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Death Penalty for Perpetrators of Corruption Crimes Perspective of Criminal Law Reform

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ABSTRACT: Perpetrators of criminal acts of corruption in Indonesia have caused enormous destruction for the survival of the nation and state. Not only is it detrimental to state finances, but the crime of corruption has also robbed the community of social and economic rights at large. If you look back at the existing regulations in the current law, especially those that regulate the imposition of capital punishment on perpetrators of criminal acts of corruption, it is regulated in Article 2 paragraph (2) of Law no. 20 of 2001 but in applying the death penalty to corruptors it is difficult to enforce so that research is needed regarding this article, corruption is a crime that is very difficult to eradicate, because it is often carried out systematically and involves people in power. We too can feel how great and extraordinary the danger posed by this crime. The methodology used in this study is a normative juridical research method. The focus of this article is how is the policy of implementing the death penalty law against perpetrators of corruption and how is the death penalty in the perspective of criminal law reform. So it is natural that the crime of corruption is classified as an extraordinary crime that must be eradicated in an extraordinary way, one of which is by punishing the perpetrators of corruption in this country to death.

KEYWORDS: Corruption, Death Penalty, Criminal Law Reform

INTRODUCTION

Corruption is a big and interesting problem as a legal issue involving types of crimes that are complicated to deal with, because corruption contains multiple aspects in relation to politics, economy, and socio-culture. Various eradication efforts have been carried out but from year to year there has been a significant increase, this is in accordance with data on perpetrators released by ICW (Indonesian Corruption Watch) which notes an increase in the number of cases and defendants of Corruption in 2021 there are 1,282 corruption cases with a total of 1.404 defendants people, this is an increase compared to 2018, 2019 and 2020.[1] The increase is in accordance with data released by the corruption eradication commission which has, investigated 268 cases, and prosecuted 234 cases throughout 2019.[2]

It is undeniable that corruption can no longer be classified as an ordinary crime that can be eradicated by conventional means. Judging from its characteristics, corruption has become a special crime that is extraordinary so that it requires extraordinary eradication efforts as well. Therefore, a criminal law policy or a crime prevention policy is needed, through criminal legislation that clearly and unequivocally regulates how chronic corruption can be eradicated in extraordinary, systemic and comprehensive measures.[3]

Corruption in Indonesia is regulated in. law number. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption can be formulated as follows: "an act against the law that intends to enrich oneself or another person directly or indirectly harms state finances and the state economy, or it should be suspected that the act is detrimental to state finances or the economy country". Cases of criminal acts of corruption are difficult to uncover because the perpetrators use sophisticated equipment, and are usually carried out by intelligent people, organized and carried out by more than one person. Therefore, this crime is often referred to as a *white-collar crime* or white-collar crime.

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1 Indonesian Corruption Watch https://m.merdeka.com/events/data-icw-cases-dan-perlaku-korupsi-meningkat-age-youngest-24-years.html.

2 Anonymous, *Report of the Corruption Eradication Commission, Throughout 2019* . (KPK Publisher.), 117.

3 Agus Pranoto and Dita Liliansa and Anbar Jayadi"Juridical Studies Regarding the Confiscation of Corruption Assets in Efforts to Eradicating Corruption Crimes according to Indonesian Criminal Law," *Legality* June Edition (2018) Volume X Number 1:92.

Death Penalty for Perpetrators of Corruption Crimes Perspective of Criminal Law Reform

Given the increasingly rampant corruption in Indonesia, which increases from year to year according to data released by ICW and the KPK, it is not wrong if the death penalty is applied to perpetrators of corruption who are detrimental to the country's finances and economy. It is well known that the death penalty itself is a punishment that is *ultimum remidium* (last medicine) that allows for eradicating corruption that is rampant in Indonesia in the hope that it can provide a deterrent effect to the perpetrators. However, the implementation of the death penalty is still an interesting debate among experts, not a few who reject the implementation of the death penalty against corruption perpetrators. The reason used by those who refuse is that the application of the death penalty is contrary to human rights as regulated in Article 28A, 28I of the 1945 Constitution of the Republic of Indonesia, Articles 4 and 9 of Law no. 39 of 1999 concerning Human Rights.

One of the factors that influence corruption cannot be eradicated is from the aspect of sanctions which do not provide a deterrent effect to perpetrators of corruption. Sanctions applied to perpetrators of criminal acts of corruption have not yet provided a deterrent effect on perpetrators of criminal acts of corruption. Often judges decide corruption cases with minimal criminal charges, judges rarely apply maximum punishment to perpetrators of corruption, for example life imprisonment or the death penalty. in article 2 paragraph (2) of Law no. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption "that what is meant by "certain circumstances" in this provision are conditions that can be used as a reason for criminal aggravation for perpetrators of criminal acts of corruption, namely if the crime is committed against funds that are designated for handling dangerous situations, national natural disasters, overcoming the effects of widespread social unrest, overcoming economic and monetary crises and repeating criminal acts of corruption.

Of the various efforts that have been made to overcome the problem of corruption, one of which is the legislation that specifically regulates corruption, in Indonesia itself the law on corruption has been amended 4 (four) times. The laws and regulations governing corruption, namely: No. 24 of 1960 concerning the eradication of corruption, Law no. 3 of 1971 concerning the eradication of corruption, Law no. 31 of 1999 concerning the eradication of corruption and Law no. 20 of 2001 concerning amendments to the law on eradicating corruption.

is because the development of corruption in Indonesia is still relatively high, while its eradication is still very slow. Romli Atmasasmita once said that corruption in Indonesia has become a flu virus that has spread throughout the government since the 1960s[4]. The slow pace of corruption eradication is influenced by many things, one of which is the power factor with which local authorities can protect their cronies, because if they are not protected, it is feared that they could also ensnare him and cause his career to decline or his electability to decline.

Many previous studies have investigated the death penalty for perpetrators of corruption, such as the study reviewed by Oksidelfa Yanto in 2017 on "The Imposition of Death Penalty on Corruption Perpetrators in Certain Circumstances (Death Penalty To Corruptors In A Certain Condition)" The study stated the need for the imposition of the death penalty on perpetrators of criminal acts [5], then the research conducted by Warih Anjari in 2020 on "Application of the Death Penalty Against Convicts in Corruption Cases" in the results of the study found the reason why the threat of capital punishment to convicted corruption was based on Article 2 paragraph (2) of the Corruption Eradication Act (UUTPK) is difficult to implement even though there are regulations that regulate the imposition of the death penalty. [6]And the research conducted by Daud Munasto "Policy on the Death Penalty for Perpetrators of Criminal Acts of Corruption Reviewed in the Perspective of Sociology of Law" in the results of his research the author explains in the perspective of legal sociology, the death penalty for convicts in corruption cases is actually not a new thing for the people of Indonesia. Other special crimes such as Narcotics and Terrorism have implemented the death penalty as a punishment that can have a frightening effect on potential perpetrators of these crimes. [7]Based on the description of the existing *gap analysis*, there is no research that examines the death penalty for perpetrators of corruption in the perspective of criminal law reform.

However, it must be realized that the death penalty with human rights is very closely related, this is based on a reason that the imposition of the death penalty is closely related to the most basic rights for humans. In the context of imposing the death penalty against perpetrators of crimes committed under certain circumstances, it must be studied in depth, considering that the imposition of capital punishment is the heaviest crime in the sense that the perpetrator will lose his life which is an invaluable right. If examined more deeply according to the alleged provisions of the Universal Declaration of Human Rights (UDHR), there are several articles in the UDHR that do not allow the death penalty, among others, based on Article 3 of the UDHR which reads "everyone has the

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4 Romli Atmasasmita, *Around the Problem of Corruption, National Aspects and International Aspects,* (Bandung: Mandar Maju, 2004) , 1 .

5 Oksidelfa Yanto, "Death Penalty To Corruptors In A Certain Condition," *Indonesian Legislation Journal* Vol. 14 N0. 01-March (2017): 49–56.

6 Warih Anjari, "Implementation of the Death Penalty on Convicts in Corruption Cases," ISSN *Journal of Legal Problems:* 2527-4716. Vol 49, No 4 (2020). 432-442.

7 Daud Munasto, "The Death Penalty Policy for Perpetrzators of Corruption Crimes Understood in the Perspective of Sociology of Law," *Widya Pranata Hukum* Vol. 4, No.1, February (2022): 1.

right to life, liberty and personal security".[8] So from the background explanation above, the author will conduct an analysis with the title **"Death Penalty for Perpetrators of Criminal Acts of Corruption in Perspective of Criminal Law Reform".**

RESEARCH METHODS

In this study, a normative juridical approach was used. The normative juridical (juridical approach) is the approach used in the study of theories and concepts related to this issue. The normative or literary approach is the method used in legal research which is carried out by examining the existing literature.[9] The first approach used is a juridical-normative and juridical-sociological analysis approach, which is complemented by a historical approach and a juridical-comparative approach. The research method is a research that provides steps or ways of taking an action in a systematic and logical research so that the truth can be accounted for, while according to Koentjoroningrat, the scientific method is about how it works, namely how to understand the object that is the target of the science concerned.[10]

So from the description of the research method above, the approach used in this scientific research is as follows:

2.1. Approach Method

This research uses the normative juridical method as the main approach, considering that the main target of this research is on the issue of the Death Penalty for the perpetrators of corruption with the perspective of criminal law reform.

This approach in addition to using a normative juridical approach is also carried out a comparative juridical approach, intended to conduct a study of the principles and norms related to strategic efforts to formulate laws in the future by discussing the applicable laws and regulations and their application to objects. researched problem

2.2. Research Specifications

The specification of the research used in this research is descriptive analysis, because this research is expected to obtain data that clearly illustrates how the death penalty for criminal acts of corruption that has been regulated in the law is not so effective so that it is hoped that in future criminal law reforms. can answer legal issues that occur.

DISCUSSION

3.1. Overview of the Crime of Corruption

Corruption comes from Latin, namely *corruption* or bribery and *corruptore* or damaging which is a symptom where officials, state agencies abuse their authority with bribery, forgery, and other wrong things.[11] Literally corruption is rottenness, ugliness, depravity, dishonesty, bribery, immorality, deviation from chastity, insulting or slanderous words or words,[12] while poerwadarminta means that corruption is a bad act such as embezzlement of money, accepting bribes. etc.[13] So that corruption is something that is rotten, evil, and destructive, this relates to morals, bad nature and conditions, positions in government agencies or apparatus, abuses of power in office, economic and political factors, as well as the placement of families or groups into service under the authority of his office.

The definition of corruption in Oxfrod *(The Oxford Unabridged Dictionary)* is a destruction of integrity or irregularities in carrying out public duties by acts of bribery or compensation, while the definition used by the *World bank* is *"the abuse of public officer for private gain"* or abuse of office. public for private gain. A similar definition is also used by *Transparency International (IT),* which defines corruption as an act that involves the behavior of employees in the public sector, both as politicians and civil servants, where they are inappropriate to commit acts that unlawfully enrich themselves, or are close to with them, by abusing the public power entrusted to them.[14]

The spread of corruption in Indonesia is widespread in society, over time and the development of the times the number of cases of corruption continues to increase from year to year, both the number of cases that occur and the state losses incurred. So that the scope of corruption in Indonesia has entered the aspects of people's lives. Therefore, the criminal act of corruption has been considered as a *seriousness crime case*, namely a serious crime that greatly interferes with the economic rights and social rights of

8 Bungasan Hutapea, *Controversy on Imposing the Death Penalty Against Narcotics Crime in the Perspective of Law and Human Rights*, (Jakarta: Cahaya Cahaya, 2016), 31.
9 Soerjono Soekanto, *Normative Legal Research: a brief overview,* (Depok: Raja Grafindo Persada 2009), 13-14.
10 Koentjaraningrat, Community Research Methods, (Jakarta: Gramedia 1986), 7
11 Evi Hartanti, *Corruption Crime*, (Jakarta: Sinar Graphic, 2005), 8.
12 Andi Hamza, *Eradication of Corruption Through National and International Criminal Law*, (Jakarta: Rajawali Press, 2012), 4.
13 WJS, Poerwadarminta, *General Indonesian Dictionary,* (Jakarta: Balai Pustaka, 1982), 698.
14 Ahmad Fawa'id, *Sultonul Huda,* (NU Against Corruption: *A Study of Tafsir and Fiqh*), 24.

the community and the state on a large scale, so that the handling must be carried out by means of *Extra ordinary treatment* and its proof requires serious, professional, and independent steps.[15]

The crime of corruption, which is one part of the crimes that fall into the category of *extraordinary crimes* or extraordinary crimes, and because corruption is an *extraordinary crime* so that it has become the focus of all countries to eradicate it, so that various results of discussions in the international era emerge, either it is in the form of a United Nations congress, or in the form of international seminars. Based on the UN Convention on the Prevention of Crime and Criminal Justice *(United Nations Congress on Crime Prevention and Criminal Justice)* which existed since the 5th UN Congress in 1975 in Geneva until the 11th UN Congress in Bangkok in 2005, it has been recommended that the fight against corruption must taken with an integral (comprehensive) approach, both preventive, repressive and educative.[16]

There are 2 basic strategies in dealing with crime contained in several UN Conventions, which can also be used to combat corruption, they are:[17]

3.1.1. Causative approach, namely minimizing the causes and conditions that give rise to crime.

3.1.2. Integral Approach (Comprehensive), namely taking crime prevention efforts not in a simplistic and fragmentary way, but from various approaches/social policies (social, cultural, economic, political, educational, religious, moral aspects, etc.).

The background of the emergence of several regulations on eradicating corruption after the Criminal Code is deemed unable to ensnare perpetrators of corruption crimes. The laws and regulations that have a basis for overcoming this crime have been alternated with improvement efforts concerning the formulation of offenses, expansion of acts, expansion of the subject of offenses, as well as procedural law in order to be able to reach perpetrators of corruption. This is because the widespread crime of corruption in Indonesia can at least be seen that the corruption has been carried out systematically and widely so that it is not only detrimental to state finances, but also has violated the social and economic rights of the community at large extraordinary, thus eradicating corruption must be done in a special way.

3.2. Death Penalty in Indonesia in the Perspective of Human Rights

The death penalty is a sentence or verdict handed down by a court (or without a trial) as the heaviest form of punishment imposed on a person due to his actions. The death penalty, hereinafter referred to as the death penalty, is one of the main punishments for the death penalty, hereinafter referred to as the death penalty, is one of the main punishments imposed by judges on convicts who have obtained permanent legal force. Based on Law No. 2/Pnps/1964 in *conjunction with* Law No. 5 of 1969 in *conjunction* with the Regulation of the National Police Chief No. 12 of 2010 concerning the implementation of the death penalty by shooting up. Execution of the death penalty by being shot to death and then ending with the death of the convict. Death, hereinafter referred to as death, is a state of loss of signs of life, cardiac arrest, and respiratory arrest as declared by a doctor.

The death penalty is a form of punishment that since hundreds of years ago has reaped the pros and cons. These pros and cons do not only occur in Indonesia, but in several countries there are still many who are pro-death penalty. Every legal expert, human rights activist always relies on the pros and cons of the death penalty institution with logical and rational reasons. "The tendency of experts who agree that the death penalty is maintained, is generally based on conventional reasons, namely the need for capital punishment is urgently needed to eliminate people who are considered dangerous to the public or state interests and are deemed irreparable, while those who are against the death penalty Usually, the reason for 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 it is found that an error has been made in the verdict handed down by the judge.[18]

Barda Nawawi Arief, a criminal law expert and national criminal law reformer, explicitly stated in his book publication that the death penalty still needs to be maintained in the context of reforming the National Criminal Code. The author can illustrate this, through his opinion which states:

> " That although the death penalty is maintained primarily as an effort to protect the community (so it focuses more or is oriented towards the interests of the community), in its application it is expected to be selective, cautious and oriented also to the protection/interest of the individual (criminal offenders)".[19]

The views that agree (pro) and reject (contra) the Law on the Implementation of the Death Penalty. Controversy about the death penalty in the international world continues to roll. Controversy surrounds the pros and cons of the death penalty. Especially

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15 Bram Mohammad Yasser, "Testing Elements of Abuse of Authority in State Administrative Courts in Relation to Corruption Crimes," *Journal of Soumatera Law Review*, Vol 2, Number 1, (2019): 2.

16 Muhamad Mahrus Setia Wijaksana, "Eradication of Corruption Crimes Through an Integral (Comprehensive) Approach", *Rechtsvinding, Media for National Law Development.* Vol 10/No.2/August/(2021): 1.

17 *Ibid.*

18 Bungasan Hutapea, *op.cit.,* 26.

19 Barnawawi Arief, *Problems with law enforcement and crime prevention policies*. (Bandung: Citra Aditya Bakti, 2001), 27.

from the *abolitionist sect* which is against the death penalty and the *retentionist sect* which agrees to carry out the death penalty. Most countries on the European continent have abolished the death penalty as a type of crime in their country, except for Bellarussia. Including the Netherlands, which once colonized Indonesia, has also abolished the death penalty in the legal system for implementing the main criminal offense in its country since 1870 AD. Ironically, the Dutch penal code is still valid in Indonesia.

Meanwhile, 8 countries in ASEAN still adhere to the death penalty, namely Brunei Darussalam, Indonesia, Malaysia, Singapore, Vietnam, Laos, Myanmar, and Thailand. Three countries in ASEAN have abolished the death penalty, namely the Philippines, Timor Leste and Cambodia. There are currently 68 countries that still apply the death penalty, including Indonesia. Meanwhile, 75 countries have abolished all practices of the death penalty for all types of crimes. In addition, there are 14 countries that abolish the death penalty for the category of ordinary criminal crimes, 34 countries which *de facto* do not apply the death penalty even though there are provisions for capital punishment. The death penalty is considered inhumane and ineffective. Jeffrey Pagan, professor of law and public health at Columbia University, United States, assessed that there is no strong scientific evidence regarding the effectiveness of the death penalty related to the deterrent effect as one of the goals of punishment. Since the fear of wrongdoing and execution of the wrong person will result in the death penalty being suspended, there will be no deterrent effect that executions are infrequent. However, using the death penalty aggressively will create an effective deterrent effect and will increase the risk of the horrific threat of execution of innocent people. Provisions regarding the right to life are regulated in:

3.2.1. Every human being has rights attached to his life. This right must be protected by law. No one arbitrarily loses his life (You may not take the right to life arbitrarily)

3.2.2. If the issue of human rights constitutes a crime of genocide (crimes with the intention of destroying races, national groups, ethnic groups with the intention of destroying the nation) it is understood that nothing in this article authorizes each state to reduce all forms of obligations assumed under on preventing and punishing the crime of genocide.

3.2.3. Anyone who is sentenced to death has the right to seek pardon or substitution of death penalty, pardon or substitution of death sentence may be granted in all cases.

In the context of Indonesia, with regard to limiting the application of the death penalty, it was confirmed in the decision of the Constitutional Court (MK) No.2-3/PUU-V2007 that in the future the formulation, application, and implementation of the death penalty should pay attention to 4 important things:[20]

3.2.1. The death penalty is not a principal crime, but as a special and alternative punishment.

3.2.2. The death penalty can be imposed with a probationary period of 10 years if the convict has commendable behavior, it can be changed to life imprisonment or 20 years.

3.2.3. The death penalty cannot be imposed on minors who are not yet adults.

3.2.4. The execution of the death penalty against a pregnant woman and a mentally ill person is suspended until the pregnant woman gives birth and the mentally ill convict recovers.

The controversy surrounding the death penalty argues between the *abolitionist sects* who are against the death penalty and adherents who state that the death penalty is still needed as a type of crime. Those who don't agree, the reason is

3.2.1. It is absolute, irrevocable

3.2.2. Judge's error

3.2.3. Contrary to humanity, morals and ethics.

3.2.4. In relation to the purpose of sentencing:

3.2.4.1. The goal of improvement was not achieved.

3.2.4.2. The implementation is not in public, so the fear is not achieved.

Article 28A of the 1945 Constitution ("UUD 1945") which reads: "Everyone has the right to live and has the right to defend his life and life."

The legal basis that guarantees the right to live in Indonesia is also contained in Article 9 of Law Number 39 of 1999 concerning Human Rights ("HAM Law") which reads:

3.2.1. Everyone has the right to live, maintain life and improve their standard of living;

3.2.2. Everyone has the right to live in peace, security, peace, happiness, physical and spiritual prosperity;

3.2.3. Everyone has the right to a good and healthy environment.

Furthermore, in the Elucidation of Article 9 of the Human Rights Law it is stated that everyone has the right to life, maintain life, and improve their standard of living. The right to life is even attached to unborn babies or people on death row. In exceptional cases or circumstances, namely in the interest of the mother's life in an abortion case or based on a court decision in a death penalty case. Then the act of abortion or the death penalty in such cases and or conditions, can still be permitted. It is only in these two things that the right to life can be limited. From the explanation of Article 9 of the Human Rights Law above, it can be seen that under certain conditions, such as the death penalty, the right to life can be limited.

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[20] Jimly Asshiddiqie, *Death Penalty Controversy, Differences in Opinions of Constitutional Judges,* (Jakarta: Kompas Media Nusantara. 2009), 209.

Based on the description above, the category of human rights violations is an act that is intentionally or unintentionally carried out against the law, because human rights themselves are against the law in the implementation of the death penalty in Indonesia because they violate the right to life which is protected by the constitution, as regulated in Article 28 A Jo. Article 28 I Second Amendment to the 1945 Constitution, but it must be understood together that in understanding a statutory regulation it cannot be studied article by article partially, but it is also necessary to pay attention to the hierarchical and comprehensive provisions of the entire existing article. Although everyone has the right to life and life, but the existence of this right is not absolute, this right is limited by the application of the death penalty as long as it is carried out according to applicable norms and values. to demand justice in accordance with morals, religious values, security and public order.

3.3. The Urgency of the Death Penalty for Corruptors

The death penalty has been known since Roman, Greek and German times. Where at that time the death penalty itself was a very cruel punishment, especially at the time of the Roman emperor, who was known in the Nero era, at that time many Christians were sentenced to death, the implementation itself by binding people who were sentenced to death at the time of death. one pillar was then burned to death. [21]In the principle known as " *Mors dicitur ultimum supplicum"* the death penalty is the heaviest punishment. [22]Because the death penalty is the heaviest punishment given by the court as the toughest form of punishment by taking the life that was imposed on someone for their actions.

The crime of corruption which is an extraordinary crime has a more complicated complexity compared to conventional crimes or even other special crimes. The proliferation of corruption crimes in our country has certainly given birth to various negative effects, not only on the state, but also on the wider community. In addition to damaging the performance of the government bureaucracy, the crime of corruption has caused tremendous destruction for the survival of the nation, especially the character and morality of the next generation of this nation. This means that corruption that has been happening so far is not only detrimental to the state's finances, but has also been a violation of the social and economic rights of the community at large, so that corruption is classified as a serious crime eradication must be carried out in an extraordinary manner. This means that legally, the acts of corruption, according to this law, must also be eradicated in an extraordinary manner. The Law on the Eradication of Criminal Acts of Corruption specifically regulates its own procedural law for law enforcement of perpetrators of corruption, in general it is distinguished from handling other special crimes. This is considering that corruption is an extraordinary crime that must take precedence over other criminal acts.[23]

The current fight against corruption is no longer feasible using ordinary (conventional) legal instruments, but in an extraordinary way , by categorizing corruption as a crime against humanity, which is also handled using instruments, technical, and procedural regulations on human rights violations. That way, corruption is no longer a domestic problem of a country but is everyone's business without being limited by the boundaries of the state and nation. Therefore, nations in the world have the right to participate in fighting and be aware of it as a crime that must be fought together.

This is what makes corruption such a latent danger that is difficult to eradicate. The existence of laws and a culture of shame that once became the character of our nation, is still not able to provide *shock therapy* for people who commit crimes of corruption in this country. It can be said that corruption has become a source of disaster or crime (the roots of all evils) which are actually relatively more dangerous than terrorism. Judging from the dangers it poses, the perpetrators of corruption crimes deserve to be sentenced to death. The consideration is that this crime has caused extraordinary destruction for the survival of the nation. Society and the nation's children and grandchildren later suffer and suffer the consequences. The existence of this nation has also become cornered and humiliated in the international world, because of the rampant culture of uncontrolled corruption.

The reason for the imposition of the death penalty, namely "Certain circumstances" itself in the formulation of the law on eradicating corruption is only regulated in the explanation, not regulated in the norm, if you look at the construction of the rules for the preparation of laws and regulations Number 12 of 2012 concerning the formation of legislation, then this has an impact in causing weaknesses because the explanation of the legislation serves as an official interpretation of the formation of legislation on certain norms in the body. Therefore, explanations only contain descriptions of foreign words, phrases, sentences or equivalents in the norm which can be accompanied by examples. Explanation as a means to clarify the norms in the body should not result in the ambiguity of the norms in question.[24]

The imposition of the death penalty for perpetrators of criminal acts of corruption is only formulated in Article 2 paragraph (2) and is not formulated in other articles that can be formulated in articles of the law on eradicating corruption, one of which is

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21 Teguh Prasetya, *Death Penalty* , (Jakarta: Raja Grafindo Persada, 2011), 117-118 .

22 Eddy O. S Hariariej. *Principles of the Death Penalty ,* (Yogyakata: Cahaya Atma Pustaka 2014), 378 .

23 IGM Nurdjana. *The Criminal Law System and the Latent Danger of Corruption (Problematics of the Criminal Law System and Its Implications for Law Enforcement of Corruption Crimes*, (Yogyakarta: Total Media. 2009), 21.

24 Law Number 12 of 2012 concerning the Establishment of Legislation and Regulations, explanation, 138.

Article 3 which is not imposed. death penalty. In fact, if viewed from the formulation of Article 3 itself, it is very feasible to be sentenced to death, but only sentenced to life imprisonment. This is seen sociologically that it is very possible if the imposition of the death penalty is formulated in article 3 because the perpetrator is an authorized official who has the authority or because with his position he can commit a criminal act of corruption, as stated by criminal law expert Barda Nawai Arief who stated that the imposition of a criminal offense death is very possible to be formulated in article 3 of the Law on the Eradication of Criminal Acts of corruption, this is because the authorized official has the authority to abuse his authority, meaning that the official is a very greedy and greedy person, so that he commits corruption, then the death penalty can be formulated in all formulations of articles relating to authorized officials.

In formal juridical terms, the application of the death penalty in Indonesia is indeed justified. This can be traced from several articles in the Criminal Code (KUHP) which contain the threat of the death penalty. Apart from the Criminal Code, there are at least six laws and regulations that carry the death penalty, such as the Narcotics Law, Anti-Corruption Law, Anti-Terrorism Law, and Law on Human Rights Courts, Intelligence Law and State Secrets Law. In addition, philosophically, the application of the death penalty is also recognized and accommodated by the concept of the state law of Pancasila. This shows that the death penalty in Indonesia still exists in the laws and regulations in Indonesia. Moreover, executions of the death penalty in Indonesia have shown an increasing trend since the reform era. Although it still maintains the death penalty in its positive legal system. [25]However, as a country that upholds human rights values, the Indonesian state applies the death penalty specifically, carefully, and selectively.

In the context of democracy, the determination of the death penalty in several laws in Indonesia has basically gone through discussions in the legislature, which incidentally are people's representatives, as representatives of all Indonesian people. According to van Bemmelen, quoting the opinion of JJ Rousseau, basically the law as a whole rests on a community agreement in which the common will is stated. [26]If there is behavior which according to the common will must be punished, then it must be described or written down in the law from the start. The detailed description is intended to avoid violating individual freedoms, because in the agreement of society, everyone is only willing to release a small part of their freedom into the common container. [9] So it is with the death penalty. If the death penalty is still feasible to be enforced and accepted by the collective will, then the sentence must be stated in the form of a written law (law). This means that the provisions of the death penalty in the law in Indonesia are basically in accordance with the theory of community agreement or the constitution. Therefore, it is very relevant to link the provisions of Article 28A and Article 28I Paragraph (1) of the 1945 Constitution with Article 28J of the 1945 Constitution. In this case, Article 28J of the 1945 Constitution determines:

3.3.1. Everyone is obliged to respect the human rights of others in the orderly life of society, nation and state.

3.3.2. In exercising their 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 morality, religious values, security, and public order in a democratic society.

Thus, the validity of the provisions of Article 28A and Article 28I Paragraph (1) of the 1945 Constitution is limited by the provisions of Article 28J of the 1945 Constitution. Therefore, to protect the greater interests of national law, it is necessary to understand the provisions of criminal or death penalty in Indonesia not only read the provisions of Article 28A and Article 28I of the 1945 Constitution, but must also pay attention to and relate them to the provisions of Article 28J of the 1945 Constitution. Thus, the application of the death penalty for perpetrators of corruption can be justified, both legally (law) and humanely (public interest). This is because the crime of corruption is related to the deprivation of the welfare rights of the wider community, so that the handling must also be oriented to the protection of these public rights. If the death penalty has no implications or no value for the perpetrator, then its value lies in its effect on others as a general deterrent.

3.4. Reformulation of the Death Penalty for Corruption in the Draft Criminal Code

Legal reform is inseparable from the development of national law, especially the development of criminal law, because the development of criminal law must be based on Pancasila and reflect the values contained in Pancasila in the form of the value of God Almighty, populist, unity and social justice, in addition to reforming the national criminal law. not only for political reasons (which is a matter of pride to have its own National Criminal Code) but also for sociological reasons which are social guidelines for having a Criminal Code based on a national value system, while the practical reason is the existence of the original Indonesian Criminal Code, but also for adaptive reasons that the Criminal Code Nationals in the future must be able to adapt to new developments, especially international developments that have been agreed upon by civilized communities.

In the concept of the Draft Criminal Code, the death penalty itself is not included in the main criminal group, but a special punishment (exceptional). Where in Article 67 of the RKUHP explains that the death penalty is a special principal crime and is

25 JE Sahetapy, *A Special Study on the Death Penalty*, 75.

26 JM van Bemmelen, *Criminal Law I: Material Criminal Law General Section*, (Bandung: Binacipta, 1987), 50.

always threatened with alternatives.[27] The issuance of the death penalty from this main crime is based on the consideration that if viewed from the purpose of punishment, the death penalty is in essence not a main means in regulating, controlling and improving individuals, but the death penalty is an *ultimum remedium* in a last resort as an exception in protecting the community. Such considerations are also supported by several studies that have been carried out, which in their conclusions show that there is a need for the death penalty to be maintained as a means to overcome and protect the community from criminals or criminals who are very dangerous.

Article 98 of the Draft Draft Criminal Code stipulates that the death penalty is alternatively imposed as a last resort to prevent criminal acts and efforts to protect the community, because in the implementation of the death penalty there are considerations that must be considered, among these considerations, namely: in Article 99 of the Draft Criminal Code:

3.4.1. The death penalty can be carried out after a clemency application for the convict was rejected by the President.
3.4.2. The death penalty as referred to in paragraph (1) is not carried out in public.
3.4.3. The death penalty is carried out by shooting the convict to death by firing squad or by other means specified in the Act.
3.4.4. Implementation of the death penalty against pregnant women, women who are breastfeeding her baby, or a mentally ill person is postponed until the woman has given birth, the woman is no longer breastfeeding her baby, or the mentally ill person is cured.

Since the beginning of the Draft Law on the National Criminal Code, the death penalty has changed several times, initially it was regulated as a special principal crime and finally the death penalty was regulated as a special crime for certain crimes. the provisions for criminal acts of corruption in the third part which consists of 4 formulations of articles from articles 603-606 following articles on corruption crimes:

Article 603

Any person who unlawfully commits an act of enriching himself or another person or a corporation that is detrimental to state finances or the state economy, shall be sentenced to life imprisonment or a minimum of 2 (two) years and a maximum of 20 (twenty) years. and a minimum fine of category II and a maximum of category VI.

Article 604

Any person who with the aim of benefiting himself or herself or another person or a corporation, abuses the authority, opportunities or facilities available to him because of a position or position that is detrimental to state finances or the state economy, is sentenced to life imprisonment or a minimum imprisonment of 2 (two) years.) years and a maximum of 20 (twenty) years and a minimum fine of category II and a maximum of category VI.

Article 605

1) Convicted of imprisonment of a minimum of 1 (one) year and a maximum of 5 (five) years and a fine of at least category III and at most category V, Every Person who:
   a) giving or promising something to a state official or state administrator with the intention that the said state official or state administrator does or does not do something in his position, which is contrary to his obligations; or
   b) giving something to a state official or state administrator because of or related to something that is contrary to obligations, which is done or not done in his position.
2) A civil servant or state administrator who receives a gift or promise as referred to in paragraph (1) shall be sentenced to a minimum imprisonment of 1 (one) year and a maximum of 6 (six) years and a minimum fine of category III and a maximum of category V.

Article 606

1) Any person who gives a gift or promise to a civil servant or state administrator by remembering the power or authority attached to his position or position, or by the giver of a gift or promise deemed attached to that position or position, shall be punished with imprisonment for a maximum of 3 (three) years and a maximum fine of category IV.
2) A civil servant or state administrator who receives a gift or promise as referred to in paragraph (1) shall be sentenced to a maximum imprisonment of 4 (four) years and a maximum fine of category IV.

As is known, the determination of fines based on categories I to VIII is calculated as follows:

3.4.1. Category I, IDR 1,000,000.00 (one million rupiah);
3.4.2. Category II, IDR 10,000,000.00 (ten million rupiah);
3.4.3. Category III, IDR 50,000,000.00 (fifty million rupiah);
3.4.4. Category IV, IDR 200,000,000.00 (two hundred million rupiah);
3.4.5. Category V, IDR 500,000,000.00 (five hundred million rupiah);
3.4.6. Category VI, IDR 2,000,000,000.00 (two billion rupiah);
3.4.7. Category VII, IDR 5,000,000,000.00 (five billion rupiah); and

[27] Draft Law of the Republic of Indonesia concerning the Criminal Code, Directorate General of Legislation, Ministry of Law and Human Rights, 2019, Ps. 67.

3.4.8. Category VIII, IDR 50,000,000,000.00 (fifty billion rupiah)

So as it is known that the Indonesian Criminal Code recognizes the main types of criminal sanctions in the form of the death penalty which is placed in the first order (this order means the arrangement based on the severity of criminal sanctions), while the regulation regarding the imposition of the death penalty in the Draft Criminal Code of September 2019, The death penalty is no longer a principal crime but is regulated as a special crime for certain crimes as determined by law. The regulations regarding the criminal investigation itself are threatened alternatively as a last resort to prevent criminal acts from being committed and protect the community.

CONCLUSION

The death penalty is a sentence or verdict handed down by a court (or without a trial) as the heaviest form of punishment imposed on a person due to his actions. The death penalty, hereinafter referred to as the death penalty, is one of the main punishments for the death penalty, hereinafter referred to as the death penalty, is one of the main punishments imposed by judges on convicts who have obtained permanent legal force. The death penalty according to the view of human rights Article 9 of the Human Rights Law states that everyone has the right to life, maintain life, and improve their standard of living. The right to life is even attached to unborn babies or people sentenced to death. Furthermore, looking at the Human Rights Law, the Constitutional Court considers that the Law also recognizes the limitation of a person's human rights by recognizing the rights of others. . For the sake of public order in this case, the Constitutional Court considers the death penalty a form of state protection for citizens, especially the rights of victims. Another thing that is also important to know is that people who are sentenced to death (death convicts) by the court still have other legal remedies so that there is still a chance that they will not be sentenced to death.

The application of the death penalty for perpetrators of corruption if only examined *textually* , then the application of the death penalty is contrary to human rights as stated in Article 28A paragraph (1), 28I paragraph (1), in conjunction with Article 4 of Law Number 39 of 1999, in conjunction with Article 3 of the UDHR. However, if studied contextually using an extensive and teleological interpretation, then the actual application of the death penalty does not conflict with human rights. The argument given is that the consequences of corruption are far greater than genocide, terrorism, narcotics, and other crimes against humanity. Reformulation of the imposition of the death penalty for perpetrators of criminal acts of corruption in Indonesia in the future and in an effort to tackle corruption, the Corruption Crime Act may formulate the imposition of capital punishment on articles regulating officials who abuse their authority which results in state losses. However, in this study there are still shortcomings because it only examines the urgency of imposing the death penalty from the perspective of human rights and criminal law reform, so there is a need for comparisons from the sociological aspects of law and comparative law with countries that do not apply the death penalty for perpetrators of corruption

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