

## THE IMPLEMENTATION OF THE DEATH PENALTY IN CORRUPTION

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### Abstract

Corruption is an extraordinary crime that has an impact on losses and the country's economy so that it has a negative impact on the welfare and welfare of society. Various criminal sanctions have been imposed on the perpetrators, but these sanctions have not provided a deterrent effect. The emergence of the discourse on capital punishment as an effort to provide a deterrent effect and efforts to prevent corruption raises pros and cons. Those who support capital punishment argue that capital punishment needs to be applied as an effort to protect the welfare of the people. On the other hand, the death penalty violates human rights. Therefore this paper examines the position and role of capital punishment as a sanction against corruption. This study uses a juridical normative method. Capital punishment as a sanction against perpetrators of corruption can be carried out on the condition that the sense of justice in society is fulfilled as a preventive measure. The position of the death penalty is appropriate for the implementation of corruptors as a crime against the sense of justice and detrimental to the fulfillment of the welfare and prosperity of the community.

**Keywords:** Death Penalty Sanctions, Corruption Crime, Corruption

## INTRODUCTION

Crime is a very common problem. There is not a single country that is not faced with this problem. Crime is also very unsettling for society and causes enormous losses to individuals, society and the government. Among these crimes, some are classified as very serious and receive deep attention from all criminal justice systems, such as crimes against life and body, crimes against property (whether violent or not), and crimes against sexuality. Therefore, the ability of a criminal justice system to tackle crime or suppress it as low as possible is highly desired by society. The application of the death penalty in Indonesia is a legacy of the provisions of Dutch colonial law, which to date have not been completely corrected. Although in the Netherlands itself the practice of the death penalty has been abolished.<sup>1</sup>

Capital punishment is one of the oldest types of punishment, as old as mankind. The death penalty is also the most interesting form of crime studied by experts because it has a high contradiction or contradiction value between those who agree with those who disagree.<sup>2</sup>

Indonesia is one of the countries that still maintains and recognizes the legality of capital punishment as a way to punish criminals. Besides being the most severe punishment, the death penalty is a punishment that is generally very frightening, especially for convicts who are awaiting execution. One of the criminal acts punishable by death is corruption.<sup>3</sup>

The development of corruption in Indonesia continues to increase from year to year, both in terms of the number of cases that have occurred and the number of losses to state finances as well as in terms of the quality of the criminal acts that have been committed more systematically and their scope has entered all aspects of public life.<sup>4</sup> The uncontrolled increase in criminal acts of corruption will bring disaster not only to the life of the national economy but also to the life of the nation and state in general. Widespread and systematic corruption is also a violation of the social and economic rights of the community, so the criminal act of corruption can no longer be classified as an ordinary crime but has become an extraordinary crime.<sup>5</sup>

Corruption is no longer carried out by individuals and has even been carried out collectively, organized and systematically. The amount that has been corrupted is already insane, no longer millions or billions, even trillions of state finances. Perpetrators of criminal acts of corruption in Indonesia can be sentenced to death penalty as stipulated in Article 2 paragraph (2) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption, which states that in the case of criminal acts corruption as referred to in paragraph (1) is carried out in certain circumstances, the death penalty may be imposed. It is time for this extraordinary corruption crime to be eradicated in an extraordinary way, namely the death penalty. The death penalty is largely recognized by the common law (*customary law*) of traditional societies not only in Indonesia, even in the world. So, to inhibit the pace and even stop the criminal act of corruption in Indonesia, it is appropriate for prosecutors and judges at the district court level, high court, appeal and cassation to be courageous based on justice and truth to provide maximum sentences and sentences, namely the death penalty for criminal offenders corruption.<sup>6</sup>

The problems that arise due to the shift in the purpose of punishment are considered to be injurious to the sense of justice for the community and the criminal act of corruption is increasingly rampant, so it is necessary to apply the death penalty as the heaviest sanction in the criminal law in these laws, because currently the Corruption Law is currently the threat of punishment is less severe, in fact, it provides an opportunity for more corruption to occur. The current Corruption Law only regulates 1 (one) article which threatens the death penalty and this does not give the effect of being afraid of a person to commit a criminal act of corruption other than the death penalty. Based on this, it is necessary to add more death penalty threats to perpetrators of corruption as it is known that corruption is a crime that is included in *an extraordinary crime*, which also has a very large impact on the country's economy.

Based on the description above, this journal is entitled "**Application of Death Penalty Sanctions in Corruption Crimes**".

<sup>1</sup> Topo Santoso, *Membumikan Hukum Pidana Islam*, (Jakarta: Gema Insani Press, 2003), hlm. 133.

<sup>2</sup> Mahrus Ali, *Dasar-Dasar Hukum Pidana*, (Jakarta: Sinar Grafika, 2012), hlm. 195.

<sup>3</sup> Ady Tri Setyo Nugroho, "Pelaksanaan terhadap Penjatuhuan Sanksi Pidana Mati Untuk Pelaku Tindak Pidana Korupsi" *jurnal skripsi*, Yogyakarta, 2014, hlm. 3.

<sup>4</sup> Ermansjah Djaja, *Memberantas Korupsi bersama KPK*, (Jakarta: Sinar Grafika, 2008), hlm.182.

<sup>5</sup> *Ibid.*, hlm. 183.

<sup>6</sup> Mas Wahyu, Hukuman Mati Bagi Koruptor Bisa Segera Diterapkan di Indonesia, <http://m.kompasiana.com/post/read/619364/2/hukuman-mati-bagi-koruptor-bisa-segera-diterapkandi-indonesia.html>, diakses tanggal 14 Januari 2021

## RESEARCH METHOD

This research uses a juridical normative approach accompanied by juridical empirical research that emphasizes the use of written legal norms associated with the practices and perceptions of the informants.<sup>7</sup> Thus it can be obtained an overview of the death penalty in the crime of corruption.<sup>8</sup>

This research is explanatory in nature<sup>9</sup>, which is a study conducted to dig deeper into the theory of development law regarding the enactment of a law.

The types of data used are primary data and secondary data. Secondary data is data obtained through literature searches or from official documents. Meanwhile, primary data is data obtained from the source directly through the method of in-depth interviews that are open to resource persons.

There are 2 (two) types of legal materials, namely 1). The primary legal material is the legal source that forms the binding / legal basis, such as: the 1945 Constitution of the Republic of Indonesia and Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes. 2) secondary legal materials, namely materials that provide an explanation of primary legal sources, such as materials in the form of books, diaries / magazines and scientific papers.

The data collection uses 2 (two) ways, namely: a) (*library research/library research*). In this literature study, what is done is to study and read books on law, legal theory, and capital punishment in the criminal act of corruption, so that these materials can be related to problems related to this research. b) interviews with informants, namely interviews.<sup>10</sup>

In an effort to be able to answer or solve the problems raised in this study, qualitative data analysis methods are used, because the data obtained is qualitative and statistical data is not required. After data collection, analysis is carried out so that conclusions can be drawn that can be scientifically justified.<sup>11</sup>

The form of the research results is in accordance with the type of research that is diagnostic in nature, namely legal research which observes the symptoms of a legal incident, in this case the issue of the death penalty in the crime of corruption.<sup>12</sup>

## DISCUSSION

Law of the Republic of Indonesia Number 31 of 1999 in conjunction with Law of the Republic of Indonesia 20 of 2001 on Corruption Eradication regulates capital punishment in article 2 paragraph (2). This article provides the death penalty for the perpetrator of a criminal act of corruption committed in certain circumstances. Article 2 paragraph (2) of the Corruption Law reads that if the criminal act of corruption as referred to in paragraph (1) is committed in certain circumstances, the death penalty can be imposed. The elements of Article 2 paragraph (2) of the Corruption Law that need to be explained in this case are the clause of certain circumstances. The specific circumstances referred to in this article as amended in this Corruption Law are:

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<sup>7</sup> Dian Puji Simatupang, *Petunjuk Penelitian Usulan Penelitian Disertasi*, (Jakarta : Program Studi Doktor Ilmu Hukum Unkrisna, 2013), hlm. 5.

<sup>8</sup> Rully Indrawan, R. Poppy Yaniawati, *Metode Penelitian, Kuantitatif, Kualitatif, dan Campuran untuk manajemen, Pembangunan, dan Pendidikan*, Bandung: Refika Aditya, hlm. 8. Metode ilmiah tidaklah bersifat tunggal dalam memperoleh kebenaran. Setidaknya ada dua metode lain yang membantu manusia mencari kebenaran (pengetahuan), yakni metode trial and error dan metode intuitif. Perbedaan menonjol dan metode ilmiah dibanding dua metode lainnya terletak pada kemampuan metode ilmiah yang menyajikan sesuatu yang bisa disaksikan (realitas), transparan, dan diulang kembali, karena metode ilmiah berangkat dan masalah yang nyata dan pentahapan kerja yang bisa diulang oleh siapa pun yang membiki latar belakang keilmuan yang sama.

<sup>9</sup> Bandingkan dengan Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, (Malang : Bayu Media Publishing, 2007), hlm. 34-62.

<sup>10</sup> Lihat teknik wawancara dalam Masri Singarimbun, *Metode Penelitian Survei*, (Jakarta: LP3ES, 1989), hlm. 192

<sup>11</sup> *Ibid.*

<sup>12</sup> Soerjono Soekanto, *Penelitian Hukum Normatif*, (Jakarta : PT.Raja Grafindo Persada, 2011), hlm. 7. Didalam suatu penelitian hukum, maka paradigma konseptual meliputi: Masyarakat Hukum, Subyek Hukum, Hak dan Kewajiban, Peristiwa Hukum, Hubungan Hukum, dan Objek hukum.

"A condition that can be used as a reason for criminal action against the perpetrator of a criminal act of corruption, that is, if the criminal act is committed against funds intended for overcoming a dangerous situation, national natural disasters, prevention of widespread social unrest, overcoming economic and monetary crises, and repetition of criminal acts of corruption".

Death penalty is the heaviest punishment, this is because its implementation is in the form of an attack on the right to life for humans, in fact this right can only be revoked in the hands of God, so it is not surprising that from the past until now it has generated pros and cons. to the application of the death penalty (*Oppositionabolisonism*) in Indonesia, views that the death penalty is very contrary to human rights, as stated in Articles 28A and 28I of the 1945 Constitution, Article 4 and Article 9 of Law Number 39 of 1999, and Article 3 DUHAM.

Meanwhile, a pro view of capital punishment assumes that the death penalty must still be maintained and applied only to *extraordinary crimes* such as corruption, to be applied, group this considers that the death penalty will have a deterrent effect, so that it will prevent the recurrence of similar crimes by others. The debate between the two strong currents, basically the point of contact can be drawn, the important point of both is, how to protect humans as subjects of this civilization, their dignity and dignity as human beings, so that the productivity of their civilizations will continue, and their existence as humans can be maintained.

The Court is of the opinion that in the future, in the context of reforming national criminal law and harmonizing laws and regulations related to capital punishment, the formulation, application, and implementation of capital punishment in the criminal justice system in Indonesia should pay close attention to the following matters:

1. Death penalty it is no longer a principal crime, but rather a special and alternative punishment;
2. The death penalty can be imposed with a probationary period of ten years, which if the convicted person has a commendable behavior can be changed to a life imprisonment or 20 years;
3. The death penalty cannot be imposed on minors;
4. The execution of the death penalty for a pregnant woman and someone who is mentally ill is postponed until the pregnant woman gives birth and the convict who is mentally ill is cured."

The death penalty in Article 2 paragraph (2) can be applied on condition that there is a reason for a criminal offense against the perpetrator of the crime. corruption. Legislators include "certain circumstances" as the reason for weighting down. In the elucidation of this article what is meant by "certain conditions" in this provision as a deterrent for the perpetrator of the criminal act of corruption if the crime is committed when the state is in a state of danger in accordance with the applicable law, at the time of a national natural disaster, as a repetition of the act. corruption, or when the country is in a state of economic and monetary crisis.

In Law number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, that the substance of Article 2 paragraph (2) remains subject to change only in the explanation of the article. In this law what is meant by "certain conditions" is a situation that can be used as a reason for criminal action against the perpetrator of a criminal act of corruption, namely if the criminal act is committed against funds allocated for overcoming dangerous situations, national natural disasters, overcoming the consequences of social unrest. widespread, overcoming economic and monetary crises, and repetition of criminal acts of corruption.

The factors so that the imposition of the death penalty is not applied in the criminal act of corruption, namely the law<sup>13</sup> itself where legislative policy makers are not serious about the formulation of the death penalty can be seen from the existence of conditions that become the reason for weighting so that the death penalty can be applied. This can be seen from the explanation of article 2 paragraph (2) of Law number 20 of 2001, namely that the weighting is carried out in certain circumstances. What is meant in certain circumstances is: It is

1. carried out on funds intended for overcoming a situation of danger;  
This state of danger also needs interpretation, it adds to the ambiguity of the law.
2. National natural disaster;  
This national disaster also needs an interpretation of whether a natural disaster in one province affects another province so that it can be said to be a national disaster.
3. Countermeasures due to widespread social unrest. Widespread social unrest, this word spread also becomes unclear.
4. Overcoming economic and monetary crises, and;

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<sup>13</sup> Soerjono Soekanto, *Faktor-faktor yang Mempengaruhi Terhadap Penegakan Hukum*, ctk Keempat, (Jakarta : PT Raja Grafindo Persada, 2002), hlm. 55.

This economic and monetary crisis is also uncertain, because when a country experiences an economic and monetary crisis.

5. Repetition of corruption crimes. This is acceptable, because the customer (recidivist) is involved in the criminal act of corruption.

According to the author, these conditions are still multiple interpretations, this certainly implies that there is no death penalty for the perpetrators of corruption. Ideally, the Corruption Law should be formulated more broadly in relation to the death penalty, so that there is a benchmark for law enforcers in interpreting how much state losses a death sentence can impose.

It is hoped that the provision of capital punishment to the perpetrators of corruption is expected to have a deterrent effect on the perpetrators and make others afraid to commit the act. This is in line with the philosophy of punishment that has been stated earlier, that the philosophy of punishment which is integrative is oriented towards retaliation, prevention so that others do not commit the act and education so that the perpetrator does not repeat his actions again. This corruption causes the country's economy to be eroded so that the desired public welfare is never realized.

These elements are very difficult to implement, because most of the criminal acts of corruption that occur today are in the form or which have elements outside the elements contained in the explanation of Article 2 paragraph (2) of the Corruption Law. Based on this, it is necessary to regulate or impose capital punishment against the perpetrators of corruption in other forms.

Until now, many legal instruments did not lead to justice and did not protect the people. Consciously, the law is made powerless to touch corrupt high officials to get and enjoy the *privilege of being treated special*. The rampant corruption is due to weak legal instruments.<sup>14</sup>

## CONCLUSIONS

Law of the Republic of Indonesia Number 31 of 1999 in conjunction with Law of the Republic of Indonesia Number 20 of 2001 concerning Eradication of Crime regulates the death penalty in Article 2 paragraph (2) which states that a person who commits corruption can be sentenced to death if the element is accompanied by elements of certain circumstances where the particular condition is meant if the criminal act is committed against funds intended for overcoming dangerous situations, national natural disasters, overcoming the consequences of widespread social unrest, overcoming economic and monetary crises, and repeating criminal acts of corruption.

The death penalty in a criminal act of corruption needs to be threatened against perpetrators of corruption, especially those who commit a criminal act of corruption that is committed in an organized and continuous manner, if the criminal act of corruption is committed by law enforcement officials, if the criminal act of corruption is committed by a state official, if the act criminal corruption followed by money laundering.

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Based on the above conclusions, the authors suggest that corruption is an extraordinary crime so that extraordinary handling is needed as well, law enforcement officials in eradicating corruption are expected to impose the heaviest punishment to provide a deterrent effect to the perpetrators and other people also get education on the downfall. punishment and feel afraid to do the same action because the consequences or punishment given are very heavy.

## REFERENCES

- Dian Puji Simatupang, *Petunjuk Penelitian Usulan Penelitian Disertasi*, (Jakarta : Program Studi Doktor Ilmu Hukum Unkrisna, 2013).
- Soerjono Soekanto, *Penelitian Hukum Normatif*, (Jakarta : PT.Raja Grafindo Persada, 2011).
- Ady Tri Setyo Nugroho, "Pelaksanaan terhadap Penjatuhannya Sanksi Pidana Mati Untuk Pelaku Tindak Pidana Korupsi" *jurnal skripsi*, Yogyakarta, 2014.
- Arie Siswanto, "Pidana Mati Dalam Perspektif Hukum Internasional", *Jurnal Ilmu Hukum Refleksi Hukum Edisi April* 2009.
- Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, (Malang : Bayu Media Publishing, 2007).

<sup>14</sup> Evi Hartanti, *Tindak Pidana Korupsi*, (Jakarta: Sinar Grafika, 2012), hlm, 3.

- Ermansjah Djaja, *Memberantas Korupsi bersama KPK*, (Jakarta: Sinar Grafika, 2008).
- Evi Hartanti, *Tindak Pidana Korupsi*, (Jakarta: Sinar Grafika, 2012).
- Henry Campbell Black, M.A.. *Black's Law Dictionary (fifth edition)*, (Minn West Publishing, St. Paul, 1979).
- Inge Dwisvimiar, "Keadilan Dalam Perspektif Ilmu Hukum", *Jurnal Dinamika Hukum*, Fakultas Hukum Universitas Soedirman Purwokerto, Vol. 11 No. 3 September 2011.
- Masri Singarimbun, *Metode Penelitian Survei*, (Jakarta: LP3ES, 1989).
- Mahrus Ali, *Dasar-Dasar Hukum Pidana*, (Jakarta: Sinar Grafika, 2012).
- Mas Wahyu, Hukuman Mati Bagi Koruptor Bisa Segera Diterapkan di Indonesia, <http://m.kompasiana.com/post/read/619364/2/hukuman-mati-bagi-koruptor-bisa-segera-diterapkandi-indonesia.html>, diakses tanggal 14 Januari 2021.
- Rully Indrawan, R. Poppy Yaniawati, *Metode Penelitian, Kuantitatif, Kualitatif, dan Campuran untuk manajemen, Pembangunan, dan Pendidikan*, Bandung: Refika Aditya.
- Schaffmeister, N. Keuzer, E. PH. Sutorius, *Hukum Pidana* (terj. J.E. Sahetapy), (Yogyakarta: Liberty).
- Shidarta, *Mochtar Kusuma Atmadja dan Teori Hukum Pembangunan*, (Jakarta: Epistema Institute, 2012).
- Soerjono Soekanto, *Faktor-faktor yang Mempengaruhi Terhadap Penegakan Hukum*, ctk Keempat, (Jakarta : PT Raja Grafindo Persada, 2002).
- Topo Santoso, *Membumikan Hukum Pidana Islam*, (Jakarta: Gema Insani Press, 2003).
- Woro Winandi, Indra Rukmana Lukito, "Penjatuhan Pidana Mati Dalam Tindak Pidana Narkotika", *Jurnal Hukum*, Vol. XIX, No. 19, Oktober 2010.