



The Policy Of The Death Penalty For Perpetrators Of Corruption Is Studied From A Sociological Perspective Of Law

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Abstract

Corruption as an extraordinary crime provides regulations regarding the death penalty for the perpetrators. However, the fact is that this provision has never been applied by judges in adjudicating corruption cases. Therefore, corruption continues to occur and has expanded both the mode and the perpetrators. The formulation of Article 2 paragraph (2) UUTPK relating to "emergency conditions" is difficult to fulfill its elements. The formulation of the word "can be sentenced to death", provides an opportunity for judges to impose other heaviest criminal alternatives that are not in the form of a crime of loss of life opportunity, namely imprisonment for a certain period of time; or a maximum of 20 years or life imprisonment. The purpose of this study is to determine and explain the quality of the policy formulation of capital punishment for criminals. The research method used is normative juridical, the research specification is descriptive analysis, data collection techniques through library research. The results of this study are first, a review of the sociology of capital punishment for perpetrators of criminal acts of corruption. Efforts to tackle corruption must be carried out thoroughly both for law enforcers of corruption crimes and must be completely free from the intervention of any party with a legal sociology approach.

Keywords: Corruption Crime; Death Penalty Sanctions; Legal Sociology Perspective.

A. Introduction

The popular corruption crime called abuse of power for personal gain is basically a matter of social justice. One of the essential elements of this theory of social justice is that the general well-being of a society must not be violated, meaning that the common good should not be sacrificed for personal benefit.¹ Corruption is a serious problem. These criminal acts can jeopardize the stability and security of the people, jeopardizes the socio-economic and political development, and undermines the values of democracy and morality, because sooner or later these acts will become a culture.² Therefore, corruption is a threat to the ideals of a just and prosperous society. Corruption is a domestic problem that continues to be addressed, one of which relates to the substance of the law in particular with regard to the regulation of legislation.³ Corruption itself is very difficult to treat as it is considered a rather serious disease in Indonesia. The various media have never escaped the news of corruption cases that are often consumables of Indonesian society. News of the corruption case. Efforts to prevent and eliminate corruption are very common. Both with the enforcement of laws and criminal acts of corruption often occur in executive bodies, as well as in legislative and

¹ Rahardjo, Satjipto. 2010. Sosiologi Hukum. GentaPublishing. Yogyakarta. Hlm 66

² Chazawi, Adami, 2016, Hukum Pidana Korupsi di Indonesia, Jakarta: PT. Raja grafindo Persada. Hlm 54

³ Chyntia Sami Bhayangkara, Bagaimana Aturan Hukuman Mati Bagi Koruptor di Indonesia? Bagaimana Aturan Hukuman Mati Bagi Koruptor di Indonesia? <https://www.suara.com/news/2021/12/08/172124/bagaimana-aturan-hukuman-mati-bagi-koruptor-di-indonesia>, diakses Senin 3 Januari 2022 pukul 14:45 WIB



judicial bodies.⁴ What's more, it's happening in some BUMN and ministries of non-state institutions. The phenomenon of corruption has caused people to lack confidence in the government while, in Indonesia, corruption cases have been threatened with the death penalty as provided for in Act No. 20 of 2001 on amendments to Law No. 31 of 1999 on Pemberantasan Korupsi.⁵ If the problems are clear in the current state of affairs, corruption has taken the rights of the people by force through treason, however, the law enforcement of the perpetrators is not going well. Corruptors are often punished lightly. The death penalty is one of the most severe crimes for perpetrators. This type of punishment is the death of the offender as a result of the crime he has committed. In its development, the death penalty has become controversial as the understanding of human rights increases. (HAM). The death penalty in Indonesia is still being legalized. The death penalty is regulated in the book 1 of article 10 of the Covenant as one of the basic crimes.⁶ These death penalty provisions are generic, meaning that they can be applied both to criminal acts regulated in the Covenant and to crimes regulated outside of it, unless the rules provide otherwise. One of the crimes threatened with the death penalty in the KUHP is the planned murder regulated in Article 340 KUHP.⁷ The special criminal proceedings that regulate the threat of death among them are UUTPK while the law provides the death sentence of the perpetrator.⁸ The public expects the corruptors to be severely punished, so that justice and the well-being of the people can be fulfilled. In order to resolve this problem, we can formulate a policy formula for the death penalty of corruption perpetrators in Indonesia in the future by making some exceptions and amending section 2 of Act No. 20 of 2001 on amendments to Law No. 31 of 1999 on the Suppression of Corruption. This phenomenon of corruption is losing people's confidence in the government. Because the perpetrators of corruption have taken away the rights of the people by force.⁹ So that criminal death threats against corrupt perpetrators can be carried out. Corrupt mostly in light law. The law threatens the perpetrator with the death

⁴ Aziz Syamsudin, 2011. *Tindak Pidana Khusus*, Jakarta: Sinar Grafika. Hlm 32

⁵ Hiarij, E. Q. 2009. *Asas Legalitas & Penemuan Hukum Dalam Hukum Pidana*. Jakarta: Erlangga. 53

⁶ Agustina Shinta. 2014. *Asas Lex Specialis Derogat Legi Generali Dalam Penegakan Hukum Pidana*. Depok: Themis Books. Hlm 61

⁷ Zaid Alfauza Marpaung. "Kebijakan Hukuman Mati Bagi Pelaku Tindak Pidana Korupsi Dalam Perspektif Hukum Pidana Islam". *Jurnal Advokasi*. Vol 7, No 1 (2019). DOI: <https://doi.org/10.36987/jiad.v7i1.243>

⁸ Media Indonesia. *Resolusi Membunuh Korupsi*. Retrieved January 7, 2019, from http://mediaindonesia.com/editorials/detail_editorials/1574-resolusi-membunuh-korupsi RI, (2019).

⁹ K. D. N. (2019). *Mendagri: Korupsi di Indonesia Sudah Akut*. Retrieved January 11, 2019, from <https://www.kemendagri.go.id/index.php/blog/27805-Mendagri-Korupsi-di-Putra,Indonesia-Sudah-Akut>.



penalty. The people hope that the perpetrators of corruption will be punished as severely as possible, so that justice and the well-being of the people will be fulfilled.

B. Research Method

This writing is normative law research or doctrinal law research.¹⁰ Approaches to regulation of laws or written legal materials are used by the authors to analyze the application of the death penalty to perpetrators of corrupt crimes studied in legal sociology. This method is chosen because the object is studied as a norm, i.e. Article 2 UUTPK. The type of data used by the author in this writing is secondary data that is not obtained directly from the field, but from the library study of various books, archives, documents, legislative regulations and research results.¹¹

C. Results and Discussion

1. The Concept

The concept of due process of law The Indonesian state is the rule of law.¹² As the rule of law as stated in the Basic Law of the Republic of Indonesia of 1945 (UUD NRI 1945) then it must be the law who is the supreme commander. Therefore, the supremacy of the law is highly appreciated by the children of this nation. Both by the government, the police, the prosecutors, the judges, the lawyers, the bureaucrats, the students, and the entire Indonesian society.¹³ It aims to ensure that truth and justice can be enforced with responsibility. As a rule of law, then the law must be understood and developed as a unified system. As a system, the law consists of the following elements: (1) institutional, (2) instrumental rule, (3) behavior of legal subjects with rights and obligations determined by the rule (subjective and cultural). The three elements of the legal system include (a) law making, (b) law administration, and (c) law adjudicating, or what is commonly referred to as law enforcement in the narrow sense. (law enforcement).¹⁴ Procedural due process of law is a fair, logical and decent formal process or procedure, to be carried out by the authorities, for example, with the obligation to carry a valid warrant, to give adequate

¹⁰ Ali, Zainuddin. 2008. *Sosiologi Hukum*. Sinar Grafika, Hlm 34

¹¹ Amirudin dan Zainal Asikin. 2004. *Pengantar Metode Penelitian Hukum*. Jakarta: PT. Raha Grafindo Persada. Hlm 57

¹² John Rawls sebagaimana dikutip dalam Marwan Effendy, 2014, *Teori Hukum Dari Perspektif Kebijakan, Perbandingan, dan Harmonisasi Hukum Pidana*, (Jakarta; Referensi, 2014), Hlm 74

¹³ Hamzah Andi .2012. *Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional*. Jakarta: PT. Rajagrafindo Persada. Hlm 33

¹⁴ Oksidelfa Yanto, *Penjatuan Pidana Mati Pelaku Tindak Pidanakorupsi Dalam Keadaan Tertentu(Death Penalty To Corruptors In A Certain Condition)*, Jurnal Legislasi Indonesia Vol. 14 N0. 01 -Maret 2017 :Hlm 49 – 56



notice, the right to self-defence, including the use of experts such as a lawyer when necessary, to present sufficient witnesses, to provide adequate compensation with a negotiating process or decent divorce, which must be performed while dealing with matters that may lead to a violation of fundamental human rights, such as right to life, right to freedom or freedom (liberty), right to ownership of things, right of opinion, right for legitimate religion, right at work and seeking a decent living, choice, to citizen's right to travel, his right to privacy, right on equal treatment (equal protection) and rights other fundamentals¹⁵ that the perpetrator must actually perform in due protection of the law in the implementation of all fundamental laws, the law of corruption and other rules of law, and criminal proceedings that require the execution of all the fundamental laws in particular circumstances. Because the sentencing is in accordance with the provisions of the Corruption Criminal Code. It remains to this day how the Act is implemented in its law enforcement process. As long as the Law is not inferior to the power, then the Indonesian principle as a rule of law will be well realized, because the law is not subject to power. The perpetrators of corruption are usually those who have power. Thro this time, corrupt people tend to be punished very lightly.

2. Implementation of the Death Penalty Policy against Perpetrators of Corruption Crimes Sociological Perspectives of the Criminal Prosecution Law of Corruption Known

As an extraordinary crime, a policy measure against the crime of corruption, there are some important points formulated by the legislators that can be used as a tool to create a sense of confusion for corrupt perpetrators, namely with severe penalties and a reverse basis of proof, one of which is the death penalty. The desire to suppress corruption crimes has overshadowed the thought of the existence of a policy of formulation related to the death penalty. The Anti-Corruption Institution was established on the basis of the Law No. 30 of 2002 on the Anti-corruption Commission (KPK). The basis for the penalization of corruption offences is the Act No. 31 of 1999 on the Suppression of Corruption Punishment, which has been updated by the law No. 20 of 2001 on the Amendment of the Criminal Penalization Commission (hereinafter abbreviated as UUTPK) Article 2 (2) of the UUTPC regulates the criminal threat of death for corruption perpetrated under

¹⁵ Ibid, Oksidelfa Yanto, Penjatuhan Pidana Mati Pelaku Tindak Pidanakorupsi Dalam Keadaan Tertentu(Death Penalty To Corruptors In A Certain Condition),Jurnal Legislasi Indonesia Vol. 14 N0.01 - Maret 2017 : 49 – 56



certain circumstances. Certain circumstances are a punishment for perpetrators of corrupt crimes. The criteria for reporting are when an offence of corruption is committed at a time when a country is in danger in accordance with applicable law; when a national natural disaster occurs; as a repeat of a corruption offence; or when a state is in an economic and monetary crisis. Moeljatno said that "a criminal act is an act prohibited by a provision of law, where the prohibition is accompanied by the sanction or threat of a particular criminal act against anyone who violates the prohibit."¹⁶ The absence of a death penalty in a judge's verdict despite the corrupt acts of corrupt people, has made Indonesia the most beautiful place for corrupts to commit crimes of taking the people's money illegally, in many court rulings, the judge just dropped the accused of corruption cases with low penalties. The threat of the death penalty as stipulated in the Corruption Criminal Code has been ignored.¹⁷ Until now, there have never been corrupt people charged with a criminal death threat that would then be the basis for a judge to impose a death sentence. When studied from the sociological perspective of criminal law, the death penalty provides several reasons, namely: (a) the imposition of the death sentence can cause injustice, because crime is not just a criminal law issue, but is sociological in nature and relates to the economy, politics and psychology; (b) the capital punishment is contrary to the right to life; (c) the criminal justice system is not a perfect system; (*bijzondere preventieve theorien*). The general precaution is intended to give captivity to someone other than the perpetrator so that he does not commit a crime, while the special prevention is meant to make the pervert a crime and not to repeat the crime. The death penalty is a violation of the right to life, which is a human right.¹⁸ Indonesia is one of the countries that upholds the right to life, which is placed on a non-derogable right. However, the perpetrators of the crime are still subject to the penalty of deprivation of life.

3. Effectiveness From The Sociological Perspective Of Law In Indonesia Regarding The Death Penalty For Perpetrators Of Corruption

The issue of the death penalty, has been the concern of criminal law, criminology, and victimology, especially in relation to the philosophy of mediation, that mediation is

¹⁶ K. D. N. (2019). Mendagri: Korupsi di Indonesia Sudah Akut. Retrieved January 11, 2019, from <https://www.kemendagri.go.id/index.php/blog/27805-Mendagri-Korupsi-di-Putra, Indonesia-Sudah-Akut>.

¹⁷ Sudirman, A. (2015). Eksistensi Pidana Minimum Khusus Sebagai Sarana Penanggulangan Tindak Pidana Korupsi. *Jurnal Masalah-Masalah Hukum*, 44(3), 316–325.

¹⁸ Brian Rahantoknam, "Pidana Mati Bagi Koruptor" *Jurnal Lex Crimen* Vol 2, No 7 (2013) ISSN: 2301-8569



not only aimed at making the victim a jerk, but also needs to pay attention to the victims, thus developing a restructive theoretical approach to justice. Arief Bernard Sidharta, presented his view of death is;

a. Pancasila's view of life is based on the fact that the universe with all that is in it that constitutes a harmoniously interwoven whole created by the One God. Nothing in the Universe stands alone regardless of the contents of the other universe;

b) also man was created by God and the ultimate purpose of his life is to return to his original source, the Lord. Each individual human being is equipped with reason and conscience that enables man to distinguish between good and bad, fair and unfair, human and inhuman, necessary and unnecessary, what should and should not be done, what can and what is forbidden, and thus individual human beings have the freedom and ability to determine for themselves the choices of action they will take and the life they want to live in. Therefore, each individual human being is responsible for what he has done or will do. The existence of reason and conscience is the foundation of human dignity.

c) Thus the maintenance of human life or the process of self-realization of every human being takes place in his community, that is, in society. In order to be able to realize himself rationally, man requires the existence of order and order (berekenbaarheid, predictability, things that can be counted first) in his fellowship;

(d) be carried by the universe of common with his neighbor then the law must be family;

(e) the maintenance of order is respect for human dignity, then the rule of law according to Pancasila is the preservation of man in the passive and active sense. The purpose of the law also includes the maintenance and development of human dignity and noble moral ideals based on the One God;

f) Criminal sanction is one form of legal sanction, that is, certain consequences that can (should) be imposed on a person for his acts that meet the conditions laid down in the Law of the Penal Code. The punishment is either a painful act or an unpleasant act.

(g) In order to be held accountable, the criminal sanction must first and foremost be a concrete statement of the public's judgment of the acts committed by the defendant:



that the act is evil, oppresses the dignity of the neighbor and endangers the existence of a healthy human society. Second, a criminal sanction must be a warning to a person to avoid an act that may lead to the commission of the crime. Third, the offence must be directed to encourage the person to update his human values so that he can control himself as fully as possible. The purpose of the law also includes the maintenance and development of human dignity and noble moral ideals based on the One God;

h) Penal punishment is one of the forms of legal sanction, that is, certain consequences that can (should) be imposed on a person for his actions that meet the conditions laid down in the Code of Criminal Law. The punishment is either a painful act or an unpleasant act. The infliction of suffering on a person by the State demands accountability;

(i) In order to be held accountable, the criminal sanction must first be a concrete statement of the judgment of the public on the conduct of the offender: that it is evil, oppressing the dignity of the neighbor and jeopardizing the existence of a healthy human society.¹⁹

Studied from a legal sociological perspective, the death penalty for corruption cases is not really new to Indonesian society. Other special crimes such as Narcotics and Terrorism have already imposed the death penalty as a punishment that could have a terrifying effect on prospective perpetrators of such crimes. The Indonesian public has clearly expressed the attitude that there is no tolerance for state officials to harm the state's finances in no small amount. The toughest punishment deserves to be earned so that the state no longer continues to lose because of an offense that violates the basis of personal interests.

The execution of the death penalty for the perpetrators of crimes should not include violations of human rights, given that the corruptors have basically slowly harassed the people by taking the rights of the people illegally, eventually suffering from poverty, hunger, lack of education and health costs. Because people's money was taken by the corrupt. Again, many parties suspect that the death penalty is merely a pretext to create a jera effect, and has never actually been implemented. In fact, there are a lot of executed

¹⁹ Rifai Ahmad. 2011. *Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif*. Jakarta: Sinar Grafika Offset. Hlm 41



deaths in Indonesia that are not all actually executed. Some were sentenced to life imprisonment, some received grace from the president, others were released after decades in prison. On the contrary, there are those who deserve to be sentenced to death, such as the heavily corrupt class, yet still free to wander around even disappear not necessarily the barracks²⁰. In cases of corruption, the perpetrators can be punished as severely as they must be able to hold accountable for their actions. In every act that has the elements of crime or crime, it is the crime or wrong that causes the person to be punished. There is no punishment without guilt (*Geen straf zonder schuld*). This unwritten legal basis is the criminal law of Indonesia today. The no-criminal foundation without guilt is offended by Strict Liability and Vicarious liability.²¹ So the effectiveness of the death penalty for perpetrators of corrupt crimes is still not effective today. The death penalty for the perpetrators of corruption is laid down in article 2, paragraph (2) of the Covenant, which states: "In the case of a corruption offence as per paragraph (1) committed in certain circumstances, the death sentence may be imposed". The further meaning of the term "specific circumstance" is described in the Explanation of article 2 paragraph (2), when corruption has been committed: when the State is in danger according to the provisions of the applicable law; when there is a national disaster; as a recurrence of the corruption crime; or when the country is in an economic and monetary crisis. Thus, normatively, there has been an arrangement that could be the basis for the judge to impose the death penalty on the perpetrators of corrupt crimes. That means, from the perspective of legality, there is no longer any doubt to question the legalization of the execution of the death penalty for perpetrators of corrupt crimes. The Corruption Criminal Code is therefore the primary duty of law enforcement, especially in the law-enforcement of corruption crimes. If studied from a legal sociological perspective, the effectiveness of the death penalty against perpetrators of corruption would be contrary to the values of human rights, the right to life.

²⁰ Helmi Muammar, Wawan Kurniawan, dkk. "Analisa Peraturan Mahkamah Agung Nomor 1 Tahun 2020 tentang Pedoman Pemidanaan kaitanya dengan Asas Kebebasan Hukum dalam Tindak Pidana Korupsi" *Widya Pranata Hukum : Jurnal Kajian dan Penelitian Hukum* Vol 3, No 2 (2021) ISSN (Online) 2654-5195-2686-2417 DOI prefix 10.37631

²¹ Chyntia Sami Bhayangkara Bagaimana Aturan Hukuman Mati Bagi Koruptor di Indonesia? Bagaimana Aturan Hukuman Mati Bagi Koruptor di Indonesia? <https://www.suara.com/news/2021/12/08/172124/bagaimana-aturan-hukuman-mati-bagi-koruptor-di-indonesia>, diakses Senin 3 Januari 2022 pukul 14:45 WIB



C. Conclusion

1. The death penalty imposed on the perpetrator of a corruption crime under article 2, paragraph (2) of the Covenant is difficult to apply especially to the element of "emergency conditions". This is because in the falling of the crime the element "emergence conditions" must be fulfilled as stated in the legislation. If the acts of the perpetrators can not concretely meet the elements listed in the law formula abstractly, it can not be punishable. The formula says that "the death penalty gives the judge the opportunity to drop the alternative to the most severe crime that is not the deprivation of a chance of life. Studied from a legal sociological perspective, the death penalty for corruption cases is not really new to Indonesian society. Other special crimes such as Narcotics and Terrorism have already imposed the death penalty as a punishment that could have a terrifying effect on prospective perpetrators of such crimes.

2. The country that has imposed the death penalty on cases of corruption is China. China has successfully enforced law enforcement against corruption cases without a glance, including the execution of corrupt. While for Indonesia, the death penalty for corrupt is just a discourse even though it has been regulated in a positive law. The Indonesian public has clearly expressed the attitude that there is no tolerance for state officials to harm the state's finances in no small amount. The toughest punishment deserves to be earned so that the state no longer continues to lose because of an offense that violates the basis of personal interests.



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