

## **The Death Penalty for Corruption Offenders in China and Indonesia (A Comparative Study)**



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**ABSTRACT:** Indonesia and China still recognize the death penalty in their positive laws. One of the death penalties that can be applied to convicted criminals is corruption. Corruption is an extraordinary crime that certainly harms the state and the wider community. The problem taken here is how to identify and analyze the death penalty for corruption and its application in Indonesia and China? This research uses normative legal research as well as a comparative study. The result of this research is that there are similarities and differences between the regulation and application of the death penalty in Indonesia and China. The fundamental difference is that the death penalty in China is regulated in the Criminal Code while the death penalty in Indonesia is specifically regulated in the law.

**KEYWORDS:** Comparative Study, Death Penalty, Corruption.

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### **I. INTRODUCTION**

Every human action has both positive and negative consequences. Negative actions in a society are commonly referred to as crimes or offences. Crime is a manifestation of deviant behaviour that can disrupt social order and pose a threat to society. The resulting criminal acts are prevented and threatened by the law in the form of sanctions as a form of protection for society and to reorganise the social order in an orderly manner.

Ethically, the term “Hukum” has become the national language of Indonesia, as a reference to the term law in other languages “Recht” (Dutch) and “Law” (English). Law itself is defined as rules or standards made by authorised officials that are mandatory and binding with the intention of creating order and security in society (Soedjono, 2002:21). In creating order and security in society, the law regulates the forms of punishment or sanctions as a preventive effort against crimes/violations that disrupt social life. Criminal sanctions are given according to the type of crime or offence committed. According to the theory of punishment, there are two classifications of sanctions, namely utilitarian and retributive. Utilitarian theory states that punishment is designed to punish the offender, while retributive theory is based on Immanuel Kant's view that punishment is appropriate for those who commit crimes and has a deterrent effect with the aim of preventing people from doing the wrong thing (Sourabh Batar, 2021:423). Legally, a person who commits an offence or crime is punished according to the degree of guilt committed. There are two types of punishment, namely major punishment and minor punishment. The legal language is main punishment and additional punishment. One of the most severe punishments is the death penalty.

The KBBI defines the death penalty as a punishment carried out by killing, shooting and hanging the guilty (<https://kbbi.kemdikbud.go.id/entri/pidana>). Capital punishment is a sanction carried out by a choice of lethal actions (by the state) on criminals who have been found guilty by a court decision that has the force of res judicata. In essence, the death penalty is a form of sanction imposed on violators of the law, especially serious violators. The death penalty is a sentence or verdict imposed by a court (or without a court) as the most severe form of punishment imposed on a person for his or her actions.

The death penalty is still recognised and regulated in positive law by several countries, including Indonesia and China. Meanwhile, almost 130 countries in the world have implemented a moratorium and even abolished the death penalty (Abd. Ghofur, 2017:1). The concept of the death penalty is often portrayed as something cruel and a violation of human rights. Of course, this is only seen from one aspect, which is humanity according to modern world standards, without seeing the intention, reason, purpose and effectiveness (Robby Septiawan, 2016:2-3). The death penalty is one type of criminal sanction in Indonesia. The death penalty is currently the most severe sanction or punishment in the Indonesian legal system (Moh. Mahfud MD, 2010: 200). The characteristics of the death penalty in different countries are execution by crucifixion; burning; decapitation; hanging; shooting; gas chamber; electric chair; lethal injection.

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In Indonesian criminal law, the types of punishment are contained in the Criminal Code (KUHP). There are two types of punishment based on the provisions of Article 10 of the Criminal Code, namely the main punishment and additional punishment. The types of penalties are as follows Capital punishment includes: death penalty, imprisonment, detention and fine. Meanwhile, additional punishment includes: deprivation of certain rights; confiscation of certain goods; and announcement of the judge's decision (Moeljatno, 2012, 5-6). However, in the 2023 Criminal Law, the death penalty is no longer classified as the main punishment, but as a special punishment. In Chinese criminal law, the death penalty is included in Article 3 of the Chinese Criminal Code, more precisely in Article 5 on the death penalty (Moeljatno, 2012:5-6).

In terms of the practice of the death penalty, Indonesia is one of the countries that still retains the death penalty in its positive legal system, even including it in many laws. However, as a country that upholds the value of human rights, the Indonesian state applies the death penalty specifically, carefully and selectively (Lubis, et.al., 2007:35). Various considerations for Indonesia to continue to implement the death penalty are based on 5 (five) things, namely the urge to abolish the death penalty comes from the country whose citizens are executed, the influence of developed countries, the existence of large countries that recognise the death penalty (United States and China), the death penalty and its implementation is a form of sovereignty and law enforcement of the country, and the Constitutional Court as the highest judicial institution has interpreted that the death penalty is not against the Constitution in Indonesia. Considering that until now, the constitution still interprets the implementation of the death penalty in Indonesia, especially on how the implementation process for death row inmates (Lucky Nurhadiyanto, 2018:2). In Indonesia itself, in terms of corruption, the death penalty is not routinely imposed, but is an option for corruption crimes that are considered very serious, such as infrastructure projects, natural disasters, and corruption crimes against human rights. In practice, however, Indonesia has not used the death penalty against corrupt individuals.

China has sentenced former Justice Minister Fu Zhenghua to death with a two-year reprieve for corruption. Fu accepted bribes and abused his power for personal gain. Fu admitted to taking bribes totalling more than 117 million yuan, or about 12 billion rupiah. Prosecutors allege that he took bribes and abused power when he was deputy and director of the Beijing Public Security Bureau and vice-minister of public security from 2005 to 2021. He is also accused of hiding his brother, who had committed a crime. China is known for having strict rules against corrupt officials. The country wants to purge the corrupt from high to low level officials. Corrupt officials face execution if they commit corruption. This act of corruption is considered a violation of the principles of the Chinese Communist Party. China is said to execute more people per year than any other country, although Beijing claims that the number of executions has fallen steadily in recent years. Beijing does not release data on the death penalty, but Amnesty International believes that Beijing executes thousands of people each year for crimes including non-violent offences such as drugs and corruption (<https://www.cnnindonesia.com/internasional>).

According to Prof Edward, Minister of Law and Human Rights, the death penalty is not only a legal issue for Indonesia, but there are social issues, political issues and religious issues. Regarding religious issues, a random survey was conducted on 100 (one hundred) people in Indonesia with the first question being whether you agree with the death penalty and 83 (eighty three) people agreed with the death penalty. The second question was whether you agree that corrupt people should be sentenced to death and 83 (eighty-three) people agreed. The last question was whether you agree that terrorists should be sentenced to death and only 20 (twenty) people agreed (<https://www.cnnindonesia.com/nasional>). It can be concluded that the issue of the death penalty is not only a legal issue, but is also related to religious and social issues. Here there are biases that can make all decisions and attitudes inaccurate. Bias also affects the way the self sees and responds to diversity. People who agree with the death penalty (pro-death penalty) and those who do not agree with the death penalty (contra-death penalty) are in the same position.

In its development, Indonesia and China regulate the death penalty as one of the threats for corruption crimes. Indonesia regulates the death penalty for perpetrators of corruption under Law No. 31 of 1999 on the Eradication of Corruption, as amended by Law No. 20 of 2001 (Corruption Law), hereinafter referred to as the Corruption Law. Article 2 of the Corruption Crime Law provides that corruption may be punished by the death penalty under certain circumstances. These circumstances are dangerous conditions, such as when there is a national natural disaster or when the country is experiencing an economic and monetary crisis. (Warih Anjari,2020,433). In addition, China divides the type of punishment imposed into two, namely the main punishment and the additional punishment. This formulation is in line with the provisions of the Chinese Criminal Law, called the "Criminal Law of the People's Republic of China". Unlike Indonesia, which specifically regulates the crime of corruption, the Chinese Criminal Code contains the crime of corruption in Articles 383, 387, 388A, 390, 390-1, 391, 392, 393, 395 and Article 396 (Criminal Law of the People's Republic of China, Articles 33 and 34).

Based on the description of the death penalty for corruptors in Indonesia and China, this research aims to present a comparative study to identify similarities and differences that are useful to reveal the background of certain legal provisions in dealing with the same problem from two different countries.

## II. RESEARCH PROBLEM

The researcher believes that the death penalty is a discursive confrontation that continues to be a process in the interpretation of the

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law itself. The law is for society, not society for the law, so the law must be studied in accordance with the direction and development of society. There are many opinions that the death penalty is no longer relevant in modern law. The problem in this research is: How to identify and analyse the death penalty for corruption and how it's applied in Indonesia and China?

### III. RESEARCH METHODS

This research makes use of normative legal research (Theresia Anita Christiani & Aprillina Mathilda Lako, 2023). Peter Mahmud Marzuki defines normative legal research as a process of finding legal rules, legal principles and legal doctrines to answer legal questions faced by society (Marzuki, 2005: 47). This research will use a comparative study approach, which provides an assessment of each legal system and evaluates the existence of general principles by comparing methods. Statutory approach, namely by examining all laws and regulations related to the legal issues under study (Peter Mahmud Marzuki, 2015: 133). The data used are secondary data consisting of primary legal materials (consisting of legislation, official records or minutes in the making of laws and regulations, and judges' decisions (Soerjono Soekanto, et.al., 2014: 54) and secondary legal materials (legal opinions from books, journals, research reports, newspapers or scientific magazines). Data collection is carried out using literature studies, namely the study of various reference books and the results of previous similar studies that are useful for obtaining a theoretical basis for the problems to be studied (Sarwono: 2006). Data analysis is carried out using qualitative methods. Conclusions were drawn based on the data analysis. How conclusions are drawn in this study using deductive techniques (general-specific)

### IV. RESULT AND DISCUSSION

#### A. The death penalty in Indonesia and China

Historically, the death penalty has a long history. In ancient times, the death penalty was reserved for the crime of murder and other crimes of equal severity based on retaliation for a very cruel act of a person (Prodjodikoro, 1976: 175). The Hammurabi period (1694 BC) for the first time established a notorious criminal law, which was included in the Hammurabi Codex, which is known as the most important and widespread law book (Glissen, et.al., 2005: 58) Criminal law in this era was notorious, in the form of revenge, death penalty, hand and finger hooding (Glissen, et.al., 2005: 58). After the VOC entered Indonesia, the death penalty was introduced and applied based on placards or local customary law (Kania, 2014: 164).

China has practised capital punishment for more than 4,000 years. Capital punishment in China dates back to the Qing Dynasty. In the Qing Dynasty, the legal system was still linked to the morals, customs and education necessary to maintain social order, so the harshest punishments were meted out for crimes that were considered a threat to survival. Punishments during the Qing Dynasty included strangulation, decapitation and death by slow killing

([https://p2k.stekom.ac.id/ensiklopedia/Hukuman\\_mati\\_di\\_Tiongkok](https://p2k.stekom.ac.id/ensiklopedia/Hukuman_mati_di_Tiongkok)). Although the death penalty has been abolished in many countries, it is still used in China because it is considered effective as a general deterrent. There are popular Chinese proverbs to illustrate the effectiveness of the death penalty, namely "Executing one deters a hundred" and "Killing the chicken scares the monkey" (Jiang, et.al., 2007). The sayings "tooth for tooth" and "the murderer must be killed" have also long been used in China to remove criminals from society (Liang, et.al., 2006).

The death penalty in China's criminal system is reserved for criminals who have committed extremely serious crimes. For criminals sentenced to death, a two-year stay of execution may be imposed concurrently with the death penalty if the execution is not carried out immediately. If a local court proposes to impose the death penalty, it must submit the proposal to the Supreme People's Court (SPC) for reconsideration and approval. In addition, the death penalty may not be imposed on a person who was under the age of 18 at the time of the crime or on a woman who is pregnant during the trial. Crimes punishable by death in China are:

- a. Treason
- b. Armed rebellion and insurrection
- c. Stealing, espionage, acquisition and unlawful disclosure of state secrets and information abroad
- d. Providing material support to the enemy
- e. Distribution of harmful substances
- f. Dangerously endangering public safety
- g. Hijacking an aircraft
- h. Illegal manufacture, trade, transport, delivery or storage of weapons, ammunition or explosives.
- i. Manufacture and sale of counterfeit medicines; intentional homicide
- j. Corruption
- k. Trafficking in Women and Children
- l. Gathering a mob to storm a prison with weapons
- m. Destruction of weapons and equipment, military installations and military communications
- n. Bribery
- o. Disobeying orders in time of war

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p. Mutilating and looting the population in time of war

In Indonesia, the procedure for the execution of the death penalty is regulated in only one article of the Criminal Code, namely Article 11, which is formulated by R. Soesilo as follows The execution of the death penalty imposed by the court in the General Court or Military Court shall be carried out by shooting in accordance with the provisions of Law No. 2 (Pnps) of 1964 (Sughandi, 1980: 14). Prior to the provisions of Law No. 2 (Pnps) of 1964, the death penalty was carried out by the executioner at the place of hanging by tying a noose around the neck of the convicted person, tying the noose to the gallows and dropping the board on which the person stood. Before Law No. 2/Pnps/1964, the death penalty was carried out by hanging. Technically, the executioner tied the rope tied to the gallows to the convict's neck and then dropped the board on which the convict stood so that the convict hung (Jacob, 2017: 99).

The death penalty is available in Indonesia for several crimes, namely (Hatta, 2012:330):

- a. Article 104 for treason against the President and Vice-President
- b. Article 111(2) on the offence of inciting a foreign country to hostility or war, if the hostility is carried out or the war becomes a war.
- c. Article 124(3), on the offence of aiding the enemy in time of war
- d. Article 140, paragraph 3, on the crime of treason against a king or head of a friendly state, which is premeditated and results in death
- e. Article 340, for the crime of premeditated murder
- f. Article 365, paragraph 4, on the crime of theft by violence causing serious injury or death
- g. Article 368, paragraph 2, on the crime of extortion with violence causing serious injury or death
- h. Article 444, on the crime of piracy on sea, coast or river resulting in death

In addition to the above provisions, there are several laws outside the Criminal Code that mention the death penalty for certain offenses, namely in Law No. 22 of 1997 concerning Narcotics, Law No. 31 of 1999 Jo. Law No. 20 of 2001 concerning Eradication of Corruption, Law No. 15 of 2003 concerning Terrorism, Law No. 26 of 2000 concerning Human Rights Courts, and Law No. 5 of 1997 concerning Psychotropic. An example of an offence for which the death penalty may be imposed is premeditated murder. This is in accordance with the provisions of Article 340 of the Criminal Code, which states that anyone who intentionally and with premeditation takes the life of another person shall be punished by death or life imprisonment or a maximum of twenty years' imprisonment for premeditated murder. An example of a case of premeditated murder is the case of the former head of the Police Professional and Security Department (Kadiv Propam), Ferdy Sambo, who was sentenced to death for the premeditated murder of his aide, Nofriansyah Yosua Hutabarat or Brigadier Joshua. The panel of judges at the South Jakarta District Court (PN) found that Ferdy Sambo had been legally and convincingly proven guilty of the premeditated murder of Brigadier J, as charged by the prosecution. However, on appeal, the Supreme Court commuted the death sentence to life imprisonment.

### B. Comparative analysis of the death penalty for corruption in Indonesia and China

#### 1.Regulation

In Indonesia, the principle that the main penalty can be imposed separately or together with an additional penalty, while the additional penalty cannot be imposed separately from the main penalty, but must be imposed together with the main penalty (Indonesia). Composition of the main penalty articles: the death penalty occupies the top position from the most severe to the least severe (Indonesia), while the death penalty occupies the bottom position from the most severe to the most severe. Additional penalty: included in article 10 together with the main penalty (Indonesia). Indonesia has an independent institution specialised in dealing with corruption offences, the Corruption Eradication Commission (KPK). Indonesia has an independent institution specialised in dealing with corruption offences, the Corruption Eradication Commission (KPK).

From a legal point of view, the crime of corruption is called "economic crime", which belongs to the category of extraordinary crimes that consume public funds and harm the state. This is why it is regulated separately, outside the Penal Code. Law No. 20 of 2002 on the Anti-Corruption Commission. Law No. 20 of 2001 amending Law No. 31 of 1999 on the fight against corruption. In particular, this law also explains the regulation of minimum and maximum penalties in the following articles: Article 2, Article 3, Article 5, Article 6, Article 7, Article 8, Article 9, Article 10, Article 11, Article 12, Article 12A-B-C and Article 13 (Rafsanjani, 2022:144).

In China, additional punishment can be imposed individually (China). In China's Criminal Law, the provisions on the main punishment and the additional punishment are regulated separately, the main punishment is regulated in Article 33, while the additional punishment is regulated in Article 34. China has special institutions called the National Supervision Commission (NSC) and the Central Commission for Discipline Inspection (CCDI). In addition, China's legal system regulates the crime of corruption in the Criminal Law of the People's Republic of China or can be called the Chinese Criminal Code. The crime of corruption is found in Article 383, Article 387, Article 388A, Article 390, Article 390-1, Article 392, Article 393, Article 395 and Article 396 (Awaliyah, et.al., 2015: 75).The regulations on minimum and maximum penalties are also regulated in the following articles: Article 383, Article 387, Article 388A, Article 390, Article 390-1, Article 391, Article 392, Article 393, Article 395, and Article 396 (Awaliyah,

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et.al.,2015:75).

### 2. Death penalty for corrupters

In Indonesia, it is enforced when the conditions are met: crisis and natural disasters, crisis and monetary, etc.; Article 2(2) of Law No. 20 of 2001 amending Law No. 31 of 1999 on the Eradication of Corruption provides for the death penalty. In China, the death penalty for corrupt persons is provided for in the Criminal Law of the People's Republic of China (Chinese Criminal Law), specifically in Articles 383, 386 and 394. In Article 383, the maximum penalty is death and the minimum penalty is administrative punishment. Confiscation of property. Acceptance of bribes, subject to Article 383. Article 394: for state officials who accept bribes, subject to Articles 382 & 383.

### 3. Execution

In Indonesia, the death penalty is carried out by hanging by the executioner (Article 11 of KUHAP), while the new Article 99(2) & (3) of the Criminal Code is carried out in a closed place and executed by firing (see also Presidential Decree No. 2 of 1964). The place of execution is determined by the local court. The execution procedure is as follows: the Public Prosecutor is the leader; the condemned's bodyguard is required to keep a distance from the condemned; the commander of the firing squad gives a preparatory signal by firing at the heart as a target; with a swing of the sword, the commander gives the order for the squad to fire. Place of execution: Indonesia: determined by the judiciary itself. one way, namely Indonesia Just shoot. Method of execution: Indonesia When the court decision is final.

In China, the procedures are contained in the PRC Procedural Law: Article 212 of the Chinese Criminal Procedure Law of 1979, as amended on 14 March 2012, stipulates that there are two ways to carry out the death penalty: injections and shots. As for the place, it can be carried out at the place of execution or at a place designated by the condemned person. Regarding the procedure, it is obligatory to check the identity and ask for the last message before the execution; if mistakes or new facts are found before the execution, the execution must be suspended; and the execution procession is carried out in private and the execution is announced to the public.

### C. Death penalty reform in Indonesia

In the end, Indonesia opted for a middle way on the death penalty by including the death penalty in the qualification of special punishment. This means that if the condemned person behaves well in prison for 10 (ten) years, there is a possibility to change the death penalty to life imprisonment. Indonesia has taken a middle ground between the pros and cons related to the death penalty by still enforcing the death penalty and giving 10 (ten) years probation to the convicts. This leaves the concern that while the death penalty exists under Indonesian law, many convicts sentenced to death are still waiting for their turn to be executed, let alone in the future after the new penal code is enacted. The drafters of the new penal code believe that all people are entitled to a second chance to repent and reform. This is one of the reasons why there is a suspended sentence for those sentenced to death. The existence of the death penalty in the new Penal Code, according to Barda Nawawi Arief, is to avoid irrational emotions of personal/community revenge; it is considered wiser to have the death penalty still available in the law (Arief, 2005: 289).

The judge imposed the death penalty on the basis of the new Criminal Code, namely Article 100 of Law No. 1 of 2023, with a suspended sentence of 10 years, taking into account the defendant's repentance and the hope of self-correction or the defendant's role in the crime. This suspended death penalty must be stated in the court decision. The 10-year probation period begins 1 day after the court decision becomes final. If the convicted person shows commendable attitude and behaviour during the probation period, the death penalty may be commuted to life imprisonment by presidential decree after the Supreme Court has considered the matter. On the other hand, if the convicted person does not show commendable attitude and behaviour during the probationary period and there is no hope for improvement, the death penalty can be carried out by order of the Prosecutor General. The death penalty is not included in the basic structure of punishment in the new Criminal Code. The death penalty is stipulated in a separate article to show that this type of punishment is truly special as a last resort to protect society. Death penalty is the most severe punishment and must always be imposed as an alternative to life imprisonment or a maximum of 20 (twenty) years imprisonment. The death penalty is imposed with a probationary period, so that during the probationary period it is expected that the convict will be able to reform himself so that the death penalty is not necessary and can be replaced by life imprisonment.

## V. CONCLUSION

The use of the death penalty in corruption cases in China and Indonesia has similarities and differences. The similarity lies in the fact that corruption itself is an extraordinary crime and is supervised by an independent institution. The difference is that in Indonesia, the death penalty can be imposed on corruptors when the country is in a state of emergency, such as natural disasters and currency crises, while in China, the death penalty is imposed based on the amount of corruption and other aggravating circumstances. Both countries agree that corrupt people should be shot, although there are other methods in China. In Indonesia, the place of execution is decided by the court, while in China it is decided at the place of execution and at the request of the convict. Execution process: it is already finalised while in China, if before the execution there are facts or possibilities that lead to mistakes, then the execution must be postponed and reported to the Supreme Court for decision.

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There are pros and cons to its use. However, efforts to prevent corruption through fair and transparent law enforcement and good governance are key factors in the fight against corruption. Unfortunately, Indonesia is not like China in actually enforcing the death penalty. Indonesia only has laws that can impose the death penalty on corrupt people, but in practice it has not been carried out or implemented.

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