

Comparison of the Implementation of the Death Penalty Against Perpetrators of Corruption Crimes as an Extraordinary Crime Based on Legislation in Indonesia and Other Countries

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Abstract. *The purpose of this research is to be able to find out the application of the death penalty against perpetrators of corruption in other countries and to conduct a study of the existing laws in Indonesia, whether the death penalty is implemented against perpetrators of corruption, whether there is conflict or not. The death penalty is classified as an extraordinary crime. This research uses normative legal research methods. This research is descriptive in nature. The analysis technique used is a description technique and the collection of legal materials used is literature study. This research uses an approach to statutory regulations (statute approach) to conduct a review of existing regulations. Making this journal takes a comparative approach. This approach is carried out as a comparison of existing arrangements in Indonesia with existing arrangements in other countries. The result of writing this journal is that there are differences in the regulations for applying the death penalty to perpetrators of corruption in Vietnam and Thailand, where there is a specified amount for corruption so that the threat given is the death penalty. Meanwhile, in Indonesia there is no specified amount of corruption proceeds so that corruptors can be sentenced to death. Another thing that influences the implementation of the death penalty in Indonesia is that there are regulations in Indonesia that conflict with the death penalty.*

Keywords: *Corruption; Death; Extraordinary.*

1. Introduction

Corruption is a crime that is categorized as an Extraordinary Crime. Corruption causes a country to suffer losses and has a major impact on the lives of people in a country. Several factors influence people in committing corruption, the influencing factors are the power factor and the opportunity factor. Not only

these two factors, regulations that have multiple interpretations also influence someone not to be afraid to commit corruption. The basic reason for committing corruption is to benefit themselves or a group in the form of a corporation. Corruption is a crime where a criminal has knowledge, but does not have integrity. In proving a corruption crime is difficult, even though it has been proven as an act of corruption, only the perpetrators who are followers and are punished, not the main perpetrators or the people who planned the corruption itself. Revealing people rather than perpetrators of corruption sometimes requires hard work, therefore in revealing a person who plans corruption requires a legal approach and is supported by a political strategy.¹

In the Criminal Code there is no crime whose formulation regulates the death penalty for perpetrators of corruption, however, crimes regarding acts of corruption are found in laws outside the Criminal Code, namely in the Corruption Crime Law. The regulation regarding the death penalty in the Criminal Code is contained in Article 10 letter a as the main crime. The existence of the regulation of the death penalty in the Criminal Code means that the application of the death penalty in Indonesia can be said to have clear legality unless there is an update in the Criminal Code that eliminates the death penalty as a criminal threat. In its implementation, the regulation of the death penalty itself is very difficult to apply to corruptors. The thing that influences the difficulty of implementing the death penalty is the formulation of the article which is open to multiple interpretations and does not regulate concretely so that perpetrators of corruption cannot full fill the formulation of the article that can be imposed the death penalty. The government's attention is currently very much needed in formulating a regulation as an effort to prevent the development of increasingly rampant corruption.

In the absence of rules that carry very severe threats, a person in committing an act of corruption has considered the consequences of the corruption itself. In other words, legal efforts that must be made to reduce the threat of criminal penalties, consider the benefits of corruption itself so that the perpetrator still benefits even though he pays additional criminal penalties, namely fines. The death penalty is very necessary as a step to prevent corruption from developing in Indonesia. At least in the application of the death penalty to people who commit corruption, it can provide fear to someone who will commit corruption so that the perpetrator can think long and hard before committing corruption and the consequences of the act. Developing countries such as Thailand and Vietnam fully support the implementation of the death penalty for people who commit corruption.²

¹Kasyanto, H. Agus, "Corruption Crime: In the Procurement Process of Goods and Services", Jakarta, Prenada Media, 2018, p. 3.

²Wardani, Koko Arianto, and Sri Endah Wahyuningsih, "Policy of Formulating the Death Penalty for Corruption Offenders in Indonesia", *Khaira Ummah Law Journal*, Vol. 12, No. 4, 2017, p. 953.

The rejection of the application of the death penalty in Indonesia is based on the existence of a law in which the provisions in the articles regulate human rights. The articles that underlie the rejection of the death penalty if applied in Indonesia to perpetrators of corruption are articles 28A, 28I paragraph (1) and (4) of the 1945 Constitution concerning Human Rights, article 9 paragraph (1) of the Human Rights Law.³The international instrument that also underlies the rejection of the application of the death penalty in Indonesia is the ICCPR as ratified in Law Number 12 of 2005. The many corruption cases in Indonesia that can be sentenced to death against suspects have not yet obtained maximum results. If the death penalty is appropriate to be applied in Indonesia, why are there still many corruption cases where the punishment is not in accordance with the actions and its development is increasingly rapid. The application of the death penalty is something that must be done because it is a preventive effort that provides fear to people who will commit corruption. The death penalty is an effort that is needed to reduce perpetrators of corruption. Indonesia needs to reflect on the application of the death penalty in other countries which can reduce corruption. This reflection can be a reference for the formation of the Criminal Code Bill or the renewal of a law in applying the death penalty to extraordinary crimes, especially corruption.

As with the criminal acts of corruption that have occurred in Indonesia, but in its handling there has not been a maximum change in eradicating criminal acts of corruption in Indonesia. Criminal acts of corruption do not only occur in Indonesia, but in several countries there are also criminal acts of corruption, one of which is China which is classified as the most corrupt country in the world. When compared to Indonesia, China has succeeded in eradicating corruption, although basically in imposing criminal sanctions on perpetrators of criminal acts of corruption, China only relies on the Chinese Criminal Code which contains the imposition of very severe sanctions, namely the death penalty. Meanwhile, in Indonesia, which has many laws and regulations regarding criminal acts of corruption, it has not been able to reduce the number of criminal acts of corruption that occur, both those committed by civil servants and by ordinary people.⁴

2. Research methods

This research is a scientific activity based on certain methods, systematics, and ways of thinking, and aims to reveal the truth systematically, methodologically and consistently. Systematic means using a certain system, methodological means using a certain method or technique and consistency means there is no contradiction within a certain framework. Research is very important to obtain

³Rahim, Abdur, Asruddin Azwar, Muhammad Hafiz, and Satrio Wirataru, "Death Penalty: A Problem of Legality & Humanity", Malang, Intrans Institute, 2015, p. 12.

⁴<http://repository.unisba.ac.id/xmlui/handle/123456789/20725>, accessed June 13, 2023, 12.45 WIB.

accurate data so that it can answer questions and uphold the truth based on existing facts and data and its truth can be accounted for.⁵

3. Results and Discussion

3.1. Comparison of Death Penalty Regulations for Corruption Offenders in Other Countries

Crime is a humanitarian problem that can cause social problems, these problems do not only arise in a certain group and result in the scope of a crime. Corruption crimes have a huge impact on the lives of many people. Corruption can be said to be a culture if it does not get a very serious response. Corruption is deviant behavior that is a real threat that is directly related to social norms that are the basis of life in society. Corruption is a crime against humanity in the form of a social reality whose causes are not easily understood and can occur anytime and anywhere in community life.⁶

Corruption can be classified as an extraordinary crime, an extraordinary crime has a major impact and has implications in all lines, namely on society, nation and state. Crimes that can be said to be extraordinary crimes initially stem from human rights violations. These violations include threatening security, peace, welfare and human life. The criteria for extraordinary crimes are usually carried out in a planned, organized and systematic manner with great losses.⁷

There are various policy reasons from countries in the world that do not implement or carry out the death penalty against corruption perpetrators, one of the reasons is regarding human rights violations. The application of the death penalty to corruptors has an important role as an effort to prevent perpetrators of corruption crimes that have developed with such a large number of cases. The application of the death penalty as a maximum remand or last weapon in overcoming corruption crimes in Indonesia does not run as it should and in its implementation gets pros and cons. Indonesia needs to make a comparison with other countries that apply the death penalty to corruptors. Comparison is an effort to make developments in the aspect of criminal law reform.

a. Death Penalty Regulations for Criminal Offenders in China

In the special provisions of the Chinese Criminal Code in Chapter VIII concerning bribery and bribery, because in this chapter it is included in the criminal act of corruption which is threatened with the death penalty, namely Article 383, Article 384, and Article 386. In the Criminal Code of the PRC (People's Republic of China) the death penalty is regulated specifically, because it is only applied to perpetrators of very cruel crimes. The death penalty can be postponed for two

⁵Abdulkadir Muhammad, *Law and Legal Research*, 2004, Bandung: PT Citra Aditya Bakti, p.2.

⁶Dwi, Ni Komang Ratih Kumala, "The Existence of the Death Penalty in the Criminal Code (KUHP)", *Journal of Legal Communication (JKH)*, Vol. 6, No. 1, 2020, p. 105.

⁷Marbun, Roy Ganda, Ida Lamsihar Sitompul, Midarmi Halawa, Indah Prihatini Malau Pasa, and Ganesha Putra Purba, "Legal Review of Corruption Crime as an Extraordinary Crime", *Simantek Scientific Journal*, Vol. 4, No. 3, 2020, p. 241.

years, the convict is given work and supervised. The death penalty must be ratified by the Supreme Court, the death penalty is not applied to perpetrators who have not reached the age of 18 at the time they commit the act. If they behave well during the 2-year postponement period, they can be reduced to imprisonment and not more than 20 years in prison. If during the postponement period he refuses to improve by means of hatred, he will be executed by being shot dead in accordance with the approval of the Supreme People's Court.⁸

The difference between the Indonesian Criminal Code and the Chinese Criminal Code is the application of the probationary period, which in the Indonesian Criminal Code is for 10 years while in the Chinese Criminal Code it is only for 2 years. A long probationary period will make the convict's soul even more depressed because they will continue to count the days until the time of execution. The execution by shooting should be considered by the government, because from the facts that occur, the execution by shooting is a less humane method of execution. Because the law of shooting which in its implementation is directed right at the heart of the person being executed turns out to only really die with an average of more than 16 seconds, some even up to 1 minute more, the death of the convict for a long time is the same as torturing the convict.

In the Criminal Procedure Law of China, there are two methods used to execute the death penalty. The two methods of the death penalty are regulated in Article 212 of the Criminal Procedure Law of China in 1979, which as amended in 2012 does not directly explain what method is used to execute convicts sentenced to death, the two methods are by lethal injection or by shooting. The death penalty can be carried out at the place of execution or places designated by the prisoner. Before carrying out the execution of the death penalty, judicial officers are required to verify the identity of the convict and ask if there was a last message before the convict was executed. If before execution facts or possibilities of an error are found, the execution must be suspended and the news must be reported to the Supreme People's Court to obtain its decision. The execution of the death penalty in China is carried out in private, but its implementation must be announced in public.⁹

In China actually takes the position of the death penalty only for the detention of "the most serious crimes" with the direct basis of article 6 (2) ICCPR (International Covenant on Civil and Political Rights) and guarantees the protection of the rights of those facing the death penalty. International action is in line with the Chinese Criminal Code, China 1997 where imposing the death penalty is limited to the most serious crimes. Since the characterization of the most serious crimes is not clear at the international level including the ICCPR,

⁸Randi Rahardian, "Death Penalty Sanction Formulation Policy in Indonesian Criminal Law, Diponegoro Law Journal, Vol. 5, No. 3, 2016, Faculty of Law, Diponegoro University, p. 13.

⁹Ayu Eza Tiara, "Death Penalty Regulation in Several Countries (Case Studies in Islamic and Non-Islamic Countries)", Thesis, Faculty of Sharia and Law, Syarif Hidayatullah State Islamic University, Jakarta, 2016, pp. 63-64.

Chinese law imposes the death penalty for 68 types of crimes that are claimed to still be in the category of “the most serious crimes”.¹⁰

According to Amnesty International report, China’s executions still run in the thousands every year and is the world’s top executioner. In this regard, China’s death penalty reform will make a great contribution to human rights in the world, in other words if the death penalty in the world’s death penalty abolition movement will make great progress. So far, the Chinese government has taken three significant steps to reform the death penalty system since 2007. On January 1, 2007, the power to review death sentences was withdrawn by the PRC’s Supreme People’s Court (SPC) from the local High Courts in each province and the Military Courts. Based on this provision, we can see that the death penalty can only be imposed on a few offenders and only for the most serious crimes.¹¹

b. Death Penalty Regulations for Corruption Offenders in Vietnam

The death penalty in Vietnam is applied to major crimes that harm the state, corruption, and drug trafficking. The Vietnamese Criminal Code in 1985 regulated 40 crimes that were subject to the death penalty, including corruption. As time went by, the types of crimes that were subject to the death penalty for suspected perpetrators of the crime decreased to 32 crimes that were subject to the death penalty in 1999.¹²The articles that regulate criminal acts of corruption in Vietnam which carry the death penalty are:

Article 278 paragraph (4) concerning embezzlement of goods states that committing a crime in one of the following circumstances, the perpetrator is subject to a sentence of twenty years in prison, life imprisonment or the death penalty”: a) taking over assets worth five hundred million dong or more; b) causing other very serious consequences”.

Article 279 paragraph (4) concerning embezzlement of goods states that committing a crime in one of the following circumstances, the perpetrator shall be punished with twenty years imprisonment, life imprisonment or the death penalty”: a) taking over assets worth three hundred million dong or more; b) causing other very serious consequences.

In handling corruption crimes in Vietnam, there are no specific regulations if the corruption is committed by state officials. The regulations contained in Article 278 paragraph (4) letter a and 279 paragraph (4) letter a in imposing a sentence on perpetrators of corruption crimes with the prosecution of the article, there

¹⁰Dodik Setiawan Nur Heriyanto and Huang Gui, “Death Penalty Legislation In China And Indonesia Under International Human Rights Law Perspective, Faculty Of Law, Islamic University Of Indonesia; Faculty Of Law, Jurnal Hukum Ius Quia Iustum, University Of Debrecen And Minzu University Of China, No. 4, Vol. 23, October 2016, p. 584, translated by Google Translate.

¹¹Ibid., p. 586.

¹²Sidauruk, Bornok Mariantha, “Prospects of the Implementation of the Death Penalty for Perpetrators of Corruption in Indonesia”, Semarang State University, Thesis of the Law Study Program, 2011, pp. 91-92.

are 3 threats of criminal punishment, namely 20 years in prison, life imprisonment and the death penalty. The application of the death penalty to perpetrators of corruption crimes in Vietnam has a weakness, namely, where there is no classification of perpetrators who will be sentenced to death.

c. Death Penalty Regulations for Corruption Offenders in Thailand.

In an effort to reduce the corruption that is developing in Thailand. Thailand also applies the death penalty to someone who commits a crime of corruption as an effort to prevent corruption through the creation of regulations. There are articles in which the death penalty can be imposed if violating the article. These regulations are contained in Article 149, Article 201, Article 202 of the Criminal Procedure Code of Thailand (No. 29), BE 2551 (2008). The text of the article is:¹³

Article 149 on accepting bribes states that “Anyone who, being an official, member of the state legislative council, member of the changcuat assembly or member of the city assembly, wrongfully demands, accepts or agrees to accept for himself or another person any property or other benefit whatsoever for performing or not performing any function, whether or not performing the function wrongfully or not, shall be punished with imprisonment of five to twenty years and a fine of two thousand to four thousand baht, or death.”

Article 201 on accepting bribes states that “Any official in the judicial office, public prosecutor, official conducting a case or investigative official, who wrongfully demands, accepts or agrees to accept property or other benefits for himself or another person to do or not do anything shall be imprisoned from five years to twenty years or life imprisonment and a fine from twenty thousand baht to forty thousand baht or death.”

Article 202 on receiving payments states that “Anyone who, as an official in the judicial post, public prosecutor, case-conducting official or investigative official, carries out or does not carry out one of his functions in consideration of property or other benefits that he has requested, received or agreed to receive before being appointed to the position, shall be subject to imprisonment for five to twenty years or life imprisonment and a fine of twenty thousand to forty thousand baht, or death.”

In Article 149 of the Criminal Procedure of Thailand (No. 29), BE 2551 (2008), the perpetrators who receive the death penalty are state officials, members of the state legislative council, members of the changwat assembly or members of the city assembly, and the contents of Article 201 and Article 202 that can be subject to the death penalty are people who hold office and who carry out justice.¹⁴The regulation on the application of the death penalty to perpetrators who commit an act of corruption in Thailand emphasizes that for a state official or legal

¹³Ibid., pp. 93-94.

¹⁴Purba, Elizabeth, “Death Penalty for Corruption Offenders in Various Countries That Implement the Death Penalty (Indonesia, China, and Thailand)”, Mahupiki Journal 1, No. 4, 2018.

institution who in carrying out his duties commits an act of corruption, the heaviest punishment imposed is the death penalty. Based on the regulations governing corruption in Thailand, there is an amount of fine used as a substitute for losses from the corruption that has been committed. The disadvantage of the regulation on corruption crimes which are punished by the death penalty is that there is no amount of loss determined to be able to be sentenced to death, either for accepting bribes or accepting payments. As a result of the absence of a classification of the amount determined by an article in the regulation on the death penalty for perpetrators of corruption, it will create legal uncertainty. So this can benefit the corruptors themselves because it can cause a problem in determining the sentence. The advantage of the regulation on the death penalty in Thailand is that the country does not discriminate in implementing the death penalty. This is emphasized by the existence of an article regulating corruption crimes which are punished by the death penalty for people who hold positions in a government institution. If before serving in a government institution if it is proven to have committed corruption, the threat is the death penalty.

d. Regulation of the Death Penalty for Corruption Offenders in Indonesia

The imposition of criminal penalties on perpetrators of corruption in Indonesia is regulated in Law Number 31 of 1999 concerning the eradication of criminal acts of corruption in Article 2 paragraph (2) which 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". Then, it is explained again regarding certain circumstances in the article in Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the eradication of criminal acts of corruption, namely in article by article number 1 article 2 paragraph (2), explaining that "What is meant by certain circumstances in this provision are circumstances that can be used as a reason for increasing the sentence for perpetrators of criminal acts of corruption, namely if the crime is committed against funds allocated for dealing with dangerous situations, national natural disasters, dealing with the effects of widespread social unrest, dealing with economic and monetary crises, and dealing with criminal acts of corruption".

If we compare the regulation of corruption crimes in Indonesia with Thailand and Vietnam, there are significant differences in the regulations. The application of the death penalty to corruptors in Indonesia has not been fully realized because certain circumstances do not often occur in Indonesia, but corruption continues to increase every year. Article 2 paragraph (2) has created legal uncertainty because in determining the formulation of a perpetrator of corruption, this causes multiple interpretations in imposing an appropriate sentence on the perpetrator of corruption. The regulation of the death penalty needs to be explicitly regulated again in a renewal of the legislation so as not to cause uncertain interpretations in making a decision to impose a sentence on a suspect of corruption. The regulation of corruption crimes in Indonesia with Thailand and

Vietnam has differences, namely that in Indonesia there is no predetermined number of qualifications, while in Thailand and Vietnam there is a predetermined number of qualifications in determining a death penalty.

To make changes in order to update the law on corruption, it is necessary to design the nominal amount of corruption that is categorized so that the application of the death penalty can create justice in the criminal system. Indonesia needs to make comparisons with other countries in drafting a regulation so that in producing new regulations regarding the eradication of corruption, this is in accordance with what is expected both among law enforcers and in society. To adopt the regulation of the death penalty against perpetrators of corruption in other countries which is then designed into a formulation in the regulation, the philosophical aspect of the nation must also be considered. The death penalty is a repressive effort to overcome the corruption that is currently developing in Indonesia. With the formulation of the applicable regulations, the death penalty also needs to be viewed from the perspective of criminal law policy (penal policy) so that the regulation can overcome an act of corruption. Corruption is a crime that is systematic and has a very broad impact (system and widespread), so that handling corruption requires extraordinary comprehensive efforts (comprehensive extraordinary measures).¹⁵

3.2. Regulations on the Implementation of the Death Penalty in Indonesia for Corruption Offenders Whose Contradictions Contradict Existing Regulations in Indonesia.

The death penalty in Indonesia is a criminal threat against extraordinary crimes. The implementation of the death penalty regulation often raises pros and cons in its implementation which is contrary to the regulations in Indonesia. Moreover, the implementation of the death penalty when viewed from corruption cases where there are political interests that support corruption so that the realization of the death penalty is not good enough. In principle, the death penalty is very contradictory in its application to the 1945 Constitution, the Human Rights Law, and the ICCPR which Indonesia has ratified in Law Number 12 of 2005 concerning the International Covenant on Civil and Political Rights. In essence, the implementation of the death penalty is an effort to restore justice to a crime, especially corruption. The implementation of the death penalty also contradicts the nation's philosophy of life, namely Pancasila. This is found in the 2nd principle, namely just and civilized humanity, this principle explains that protecting and honoring the dignity of every person. With this principle, it is very clear that Pancasila contradicts the implementation of the death penalty in Indonesia. There are things that strengthen the death penalty can be implemented, namely the legality of the death penalty. The legality of the application of the death penalty has also been regulated in the Criminal Code,

¹⁵Widodo, Eddyono Supriadi, "The Politics of Death Penalty Policy in Indonesia Over Time", Jakarta, Institute Criminal Justice Reform Team, 2017, p. 137.

which is contained in Article 10, which is the main crime. It is necessary to adjust the regulation of the death penalty to the current developing corruption cases. The need for government attention in overcoming corruption, both from the executive and legislative by designing a regulation that strengthens the implementation of the death penalty so that it does not cause conflict, either with the philosophical aspects of the nation or existing laws and regulations. This effort is made as a concern to overcome or prevent crimes, especially corruption that can harm the state and the lives of the community.

a. Articles in the 1945 Constitution that conflict with the application of the death penalty to perpetrators of corruption crimes

Article 28A of the 1945 Constitution states that "everyone has the right to live and the right to defend their life". When compared to the regulation of the death penalty for perpetrators of corruption, the article clearly contradicts a person's right to life. In the article, there is no reduction in a person's right to life. Other articles also do not provide restrictions on a person's rights, including in Article 28I paragraph (1) which states that "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 human rights that cannot be reduced under any circumstances", with the words cannot be reduced under any circumstances is a principle that the 1945 Constitution does not provide restrictions on a person's right to life. It can be concluded that the article prohibits the deprivation of a person's rights in determining a sentence.

The death penalty is defined as the forced deprivation of a person's right to life for committing a crime without considering the aspect of the convict in correcting the crime he committed. The 1945 Constitution, as the highest hierarchy in the legislation, has given rise to pros and cons which have become a polemic on the legitimacy of the death penalty in Indonesia. Basically, the death penalty functions as a threat to someone who wants to commit a crime, so that someone thinks if they commit a crime where the benefits of a crime are not commensurate with the punishment imposed, namely the death penalty.¹⁶

The death penalty also contradicts Article 28I paragraph (4) which states that "protection, advancement, enforcement, and full fulfillment of human rights is the responsibility of the state, especially the government". Regarding this article, the government is responsible for what a person has as a citizen with their rights. The state, especially the government, is obliged to fulfill, protect, and enforce a person's rights. Where these rights are needs that must be met. The state, especially the government, must also protect the rights if someone commits a crime until a sentence is imposed. The death penalty is truly absolute, which basically suspects who have received the death penalty cannot come back to life

¹⁶Hamenda, Veive Large, "Human Rights Review of the Implementation of the Death Penalty in Indonesia", *Lex Crimen* 2, No. 1, 2013, p. 115.

even though at some point the suspect who received the death penalty is declared not guilty. This article emphasizes the government to protect human rights by taking action to be more selective in imposing the death penalty and the person who imposes the death penalty can be held accountable for his decision in imposing the sentence if later the suspect who was sentenced to death is declared not guilty. Regarding the death penalty which is considered to violate a person's rights as stated in Articles 28A and 28I, these two articles must comply with the restrictions on rights regulated in Article 28J of the 1945 Constitution.¹⁷

Article 28J is an article that has the power to legalize the death penalty against someone if the crime of corruption committed has an impact on the rights of many people. In the application of the death penalty against perpetrators of corruption, it is necessary to reconsider its application in the field in a decision made by law enforcement, this aims to avoid mistakes in determining a suspect because a decision has great implications for various stigmas that arise in society. So that in determining suspects and sentencing perpetrators of corruption, it can provide justice which is fair to the imposition of sentences according to their actions and fair to the rights of a person even though the person has committed a crime. The definition of Article 28J of the 1945 Constitution, against the crime of corruption which is the deprivation of human rights that arises due to opportunities and opportunities to commit corruption. This of course takes away the rights of many people and has an impact on the losses of society, the nation, and the state.

b. Articles in Law Number 39 of 1999 Concerning Human Rights Which Contradict the Application of the Death Penalty to Perpetrators of Corruption Crimes

In reality, the imposition of the death penalty on perpetrators of corruption is something that can take away a right that is owned by a person, that right is the right to life. The articles in Law Number 39 of 1999 that are in conflict with the application of the death penalty to perpetrators of corruption are Article 4 and Article 9 paragraph (1) where the text of Article 4 is "the right to life, the right not to be tortured, the right to personal freedom, thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person and equality before the law, and the right not to be prosecuted on the basis of retroactive law are human rights that cannot be reduced under any circumstances and by anyone". The text of Article 9 paragraph (1) is "everyone has the right to live, maintain life and improve their standard of living". The two articles above are a protection of the basic rights owned by all people who have had since they were born which are naturally given directly by God Almighty and these rights cannot be taken away by anyone. With this article, the government

¹⁷Soge, Paulinus, "Legal Review of Death Penalty Execution in Indonesia", *Yustisia Jurnal Hukum* 1, No. 3, 2012, p. 99.

is obliged to protect every human being as a living creature that has rights and cannot be disturbed by any party. These rights must be upheld, respected, and enforced by every human being as a social creature.

The concept of human rights protection from state granting is based on the concept of a binding relationship between the state and its people even though they have committed crimes, especially crimes in terms of corruption. In this case, the state has the right to regulate and provide restrictions on the rights of each person, especially those who have taken the rights of others in a crime of corruption so that a fair punishment can be imposed.¹⁸In reviewing the Human Rights Law, it can be seen that the law also recognizes the limitations of individual rights and recognizes the rights of others for the sake of order in society. Thus, it can be interpreted that the death penalty is a protection provided by the state against rights that are taken away individually or corporately in a crime of corruption itself which results in losses for both the state and society. Another matter that is no less important is the protection given to the rights of suspects of corruption, namely that suspects can take legal action before the court where the legal action aims to reduce the sentence to be imposed so that the suspect has the opportunity to prove that he is not guilty so that the death penalty cannot be imposed. Corruption is a crime that includes acts that violate human rights, because the element of corruption is basically a torture of people who are unable, namely taking away someone's rights illegally to gain benefits either individually or corporately through corruption.¹⁹

There are other laws and regulations in which the articles contradict the application of the death penalty to perpetrators of corruption. The law is Law Number 12 of 2005 concerning the International Covenant on Civil and Political Rights which is a ratification of the international instrument, namely the ICCPR, which contradicts the application of the death penalty. In the international world, there is a tendency to abolish the death penalty. However, the death penalty can still be applied to crimes that are extraordinary crimes even though there is a desire to abolish the death penalty in the international world. International regulations that contradict the death penalty are stated in Article 6 paragraph (1) of the ICCPR, which states that "every human being has the right to life that is inherent in him. This right must be protected by law, no one can be deprived of his right to life arbitrarily". In this international instrument there is an article which has very clear legality regarding the application of the death penalty than countries that have not abolished the death penalty in accordance with applicable laws and applied to the most serious crimes, which is contained in Article 6 paragraph (2) which reads "in countries that have not abolished the death penalty, the death penalty may only be imposed for some of the most

¹⁸Pratama, Windhy Andrian, "Enforcement of the Death Penalty for Premeditated Murder", *SIGN Jurnal Hukum* 1, No. 1, 2019, p. 34.

¹⁹Yanto, Oksidelfa, "Death Penalty to Corruptors in a Certain Condition", *Indonesian Legislation Journal* 14, No. 1, 2017, p. 54.

serious crimes in accordance with the law in force at the time the crime was committed, and does not conflict with the provisions of the covenant and convention on the prevention and punishment of the crime of genocide. This punishment can only be carried out on the basis of a final decision handed down by a court". This article emphasizes that the right to life of a person is not absolutely owned by a person, where this right can be taken by the state if it has committed an extraordinary crime and does not conflict with the provisions contained in the covenant.²⁰In the ICCPR, in fact, the death penalty is not prohibited. However, with an explanation that leads to human rights violations, the legality of the application of the death penalty to perpetrators of corruption, which is an extraordinary crime, does not receive special attention in international circles. The international community is more focused on the death penalty, especially in cases of corruption, which is a violation of the right to life rather than the perpetrator without considering the aspect of the violation of the rights lost by the victim.²¹

In 2005, Indonesia ratified the ICCPR by making it a regulation in the form of Law Number 12 of 2005. The ratification of the convention was because Indonesia is part of the international community which respects, appreciates, and upholds the provisions and objectives of the UN and the Universal Declaration of Human Rights and international principles and objectives. The instrument basically does not violate Pancasila and the 1945 Constitution as a hierarchy of laws and regulations. With this, the ratification is a justification for an international instrument that does not change the contents of the convention and binds the convention to Indonesia. The death penalty is a problem in its application to overcome a crime because the death penalty takes away the right to life from a person who has committed a crime or in other words committed an extraordinary crime, thus it is very inconsistent with the provisions referred to in a regulation relating to human rights.²²The Indonesian Constitution does not actually prohibit the application of the death penalty, however, there is an article that provides an alibi for people who are against its application, creating a burden to consider the rights of the perpetrator of a criminal act of corruption.

4. Conclusion

In order to prevent corruption that is currently developing, it is necessary to impose the death penalty on perpetrators of corruption. There are several countries that apply the death penalty to corruption, namely Thailand and Vietnam, corruption is a crime that can be categorized as an extraordinary crime.

²⁰Krisnawati, N., and Suatra Putrawan, "The Implementation of Mass Death Penalty in Egypt Reviewed from International Human Rights Law", *Kertha Negara Journal* 3, No. 3, 2015, p. 4.

²¹Wicaksono, Setiawan, "Obstacles in Implementing Article 6 of the International Covenant on Civil and Political Rights as the Basis for the Abolition of the Death Penalty in Indonesia", *Pandecta Research Law Journal* 11, No. 1, 2016, p. 71.

²²Anjari, Warih, "Implementation of the Death Penalty for Corruption Convicts", *Legal Issues* 49, No. 4, 2020, p. 435.

The impact of corruption has an impact on the life of the nation and state. Corruption is an act that can harm the state and society where the act is an attempt to benefit oneself by harming or taking the rights of others. In handling corruption in the Vietnamese Criminal Code, there is no explicit explanation of the increased punishment if the perpetrator of the corruption is a state official. The Vietnamese Criminal Code regulates the amount of corruption that is threatened with the death penalty, namely Article 278 paragraph (4) letter a concerning embezzlement, namely five hundred million dong or more, the sentence can be imposed with the death penalty and Article 279 paragraph (4) letter a concerning accepting bribes, namely three hundred million dong or more, the sentence can be imposed with the death penalty. In Thailand, there is an article that in its regulation applies the death penalty, namely in articles 148, 149, 201, and 202. The regulation of corruption crimes in Thailand has a deficiency, namely that there is no accumulation of the amount determined as corruption which is threatened with the death penalty, both for corruption crimes in the form of bribery or acceptance of payments. As a result of the absence of an amount determined in the formulation of the article in the regulation regarding corruption crimes in Thailand, the application of the death penalty to perpetrators of corruption crimes in Thailand becomes ambiguous in making a decision in court. The advantage of the regulation of the death penalty against perpetrators of corruption crimes in Thailand is that the death penalty can be imposed if carried out by a judicial officer. As for the regulations that conflict with the application of the death penalty to perpetrators of corruption crimes in Indonesia, namely in its application in Indonesia there is a slight conflict with the existing regulations, namely that it conflicts with the 1945 Constitution, article 28A concerning the right to life of a person protected in this article and article 28I paragraph (4) where the state has responsibility for a person's basic rights. There are limitations imposed on a person's human rights contained in Article 28J, which if associated with perpetrators of corruption, can be interpreted that corruption is the deprivation of other people's rights so that perpetrators of corruption can be sentenced to death in order to create justice. There are also other regulations that conflict with the application of the death penalty, namely Law Number 39 of 1999 concerning human rights contained in Article 4 and 9 paragraph (1) where the article provides the meaning that there is an opportunity for the suspect's rights given by the state and is contrary to the international convention, namely the ICCPR which protects the rights of every person but legalizes the death penalty to countries that have not abolished the death penalty for perpetrators of extraordinary crimes and require serious handling. Indonesia needs to compare the regulation of the application of the death penalty with Vietnam and Thailand. As an effort to renew a regulation made by the government to prevent corruption that is currently developing. The application of the death penalty is an effort to create a frightening effect on people who will commit corruption. Regulations are needed that regulate the

amount of state losses that are corrupted so that the death penalty can be imposed. Against the laws and regulations in Indonesia that have a little conflict with the application of the death penalty, the government needs to emphasize the legality of the application of the death penalty, especially for a criminal act of corruption which is very clearly detrimental to the state and society. So that in its implementation later it does not cause contra in its application. Thus, the implementation of the death penalty does not give rise to any contradictions in its application and is in line with the hierarchy of laws and regulations in Indonesia. Thus, the implementation of the death penalty does not give rise to any contradictions in its application and is in line with the hierarchy of laws and regulations in Indonesia. Thus, the implementation of the death penalty does not give rise to any contradictions in its application and is in line with the hierarchy of laws and regulations in Indonesia.

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