



LAW ENFORCEMENT OF DEATH CRIMINAL IMPOSITION AGAINST CORRUPTION CRIMINAL ACTORS IN INDONESIA

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Article history:	Abstract:
<p>Received: 6th January 2023 Accepted: 6th February 2023 Published: 11th March 2023</p>	<p>Corruption is a disturbing problem, and hinders national development because corruption has resulted in leaks in state finances which actually really need large funds during the economic and monetary crisis . Corruption at present and for the future is a serious threat that can endanger the development of the nation's life in general, and in particular the Indonesian nation so that the crime of corruption should be categorized as a crime that endangers the welfare of the nation and state . Efforts to prevent and deal with corruption and the imposition of punishment for the perpetrators have developed with the increasingly emerging discourse on imposing the death penalty for corruptors . The death penalty penalty has been clearly regulated in the law, namely article 2 paragraph (2) of the Law of the Republic of Indonesia No.20 of 2001 jo. The Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Crimes, however, it is not easy to apply capital punishment in corruption cases. The legal theory used is Law Enforcement Theory and Law Enforcement Theory.</p> <p>The research method used in this study is a normative juridical approach supported by empirical juridical by detailing the description, namely a deductive study starting with an analysis of the articles in the laws and regulations that regulate the problem of law enforcement imposing capital punishment on perpetrators of corruption. in Indonesia. Besides that, premier data is also used to support secondary data legal materials. The legal material analysis technique uses the normative juridical method which aims to provide a prescriptive study with interpretive analysis.</p> <p>The results of research on capital punishment for perpetrators of corruption in efforts to eradicate criminal acts of corruption in Indonesia show that the imposition of capital punishment for perpetrators of corruption is contained in the Law on the Eradication of Corruption Crimes. only There is One chapter Which arrange that is chapter 2 paragraph (2). In chapter theexplained that the death penalty can be applied to perpetrators of corruption in "certain circumstances". Law Enforcement in Completion of Corruption Crimes Through Death Penalty Sanctions in Indonesia that the criminal sanction of the death penalty for perpetrators of corruption if only examined in detail <i>textual</i> , so application punishment dead contrary with Right Fundamental Man as stated in Article 28A paragraph (1), in conjunction with Article 4 of the Law act Number 39 Year 1999, jo Chapter 3 UDAM</p>

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INTRODUCTION

A social phenomenon called corruption is a reality of human behavior in social interaction that is considered deviant and endangers society and the state. Therefore, this behavior in all forms is criticized by society, even including by the corruptors themselves in accordance with the expression "corruptors shout corruptors". Public disapproval of corruption according to the juridical conception is manifested in the formulation of law as a form of crime.

Within the politics of Indonesian criminal law, corruption is even considered a form of crime that needs to be approached specifically, and is punishable by quite severe penalties.

Efforts to eradicate corruption have begun to be realized within a juridical framework during the Habibie administration with the issuance of Law no. 31 of 1999 concerning the Eradication of Corruption Crimes which replaced Law no. 3 of 1971 concerning the Eradication of Corruption Crimes. The reason for changing the Corruption Law from Law no. 3 of 1971 became Law no. 31 of 1999 concerning the Eradication of Crime Corruption can be seen in the dictum

of Law no. 31 of 1999 as follows:

Whereas Law Number 3 of 1971 concerning the Eradication of Corruption Crimes is no longer in accordance with developments in the needs of society, therefore it needs to be replaced with a new Law on the Eradication of Corruption Crimes so that it is expected to be more effective in preventing and eradicating Corruption Crimes.

UU no. 31 of 1999 concerning the Eradication of Corruption Crimes has also been amended to become the Law of the Republic of Indonesia No. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption Crimes. In the current era of reform, efforts to prevent and deal with corruption and the imposition of punishment for the perpetrators have developed with the increasingly emerging discourse on imposing the death penalty for corruptors.

Even though the death penalty has been clearly regulated in the law, namely article 2 paragraph (2) of the Law of the Republic of Indonesia No. 20 of 2001 jo. The Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Crimes, however, it is not easy to apply capital punishment in corruption cases. The issue of protecting Human Rights (HAM), particularly the protection of the right to life, has been a big ' stumbling block ' for the imposition of death penalty for corruptors.

According to Romli Atmasasmita, the imposition of the death penalty for perpetrators of corruption has been effectively implemented in the People's Republic of China (PRC), and has been quite successful in reducing corruption. This of course can be used as an example for Indonesia in imposing capital punishment on corruptors .

The author lists several similar studies that have been studied by previous researchers . The first research was conducted by Kiki Marisa, Death Penalty Against Perpetrators of Corruption Crimes in the Perspective of Human Rights (HAM), (Thesis, Postgraduate Program in Master of Law in Law, Andalas University, Padang, 2017) . The results of the research conducted by Kiki Marisa essentially concluded that Indonesia is one of the most corrupt countries. Therefore, it is urgent to immediately find ways to eradicate corruption, which damages the economic order and causes poverty, whatever the penalty, including the application of the death penalty. For this reason, it is hoped that law enforcers will be more courageous in eradicating corruption, the provisions of certain circumstances in the Corruption Law must also be more detailed so that there is no mention that the death penalty is always associated with violations of human rights.

METHOD

The type of research used is normative juridical with the research approach used is the statutory approach (*statute approach*) and case approach (*case approach*) by taking primary sources of legal material, what is meant by primary legal material is legal material obtained directly from public. , then secondary legal materials obtained by researchers from library research and documents, which are the result of research and processing of other people, which are already available in the form of books or documents which are usually provided in libraries, or privately owned.

analytical method used according to the type and approach to making research is by conducting a study of materials from secondary legal materials, the data will then be inventoried, classified, processed and analyzed so that conclusions are obtained that the processing of legal materials is carried out so that it has a direction and clear goals, as well as optimizing the writing goals to the maximum.

RESULTS

According to the author's opinion, according to Soerjono Soekanto's law enforcement theory, law enforcement is an activity of harmonizing the relationship of values described in solid principles and attitudes as a series of final stages of value translation. To create, maintain and maintain social peace of life.

Law enforcement as a process which is essentially the implementation of decisions that are not strictly regulated by legal rules but has elements of personal judgment (*Wayne La-Favre*). Conceptually, the essence and meaning of law enforcement lies in the activity of harmonizing the relationship of values which are spelled out in solid principles and attitudes as a series of final stages of value translation, to create, give birth to and maintain social peace.

The criminal act of corruption remains the most serious type of crime (*extra ordinary crime*), so the death penalty is an ideal punishment and is equal to the type of crime.

The process of making corruption criminals aware takes a very long time, because the form of punishment they receive is soft. The form of the death penalty in the Corruption Law which is contained in article 2 paragraph (2) (death penalty in certain cases), is far harsher than the recommendations given. The forms of punishment offered are the views of certain groups who are against the death penalty, a more humane punishment that can open opportunities for the process of raising awareness and protecting the community.

Implementation of the death penalty in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, in Article 2 paragraph (2) states " In the event that the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, capital punishment may be imposed". The crime referred to in paragraph (1) is any person who unlawfully commits an act of enriching himself or another person or a corporation that can harm state finances or the state economy.

The death penalty contained in Article 2 paragraph (2) is in fact permissible to be applied on condition that there is a reason for aggravating the crime against the perpetrators of corruption. Legislators include "certain circumstances" as a reason for aggravation. In the elucidation of this article, what is meant by "certain circumstances"

in this provision is as a burden for the perpetrators of corruption if the crime is committed when the country is in a state of danger in accordance with the applicable law, when a natural disaster occurs, as a repetition of the crime. 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 the only thing that has changed in the explanation of the article. In this law what is meant by "certain circumstances" are circumstances that can be used as grounds for criminal prosecution of perpetrators of corruption, namely if the crime is committed against funds earmarked for overcoming emergencies, national natural disasters, overcoming the consequences of social unrest. widespread, overcoming the economic and monetary crises, and repetition of criminal acts of corruption.

DISCUSSION

Corruption is behavior that deviates from the official duties of a state office due to status gains or money involving personal (individual, close family, own group), or violating the rules of implementation of some personal behavior.

Elements of corruption are listed in Article 2 paragraph (1) of Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning Corruption Crimes which reads "Anyone who unlawfully commits an act of enriching himself or herself or another person or a corporation that can harm the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum Rp. 1,000,000,000.00 (one billion rupiah)."

Corruption is a criminal act that enriches oneself by directly or indirectly harming the country's finances and economy. The criminal act of corruption (Tipikor) is a violation of people's rights, both economic and social. Corruption crimes are no longer classified as ordinary crimes, but have become extraordinary crimes (extra-ordinary crimes).

Corruption in Indonesia continues to show an increase from year to year, criminal acts of corruption have become widespread in society, both in terms of the number of cases that have occurred and the amount of losses to the state, as well as in terms of the quality of crimes that have been carried out systematically and the scope of which has entered all aspects of people's lives.

The increase in uncontrolled acts of corruption has brought disaster, not only to the life of the national economy, but also to the life of the nation and state.

Given the increasingly rampant acts of corruption in Indonesia, it is not wrong if the death penalty is applied to perpetrators of corruption which is detrimental to the country's finances and economy. However, the application of the death penalty is still an interesting debate among experts, not a few who reject the implementation of the death penalty against perpetrators of corruption. The reason used by those who refused was that the application of the death penalty was contrary to human rights as stipulated in Articles 28A, 28I of the 1945 Constitution of the Republic of Indonesia, Articles 4 and 9 of Law Number 39 of 1999 concerning Human Rights, and Article 3 of the Universal Declaration of Human Rights Humans (UDHR).

A. Imposition of Death Penalty Against Corruption Actors in Efforts to Eradicate Corruption Crimes in Indonesia

The death penalty is basically a classic form of punishment, which is assumed to be a form of punishment capable of deterring those who have not committed a crime. The form of the death penalty is still a punishment that has power and power to deter others. The ideal substance of punishment when applied, is the extent to which the punishment is able to psychologically terrorize other people, not to commit similar acts. In various cases, it is not uncommon for criminals to be recidivists who continue to commit crimes repeatedly due to light sentences. Often the rejection of the death penalty is only based on the human side of the perpetrator without looking at the humanity of the victim himself, his family, relatives or the community that depends on the victim. It's a different matter if the victim's family has forgiven the perpetrator, of course the sentence can be changed with clear prerequisites.

There is only 1 (one) article regulating the death penalty in the Corruption Crime Act, namely article 2 of Law no. 31 of 1999 in conjunction with Law No.20 of 2001 concerning the eradication of criminal acts of corruption, which reads as follows:

- (1) Anyone who unlawfully commits an act of enriching himself or another person or a corporation that can harm the state's finances or the country's economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).
- (2) In the event that the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, capital punishment may be imposed.

The elucidation of Article 2 states:

"What is meant by "unlawfully" in this article includes acts against the law in the formal sense as well as in the material sense, that is, even though these actions are not regulated in statutory regulations, if these actions are considered disgraceful because they are not in accordance with a sense of justice or norms -the norms of social life in society, then the act can be punished. In this provision, the word can before the phrase "harm the finances or the economy of the State" indicates that the criminal act of corruption is a formal offense, that is, the existence of a criminal act of

corruption is sufficient by fulfilling the elements of the act which have been formulated not by the emergence of consequences".

What is meant by "certain circumstances" in this provision are circumstances that can be used as grounds for criminal prosecution of perpetrators of corruption, namely if the crime is committed against funds earmarked for overcoming emergencies, national natural disasters, overcoming the consequences of widespread social unrest, overcoming economic and monetary crises, and tackling corruption.

In the elucidation of Article 2 paragraph (1) of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes it is stated that what is meant by "against the law" in this article includes acts against the law in the formal sense as well as in the material sense, that is, even though these actions are not regulated in statutory regulations, if the said actions are considered disgraceful because they are not in accordance with a sense of justice or the norms of social life in society, these actions can be punished;

The Constitutional Court of the Republic of Indonesia with Decision Number 003/PUU-IV/2006 dated 25 July 2006 stated in its decision the Elucidation of Article 2 paragraph (1) of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Laws -Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption to the extent that it concerns the meaning of unlawful acts in a material sense, is contrary to the 1945 Constitution of the Republic of Indonesia, so that it does not have binding legal force;

Thus the Constitutional Court has limited unlawful acts in the formal sense, that is, a person can only be sentenced/prosecuted based on written law, but it must be understood first what the true meaning of an unlawful act is. An unlawful act is an act carried out without a legal basis or the perpetrator has no right to do so;

One of the changes made by Law Number 20 of 2001 against Law Number 31 of 1999 is a change in the elucidation of Article 2 paragraph (2). After the amendment of the elucidation of Article 2 paragraph (2) states that what is meant by "certain circumstances" in Article 2 paragraph (2) is a situation that can be used as a reason for aggravation of punishment for perpetrators of corruption, namely if the criminal act of corruption is committed against funds which is intended for overcoming emergency situations, national natural disasters, overcoming the consequences of widespread social unrest, overcoming monetary crises, and overcoming corruption.

The sentence "certain circumstances" with details as stated in the elucidation of Article 2 paragraph (2) above, constitutes a criminal burden that can only be imposed specifically on perpetrators who commit acts of corruption as referred to in Article 2 paragraph (1). Because it is a criminal punishment that can be imposed, it does not need to be proven against the perpetrators of corruption, that the perpetrators knew of certain circumstances with the details as mentioned above at the time of committing the crime of corruption.

B. Law Enforcement of Death Penalty Against Corruption Crimes in Indonesia

Criminal law must not only be oriented towards human actions (*daadstrafrecht*), because then criminal law becomes inhumane and prioritizes retaliation. Criminal is only oriented towards fulfilling the elements of criminal acts in legislation.

Criminal law is also incorrect if it only pays attention to the perpetrator (*daderstrafrecht*), because then the application of criminal law will give the impression of spoiling criminals and paying little attention to broad interests, namely the interests of society, the interests of the state, and the interests of victims of crime. Thus, the most appropriate integral criminal law must protect the various interests above, so that the criminal law adhered to must be *daad-daderstafrecht*.

Death penalty as one of the most controversial types of punishment has always received attention from various groups around the world. Various opinions and reasons were put forward for and against capital punishment. In Indonesia, the Criminal Code made by the Dutch government has been in force since January 1 1918, in Article 10 it still includes the death penalty in the main sentence, even though in the Netherlands itself the death penalty was abolished in 1870. This was not followed in Indonesia because the special circumstances in Indonesia demanded that criminals the largest can be countered with the death penalty.

The threat of death penalty in Indonesia originates from *Wetboek van Strafrecht* which was ratified as the Criminal Code (KUHP) by the Dutch East Indies Government on January 1, 1918. The enactment of the Criminal Code was based on the provisions of Article I of the Transitional Rules of the 1945 Constitution (now UUDNRI 1945) which states that all existing laws and regulations are still valid as long as new ones have not been enacted according to UUDNRI 1945 and strengthened by Law number 1 of 1946 concerning the application of *Wetboek van Strafrecht* to become the Criminal Code.

In 1964 the government issued Law number 2/PNPS/1964 LN 1964 No. 38 which was later stipulated above, the concept of the draft Criminal Code issued capital punishment from the framework of Law Number 5 of 1969 concerning Procedures for the Implementation of Death Penalties that were handed down by courts in the General and Military Courts. The law states that the execution of convicts on death row is carried out by being shot to death. Because before there was never any arrangement regarding how the execution should be carried out.

After the 1998 reform, courts in Indonesia still imposed death sentences. The death penalty is punishable in several crimes. This is due to the fact that there are still various statutory regulations that contain capital punishment which are actually pre-reform products but are still valid post-reform.

As a result of the death penalty still being enforced in Indonesia's national legal instruments, the execution of death sentences against convicts continues to this day. Controversy regarding the death penalty in Indonesia has never stopped until now. Death penalty in Indonesia is considered not through an independent, impartial and clean judicial process. So far, the practice of death penalty in Indonesia is still considered class bias and discrimination. The death penalty never reaches perpetrators from an elite group whose crimes can generally be categorized as serious or extraordinary crimes.

The imposition of capital punishment according to punishment in the Criminal Code is always alternative to other types of punishment, namely imprisonment, both life imprisonment and imprisonment for a maximum of 20 years (20 years temporary imprisonment). This can be seen in the formulation of Article 340 of the Criminal Code concerning premeditated murder.

The existence of capital punishment in Indonesia has received responses from various experts in criminal law, criminology and victimology, even the public, especially those related to the philosophy of sentencing, that punishment is not only aimed at deterring convicts, but also must pay attention to victims, so that a restorative justice theory approach develops.

Death penalty according to the abolitionist view, because it is not in accordance with the philosophy of the Indonesian nation, namely Pancasila, but on the part of those who still maintain the death penalty that the death penalty is not contradictory and can be accounted for in the philosophy of Pancasila. In this case the view of capital punishment can be accounted for in the Pancasila state, which is manifested as individual protection as well as protecting society for the creation of justice and truth in law based on Belief in One Almighty God.

The existence of capital punishment is still needed in the future and is not related to the main purpose of punishment and capital punishment can only be imposed as a last resort to protect society. For this reason, in imposing punishment on capital punishment which is specific in nature, the judge must carefully consider all matters relating to the person of the convict, his family and his environment. Regarding the benefits and harms that will arise from the imposition of the death penalty, it should be during the waiting period before the execution of the death penalty, that is when their life is about to be taken, death convicts must still respect their human rights, by obtaining guidance like other convicts.

Writing references in the body of the article using *in note* (belly notes) . Recommended using Mendeley's application with APA 6^s *style edition* . It is recommended that referrals are not in the form of direct quotations or do not contain too many direct quotations. However, if there is a direct quote that is less than 40 words, it must be written in paragraphs (not separated) and **given quotation marks** ("..."). If a direct quote contains 40 words or more, it is written in blocks (separate from paragraphs), indented half an inch from the margins, **without given quotation marks** followed by the author's name, year, and pages in parentheses (name, year:page). If a statement is extracted from several references, all sources are written by mentioning all references in alphabetical order and a semicolon (;) to separate between sources, for example (Triyono, 2017 ; Nurgiyantoro & Efendi, 2017; Zamzani et al., 2017; Widyastuti, 2018) . For translation reference sources, what is referred to is the name of the original author, the year of the translation and the original book (see examples in the bibliography of the book). Referenced literature sources (in the form of journal articles, research reports – including dissertations and theses – , and books) **at least 80% are literature published in the last 10 (ten) years . Reference sources from journals at least 60%** of the entire referenced literature. Authors are advised to refer to primary sources and avoid citing quotations.

CONCLUSION

1. The imposition of death penalty on corruptors in an effort to eradicate corruption in Indonesia, that the imposition of death penalty for perpetrators of corruption is contained in the Corruption Eradication Law, there is only 1 (one) article that regulates it, namely article 2 paragraph (2) . In that article it is explained that the death penalty can be applied to perpetrators of corruption in "certain circumstances". There are two reasons why the death penalty in corruption cases has never been imposed by a judge; *first*, the "can" clause in Article 2 paragraph (2) of the Corruption Eradication Law has a facultative meaning, not an imperative meaning; *secondly* , the "under certain circumstances" clause means that the death penalty cannot be applied to every act of corruption, but only to corruption committed under certain conditions.
2. Law enforcement in the settlement of criminal acts of corruption through death penalty in Indonesia that the criminal sanction of the death penalty for perpetrators of corruption if only examined textually , then the application of the death penalty is contrary to human rights as stated in Article 28A paragraph (1), jo Article 4 Law Number 39 of 1999, jo Article 3 UDHR. However, if examined contextually by using extensive and teleological interpretations, in fact the application of the death penalty is not contrary to human rights. The argument given is that the consequences of corruption are far greater than the crimes of genocide, terrorism, narcotics and other crimes against humanity.

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