

## **Juridical Analysis of Death Criminal Sanctions against Criminal Acts of Corruption in Indonesia And According To Islamic Criminal Law**

Rahma Nindita Nurul Faaza<sup>\*)</sup>

<sup>\*)</sup>Master of Law Education Program, Faculty of Law, Sultan Agung Islamic University,  
Semarang Email : rahmanindita1234@gmail.com

### **Abstract**

The author reviews the laws and regulations concerning the death penalty for perpetrators of corruption in Article 2 paragraph (2) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. In the research as the researcher did, the researcher discusses the laws and regulations regarding the death penalty for perpetrators of criminal acts of corruption in Article 2 paragraph (2) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, as well as Islamic views on this matter and in the future renewal of Indonesian law. This study uses a normative juridical approach. Based on the results of the study, conclusions were obtained, namely: First, the application of the death penalty for perpetrators of corruption has been regulated in Article 2 paragraph (2) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes. Second, the death penalty for perpetrators of corruption in Islam can be applied because it is based on ta'zir punishment which is very dependent on the demands of benefit. Implementing the death penalty for perpetrators of criminal acts of corruption is legitimate considering that Islam classifies it to the application of ta'zir. Third, criminal law reform is essentially an effort to review and reassess ("reorientation and re-evaluation") sociopolitical, socio philosophical.

Keywords : *Law, Death Penalty, Corruption Crime.*

### **1. Introduction.**

Corruption which is an extraordinary crime (extra ordinary crime) is characterized by transnational actions in which the corruptors keep the proceeds of corruption as shares in countries that have not ratified the extradition treaty with Indonesia, such as Singapore. The impact of extraordinary corruption in the economic sector and the evidence that requires extra hard work makes corruption an extraordinary crime.<sup>1</sup>

Corruption itself has been regulated in the Special Criminal Act which is based on Article 103 of the Criminal Code (Book of Criminal Law). The implementation of the death penalty for perpetrators of corruption is actually already regulated in the law. Article 2 paragraph (2) of Law no. 20 of 2001 jo. UU no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption which states "In the event that the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed".

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<sup>1</sup> <https://m.republika.co.id / amplztpg> These are 3 Reasons Why Corruption is Called an Extraordinary Crime accessed on August 22, 2022 at 09.53

Talking about the death penalty cannot be separated from talking about human life, and talking about human life which is a human right. Viewed from the point of Islamic law, the first precepts of Pancasila can be understood as identical with monotheism which is the core of Islamic teachings, with the understanding that in Islamic teachings there is given tolerance, freedom and the widest opportunity for adherents of other religions to carry out the teachings of their respective religions, respectively. One of the principles of recognition and protection related to human dignity has been outlined in the Qur'an, surah al-Isra/17:33. In Islamic nomocracy, the guarantee of protection for human life is very important, as stated in the Qur'an, surah al-Maidah/5:32.

The imposition of the death penalty on perpetrators of criminal acts is the last remedy (*ultimum remedium*), which is only carried out if other efforts such as prevention have not worked. The death penalty is still quite effective and rational, especially if it is applied to very serious crimes, if not imposed the death penalty will have a worse impact on security and peace in society.

Based on the descriptions that have been stated above, the author is interested in conducting a study with the title, "Juridic Analysis Of Death Criminal Sanctions Against Criminal Acts Of Corruption In Indonesia And According To Islamic Criminal Law."

## 2. Research methods

The method used in this research is normative juridical. The normative research method is also known as doctrinal research, which is a study that analyzes the law both written in the book (law as it is written in the book), as well as the law decided by the judge through the court process.<sup>2</sup> Normative legal research is based on secondary data and emphasizes speculative-theoretical measures and normative-qualitative analysis.<sup>3</sup>

The specification of the research conducted by the author is descriptive analytical. Legal science has characteristics as a prescriptive science, legal science studies the purpose of law, values of justice, validity of the rule of law, legal concepts, and legal norms. As an applied science, legal science establishes standard procedures, provisions, and signs in implementing the rule of law.<sup>4</sup> Law is not a descriptive science, but a prescriptive science. Therefore, legal research, whether carried out by practitioners or scholars, does not start with a hypothesis.<sup>5</sup> Prescriptive according to the Big Indonesian Dictionary is to give instructions or provisions; depend on or according to applicable official regulations.<sup>6</sup> Thus, the prescriptive nature of this research is intended to provide instructions or provisions for the results of research that has been carried out. Arguments are made to provide a prescriptive about right or wrong according to the law

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<sup>2</sup>Amiruddin and Zainal Asikin, *Introduction to Legal Research Methods*, (Jakarta: Grafitti Press, 2006), p.118

<sup>3</sup>J. Supranto, *Legal and Statistical Research Methods*, (Jakarta: Pradnya Paramitha, 2003), p. 3

<sup>4</sup>*Ibid*, p. 22

<sup>5</sup>*Ibid*, p. 59

<sup>6</sup><http://kbbi.web.id/prescriptive>

regarding the crime of corruption which is related to facts or legal events that occur in the community which are then linked to the results of the research.

Data collection was carried out in two ways, namely analyzing death penalty regulations for perpetrators of corruption in Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption. The second is a literature study consisting of books, articles, newspaper journals, internet, legal dictionaries, KBBI, encyclopedias and other sources.

The data analysis method used is a qualitative method with using the stages of data collection, classifying, connecting with existing theories and problems, then drawing conclusions to determine the results. Then it is described descriptively, namely explaining, describing, and describing in accordance with the problems that are closely related to this research.

### **3. Result and Discussion**

#### **Death Penalty for Corruption Perpetrators in Indonesian Legislation.**

The death penalty for perpetrators of corruption has been regulated in Article 2 paragraph (2) of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Crimes Corruption Crime.

Article 2 paragraph (2) states that in the event that the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed. Certain circumstances here are a burden for perpetrators of criminal acts of corruption if the crime is committed at a time when the country is in danger. For example, when a national natural disaster occurs, the repetition of a criminal act of corruption, or when the country is in a state of economic and monetary crisis.

The only way to overcome the problem of corruption is to give the severest punishment, one of which is to be given the death penalty. It's just that in practice, in general, almost no judges impose the death penalty because it is associated with aggravating or mitigating reasons and the mitigating factor is far more dominant in terms of the highest sentence limit, education, and others.<sup>7</sup>

#### **Juridical Analysis of the death penalty for corruption in the perspective of Islamic law**

In Islamic criminal law it is known as "jarimah". Jarimah is doing every act that deviates from the truth, justice, and the straight path (religion).<sup>8</sup>

So the finger is doing an unlawful act that is punishable by punishment, or abandoning an ordered action which if left behind will be punished. Many scholars also call this "Jarimah" with the word "Jinayah", jinayah is an act that is prohibited by syara'

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<sup>7</sup>Monang Siahaan, Corruption is a Deadly Social Illness, (Jakarta: PT Elex Media Komputindo, 2014), p, 93.

<sup>8</sup>Muhammad Abu Zahrah, Al-Jarimah Wa Al-'Uqubah Fi Al-Fiqh Al-Islam, Makhtabah Al-Angelo Al-Mishriyah, Cairo

both regarding life, property and others.<sup>9</sup>

Meanwhile, according to Abdul Qadir Audah,<sup>10</sup> Jinayah is the name for an act that is forbidden by syara', whether the act is on the soul of property or other than life and property. However, scholars use this finger for acts of "hudud and qisas" crimes.

When viewed in terms of punishment as stated by Abdul Qadir Audah, namely:

- Jarimah al-hudud, which is a crime whose level of punishment has been determined by Allah SWT
- Jarimah Al-Qishas and diyat, namely criminal acts subject to qishas and diyat sanctions. Qishas and diyat are punishments whose punishment is determined, but are the rights of individuals, meaning that the punishment is determined because it only has one predetermined had (punishment). As an individual right, if the individual who is harmed because of this crime wants forgiveness, it is his right and can be accepted and justified by law, so that his had punishment is lost because of that forgiveness. But the takzir penalty is still imposed.
- Jarimah takzir, namely criminal acts whose law is not prescribed by syara with certain penalties. As stated by Mahmud Shaltut about the takzir punishment.<sup>11</sup> The hudud crimes are: committing adultery, qadzaf (accusing of adultery, theft, drunkenness, kharabah (rogue), and apostasy, al-baghy (rebellion). The types of qishas crimes are murder, athraf crime and bodily harm.<sup>12</sup>

Corruption in Islam there are those who view it as Ta'zir, and there are those who classify the Crime of Corruption into hudud considering the madharat of its consequences which have a wide and large impact.

Islam has a goal in enforcing its law known as maqaashidu as-shari'ah which protects the five basics of human life:

- Keeping Religion
- Keeping Mind
- Nurturing the Soul
- Taking care of property
- Caring for offspring

Islamic law in providing its punishment clearly pays attention to these five basic principles. Then the crime of corruption is a crime that threatens property that can affect the continuity of the welfare of people's lives.

In giving a sentence, one should distinguish between the classification of the crime, such as hudud, dhiyat, and ta'zir. So there is a criminal act of corruption that categorizes it into a hudud crime and a ta'zir crime. Before classifying it is necessary to know what Ta'zir and hudud are.

Hudud crime is a crime whose punishment has been determined by the type and amount and is the right of Allah. The purpose of the punishment that has been determined is that the hadd punishment does not have a maximum or minimum limit,

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<sup>9</sup> M. Abdul Mujieb, 1994, Dictionary of Fiqh Terms, Librarian Firdaus, Jakarta

<sup>10</sup> Abdul Qadir Audah, Muqaranan Bi Al-Qanuni Wadh'i, Makhtabah Dar Al-Arubah, Cairo

<sup>11</sup> Mahmud Saltut, 1996, Al-Islam Al-'Aqidah Wa Shari'ah, Dar Al-Qalam, Egypt

<sup>12</sup> Sayyid Sabiq: 302-426) Sayyid Sabiq, Fiqh Al-Sunnah, Dar Al-Fikr, Beirut

while the intention of Allah's right is that the punishment cannot be abolished by individuals or society. Allah has set definite sanctions because these actions can damage the joints of people's lives. Hudud crimes include:<sup>13</sup>

- Adultery
- Accusing people of adultery (qazaf)
- Drink khamr
- Steal
- Disturbing security (hirabah)
- apostate
- Rebellion (baghyu)

Corruption in Islamic law can be classified into hudud by confirming it with the law of theft. The law of theft has been stated in the Qur'an Surah Al-Maidah 5 Verse 38 which reads:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جِزَاءً بِمَا كَسَبَا نَكَالًا  
مِّنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ

"The man who steals and the woman who steals, cut off their hands (as) in retribution for what they did and as a punishment from Allah. And Allah is Mighty, Most Wise."<sup>14</sup>

Hadith from Aisyah Radhiyallahu'anha tells about the Prophet Muhammad SAW said about the dangers of stealing for a society and the firmness of the law: "By Allah! If Fatimah bint Muhammad stole, I would definitely cut off her hand."<sup>15</sup>

The law of cutting hands is often seen as inhumane for those who oppose it, even if it is considered a violation of human rights, in practice it is not carried out without context. Islamic jurists often imitate the story that occurred during the Caliph Umar bin Khattab who did not punish the thief, but instead threatened to punish the stolen or the master of the thief.

The definition of ta'zir punishment itself is a punishment that is required because of an error, where the giver of the shari'ah (God) does not determine the punishment in a certain way. It can also be interpreted as a punishment that is handed over to the authorities to determine the form and level in accordance with the benefit that requires and the purpose of syara' in establishing the law, which is set on all forms of immorality, in the form of abandoning obligatory acts, or doing prohibited acts, all of which are not included in the law. in the hudud and kafarat categories, both related to the rights of Allah SWT in the form of disturbances to the general public, their safety, as well as applicable laws and regulations, as well as those related to personal rights.<sup>16</sup>

Corruption in Islam can also be categorized as a ta'zir crime, in the Qur'an Surah

<sup>13</sup>Sri Endah Wahyuningsih, Comparative Criminal Law from the Perspective of the Religious Law System, Unissula Press, Semarang, 2013, p. 57.

<sup>14</sup><http://quran-id.com>

<sup>15</sup>Hadith History of Bukhari No. 6788 and Muslim No. 1688

<sup>16</sup>Sri Endah Wahyuningsih, Op.Cit pp. 74

An-Nisa Verse 29 reads:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ  
تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ  
رَحِيمًا ﴿٢٩﴾

It means:

"You who have believed, do not eat each other's property in a vanity way, except by means of commerce which is carried out with mutual consent between you. And don't kill yourself. Verily Allah is Most Merciful to you."<sup>17</sup>

(You who believe. Do not eat your neighbor's property with vanity) means the path that is forbidden according to religion such as usury and gasab / seizing (except by road) or occurs (commercially) according to a qiraat with the above line while the meaning is that the property should be a commercial property that is valid (with consensual between you) based on the willingness of each of you, then you may eat it. (And do not kill yourself) means by doing things that cause the accident regardless of the way and the symptoms both in this world and in the hereafter. (Verily Allah is Most Merciful to you).

In the Qur'an Surah As-Syu'ara Verse 183 Allah says:<sup>18</sup>

وَلَا تَبْخَسُوا النَّاسَ أَشْيَاءَهُمْ وَلَا تَعْتُوا فِي الْأَرْضِ مُفْسِدِينَ ﴿١٨٣﴾

It means : And do not harm people in their rights and do not run rampant in the earth by making mischief.

Ta'zir punishment is very dependent on the demands of the benefit. So the state applies more ta'zir to the crime than to apply hudud. Types of sanctions from ta'zir can be:<sup>19</sup>

- Advice
- rebuke
- Threat
- Exclusion from association
- Public announcement or defamation
- Fines and confiscation of property
- Prison
- Sebat (whip)
- kill

The case for the release of the thief by Umar, according to Qardhawi, shows that the application of this case is not a form of aborting the sentence, but because the pre-

<sup>17</sup>QS An Nisa' Verse 32.

<sup>18</sup>Al-Qur'an

<sup>19</sup>Ibid, page 77

condition is not yet mandatory for the law to apply. There are several arguments that strengthen Umar bin Khattab's *ijtihad*.

There are several reasons for that. First, the hadith narrated by As-Sarkhasi from Mahkul that the Prophet SAW said: There is no cutting of hands during a very famine (year). At that time, (the year of famine) was brought to 'Umar, two thieves with their hands tied and with him a piece of meat. Umar then said to the victim of the theft, "Will you give up your pregnant camel, because I did not cut off the hand of the thief, who stole the dates when they were still in bunches and in this (famine) year?" So, Umar did not apply the law of cutting hands during famine. Umar did not leave the Qur'anic texts that have clear meanings.<sup>20</sup>

Second, at the time of Umar bin Khattab, "the sons of Hatib bin Abi Balta'ah stole the camel of a Bani Mazinah man. So Umar called them, and they confessed all their actions. However, in this case Umar ordered the father of the theft to pay a fine twice the price of the stolen camel."<sup>21</sup> So in this hadith it is narrated that once some slaves belonging to Hathib bin Abi Balta'ah stole a camel belonging to a neighbor and slaughtered it. Umar bin Khattab received the complaint but did not immediately impose a sentence but first asked the slaves about the reasons why they stole. Turns out they were forced to steal just to fill their hungry stomachs. Because they were abandoned by their employers. Umar was really angry, Hathib was immediately called and forced to replace the camel stolen by his slaves. Meanwhile the slaves were freed from all charges.<sup>22</sup>

From the narration of Imam Malik, that 'Abdullah bin 'Amr al-Hadrami came to 'Umar with a small child. 'Abdullah then said, "Cut off this child's hand, for he has stolen." 'Umar asked, "What did he steal?" "He has stolen my wife's mirror which is worth sixty dirhams", replied 'Abdullah. 'Umar then ordered, "Let him go, and he has no right to have his hand cut off, because it is your servant who has stolen your things."<sup>23</sup>

Then, narrated by Abu Yusuf, that there was a man who stole things from the Baitulmal. By Sa'ad, the person was reported to the caliph. Umar's answer to the complaint was that the man's hand was not cut off.<sup>24</sup>

Of the four stories of Umar bin Khattab that the law of cutting hands during the caliph Umar was not enforced unless it met the conditions so that the law of cutting hands could be implemented, such as:

- "The value of the stolen property reaches one nishab.
- Stolen goods can be traded.
- The stolen goods and/or money do not belong to Baitulmal.
- The thief is an adult.
- Actions that are carried out at their own will, not under the coercion of others.

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<sup>20</sup> <https://republika.co.id/berita/archive/no-channel/34204/ijtihad-umar-bin-khathab> accessed on 23/11/2019 at 10:41 WIB

<sup>21</sup> Ibn Qayyim al-Jauziyah, *I'lâm al-Muwaqqi'în*, Vol. 3, (Cairo: Maktabah al-Kulliyat al-Azhariyah, 1388 H), p. 10.

<sup>22</sup> [www.pesantrenvirtual.com](http://www.pesantrenvirtual.com), Copyright and Stealing Law, Paper downloaded on 30 September 2019.

<sup>23</sup> Anas bin Malik, *al-Muwaṭṭa'*, Vol. 3, (Beirut: Iḥya al-Ṭurâs al-'Arabi, 1406 H), p. 398.

<sup>24</sup> Abu Yusuf, *Al-Kharrâj*, (Cairo: al-Maṭba'ah al-Salafiyyah, Cet.3, 1382 H), p. 171

- Not in a state of economic crisis.
- Thieves steal not because they fulfill basic needs.
- Victims of theft are not parents, or close relatives.
- The thief is not the victim's helper. If the housemaid steals the jewellery."<sup>25</sup>

*Second*, in addition to the very clear hadith, Allah explains in the Qur'an:

فَمَنْ اضْطُرَّ فِي مَخْمَصَةٍ غَيْرَ مُتَجَانِفٍ لِإِثْمِهِ، فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

"So whoever is compelled by hunger without knowingly commits a sin, surely Allah is Oft-Forgiving, Most Merciful (Qur'an 5:3).<sup>26</sup>

There is a hadith that reads: "Reject the hudud (punishment) from the Muslims as much as you can, if you find a way out for a Muslim then let go of the way, verily if an imam is wrong in forgiving, it is better than wrong in punishing."<sup>27</sup>

If the Ta'zir sanction is carried out, then the death penalty for the perpetrators of corruption can be applied because the ta'zir punishment is very dependent on the demands of the benefit. So the state applies more ta'zir to the crime than to apply hudud. If a country applies the death penalty for perpetrators of criminal acts of corruption, then it is fine considering Islam classifies it to the application of ta'zir.

### **Contribution of the Death Penalty for Corruption Perpetrators in Renewing Criminal Law in Indonesia in the future**

In reality, the imposition of the death penalty for perpetrators of corruption has two different schools, namely retentionist (a sect that agrees with the death penalty) and abolitionist (a sect that opposes the death penalty).

The tendency of experts who agree that the death penalty is maintained, is generally based on conventional reasons, namely the death penalty is urgently needed to eliminate people who are considered to be endangering the public or state interest and are deemed irreparable, while those who are against the death penalty usually make excuses for the death penalty. The death penalty is contrary to human rights and is a form of punishment that can no longer be corrected if after the execution is carried out an error is found in the verdict handed down by the judge.

The death penalty has been imposed in China. The death penalty for perpetrators of criminal acts of corruption in China has been regulated in Chapter VIII of the Chinese Criminal Code, Article 383 regarding the crime of bribery, Article 384 regarding abuse of state finances and Article 386 regarding accepting bribes.

In Article 383 paragraphs (1) and (2) of the Chinese Criminal Code, a death penalty can be filed if the perpetrator bribes or accepts bribes of more than 50,000 yuan. While what is meant by "serious cases" so that the perpetrators are threatened with the death penalty, namely corruption cases committed by state officials and cases that get attention and disturb the public. This is different from the "certain circumstances"

<sup>25</sup> [https://iraaliamaerani.files.wordpress.com/2017/03/hk-pidana-islam\\_ira.ppt](https://iraaliamaerani.files.wordpress.com/2017/03/hk-pidana-islam_ira.ppt) Islamic Criminal Law by Ira Alia Maerani downloaded on 24/11/2019 at 22.24 WIB.

<sup>26</sup> <https://tafsirweb.com/1887-surat-al-maidah-ayat-3.html>

<sup>27</sup> Hadith History of Judges



contained in Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes.

As for the criminal imposition, China provides a classification of punishment classes according to the amount of property and the circumstances of the case. The greater the amount of property and the more serious the case, the death penalty can be applied.

The philosophical basis is seen in the 1945 Constitution of the Republic of Indonesia. Especially in Articles 28A, 28I, and 28J of the 1945 Constitution of the Republic of Indonesia. It is necessary to state the following differences of opinion:

The provisions of Articles 28A and 28I of the 1945 Constitution of the Republic of Indonesia essentially stipulate that everyone has the right to live and has the right to defend his life and life which cannot be reduced under any circumstances (non-derogable rights). The full text of the articles is below in the 1945 Constitution of the Republic of Indonesia:

Article 28A:

"Everyone has the right to live and has the right to defend his life and life."

Article 28I:

- (1) The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of retroactive law are rights human rights that cannot be reduced under any circumstances.
- (2) Everyone is free from discriminatory treatment on any basis and is entitled to protection against such discriminatory treatment.
- (3) The cultural identity and rights of traditional communities are respected in line with the times and civilizations.
- (4) The protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government.
- (5) To uphold and protect human rights in accordance with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated, and set forth in laws and regulations.

If examined further, the inclusion of the right to life in Articles 28A and 28I of the 1945 Constitution of the Republic of Indonesia, is to protect the public from acts, actions, killing activities whether carried out by the authorities (government) or carried out by the community itself. Whether it's physical murder, or the killing of the right to think, the right to religion, the killing of freedom using conscience. This implies that the inclusion of the right to life in Articles 28A and 28I of the 1945 Constitution of the Republic of Indonesia is not intended for people who commit criminal acts. 1948 was used to test perpetrators of criminal acts that were threatened with the death penalty, one of which was corruption.

The body of the 1945 Constitution of the Republic of Indonesia has also actually provided an exception to the application of Article 28 I of the 1945 Constitution of the Republic of Indonesia, namely the stipulation of Article 28 J of the 1945 Constitution of the Republic of Indonesia. the order of norming, has shown that Article 28J of the 1945

Constitution of the Republic of Indonesia is an exception to Article 28 I of the 1945 Constitution of the Republic of Indonesia. Moreover, Article 28J of the 1945 Constitution of the Republic of Indonesia reads:

- (1) "Everyone is obliged to respect the human rights of others in the orderly life of society, nation and state.
- (2) In exercising his rights and freedoms, everyone is obliged to comply with the restrictions established by law for the sole purpose of guaranteeing the recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with considerations of morals, values and principles, religious values, security, and public order in a democratic society."

It can be concluded that Indonesia basically highly upholds human rights, but still has to comply with the applicable laws and regulations if it has violated a criminal act.

Currently in the 2019 RKUHP, the death penalty is a special principal crime and is always threatened with alternatives. Even though it is not included as a principal crime, the death penalty is still recognized as a special form of principal punishment. In the 2019 RKUHP, precisely in Article 603 of the RKUHP, it stipulates that perpetrators of corruption by harming state finances are punished with life imprisonment or at least 2 years in prison and a maximum of 20 years with a fine of at least category II, which is Rp. 10,000,000.00 (ten million rupiah) and a maximum of Rp. category VI, namely IDR 2,000,000,000,

Article 604 of the RKUHP regulates the loss of state finances with abuse of authority, shall be sentenced to life imprisonment or at least 2 years in prison and a maximum of 20 years with a fine of at least category II, namely Rp. 10,000,000.00 (ten million rupiah) and a maximum of category VI, which is Rp. 2,000,000,000.00 (two billion rupiah) with a comparison of Article 3 of the Anti-Corruption Law concerning harming state finances by abusing authority, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000. 0000.00 (fifty million rupiah) and a maximum of Rp. 1.000.000.000,00 (one billion rupiah).

In Article 64 of the 2019 RKUHP, the death penalty is not a principal crime but is a special crime that is threatened with always being side by side with other crimes, so it is called a conditional death penalty. This is in accordance with article 98 of the RKUHP where the purpose of the death penalty is the last resort (*ultimum remidium*) to prevent criminal acts and protect the community. This article is also a resolution of conflicts between the retentionist and abolitionist groups where a middle way is taken that the death penalty is still carried out as a last resort for the greater interest of protecting and protecting the community.

It can be concluded that the 2019 RKUHP provides a new breakthrough that the death penalty is an *ultimum remidium* which includes conditional alternative punishment, the possibility of imposing the death penalty to be conditional on giving repentance so that later the person concerned avoids the implementation of the death penalty. This can make the abolition of the death penalty as the main crime for perpetrators of corruption in practice.

With the inclusion of corruption in the 2019 RKUHP, corruption will not be seen as

an extraordinary crime. Even though corruption is a crime that has a tremendous impact on the decline of the country's economy, as well as obstacles to the progress of public welfare as one of the goals of the Indonesian nation in accordance with the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia regarding the eradication of corruption.

The Indonesian laws and regulations recognize that the application of the death penalty is possible according to law, but in essence the philosophy of punishment in Indonesia does not emphasize the aspect of revenge as applies to the application of the death penalty. The death penalty theoretically has a very high deterrent effect. The deterrent effect of the death penalty is an important factor in causing people to give up their intention to commit a crime. This in turn will theoretically reduce the number of related crimes. Logically, this argument makes sense, but there is no definite statistical data (empirical based on research results) that supports this conclusion.<sup>28</sup>

In Indonesia, the imposition of the death penalty for perpetrators of criminal acts of corruption has been regulated in Article 2 Paragraph (2) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, which reads:

*"(1) Anyone who unlawfully commits an act enriching himself or another person or a corporation that can harm the state finances or the state economy, shall be sentenced to life imprisonment or a minimum imprisonment of 4 (four) years and a maximum of 20 (twenty) years and a minimum fine of 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, the death penalty may be imposed."*

Execution against death row convicts in Indonesia will be carried out before a firing squad in accordance with Law Number 2/Pnps/1964 (Presidential Decree Number 2 of 1964) (LN 1964 Number 38) which is stipulated as Law Number 5 of 1969 concerning Procedures for the Implementation of the Death Penalty in Article 2 paragraph (1), that is, if the Minister of Justice does not specify otherwise, the death penalty is carried out within the jurisdiction of the court that handed down the decision in the first instance.

Thus, the implementation of the death penalty against corruptors has actually been regulated and is very possible to do, although it is very difficult in practice. The implementation of the death penalty for corruption cases can be carried out in the event that the criminal act of corruption is carried out if the State is in a state of emergency or natural disaster.

The imposition of the death penalty when viewed from the purpose of punishment, namely 3R and 1D:

- *reformation*, which means to improve by imposing the death penalty, it will provide a change in the culture of corruption which will decrease over time. Especially if before the execution, the convict is required to compensate the state for the losses

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<sup>28</sup>Todung Mulya Lubis and Alexander Lay, *Death Penalty Controversy, Differences in Opinion of Constitutional Justices*, Kompas Book Publishers, Jakarta, 2009, p. 65

that have been done so as to improve the existing situation.

- *restraint*, namely alienating violators from society with the act of reappearing perpetrators of corruption in front of the community so that they will not be able to incite others to commit the same crime.
- *Retribution*, is retaliation against violators because they have committed a crime, this applies because the death penalty is an ultimum remedium.
- *deterrence*, namely providing a sense of deterrence or prevention so that both the defendant as an individual and other people who are potential criminals will be deterred or afraid to commit a crime, seeing the punishment imposed on the defendant. The death penalty prevents the defendant from repeating the same crime, and for the community is a serious threat so as to minimize the occurrence of repeated crimes.

See death penalty sanctions that have never been applied in Indonesia, especially seeing many corruptors who were decided with very light decisions make corruption crimes increasingly rise in the graph every year.

Marc Ancel once stated that "modern criminal science" consists of three components "Criminology", "Criminal Law" and "Penal Policy".<sup>29</sup> He stated that "Penal Policy" is a science as well as an art that ultimately has a practical purpose to enable positive legal regulations to be formulated better and to provide guidance not only to legislators, but also to courts that apply laws and regulations also to the organizers or implementers of court decisions.

So in practice, the law will continue to evolve so that it adapts to the conditions and needs of the wider community. Efforts and policies to make good criminal law regulations essentially cannot be separated from the purpose of crime prevention.

Update criminal law must be carried out with a policy approach, because in essence it is only part of a policy step or "policy" (i.e. part of legal politics/law enforcement, criminal law politics, criminal points, and social politics). Each policy contains value considerations. Therefore, criminal law reform must also be value-oriented. Criminal law reform is essentially an effort to review and reassess ("reorientation and re-evaluation") the sociopolitical, socio philosophical, and sociocultural values that underlie and provide content for the normative and substantive content of the aspired criminal law. It is not reform ("reform") of criminal law, if the value orientation of the aspired criminal law (for example, The New Criminal Code) is tantamount to the value orientation of the colonial legacy of the old criminal law (old KUIIP or WVS). It can be concluded that Indonesia needs a law that is in accordance with the existing conditions, because basically the legal situation and culture over time has developed from a criminal perspective as well as solutions and efforts to deal with it. For example, there is a death penalty regulation for perpetrators of corruption that has never been implemented in Indonesia.

This makes corruption cases increase every year and there will be no deterrent effect for the perpetrators. This is evidenced by the data released by ICW and the KPK.

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<sup>29</sup>Marc Ancel, *Social Defense, a Modern Approach to Criminal Problems*, (London, Routledge & Kegan Paul, 1965)

So that the life of a prosperous, safe, just and prosperous society is not fulfilled in accordance with the Preamble to the 1945 Constitution of the Republic of Indonesia. This is in line with efforts to reconstruct legal policies for implementing criminal laws based on Pancasila values. If the application of the death penalty for perpetrators of corruption is applied, the values of social interest will be fulfilled. However, it should be noted that if the perpetrator of a criminal act of corruption is sentenced to death, it must first compensate for the losses that have been caused.

The article explains that compensation is an additional crime, so a revision can be made in the future that compensation is included in the main crime, especially for the Law on the Eradication of Criminal Acts of Corruption, so that if the perpetrator of a criminal act of corruption is sentenced to death, then first must compensate the loss incurred has been caused, so that death row inmates do not carry debts and can restore the balance of the country's economy.

#### **4. Conclusions and suggestions**

Based on the data obtained by researchers from research and discussions that researchers have done, it can be concluded as follows:

1. The application of the death penalty for perpetrators of corruption has been regulated in Article 2 paragraph (2) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes which states that in the case of a criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed.
2. Criminal sanctions for corruption in Islam can be categorized into hudud and ta'zir. The provision of capital punishment for perpetrators of corruption can be applied because the punishment of ta'zir is very dependent on the demands of the benefit. So the state applies more ta'zir to the crime than to apply hudud. If a country applies the death penalty for perpetrators of criminal acts of corruption, then it is fine considering Islam classifies it to the application of ta'zir.
3. Criminal law reform is essentially an effort to review and reassess ("reorientation and re-evaluation") the sociopolitical, socio philosophical, and sociocultural values that underlie and provide content for the normative and substantive content of the aspired criminal law. It is not a renewal ("reform") of criminal law, if the value orientation of the aspired criminal law (for example, the New Criminal Code) is the same as the value orientation of the old criminal law inherited from the colonialists (old KUIIP or WVS). It can be concluded that Indonesia needs a law that is in accordance with the existing conditions, because basically the legal situation and culture over time has developed from a criminal perspective as well as solutions and efforts to deal with it. For example, there is a death penalty regulation for perpetrators of corruption that has never been implemented in Indonesia. This makes corruption cases increase every year and there will be no deterrent effect for the perpetrators. This is evidenced by the data released by ICW and the KPK. So that it is not fulfilled

the life of a prosperous society is safe, fair and prosperous in accordance with the Preamble to the 1945 Constitution of the Republic of Indonesia. If the application of the death penalty for perpetrators of corruption is applied, the values of social interest will be fulfilled. However, it should be noted that if the perpetrator of a criminal act of corruption is sentenced to death, it must first compensate for the losses that have been caused.

### **Suggestion**

In the application of crime, law enforcers need to take a firm stance if it is felt that the act of a criminal act is an extraordinary crime. So if the application of the death penalty is deemed necessary, it should be enforced.

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