

Enforcement of the Death Penalty for Perpetrators of Corruption Crimes in Indonesia

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Abstract. *Known as an extraordinary crime, corruption requires extraordinary handling, including the application of criminal sanctions. Even though the Indonesian Corruption Eradication Law explicitly mentions the death penalty as a sanction, in reality, the punishment imposed generally focuses more on imprisonment and/or fines. The purpose of this article is to investigate and analyze the implementation of the law regarding death penalty sanctions for perpetrators of criminal acts of corruption based on the Corruption Eradication Law, as well as the obstacles faced in implementing these sanctions. This research is normative in the legal field. The data used comes from books, journals and related laws and regulations. The research results show that to optimize the application of the death penalty to perpetrators of criminal acts of corruption, it is necessary to fulfill the requirements specified in the law. However, challenges arise due to the existence of ambiguous clauses in the law, complicating the death penalty process. In overcoming this problem, it is recommended that the government revise existing laws to provide legal certainty to the public.*

Keywords: *Corruption; Death; Perpetrators.*

1. Introduction

Corruption is a major challenge for all countries, involving not only government officials at the central and regional levels, but also legislative members, and even law enforcement officers. Various methods are used to gain personal gain. Currently, the level of corruption has reached its peak with the involvement of law enforcers, including the police, prosecutors, and judges who should be representatives of justice in the world.

Corruption crimes have become a serious threat to the Indonesian economy and have significantly damaged the country's economic system. Its impact has reached an extraordinary level, permeating almost all aspects of community life and government. Corruption crimes involving individuals with positions and

authority in the state have the potential to damage the order of national life and take away the basic rights of the people as citizens.

Corruption, both now and in the future, is a serious threat that can harm the development of the lives of nations in general, especially the Indonesian nation. Therefore, criminal acts of corruption should be considered as crimes that can threaten the welfare of the nation and state. The presence of a strong and firm legal basis, accompanied by law enforcement that is impartial to perpetrators of corruption, has a major impact on the incidence of criminal acts of corruption. The implementation of fair and firm laws is very important to eradicate corruption, especially when it involves state officials with high positions and authorities.¹

Corruption, which is considered an extraordinary crime, has the potential to harm the nation and state. Using one's position to engage in corruption is an act that violates public trust.²

The increase in the level of corruption crimes in Indonesia will have a negative impact not only on the national economy, but also on the level of public trust in state officials and the law enforcement system in Indonesia. To prevent an increase in corruption, preventive measures taken include law enforcement by classifying the death penalty as the heaviest sanction, as regulated in Article 2 paragraph (2) of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption which is reinforced through amendments to Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. The article states that "In the event that the criminal act as referred to in Article 2 paragraph (1) is committed under certain circumstances, the death penalty may be imposed³."

Certain situations as described in Article 2 paragraph (2) of the Corruption Eradication Law involve the following conditions:

1. Carried out against funds that should be used to deal with emergency situations;
2. Carried out on funds that should be used for national natural disaster management;

¹Abdul Kholiq Nur, Gunarto, Concept of Criminal Law on Corruption of Corporate Criminal Liability System Based on Justice Value, Journal of Daulat Hukum Volume 4 Issue 1, March 2021, p. 81, url:<http://jurnal.unissula.ac.id/index.php/RH/article/view>

²Lusia Sulastri, The Legal Protection for Whistleblowers on Corruption Crimes in Indonesia, Journal of Sovereign Law Volume 6 No. 3, September 2023, p. 289, url:<http://jurnal.unissula.ac.id/index.php/RH/article/view>

³Hulman Siregar, Rakhmat Bowo Suharto, Analysis and Review of The Implementation of Law Enforcement Operations Juridical Capture Corruption in The Criminal Justice System, Journal of Sovereign Law Volume 1 Issue 3 September 2018, p. 843, url:<http://jurnal.unissula.ac.id/index.php/RH/article/view>

3. It was carried out on funds that should have been used to deal with the consequences of widespread social unrest;
4. Carried out on funds that should be used to overcome the economic and monetary crisis; and
5. The crime of corruption is a repetition of a previous crime.

The application of the "death penalty" to perpetrators of corruption, for those who support the death penalty, is justified by the argument that the death penalty is a form of retaliation that is in accordance with the consequences of the act and has been regulated in the law. The application of the death penalty is considered very relevant in Indonesia considering the rampant cases of corruption today. In an effort to overcome criminal acts of corruption, the criminal law policy on corruption that has been taken so far is expected to be able to effectively anticipate the increase in corruption cases.

Seriousness is needed in the implementation by law enforcement officers to reduce and even stop criminal acts of corruption in Indonesia by imposing very strict sanctions on perpetrators of corruption. Sanctions against perpetrators of corruption involve restrictions on the right to life and are one of the steps to enforce the law in corruption cases, where the sanctions are determined based on the level of error and the impact of the act. The implementation of the death penalty is aimed at fulfilling a sense of justice for perpetrators of corruption. According to Rambonet's view in the context of criminal law, the task of state authorities is to maintain legal order, and this can be realized through the criminal system.⁴

To overcome the problem of corruption that often occurs in Indonesia, very strong and massive law enforcement is needed by law enforcement officers. This law enforcement aims to be a serious form of fighting corruption and also to restore public trust in the government and law enforcement agencies in Indonesia. The increase in corruption cases in Indonesia is a factor in considering implementing the death penalty for perpetrators of corruption. However, until now, the implementation of the death penalty is still a topic being discussed among legal experts before it can be implemented for corruptors.⁵

The death penalty can be considered as the best option to reduce or even stop corruption in Indonesia because it can create a fear effect on individuals who plan to commit corruption. The imposition of light criminal sanctions on perpetrators of corruption results in a lack of the expected fear effect on potential perpetrators of corruption. Several developed countries, such as China,

⁴Lusia Sulastri, The Legal Protection on Reporters for Corruption Crime, *Jurnal Daulat Hukum* Volume 5 Issue 2, June 2022, p. 116, url:<http://jurnal.unissula.ac.id/index.php/RH/article/view>

⁵Cipto Dwi Leksana, Rakhmat Bowo Suharto, Implementation of Cooperation Agreement Between the Ministry of Internal Affairs, Police, Attorney General Office (Ago) in Handling and Crime Of Corruption in Indonesia, *Jurnal Daulat Hukum* Volume 2 Issue 1, March 2019, p. 125, url:<http://jurnal.unissula.ac.id/index.php/RH/article/view>

which apply the death penalty to perpetrators of corruption, have proven their effectiveness in reducing the level of corruption. This fact can be a consideration for Indonesia, which is currently still facing the problem of rampant corruption. Therefore, this writing aims to find out and analyze law enforcement related to the death penalty for perpetrators of corruption based on the Corruption Eradication Law and the Obstacles in implementing the death penalty against perpetrators of corruption.

2. Research methods

Based on the legal problems that will be explored in this study, the type of research that will be conducted is normative legal research. The selection of this type of research is based on the consideration that the focus of this research is more aimed at identifying legal regulations, legal principles, and legal doctrines with the aim of answering the legal problems being faced.⁶

3. Results and Discussion

3.1 Law enforcement regarding the death penalty for perpetrators of corruption crimes based on the Corruption Eradication Law.

Corruption is not only an act of economic, social and cultural destruction, but can also be considered a form of sabotage against these values. The perpetrators of corruption not only insult the principles of religion, morality and humanity, but also create economic polarization, social amnesia and cultural degradation. The impact of corruption is not only limited to the injury to the trust of millions of people who are trapped in poverty, but is also considered a crime against humanity because it encourages the emergence of poverty and suffering for the community.⁷ For example, the corruption case that emerged in Indonesia was an action involving M. Akil Mochtar, Chief Justice of the Constitutional Court for the 2008-2013 period.⁸ This incident shows that corruption not only harms the perpetrators and their closest circle, but also damages the image and dignity of the nation and state. This illustrates that Indonesia is still faced with threats from individuals who compete to obtain positions by any means, including using their positions for personal gain. This incident also serves as a warning that Indonesia is facing a corruption emergency, where law enforcement actions that have been taken have not been effective enough to provide a deterrent effect on perpetrators of corruption so that they realize their mistakes and repent.

In the context of democracy, the implementation of the death penalty in several laws in Indonesia has basically gone through a discussion process in the legislative institution. This institution is a representative of the people, which is considered to represent the entire population of Indonesia, as explained by van

⁶Peter Mahmud Marzuki, 2011, *Legal Research*, Kencana Prenada Media Group, Jakarta. p, 35

⁷Muda Hindun Harahap, 2010, *Urgency of the Death Penalty for Corruption Offenders*, (Thesis of the Legal Studies Program, Faculty of Law, University of North Sumatra), p, 122

⁸Corruption Eradication Commission (KPK), 2017, *Our Corruption Story: Anatomy of Major Cases in Interdisciplinary Studies*, Jakarta, Corruption Eradication Commission (KPK), p, 63

Bemmelen, referring to JJ Rousseau's view that the law as a whole comes from a community agreement that expresses the common will.⁹ The provisions regarding the death penalty in the Law in Indonesia are basically in accordance with the theory of social agreement or constitution. Therefore, there is a very relevant relationship between Article 28A and Article 28I Paragraph (1) of the 1945 Constitution of the Republic of Indonesia with Article 28J of the 1945 Constitution. In this context, Article 28J of the 1945 Constitution stipulates:

1. Every individual must respect the human rights of others in social, national and state life.
2. In exercising their rights and freedoms, everyone must comply with the restrictions set by law. These restrictions are intended solely to guarantee recognition and respect for the rights and freedoms of other individuals and to meet just demands in accordance with moral considerations, religious values, security, and public order in a democratic society.

The application of the death penalty against perpetrators of corruption can be justified, both from a legal perspective (statutes) and a humanitarian perspective (public interest). This is due to the connection between corruption and the taking of public welfare rights in general, so that its handling needs to be focused on protecting these public rights. If the death penalty does not have an impact or value on the perpetrator, its significance lies in its effect on others as a general preventive measure.¹⁰

The provisions regarding the death penalty in the Corruption Crime Law are contained in Article 2. This article explains that: (1) Any person who commits an unlawful act to enrich themselves, others, or a corporation with a detrimental impact on the country's finances or economy, can be subject to life imprisonment or a minimum of 4 years and a maximum of 20 years imprisonment, and a minimum fine of IDR 200,000,000.00 and a maximum of IDR 1,000,000,000.00. (2) In certain circumstances, the death penalty can be imposed for corruption crimes as regulated in paragraph (1).

Explanation of Article 2 explains that "against the law" includes acts that are contrary to the rule of law both formally and materially. Although such acts are not regulated in legislation, if they are considered reprehensible because they are not in accordance with a sense of justice or social norms, then such acts can be punished. In another section, the provision "can" before the phrase "harming the finances or economy of the State" indicates that the crime of corruption is a formal crime, sufficient with the fulfillment of the elements of the act that have been formulated without having to have any consequences arising.

⁹M. van Bemmelen, 1987, *Criminal Law I: Material Criminal Law General Part Indonesian Edition*, Bandung, Binacipta, p, 50

¹⁰Khaeron Sirin, No Year, *Implementation of the Death Penalty for Corruption Crime Perpetrators in Indonesia: Analysis of the Maqàshid Al-Syari'ah Theory Approach*, Institute of Al-Qur'an Studies (PTIQ) Jakarta, p, 10

The term "certain circumstances" in this provision refers to situations that can be the basis for imposing the death penalty on perpetrators of corruption, such as actions against funds allocated for dealing with dangerous situations, national natural disasters, dealing with the consequences of widespread social unrest, dealing with economic and monetary crises, and repeated acts of corruption.

The provisions contained in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption regarding the imposition of the death penalty on perpetrators of criminal acts of corruption is a decision that is the authority of the judge and must be carefully considered from a legal and sociological perspective so that the criminal sanctions imposed provide positive benefits for both the convict and the community.

The application of the death penalty must take into account the purpose of the punishment (straf soort), how heavy or light the punishment is (straf maat), and the method of imposing the sentence (straf modus). Within the framework of this research, the judge needs to detail the defendant's actions that fulfill the provisions of Article 2 paragraph (2) of the Corruption Eradication Law. The threat of the death penalty can be imposed if the crime of corruption, as regulated in Article 2 paragraph (1) of the Corruption Eradication Law, is carried out under certain circumstances, including:

1. Carried out against funds allocated for dealing with emergency situations;
2. Done against funds allocated for national natural disasters;
3. Done against funds allocated for dealing with the consequences of widespread social unrest;
4. Carried out against funds allocated for overcoming economic and monetary crises; and
5. Repetition of criminal acts of corruption.

In considering criminal penalties, judges have an obligation to pay attention to elements that can be aggravating or mitigating, as regulated in Article 8 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, which states that, "In considering the severity of the penalty, judges are also obliged to pay attention to the good and evil nature of the accused." Several reasons that are considered by judges to provide mitigation of imprisonment to the accused have been explained, namely:¹¹:

1. Never had any previous criminal convictions or records.
2. Be polite in court.

¹¹Muhamad Riyadi Putra, Gunarto, Analysis Of Handling Practices On Corruption Crime By Police (Case Study In Special Criminal Investigation Police Directorate Of Central Java), Journal of Sovereign Law Volume 2 Issue 2, June 2019, p. 211, url:<http://jurnal.unissula.ac.id/index.php/RH/article/view>

3. Demonstrate a frank attitude during the trial.
4. Shows regret and determination not to repeat the action.
5. Have not had time to enjoy the results of criminal acts of corruption.
6. Returning assets obtained from corruption.
7. The defendant had an important role as the backbone of the family.

Likewise, there are reasons that judges consider when imposing heavier criminal sanctions, namely:¹²:

1. These actions cause discomfort or anxiety in society.
2. The defendant behaved impolitely during the trial.
3. The defendant refused to admit that his actions violated criminal law.
4. The defendant's life history reflects behavior that is detrimental to society.
5. There is an element of planning in the implementation of criminal acts.

According to Muh Luthfie Hakim, a lecturer at the Faculty of Law, Gajah Mada University, who has written a dissertation entitled "Public Implementation of the Death Penalty in Islamic Law and Its Relevance to the Deterrent Effect in Indonesia," he is of the opinion that the application of the death penalty against perpetrators of corruption is an appropriate step to take if the corruption falls into the category of the most serious crime. Muh Luthfie Hakim emphasized that corruption in Indonesia has met the characteristics to be categorized as the most serious crime. Therefore, law enforcers in Indonesia need to take real action by implementing the death penalty, considering that corruption can cause very large state losses. The application of the death penalty against perpetrators of corruption must also consider the elements regulated in Article 2 paragraph (2) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption.¹³

3.2 Obstacles in implementing the death penalty against corruption perpetrators.

The large number of defendants who are acquitted in corruption cases or whose sentences are minimal, which are not commensurate with the crimes committed, shows the difficulty in eradicating corruption. This is detrimental to the country and hinders national development. If this continues to happen for a long time, it can eliminate the sense of justice and public trust in the law and regulations. The issue of corruption is a complex challenge for the nation, and some of the factors that make this possible are because perpetrators of corruption often have

¹²Jawade Hafidz Arsyad, 2017, *Corruption in the Perspective of HAN*, Jakarta, Sinar Grafika, 2017, p, 168

¹³R. Wiyono, 2005, *Discussion of the Law on the Eradication of Criminal Acts of Corruption*, Jakarta, p, 30

wealth and extensive networks. When they face legal problems, they tend to use their wealth and power to influence or avoid punishment.¹⁴

The application of the death penalty is considered as a last resort against perpetrators of corruption, as well as a sanction to prevent and intimidate those who have the potential to commit corruption. The approach of the absolute punishment doctrine and the classical punishment school, both of which are applied in Indonesia, are expected to provide a deterrent effect. In addition to the prevention aspect, the Indonesian criminal justice system also follows the principle of proportional punishment and the concept of modern punishment, which aims to take action and repair the losses caused by the crime (the concept of restorative justice).

Corruption is a widespread systemic problem that not only harms the country's finances and economy, but also violates the social and economic rights of the community at large. Therefore, corruption is considered an extraordinary crime, and its eradication requires extraordinary measures. One extraordinary approach to combating corruption is to impose heavier criminal threats, such as the death penalty. However, this is still a matter of debate in the legal field, covering aspects of legal substance, legal structure, and legal culture.

According to Muh Luthfie Hakim, the main factor that hinders the application of the death penalty against perpetrators of corruption is the general attitude that is starting to form among lawmakers and some legal experts to avoid the application of the death penalty, on the grounds of human rights (HAM). This attitude emerged as a response to the massive efforts made by those who claim to be human rights activists to abolish the death penalty throughout the world.¹⁵

Matters regulated in the field of prosecution include steps that must be taken to uphold public order in society while protecting the human rights of individuals, both victims and perpetrators of crimes. The material in the field of prosecution cannot be considered complete and comprehensive without considering activities before a criminal case can or cannot be prosecuted. Therefore, it is necessary to link it to the issue of investigation or additional investigation.

The most severe criminal threat, namely the death penalty for corruptors, is stated firmly in the articles of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. However, until now, the threat of the death penalty has never been carried out in practice. Therefore, the legal objective of achieving legal clarity and benefits has not been fully achieved effectively.

¹⁴Ardi Sanditya, Sri Endah Wahyuningsih, Hint As A Means Of Verification And Inspection Decision In Subsidized Fertilizer Corruption (Case Study Case Number 45 / Pid.SusTPK / 2016 / PN SMG), Journal of Sovereign Law Volume 2 Issue 3, September 2019, p, 349, url:<http://jurnal.unissula.ac.id/index.php/RH/article/view>

¹⁵Mahrus Ali, 2012, Basics of Criminal Law, Jakarta, Sinar Grafika, p, 195

The implementation of regulations that meet the requirements of justice as part of legal politics has not been optimal in the implementation of state products. Corruptors are expected to stop fraudulent acts against public money, which are considered extraordinary crimes. A new approach is needed in handling corruption, one of which is through the establishment of the Corruption Eradication Commission (KPK) in accordance with Law Number 30 of 2002 concerning the Corruption Eradication Commission. In addition, imposing the death penalty on perpetrators of corruption in accordance with Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption is a form of optimizing the decision to impose the death penalty to create a deterrent effect on corruptors.¹⁶

Judges, through their decisions, determine the most severe punishment. Therefore, it is inappropriate for the court to decide whether or not the law is followed in the criminal process. Judges have a crucial role in punishing corruptors and upholding the values of justice in society. Judges are the backbone of the community's justice system, and in carrying out their duties, judges must comply with professional, moral, legal, and technical responsibilities. In the field of law enforcement, judges have an important role, and their decisions have a direct impact on law enforcement.

Judges with integrity and professionalism in their discipline are very important. Good decisions will provide a sense of justice for the community, and judges must remain upright and adhere to the code of ethics and conduct of judges. Despite many temptations, judges must carry out their duties fairly. In eradicating corruption, judges play a vital role by assessing who is right and who is wrong in a case. Judges must remain upright and adhere to their code of ethics, and their decisions must be based on beliefs and existing facts. If judges can impose the harshest sentences, this will have a deterrent effect and increase public confidence in justice.

In law enforcement, judges have the power to assess the involvement of the accused and ensure that legal certainty is obtained by the community. By considering the evidence found during the trial, the judge must ensure that the amount of involvement of the accused is reflected accurately. If the judge can impose the heaviest sentence, this will provide legal certainty and benefit the community. Therefore, the court must decide the accused is guilty based on the judge's conviction and the facts available, especially in corruption cases which are considered extraordinary crimes and result in great state losses.¹⁷

Any individual who unlawfully gains personal gain, benefits others, or a corporation can be subject to the death penalty in accordance with Law Number

¹⁶Andi Hamzah, 2007, *Eradication of Corruption Through National and International Criminal Law*, Revised Ed., Publisher PT Raja Grafindo Persada, Jakarta, p, 279

¹⁷Monang Siahaan, 2015, *KPK and Polri Unite to Eradicate Corruption*, Jakarta: PT. ElexMedia Komputindo, p, 6

31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. Justice can be realized when a judge has the courage to give a deeper meaning to an article based on community values, so that it can change the mindset of law enforcement officers from a legalistic-positive approach to thinking that pays attention to the values of propriety and justice. In this case, the success of the law can be measured by the extent to which the law is in accordance with community life (living law) and reflects existing social values.¹⁸

As the ruler of the power of society, judges are expected to be able to make decisions that reflect the objectives of the law, especially justice, certainty, and benefit, by referring to the laws, statutes, and values that live in society. Good law is law that adapts to the norms that apply in society (living law) and reflects social values such as social justice. Society is upset about acts of corruption that are considered inhumane, especially because they harm state finances, and the application of law progressively is considered a more possible alternative in achieving justice and welfare for the people.¹⁹

Judges are also expected to act as legal mouthpieces by understanding and internalizing the legal values that live in society. This can be realized by absorbing and exploring the legal feelings and sense of justice that exist in the midst of society. In handling cases, judges must be able to make decisions that are in line with legal values and the sense of justice of society. Corruption committed by officials can increase economic disparities and harm the poor, which is contrary to John Rawls' principle of justice. Therefore, legal breakthroughs are needed in enforcing the law on corruption.

The freedom of judges in deciding and finding the law must be followed by careful consideration of the impact of the death penalty on state finances in an economic emergency. In dealing with complex corruption, prosecution of perpetrators of corruption must be right on target, not only to uphold legal justice, but also to maintain the stability of the country's economy and finances. Cultural shifts and increasing the professionalism of law enforcement are important steps in fighting corruption as an extraordinary crime that can damage the existence of the nation and state. A wise judge will conduct an in-depth analysis of the consequences of the death penalty before passing a verdict, considering the purpose of punishment and its impact on the defendant and his family. Top of Form Bottom of Form

¹⁸Andi Hamzah, A. Sumangelipu, 1985, *The Death Penalty in Indonesia in Other Times, Now and in the Future*, Ghalia Indonesia, Jakarta, p, 24

¹⁹Gholibuddin Zuhairmanto, Retno Saraswati, Kornelius Benuf, *The Practical Barriers to Auction of Confiscated Objects for Corruption Crime*, *Jurnal Daulat Hukum* Volume 5 Issue 1, March 2022, url:<http://jurnal.unissula.ac.id/index.php/RH/article/view>

4. Conclusion

Law enforcement related to the imposition of the death penalty on perpetrators of corruption must refer to Article 2 paragraph (2) of the Corruption Eradication Law. This article stipulates certain requirements that must be met, such as when the country is in a state of danger in accordance with applicable laws and regulations, when a national natural disaster occurs, in cases of repeated corruption, and when the country is experiencing economic and financial difficulties. The belief that corruption is a very serious crime may be a relevant legal element in the application of the death penalty to perpetrators of corruption. In situations where corruption can cause the country to face an economic crisis, legal changes that allow judges to impose the death penalty are essential. The law must not only protect perpetrators of crimes, but must also protect society. The challenge of implementing the death penalty in corruption cases involves the ambiguity in Article 2 paragraph (2), which tends more towards discretion than an obligation to be implemented. Therefore, to ensure legal clarity, changes are needed in the articles that can eliminate "ambiguity".

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