful individual or a "high social class" person like white-collar crime, but the nature of the position attached to the actor differs in the scope of his authority, where the top had crime is "take part in politics and hold public offices, and not "general are making business or exercise professions mainly in the private sector "as identified by white-collar crime.

The term political corruption was first raised in the realm of national criminal law at least since the "Report of the Civil Society on the Implementation of the United Nations Convention Against Corruption (UNCAC) in Indonesia" in 2013 stating that political corruption was the mother of corruption in Indonesia (ACCH, 2017), and to ICW researcher J Danang Widoyoko (2013:9) mentions in his book, that Indonesia has been colored by the tendency of the emerge of cartel politics, where political parties collude in a coalition to access public resources together, control of public office and government ministries is a form significant source of funding for Political Parties, and it is more important than ideological differences or attitude orientation in a number of political issues, this is also the cause of the occurrence of political corruption that often involves politicians across Political Parties, both opposition and politicians from government parties are a not barrier to corrupt in congregation.

This type of corruption later got the attention from the Indonesian Supreme Court through:

a. A Verdict of the R.I. Supreme Court No. 1261 K/Pid.Sus/2015 on the convicted Anas Urbaningrum (Chairperson of the Democratic Party) which basically stated "that the defendant's actions constitute a political corruption";

b. A Verdict of the R.I. Supreme Court No.1195 K/Pid.Sus/2014 for convicted Luthfi Hasan Ishaaq (President of the Keadilan Sejahtera Party), which basically stated "... the transactional relationship between the defendant who is a member of the legislative power body and Maria Elizabeth Liman, businesswoman a beef importer is a political corruption because it is done by the defendant who is in a position to hold political power so that it is a serious crime (serious crimes)" (TII, 2013).

c. A Verdict R.I Supreme Court No. 1885 K/PID.SUS/2015 on Defendant Rina Iriani Sri Ratnaningsih (Karanganyar Regent) who basically stated the perpetrators was a public official and the corrupt money was partly channeled for political activities.

From those three verdicts, a conclusion can be drawn that political corruption is a criminal act of corruption with a political dimension committed by politicians being state administrators, where all and part of the monies are channeled for political activities, even though political corruption is not included in the Anti-Corruption Law but in its progress it is acknowledged by the R.I. Supreme Court. It is then argued a Court's Decision at a Supreme Court's level is a source of formal law, besides the laws, and the customs, according to Prof. Mahfud MD in the collection of criminal law in Indonesia there has been a term of political corruption, that is an corruption act by using his public office's influence to corrupt" (Fardiyansyah, 2018).

3.3 The application of political party's vicarious liability in political corruption case

Before determining whether a Political Party could be vicariously accountable in political corruption cases, it is necessary to identify the person of the Political Party according to Article 1 number 1 of the Anti-Corruption Law, in where the article has formulated the subject of corruption criminal acts other than natuurlijk person (natural person) namely corporations as legal fiction. In some people's knowledge as we can read in various literature including the opinion of legal experts as well, some perceive corporation as a business entity or a large corporation, as well as the perception of the Indonesian Supreme Court through the Supreme Court Regulations. No. 13 of 2016 concerning the Procedures in Handling Criminal Cases by Corporations (LNRI Year 2016 No. 2058), in Article 1 number 2 is that "(Parent company) is a legal entity that has two or more subsidiaries called subsidiary company having their own legal entity status", this interpretation does not extend the meaning of corporation but constrict the meaning of Article 1 number 1 of the Anti-Corruption Law that corporation is a group of people and or assets that is well organized either as a legal entity or not as a legal entity (Wiyono, 2009: 21-22), and perceive the corporation as a company, which according to I Gede AB Wiranata (2009: 327) a corporation is not only understood as a large company but more extensively as legal entity, as well as the explanation of Prof. Sutan Remy Sjahdeini (2017:27) is that "corporations incorporated as civil law are in the form of Political Parties and various other organizational units too", then the Dictionary of English Law said "a corporation is also known as a body politic" (Anwar & Adang, 2010: 219), this opinion conforms with Article 2 of the Political Parties Act that a Political Party is an organized group of people, having organized Assets as described in Article 1 number 5 of the Political Party Act, as well as a legal body as determined by Article 3 paragraph (1) of the Political Party Law, it can be concluded that "Political Parties are organizations with legal status which is engaged in politics and is a

corporation as formulated in Article 1 number 1 of the Anti- Corruption Law, automatically a Political Party is a subject of the criminal law in a political corruption case, subsequently the writer will identify which norms in the Anti-Corruption Act can be applied to hold criminal Political Parties liable for political corruption in the following political corruption case.

The corporate responsibility in the Anti-Corruption Act is provided in Article 20 paragraph (1) and paragraph (2), and from both paragraphs the most possible clause that could be imposed to the Political Parties is Article 20 paragraph (2) of the Anti- Corruption Act and not Article 20 paragraph (1) of the Anti-Corruption Act, since Article 20 paragraph (1) of Anti-Corruption Act understands that the corporate corruption is attributable to someone acting for and on behalf of the corporation thus acting for and on behalf of the corporation is a corporation deed, having legal relation in the form of other relationship and act within the political parties community, the clause in this article has a similarity and since the doer is inseparable with the corporation according to the law, this is different than the interpretation of Article 20 paragraph (2) of Anti-Corruption Act, where this article hold corporation as "guarantor or bond (borg)", same as the conjunction "if" in the formulation of the article which also means political corruption is considered to be committed by Political Parties if the doer is a politician as a state administrator, and it can be proven that between politicians and Political Parties, the doctrine of vicarious liability according to Amrani and Ali (2015: 34) can be applied when two things are present namely:

1) There must be a work relationship, such as a relation between work giver and work receiver or worker.

2) Criminal act committed by the work giver or work receiver are related or are still within the scope of their work.

Thus the understanding of this doctrine conforms the formulation of Article 20 paragraph (2) of the Anti-Corruption Act, namely:

a. Performed by good people based on work relationship or even based on other relation, and the relation between politician and Political Party is the other relationship, that is a certain legal relationship other than work relationship, and such legal relationship happened when one become a member of the Political Party.

b. Politics in Political Party Community;

c. With the legal relationship between politics and Political Parties regulated in the Articles of Association and By-Laws of the Political Parties, the Political Party Law, and the Election Law, it is within the Political Party community.

d. The Political Party gets profits or benefits.

The conjunction word " when" in article 20 paragraph (2) of the Anti-Corruption Act indicates that the Political Party as corporation was not involved in the political corruption, but with doctrine of vicarious liability in this situation the Political Party could be positioned as the vicarious liability, even the Political Party did not directly benefit in the political corruption criminal act, as compared in the case Re Supply of Ready Mixed Concrete (No. 2) Director General of Fair Trading vs. Pioneer Concrete (UK) LTD (1995) 1 BCLC, Court of Criminal Appeal, England, in his verdict in essence argued that a company can be held liable for criminal acts done by its employee, even though the company has reminded the employee not to do something that could potentially be a criminal offense (Sjawi, 2006: 35), Likewise Matthew Goode argues that profit or benefit is not required in holding vicarious liability to corporation, by referring to Section 42 of the Australian marine Environment Protection Act 1990, then in its progress the doctrine of vicarious liability can be applied if there is a work relationship between work giver and work receiver, like in Coppen vs. Moor (No. 2) (1898) 2 QB 306, where one of the sales clerk made a mistake in mentioning the name of the food product which should be "breakfast hams" instead of "scolch ham", which according to Divisional Court of the Queen's Bench this act is a criminal act, as referred to in s.2 (2) Merchandize Marks Act 1987, thus besides the sales clerk the shop owner is liable to criminally liability, because according to Lord Russell LJ that:

"The (accused). . . carries on an extensive business as grocer and provision dealer, having, it appears, six shops or branch establishment, and having also a wholesale warehouse. It is obvious that, if sale with false, trade descriptions could be carried out in these establishments with impunity so far as

the principal (i.e. the accused) is concerned, the act would to a large extent be rendered nugatory" (Sjahdeini, 2017: 161)

Waiving the opinion of the Court of Criminal Appeal, England, Divisional Court of the Queen's Bench, and Mathew Goode, and Lord Russell LJ, even if the Anti- Corruption Act required the present of profits for the Political Party then such profits was already gained by the Political Party in a political corruption case, provided the proceeds of the political corruption is used by the doer for political activities, both in the form of socialization and political campaigns where it will lead to the popularity of the Political Party at community level, as well as in the case of money politics carried on in the election of legislative members, in this case the votes for Political Party will certainly be increased due to the increased votes cast for the actor as referred to Article 420 of the Law. RI. No. 7 of 2017 concerning General Elections (LNRI of 2017 No. 182) is abbreviated to the Election Law.

The other benefits the Political Party will receive is a sum of money from the state as compensation for votes the Political Party get in the election, and this is regulated in Government Regulation No. 1 of 2018 concerning the Second Amendment to Government Regulation No. 5 of 2009 concerning Financial Assistance to Political Parties (Explanation in LNRI No. 6177), or the benefit is obtained by Political Parties through contributions or other contributions by the actor when he has served as an official of the state administration. Thus a Political Party is a species of corporation, it is upon this legal position that a Political Party may be subject to Article 20 paragraph (2) of the Anti-Corruption Act as the vicarious liability, where its legal consequences is that a Political Party may be subject to a basic punishment is a fine (Article 20 paragraph (7) of the Anti- Corruption Act), may be subject to additional criminal sanctions in lieu of money (Article 18 paragraph (1) letter b of the Anti-Corruption Act) as a means of realizing the goal of establishing the Anti-Corruption Act, namely to recover the state financial losses due to political corruption, and by recovering financial losses, the state theoretically can again distribute the social rights and economic rights of the Indonesian people as mandated in the Pancasila (the Indonesian State Ideology) and the 1945 Constitution.

The problem faced by the Anti-Corruption Act today is that the convicted person does not pay the additional indemnification for various reasons including using "rational choice theory" (Carthy, 2002: 417-418), so the alternative criminal law to deal with this is to place the Political Party as a vicarious person based on the doctrine of vicarious liability, who will be demanded to pay the state financial losses not paid by politicians as convicted political corruptor, and this criminal law system is felt very just. Further, what strictly needs observation is the execution of the criminal punishment, a criminal threat is needed to force the Political Party to pay, such as using the threat in Article 35 letter c of the Criminal Code whereby the right of Political Party to be elected in the General Election will be revoked, and if the Political Party still does not made the payment he can then be considered as irresponsible criminal subject. The above criminal liability system is acceptable to be implemented based on the Corruption Eradication Commission Law that "the eradication efforts can no longer be carried out in an ordinarily manner, but are demanded in the extraordinary ways", and the application of vicarious liability of the Political Party in political cases by using the doctrine of vicarious liability are extraordinary ways that can be justified by national law.

4. Conclusion

The significance of the application of the Political Party vicarious liability in a political corruption case is to recover the losses of the state as referred to in Article 18 paragraph (1) letter b Anti-Corruption Act, whereas the essence of ontology is in the context of establishing social justice of the Indonesian people, and from the viewpoint of the axiology the aim is to evaluate the ethics and aesthetics of politicians and political parties in the life of society, nation and state,

As for the purpose of applying vicarious liability in political corruption cases, it is carried out to seek scientific truth by using positivism method as one of the methods of choice from the nature of epistemology, up to the level of significance and nature is very reasonable if the doctrine of vicarious liability is applied in corruption criminal deed in Indonesia, the legal basis of species Political Parties from the corporate genus, according to Article 20 paragraph (2) of the Anti-Corruption Act, funds referred in this political corruption case can be interpreted as a guarantor (borg) with his position, the Political Party can be held liable for criminal liability corporation in the case of political corruption, and the consequence is the Political Party as the vicarious person in charge can be

subject to the principal crime referred to in Article 20 paragraph (7) of the Anti- Corruption Act and may be subject to criminal sanctions to pay the additional indemnification referred to in Article 18 paragraph (1) letter b Corruption Act , which is not paid by the convicted corruptor because the Political Party's position is as the guarantor (borg) in a corporate criminal corruption acts and not an autor physic or is not the real culprit, the requirement for a vicarious liability in criminal law are extraordinary ways as referred to in the Explanation of the Corruption Eradication Commission Law

In the future, legal politics needs to include the vicarious liability system of Political Party in a political corruption case in the Anti-Corruption Act, so that the provisions become positive laws for the use of the law enforcers in attempting to recover state financial losses, while the other means according to the law is to answer the vagueness of the law in implementing the vicarious liability system of the Political Party referred to in Article 20 paragraph (2) of the Anti-Corruption Act is that the Public Prosecutor submits this accountability to be tested before the Court, and that it will be certainly answered by a Court Decision on various legal grounds delivered by the judges.

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