

Review Article

Analysis of the Implementation of the Death Penalty in Corruption Cases in Indonesia

Emirza Henderlan Harahap

Dosen Prodi Hukum Universitas Deli Sumatera Medan, Indonesia : emhenhar@gmail.com

*Corresponding Author : Emirza Henderlan Harahap

Abstract This study discusses the phenomenon of increasing corruption cases in Indonesia, which is caused by the lack of effective criminal penalties. Although Law No. 20/2001 concerning the Eradication of Corruption regulates the threat of the death penalty for perpetrators of corruption, in practice it has never been implemented. This study uses the approach of the law enforcement system theory and the theory of punishment, with normative legal methods and literature studies. The results show that the difficulty of implementing the death penalty in corruption cases in Indonesia is caused by the pros and cons and rejection from the community and law enforcement. This finding indicates the importance of reforming the death penalty policy for perpetrators of corruption to provide a deterrent effect and prevent similar cases in the future. Therefore, this study recommends improving the law enforcement system and more effective anti-corruption policies.

Keywords: Corruption, Death Penalty, Policy.

1. Introduction

A Policy in Social Policy includes law enforcement, which strategically needs to be implemented through three (3) stages, namely the legislative stage, the legal implementation stage, and up to the execution stage. (Barda Nawawi Arief. 2015) With the increasing cases of corruption, among the most talked about legal policies today is where the policy of a formulation of the death penalty, which is actually expected to provide a deterrent effect for perpetrators of corruption.

The term "corruption" is very common in Indonesia. Indonesia has formed a special institution to handle corruption cases and eradicate them. The Corruption Eradication Commission (KPK). The Corruption Eradication Commission (KPK) was established based on the provisions of Law Number 30 of 2002. The establishment of the KPK was also supported by Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which was later revised through Law Number 20 of 2001. Both regulations provide a legal basis for the KPK to carry out its functions in eradicating corruption effectively. (hereinafter abbreviated as UUTPK) is the basis for criminalizing criminal acts of corruption.

Corruption is a cause of great loss for all aspects, destroying even the general public. The crime of corruption can trigger class resentment sentiments among marginalized communities, worsening social inequality. In response to this, Prof. Mahfud MD, Chief Justice of the Constitutional Court, proposed death penalty for corruptors. This view is also supported by the fatwa of the 2012 National Conference of Ulama and the NU National Conference, emphasizing the importance of eradicating corruption firmly and effectively. stated that this can be applied to all those who commit corruption, not just those who bankrupt the country.

Corruption cases themselves are cases that have existed since ancient times and are very

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difficult to eradicate for several countries including Indonesia, the inefficiency of enforcing punishment for perpetrators of corruption crimes has caused this crime to often recur every year, even with fantastic state losses. Although it has caused very high state losses and caused prolonged social problems in society, it does not make the perpetrators of corruption receive a punishment commensurate with their actions. In general, in Indonesia itself, perpetrators of corruption crimes can be subject to the death penalty for their actions. In Indonesia, perpetrators of corruption can be subject to the death penalty based on the Criminal Code. This provision is a legacy of the Dutch Criminal Code which has been implemented in the Dutch East Indies since 1918, but basically the death penalty has been removed from the Dutch criminal system since 1870. (Sahetapy, JE. and Pohan. Agustinus. 2017).

Indonesia is one of the countries that still implements the death penalty, especially in corruption cases. This is regulated by Law No. 20/2001 concerning the Eradication of Corruption. This provision confirms that the death penalty can be given as the highest sanction for perpetrators of corruption that have a significant impact on state and community finances. However, in fact, the death penalty for corruption crimes has almost never been applied to perpetrators of corruption. Most Indonesian people reject the imposition of the death penalty and support the abolition of the death penalty in the Indonesian criminal justice system. They argue that the implementation of Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption has not achieved the expected effectiveness in providing a deterrent effect on perpetrators of corruption and taking action to combat a person's intention to commit corruption.

Although the Indonesian state already has laws that regulate the death penalty for corruptors, it always arises. One of the most common objections to the application of the death penalty is the risk of irreparable judicial error. This occurs when a judge's decision is based on false evidence or incorrect information, resulting in an unfair and irreversible execution. (Wirjono Prodjodikoro, 2021) A place that must maintain related to the death penalty, it must basically return to the intent of the criminal punishment itself. In some countries, the death penalty has been abolished because they believe that the death penalty, according to Cesare Beccaria, is a counterproductive paradox of justice, because it eliminates the opportunity for perpetrators to change and improve themselves, and strengthens human cruelty and barbarity through the legalization of extreme actions.

The popularity of the death penalty that still persists is only useful to provide threats but has never been fully implemented. In fact, the truth of the context that is to be conveyed is to provide an understanding to the Indonesian people about the framework of contemporary international law that tends to abolish the death penalty. For supporters of the abolition of the death penalty, sentencing convicts to death is considered inhumane because it involves two stages of suffering: imprisonment and execution. In addition to violating the right to life, the death penalty also contradicts the purpose of the law itself, which is to change the behavior of criminals for the better. On the contrary, the death penalty only frees the perpetrator from responsibility. and society will not experience any change. In criminal law, punishment is an important component, because it is considered the highest point of all stages of responsibility for criminal acts. According to Chaerul Huda, criminal law without punishment means declaring someone guilty without any definite consequences for the actions they have taken.

The inclusion of the death penalty for corruptors in Law No. 20 of 2001 is intended to create a deterrent effect for perpetrators and other parties who have the potential to be involved in criminal acts of corruption. This provision aims to provide a legal basis for law enforcers to impose the death penalty on perpetrators of corruption who fulfill the elements as stipulated in Article 1 paragraph (1) of the Law. In addition, as conveyed by Romli Atmasasmita. This shows that the death penalty can be a significant deterrent if applied properly. Certainly, Indonesia can take this example by imposing the death penalty on those who commit corruption. Although there are laws that provide a strong legal basis, these laws only speak in parliament and are not effective in providing a deterrent effect on corruptors.

In the explanation of the background above, the author will focus on discussing and reviewing whether the application of the death penalty is effective in minimizing the level of corruption and how urgent it is to apply the death penalty to perpetrators of corruption in Indonesia.

2. Research Methods

This research approach uses normative juridical, which collects research data by looking at documents or literature used to find solutions to research problems. This normative juridical method was chosen because it will allow researchers to find the truth by using inductive and standard methods to measure facts that are in accordance with legal studies. This study aims to refine and explain current assumptions through document and literature analysis. The research methodology involves: Data Sources such as Legal sources and related laws, Other written sources. And Research Process Data collection through library research. Data analysis to answer research questions, Drawing conclusions based on the results of the analysis and Verification of research results through a rationalization process. Which is the main focus of this research aims to provide a significant contribution to the understanding and handling of corruption cases in Indonesia with the implementation of the death penalty.

3. Results and Discussion

The effectiveness of implementing the death penalty in reducing corruption in Indonesia.

One of the most severe criminal penalties is the application of the death penalty, which involves the removal of the perpetrator's life as a result of his criminal act. With the increasing understanding of human rights, the death penalty is also increasingly controversial along with the increasing understanding of Human Rights (HAM). However, the death penalty is still applied in Indonesia. for crimes in the Criminal Code and outside the Criminal Code, unless there are special provisions. For example, premeditated murder (Article 340 of the Criminal Code) and other special crimes such as the Law on the Prevention and Eradication of Corruption (UUTPK), regulate the threat of the death penalty. (Lubis, 20019).

In Indonesia, the implementation of the death penalty is still pending. This is due to many factors, such as the inability of the convict to exercise all his rights. The President weakens the influence of deterrence and repentance by not postponing the death penalty. As long as the rights of the convict have been fulfilled, the death penalty must be carried out immediately, in accordance with the text of the decision. Regarding the effectiveness of the implementation of the death penalty for perpetrators of corruption, if it is applied as much as possible to perpetrators of corruption, it could provide insight and a deterrent effect for perpetrators who intend to commit corruption. later on. But in fact the application of the death penalty has never really happened in Indonesia against perpetrators of corruption. Even the punishment received by perpetrators of corruption is often only a prison sentence of several years which is even considered very far from giving a deterrent effect.

The policy of implementing Law No. 20/2001 concerning Amendments to Law No. 31/1999 concerning the Eradication of Corruption stipulates the death penalty for corruptors who meet certain criteria. those who commit corruption in Indonesia. However, the policy stipulated in the law still ignores a number of problems that often lead to rejection of the death penalty policy. However, the "good" sentencing standard for corruption convicts is still considered ineffective in providing a deterrent effect for the perpetrators. (Koko Arianto Wardani and Sri Endah Wahyuningsih, 2017) This fact can be seen from the fact that there are still many death penalty sanctions imposed by law enforcement that have never been actually imposed in the Gayus Tambunan case. With these bad facts, the author hopes that the death penalty is truly sanctioned for corruptors. So that there are no more criminals roaming around out there even though they have or are still serving their sentences for the corruption they have committed.

Over the years, the implementation of the death penalty has brought many responses, both good and bad, depending on the needs of how to see it. Over the years, the issue of the death penalty has also been debated. controversial because two ideas have the same basis but produce different results. (Moses Janrry Wotulo Wempie Jh. Kumendong, Noldy Mohede, 2021) In addition, it is controversial because Since the death penalty emerged, there have been two clearly different or conflicting lines of thought. There is no agreement on the best method to implement the death penalty, which makes the situation even more complicated. Although starting from the same foundation, two thoughts can reach different conclusions because they are influenced by other factors such as perspective, interpretation and context. This is

reflected in the debate over the death penalty in Indonesia, which remains a controversial issue.

The effectiveness of the application of the death penalty for defendants who are caught in a crime, some are accepted but some are rejected. Some who accept it have various reasons, including:

- They argue that the application of the death penalty is more effective than other punishments because it has a definite effect on a crime;
- The application of the death penalty reduces the budget more than other sanctions;
- The death penalty can overcome the possibility of revenge that will arise against the accused;
- The death penalty can provide concrete certainty. (Jacob, 2017).

Through the imposition of the death penalty for perpetrators of corruption, it is hoped and desired that the impression of punishment in the form of giving the impression of deterrence is to apply a sense of deterrence to the actions taken by the perpetrators in terms of corruption. The purpose of this deterrence is depicted in the contents of the UUTPK, namely: for this Law to determine the threat of a special minimum sentence and a higher fine to achieve a more effective goal of preventing and eradicating corruption, and its threat and termination with the death penalty which is the most frightening sentence but is rarely applied.

From the end of the discussion that the author can get in the results related to the effectiveness of the application of the death penalty to reduce the number of corruption crimes, the author is of the opinion that the imposition of the death penalty in the Law on the Prevention and Eradication of Corruption Crimes (UUTPK) is an effective strategy to eradicate corruption, create legal certainty, justice, and benefits for the community. However, this death penalty is only applied to certain corruption crimes as regulated in Article 2 paragraph (2) of the UUTPK. which are carried out in "certain circumstances". This means that the imposition of the death penalty only applies to corruption carried out under certain conditions. Although the death penalty has been set for corruption perpetrators since 1999, not a single one has been sentenced to death (Yuhermansyah, E; Fariza, 2017).

The deterrent effect of the death penalty lies in the fact that it is considered the harshest punishment possible by the legal system. The death penalty clearly shows that the state will not allow corruption and is ready to give the harshest punishment to those who do it. This can increase the awareness of officials and civil servants to avoid corruption. The death penalty has been proven to reduce corruption in Indonesia. This study shows through a literature review and theoretical analysis that potential perpetrators of corruption are very afraid of the threat of the death penalty. Many legal experts and anti-corruption practitioners agree that the death penalty is the most severe punishment that can suppress the intention to committing corruption. According to some sources, the death penalty can also show the state's firmness in handling corruption cases.

The urgency of implementing the death penalty against perpetrators of corruption in Indonesia

Among the countries with the highest corruption and corruption crime in Asia, Indonesia is in the highest position (Indonesia Fifth Most Corrupt Country In Southeast Asia In 2022, nd). This shows how difficult it is to combat this crime. In response to this situation, the Indonesian government issued Law No. 20/2001 concerning Amendments to the Corruption Eradication Law (Amendment to Law No. 31/1999). (Law No. 20 of 2001, nd). By introducing heavier sanctions and a stricter monitoring system, this law aims to strengthen the legal framework to combat corruption. In addition, this regulation also expands the definition of corruption and gives law enforcement agencies such as the Corruption Eradication Commission more power. This law is expected to accelerate efforts to eradicate corruption, promote justice for the people, and maintain the integrity and transparency of government. Certain circumstances referred to in this provision may be used as a reason to punish perpetrators of corruption, namely when they are punished for funds used to deal with

dangerous situations, natural disasters, widespread social damage, economic crises and reducing corruption.

In Indonesia, the lack of harshness in the effects of criminal sanctions given and applied has caused the crime of corruption to increase rapidly, basically and should be fully implemented by Indonesia, the urgency of the death penalty against someone who commits a crime of corruption. (Hiariej, E. Q, 2009) The implementation of the death penalty in Indonesia is regulated through Article 10 of the Criminal Code and Law Number 2 PNPS 1964. However, the effectiveness of the death penalty in preventing corruption remains a topic of debate in legal and social studies. Or in a more formal version: Implementation of the Death Penalty in Indonesia The implementation of the death penalty in Indonesia is regulated through clear legal provisions. Article 10 of the Criminal Code stipulates the death penalty as the most severe type of principal punishment. In addition, Law Number 2 PNPS 1964 regulates the procedures for implementing the death penalty. However, the effectiveness of the death penalty in preventing corruption is still a topic of debate among legal and social academics. The death penalty is considered a form of punishment that the most severe in theory. It is expected to intimidate and deter individuals who commit violations that harm the state. Nevertheless, the death penalty in corruption cases must be examined from various perspectives.

The application of the death penalty, although very important in its application to corruption crimes, many people and human rights organizations strongly oppose the death penalty under any circumstances. This is despite the fact that there are several arguments in favor of the application of the death penalty for corruption crimes. They argue that the death penalty violates human rights, such as the right to life and the right to freedom from cruel, inhuman, or degrading treatment. In addition, this perspective emphasizes the possibility of judicial error and questions how effective the death penalty is in preventing criminal acts. In connection with the emergence of the threat of the death penalty for corruption crimes in Indonesia, there are several things that need to be considered.

According to Eddy OS Hiariej, there are five factors that influence the implementation of the death penalty. First, there is no religious teaching that prohibits the implementation of the death penalty; the death penalty is still considered to have a deterrent effect. This argument also comes from the assumption that *crimina morte extinguuntur*, which means that the death penalty can eliminate crime, and *mors omnia solvit*, which means that the death penalty solves all problems. Second, the death penalty only applies to a very high crime or a crime that is indeed committed by a plan that is prepared and is considered very dangerous and sadistic beyond the limits of humanity, narcotics, terrorism, corruption, and human rights violations are included in this category of extraordinary crimes (Hiariej, 2016).

AchmadAli stated that the debate on the death penalty has been going on for centuries, with many arguments for and against it in the 18th century. In the 18th century, Italy Baccaria opposed the death penalty because he believed that killing was a despicable thing and life could not be taken legally. In Indonesia, many people oppose detention because it is considered a violation of human rights. They argue that the 1945 Constitution, Article 28 of the Second Amendment, states that "everyone has the right to life and the right to defend his life," which means that the right to life is a right that cannot be reduced under any circumstances.

Article 2 paragraph (2) of the Law on the Prevention and Eradication of Criminal Acts of Corruption (UUTPK) states that perpetrators of corruption can be sentenced to death if they meet the criteria of "certain circumstances". These certain circumstances are explained in the Explanation of Article 2 paragraph (2) of the UUTPK, which includes special situations that increase the gravity of criminal acts of corruption, namely when corruption occurs: when a country is in a dangerous condition as stipulated in applicable laws; when a national disaster occurs; as Therefore, the law has been normatively established as a basis for applying the death penalty for perpetrators of corruption. In other words, there is no longer any doubt about the legalization of the application of the death penalty for perpetrators of criminal acts of corruption.

One of the punishments that can be given to perpetrators of corruption according to Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption (UU

Tipikor) is life imprisonment. However, in fact, it is rarely used, because many major corruption cases only end with a few years in prison, and the perpetrators often receive compensation.

Law No. 20/2001 on Amendments to the Law on the Eradication of Corruption regulates several types of sanctions for corruption defendants. These sanctions include imprisonment, the death penalty in certain cases, fines, and additional sanctions such as revocation of certain rights. In addition, there are also administrative sanctions in the form of revocation of office and public rights, as well as strict supervision. Restorative sanctions are also imposed, such as the return of money or goods from corruption and the provision of compensation to the state. These sanctions can be imposed singly or cumulatively depending on the gravity of the corruption crime and the judge's decision: (Ibid.)

- Article 2 paragraph (2) of Law No. 20/2001 concerning Amendments to the Law on the Eradication of Criminal Acts of Corruption stipulates that the death penalty may be imposed on perpetrators of corruption who commit crimes under certain circumstances, as referred to in paragraph (1). These certain circumstances include special situations that increase the gravity of criminal acts of corruption.
- Imprisonment is one of the criminal sanctions in Law No. 20/2001 concerning Amendments to the Law on the Eradication of Criminal Acts of Corruption, which is given to perpetrators of corruption according to the level of error and its impact. are as follows:
 - ✓ Based on Article 2 paragraph (1) of Law No. 20/2001 concerning the Eradication of Criminal Acts of Corruption, it is stated that perpetrators of corruption who enrich themselves or others by harming state finances are subject to a prison sentence of 4-20 years and a fine of IDR 200 million - IDR 1 billion.
 - ✓ Based on Article 3 of Law No. 20/2001 concerning the Eradication of Criminal Acts of Corruption, it states that anyone who abuses authority or position to benefit themselves or other parties, thereby harming the state's finances or economy, is subject to life imprisonment or imprisonment of 1-20 years, as well as a fine of IDR 50 million-IDR 1 billion.
- Additional Criminal Procedures, The additional criminal procedures referred to include:
 - ✓ Confiscation of movable and immovable property obtained from criminal acts of corruption, including companies owned by convicts and replacement assets, can be confiscated and used as evidence or returned to the state;
 - ✓ Payment of compensation according to the value of assets resulting from corruption.
 - ✓ Company closure for a maximum of one year.
 - ✓ The revocation of certain rights and benefits from the government.
 - ✓ Confiscation and auction of property to pay compensation if not paid within one month.
 - ✓ Additional imprisonment if assets are insufficient to pay compensation, does not exceed the maximum threat of the principal penalty.

Nevertheless, the Indonesian justice system remains inefficient. This is because the police, prosecutors, advocates, and judges who are responsible for implementing the death penalty for corruption perpetrators are not fully accountable. As a result, a large number of corruption convicts continue to receive sentences that are not commensurate with their crimes. Overall, the death penalty in Indonesia shows a strong commitment to combating corrupt corruption. That perpetrators who are proven guilty can be given strict punishment. Nevertheless, the weakness of the judicial process caused by the lack of responsibility and integrity of law enforcement officers shows that our legal system still needs much

improvement.

To ensure that every decision made reflects true justice and provides maximum deterrent effect, deep reform is needed in the police, prosecutors, advocates, and judges. Therefore, the public can trust the legal system again and corruption can gradually disappear from Indonesia. Without the participation and real action of all parties involved, the fight against corruption will only be rhetoric without results. Therefore, to achieve this goal, reform and strict supervision of law enforcement officers must be a top priority. justice and prosperity for all Indonesians

The author argues that the death penalty plays an important role in the Indonesian criminal law system, especially if it is applied to corruption perpetrators by the Indonesian Government, showing a strong commitment to combating corruption by implementing the death penalty for corruption perpetrators who have a wide and serious impact on society, as regulated in Law No. 20 of 2001, which is detrimental to state finances and damages social and economic order. Severe sanctions, such as the death penalty, are expected to provide a major deterrent effect and prevent future corruption. Reform of the legal system and increasing the integrity and accountability of law enforcement officers must continue to improve the ability of law enforcement to combat corruption. Indonesia cannot achieve a free society unless it takes firm and comprehensive action against corrupt practices and ensures justice and welfare for all its citizens.

The death penalty has been proven to reduce corruption in Indonesia. This study shows through a literature review and theoretical analysis that potential corruptors are very afraid of the threat of the death penalty. Many legal experts and anti-corruption practitioners agree that the death penalty is the most stringent punishment that can suppress the intention to commit corruption. According to several sources, the death penalty can also show the state's firmness in handling corruption cases.

4. Conclusion And Suggestions

Based on the analysis conducted by the author, it can be concluded that Article 2 Paragraph (2) of the Corruption Crime Law allows judges to impose the death penalty on corruption perpetrators in emergency conditions. However, the formulation of this article still allows for other alternative punishments. Therefore, changes need to be made with replacing the word "can" with "must" or "obligatory" in Article 2 Paragraph (1) to clarify and strengthen the death penalty for corruption crimes. This change aims to achieve a deterrent effect and ensure alignment with national and international provisions.

The application of the death penalty in the Indonesian criminal law system is the most severe sanction for serious crimes such as corruption, premeditated murder and terrorism. Law No. 20/2001 on the Eradication of Corruption stipulates severe sanctions for perpetrators of corruption, including the death penalty, to prevent crime, protect society and uphold justice. The application of the death penalty for perpetrators of corruption also aims to improve the integrity of law enforcement officers. However, the judicial process needs to be improved by strengthening responsibility, transparency, accountability, protection of the rights of the accused and improving the quality of investigation and prosecution. Thus, the application of the death penalty can be effective in preventing corruption and upholding justice. To ensure true justice and reduce the deterrent effect, reform of the judicial system that includes the police, prosecutors, lawyers and judges is very important.

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