

The Implementation of The Death Penalty In Cases of Corruption According to Law No. 31 of 1999, as Amended by Law No. 20 of 2001 and Law No. 1 of 2023, From The Perspective of Legal Certainty is as Follows

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Abstract: Criminal law regulates prohibited acts under the law and the criminal sanctions for perpetrators. Punishment is the suffering imposed by the state on criminal offenders. Corruption is an act that violates the law and involves the subordination of personal interests above public interests, including violations of norms, duties, and public welfare. Corruption is carried out through secrecy, betrayal, fraud, and manipulation that harm the people. The death penalty is considered the most severe punishment under Law No. 1 of 2023. The Criminal Code (KUHP) explicitly regulates the death penalty as the principal punishment. However, the implementation of the death penalty for corruption in Indonesia is still not optimal due to factors such as the lack of clarity and accuracy in the law enforcement system, as well as judges' assessment of justice and legal certainty for corruptors. Other obstacles also affect the implementation of the death penalty. Law No. 1 of 2023 states that the death penalty can be applied if the corruption perpetrator shows no remorse and good behavior during a 10-year probation period. If the corruption perpetrator demonstrates good behavior and receives clemency, the death penalty will not be carried out, even if the elements of Law No. 31 of 1999 on Corruption Eradication (UU Tipikor) Article 2 paragraphs 1 and 2 are fulfilled. Until now, no corruptor in Indonesia has been sentenced to death in various corruption cases. Furthermore, the punishment for corruptors under the Criminal Code is lower than under the Law on Eradication of Corruption Crimes (UU Tipikor). Article 2 of UU Tipikor establishes a minimum imprisonment of four years and a maximum of 20 years for corruptors. UU Tipikor also regulates a minimum fine of IDR 200 million and a maximum of IDR 1 billion for corruptors. The high number of corruption cases receiving lenient sentences and the absence of corruptors in Indonesia being sentenced to death indicate the need for a study of UU Tipikor Article 2 paragraphs 1 and 2. This aims to ensure that the application of the death penalty in corruption verdicts fulfills legal certainty without confusion in law enforcement. Although the death penalty is considered a last resort by law enforcement authorities in corruption cases, judges' assessment must also consider the aspects of crimes that harm the state and society, including corruption crimes committed in specific circumstances such as disasters. Article 2 paragraph (2) states that in cases of corruption committed in specific circumstances, the death penalty can be imposed to meet the elements of judges' assessment and consideration in imposing the death penalty verdict.

Keywords: death penalty, corruption crimes, legal certainty

I. INTRODUCTION

Criminal Law is a system consisting of the subsystems of criminal acts, culpability, penalties, and the purpose of criminalization. Corruption falls under the subsystem of culpability and crime (Erni & Achmad, 2017). The Indonesian Criminal Code (KUHP) clearly stipulates the death penalty as the primary punishment. Article 10 letter a of the old KUHP and Article 64 of KUHP No. 1 of 2023 state this.

However, the numerous corruption cases in Indonesia indicate that corrupt individuals do not seem to fear the existing punishments. The death penalty prescribed in the anti-corruption law and the KUHP is unable to deter corrupt individuals from engaging in corrupt activities. This phenomenon has sparked critical discussions within society and has eroded public trust in law enforcement. According to the Supreme Court's report in 2017 on punishments for corrupt individuals, 442 corruption cases had been adjudicated. Out of that number, 269 cases or 60.68 percent resulted in defendants being sentenced to one to two years, while 400 cases or 90.27 percent resulted in lighter sentences. There were also 42 cases or 9.73 percent where defendants were acquitted, and 28 cases or 6.33 percent where defendants were sentenced to less than one year. These data indicate that corrupt individuals receive very lenient punishments. This contrasts with the Supreme Court's report on terrorism and drug crime cases, where the minimum sentence threatened is ten years' imprisonment or even the death penalty.

Corruption poses a threat to the nation's future and must be closely monitored to ensure that corrupt individuals receive effective punishments as a deterrent. The death penalty can be used as a threat to corrupt individuals under the prevailing Indonesian law, both in general and specific criminal acts. This law aims to eradicate corruption. Enrichment actions that harm the state's finances are regulated in Article 2 paragraph 1 of Law Number 31 of 1999, as amended by Law Number 20 of 2001 on the Eradication of Corruption. Although the death penalty is mentioned in this article, it has not been fully utilized to curb corruption. Article 2 paragraph (2) explains that the death penalty can be imposed in certain circumstances for perpetrators of corruption crimes, and this should serve as a guideline for law enforcement in applying the death penalty.

Criminal law is a set of rules that regulate violations and crimes against public interests, with the threat of punishment or suffering for the perpetrators. Criminal law is part of positive law manifested in legal products such as laws, providing clarity and certainty regarding the application of the death penalty (Muzakkir et al., 2014). In a positivist approach, the orderliness and certainty of the law are necessary to maintain the smoothness of the legal system (Sinaga, 2017). Therefore, achieving legal certainty is crucial to protect public interests (including personal interests), serve as the main driver of justice enforcement in society, build citizens' trust in the government, and affirm the government's authority in the eyes of the public. Legal certainty is an inseparable characteristic of the law, especially regarding written legal norms. According to Fence M. Wantu (Remaja, 2014), "law without legal certainty will lose meaning because it cannot serve as a guide for everyone's behavior." Legal certainty refers to the clarity of norms that guide individuals subject to these regulations. The meaning of legal certainty can be interpreted as the existence of clarity and firmness regarding the application of the law in society. Legal certainty signifies the enforcement of law that is clear, consistent, and unwavering.

In the context of Law No. 31 of 1999 on Corruption Eradication (UU Tipikor), Article 2, paragraphs 1 and 2, the clause on the death penalty should have been applied based on the explanation in Article 2, paragraph 2. Article 2, paragraph 2, explains that the "specific circumstances" in this provision refer to conditions that can be the basis for aggravating the punishment for perpetrators of corruption crimes, such as crimes committed against funds intended for disaster management, national natural disasters, widespread social unrest, economic and monetary crises, and repeated acts of corruption.

The term "national natural disasters" consists of the words "natural" and "disasters." According to the Indonesian Dictionary (KBBI), "bencana" means an event that causes distress, loss, or suffering. On the other hand, "alam" refers to everything that exists in the sky and on the earth, the environment of life, and is considered as a unity. The word "nasional" refers to something related to nationality, originating from the nation itself, or encompassing a nation. Thus, "bencana alam" (natural disaster) is the destruction caused by an event or series of events resulting from natural occurrences, such as tsunamis, earthquakes, volcanic eruptions, droughts, floods, hurricanes, and landslides.

Based on several corruption cases in disaster conditions, there are several categories of national natural disasters. For example, in 2011, former Regent of Nias, Binahati Benedictus Baeha, was involved in a corruption case related to the tsunami disaster relief funds in Nias, North Sumatra, which occurred between 2006-2008. The alleged corruption amounted to IDR 3.7 billion out of a total of IDR 9.4 billion allocated for natural disaster mitigation. Additionally, there were other suspects, including members of the Regional People's Representative Council (DPRD) of Nias, who also became defendants in this case. Binahati was initially sentenced to 8 years in prison in a trial at the Corruption Court (Tipikor) in Medan, but the sentence was later reduced to 5 years in prison and a fine of IDR 200 million, or 4 months' imprisonment if the fine is not paid, after the case reached the cassation level at the Supreme Court (MA).

In September 2019, former Member of the Mataram Regional People's Representative Council from the Golkar Faction, Muhir, was arrested in an Operation to Catch (OTT) by the Mataram District Attorney's Office regarding an extortion case in the context of natural disasters. Muhir was involved in extortion related to a project worth IDR 4.2 billion allocated in the 2018 Revised Regional Budget for the repair of 14 elementary and junior high school buildings affected by earthquakes in Mataram City. Muhir was sentenced to 2 years in prison and a fine of IDR 50 million.

The third case is the corruption case of Mosque Rehabilitation in West Nusa Tenggara (NTB). The Ministry of Religious Affairs, through the proposal of the NTB Regional Office of the Ministry of Religious Affairs, allocated funds of IDR 6 billion from the state budget for the rehabilitation of 58 mosques affected by earthquakes. However, reports from the community regarding the slow disbursement process of mosque reconstruction funds led to a police investigation. There were three suspects who were civil servants from the Regional Office of the Ministry of Religious Affairs in NTB, identified as BA, IK, and SL (H. Silmi). The Tipikor District Court in Mataram sentenced H. Silmi to four years in prison and a fine of IDR 100 million, or two months' imprisonment if the fine is not paid. The sentence was lower than the previous prosecutor's demand, which was eight years in prison and a fine of IDR 200 million, or two months' imprisonment if the fine is not paid.

Furthermore, the Minister of Social Affairs, Juliari Batubara, was named a suspect by the Corruption Eradication Commission (KPK) in a case related to the alleged corruption of COVID-19 social assistance. Despite being involved in a corruption case involving funds for the social welfare of the community, Juliari was sentenced to 11 years in prison.

Capital punishment is one of the most controversial forms of criminal law enforcement in the world. From the time of Babylon to the present day, this punishment is still used as a sanction for those accused or proven guilty of committing crimes. The death penalty is considered the most severe punishment because it does not offer the convicted any hope of reforming their wrongdoing (Satriyo Kusumo, 2015). In Indonesia, the death penalty is still stipulated in the Criminal Code (KUHP). The articles regarding the death penalty in the KUHP are actually translations from the *Wetboek van Strafrecht voor Nederlandsch-Indie*, which was implemented by the Dutch colonial government in the Dutch East Indies (Indonesia) since 1918. However, in the Netherlands itself, the death penalty was abolished in 1870. Nevertheless, the Netherlands still includes the death penalty in their Military Criminal Code, with the provision that the imposition of the penalty can only be done if the judge deems it necessary for the security of the state (Article 9) (Hadiyanto, 2016).

After Indonesia proclaimed its independence, the death penalty was retained through Article II of the Transitional Provisions of the 1945 Constitution. Even after the enactment of Law Number 1 of 2023, the death penalty remains in effect. As of June 2006, only 68 countries still apply the death penalty, including Indonesia, while more than half of the countries in the world have abolished it. There are 88 countries that have abolished the death penalty for all categories of crimes, 11 countries that have abolished it for ordinary criminal offenses, 30 countries that have implemented a moratorium (not de facto application) on the death penalty, and a total of 129 countries that have abolished the death penalty. Punishment or penalty is a form of sanction given by a judge through a verdict to individuals who violate criminal law, resulting in unpleasant or suffering feelings (Sukinto, I.Y.W., & SH, 2022). The death penalty (in Dutch known as *doodstraf*) is a practice in which a state kills someone as a punishment for a crime. According to KBBI (Indonesian Dictionary), the death penalty is a punishment carried out by killing, shooting, or hanging the guilty person. According to Barda Nawawi, a member of the team that drafted the Criminal Code, the death penalty is one of the options for criminal punishment in Indonesia to avoid demands or retaliatory reactions from the community or extrajudicial executions. In other words, the death penalty is provided by law to control public emotions. The legal certainty regarding the death penalty can be found in Article 10 letter a of the Criminal Code, which states that the death penalty is one of the principal punishments.

In Indonesia, the effort to enforce the death penalty has faced strong pros and cons in society. Those who oppose the death penalty question the ability of the law to deter crime and eradicate criminals, especially considering that Indonesia ranks 30th out of 85 most corrupt countries in the world according to US News. Meanwhile, supporters of the death penalty argue that it is necessary to eliminate individuals deemed to endanger public or state interests and are considered beyond rehabilitation. However, opponents of the death penalty argue that it violates human rights and is an irreparable form of punishment if there is a wrongful conviction after the execution is carried out. Some experts and figures who support the death penalty include Jonkers, Lambroso, Garofalo, Hazewinkel Suringa, Van Hantum, Barda Nawawi Arief, Oemar Senoadji, and

T.B Simatupang. Jonkers supports the death penalty with the argument that the fact that "criminal reasons cannot be retracted once executed" is not an acceptable reason to declare that "the death penalty is unacceptable." Because court decisions are usually based on valid reasons.

The death penalty in Indonesia is regulated in several articles of the Criminal Code (KUHP) and several other laws, such as the Narcotics Law Number 35 of 2009, the Corruption Law Number 31 of 1999, the Terrorism Law Number 15 of 2003, the Human Rights Court Law Number 26 of 2000, and the Psychotropic Law Number 5 of 1997. The procedure for implementing the death penalty in Indonesia is regulated in the Law on Procedures for Implementing the Death Penalty Number 2/Pnps/1964. The death penalty for corruption offenses is considered as a last resort or ultimum remedium after various law enforcement efforts and criminal law application policies have been implemented in various legal systems to protect and uphold legal interests.

II. METHODE

This research is a normative juridical study conducted using two approaches, namely the statutory approach (case statute approach) and the case approach. The normative juridical research method is used to clarify and elaborate on the researched issues. With the statutory approach (case statute approach), the researcher will refer to legal norms related to the researched issue, such as laws, regulations, and policies. Meanwhile, with the case approach, the researcher will analyze similar cases that have occurred and study the legal approaches applied in those cases. These two approaches complement each other and provide a more comprehensive understanding of this research.

III. RESULT AND DISCUSSION

Corruption, as an extraordinary crime, has provisions regarding the death penalty for perpetrators. However, to date, this provision has never been applied by judges in adjudicating corruption cases. Theoretically, corruption is committed by high-ranking officials who commit serious crimes, hence the nature of the crime. Even when corruption becomes widespread, organized investigations are conducted. Corruption offenses are classified more comprehensively compared to terrorism and drug offenses, which have wide-ranging impacts on various aspects of life. The regulation regarding the death penalty is found in the Criminal Code for several criminal offenses, such as Article 104, Article 111 paragraph (2), Article 124 paragraph (3), Article 140 paragraph (3), Article 340, Article 365 paragraph (4), Article 368, Article 444 of the Criminal Code, Article 479 K paragraph (2), and Article 479 o paragraph (2). Additionally, there are also regulations regarding the death penalty outside of the Criminal Code, such as in Law Number 5 of 1997 concerning Psychotropic Substances Article 59 paragraph (2), Article 36 of Law Number 26 of 2000 concerning Human Rights Courts Article 2 paragraph (2), Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Article 6, Law Number 15 of 2003 concerning the Determination of Government Regulation in Lieu of Law Number 1 of 2002 concerning the Eradication of Terrorism, and Law Number 35 of 2009 concerning Narcotics. However, the regulation regarding the death penalty remains controversial in the context of Human Rights.

Therefore, it is necessary to discuss the arguments for both perspectives while still referring to national law (Christianto, 2017). According to The Indonesian Human Rights Watch, there are three main reasons why the death penalty is often used by courts. First, in its history, the threat of the death penalty was used by the Dutch colonial regime and continued to be implemented by the authoritarian regime of the New Order to create fear and destroy political opponents. An example is the application of Article 104 of the Criminal Code regarding political crimes. The second reason is a political effort to enact laws that incorporate the death penalty as compensation for the failure to improve a corrupt legal system. However, the death penalty has never been proven effective in reducing crime rates, including corruption. The third reason is the increase in crime rates, which is considered solely the responsibility of individual perpetrators, while the principle of non-retroactivity is seen as focusing only on retributive punishment, even though this principle is no longer the primary reference in Indonesia's criminal justice system, which emphasizes preventive and educational principles. This is also in line with Law No. 12 of 1995 concerning Correctional Facilities, which emphasizes that prisoners are human beings who can make mistakes and errors, so the factors that drive them to commit legal violations should be eradicated. Although the death penalty takes away a person's life and is contrary to human rights, such as the

right to life, issues arise when the perpetrators have taken the lives of others or committed crimes against humanity, such as corruption cases related to natural disasters like landslides, tsunamis, and other disasters that are considered crimes against humanity. According to the Criminal Code No. 1 of 2023, the death penalty will automatically be commuted to life imprisonment if ten years after the President's denial of clemency, the prosecutor has not carried out the execution of the death penalty.

The following are the provisions regarding the death penalty stated in Law Number 1 of 2023 on the Criminal Code (KUHP) Article 100.

1. The judge can impose the death penalty with a probationary period of 10 years, taking into account the following factors: the defendant's level of remorse and potential for rehabilitation, as well as the defendant's role in the crime.
2. The imposition of the death penalty with a probationary period must be explained in the court's verdict.
3. The 10-year probationary period starts the day after the court's verdict becomes legally binding.
4. If the convict demonstrates good and commendable behavior during the probationary period, the death penalty can be commuted to life imprisonment through a Presidential Decision, after considering the opinion of the Supreme Court.
5. The calculation of life imprisonment starts from the date when the Presidential Decision is affirmed.
6. If the convict does not show good behavior and there is no hope for rehabilitation, the death penalty can be carried out based on the order of the Attorney General.

Basically, the death penalty for corruptors in Indonesia has been regulated in Article 2 paragraph (2) of Law No. 31 of 1999, which was amended by Law No. 20 of 2001 concerning the Eradication of Corruption. However, to date, no corruptors have been sentenced to death by the courts. Although the Anti-Corruption Law stipulates the death penalty in Article 2 paragraph (2), there is no additional clause that imposes the death penalty on corruptors, so the use of the death penalty against corruptors has not been clearly implemented based on Law No. 1 of 2023 Article 1. Article 1 (1) of the law emphasizes that no criminal action or sanction can be applied except based on existing criminal regulations before the action is taken. Thus, the death penalty should be applicable based on these provisions, considering that the Anti-Corruption Law No. 31 of 1999 also states that the death penalty can be applied as a form of legal certainty for the death penalty (Anjari, 2020). Although the death penalty is currently applied outside the provisions of Article 2 paragraph (2) of Law No. 31 of 1999, such as in cases of premeditated murder or drug kingpins, unfortunately, the death penalty in corruption cases has not been maximally enforced in every case, even though the conditions in Article 2 paragraph (2) of the Anti-Corruption Law are clearly met. Certain circumstances, such as corruption in natural disaster situations, have not been able to implement the death penalty, as well as other aggravating factors in certain circumstances, such as natural disasters, monetary crises, and significant state financial losses, such as the Asabri corruption case with state losses reaching Rp. 23.7 trillion, exceeding the Jiwasraya corruption case of Rp. 16.81 trillion. Even in corruption cases involving significant state financial losses in specific circumstances, these factors themselves already fulfill the elements described in Article 2 paragraph (2) of the Anti-Corruption Law, but law enforcement has not applied the death penalty.

To impose punishment on suspects of committing criminal acts, the elements of the alleged criminal act against the perpetrator must be fulfilled. Every criminal act has an objective element (*actus reus*) and a subjective element (*mens rea*). Both elements are stated in the article charged against the perpetrator of the criminal act. The objective element is the criminal act itself, while the subjective element is the mental state of the perpetrator. The perpetrator's act is a primary requirement for someone to be criminally punished (Ali, 2022).

There are factors that complicate the implementation of the death penalty in cases of corruption, including:

1. According to the author, the imposition of the death penalty by the Panel of Judges is based solely on the primary charges, taking into consideration the aims of criminal justice to prevent crimes, educate the perpetrators, and benefit society. This concept becomes a factor that makes it difficult to sentence corruptors

- to death in Indonesia. It undermines public perception of justice and contributes to the increase in corruption. Therefore, is it necessary to apply the death penalty as the harshest sanction in criminal law?
2. Law No. 1 of 2023, Article 53 (1) asserts that judges are obligated to uphold the law and justice in adjudicating criminal cases. (2) In cases of conflict between legal certainty and justice, judges must prioritize justice. In the context of the death penalty for corruption offenses, the aspect of legal certainty based on positive law in the Anti-Corruption Law is considered insufficient to apply the death penalty. For example, Article 2, paragraph 2 of the Anti-Corruption Law does not specifically explain the criteria for disasters or the amount of state or societal losses involved in corruption cases occurring during disasters. Therefore, justice becomes the primary factor prioritized by judges in their considerations of sentencing, in accordance with Article 54 of Law No. 1 of 2023. Although justice may not always be evident in various corruption cases, it remains the foundation for judges to sentence corruptors, as regulated in Paragraph 4 of Aggravating Circumstances, Article 58.
 3. Law No. 1 of 2023 regulates the death penalty as an alternative sanction in Article 67 of the Criminal Code, with the consideration of preventing crimes and protecting society. Article 100 (1) affirms that judges can impose the death penalty with a probationary period of 10 years, considering the defendant's remorse or the defendant's role in the criminal offense. If the convict demonstrates commendable behavior during the probationary period, the death penalty can be commuted to life imprisonment through a Presidential Decision after the Supreme Court's deliberation. However, if the convict does not show commendable attitudes and actions and there is no hope of rehabilitation, the death penalty can be executed upon the order of the Attorney General. In corruption cases, offenders can be exempted from the assessment of 10 years of good behavior during the probationary period, making it difficult to apply the death penalty sentence.
 4. Law No. 1 of 2022 concerning the Criminal Code (KUHP) reduces the punishment for corruptors. Article 603 of the Criminal Code stipulates a sentence of life imprisonment or a minimum of 2 years and a maximum of 20 years, as well as fines, for corruptors who cause financial or economic harm to the state. This punishment is lower than the punishment stipulated in the Anti-Corruption Law (UU Tipikor), where UU Tipikor imposes a minimum imprisonment of 4 years and a maximum of 20 years, as well as fines ranging from a minimum of IDR 200 million to a maximum of IDR 1 billion. Similarly, the fine sanctions in Law No. 1 of 2023 are lower for corruptors under the Criminal Code compared to UU Tipikor.
 5. Prerequisites for imposing the death penalty should consider aggravating factors, but the explanation in Article 2, paragraph 2 is incomplete in interpreting specific circumstances that may lead perpetrators to always evade the death penalty sentence.
 6. The quality of law enforcement in handling corruption cases is considered not sufficiently resolute.
 7. The lack of coordination among law enforcement agencies in combating corruption, also known as "corruptors," is considered to have not provided the satisfaction of justice desired by the public.
 8. Law enforcement officials are not fulfilling the mandate of the Anti-Corruption Law fairly and honestly. Moreover, the lack of transparency in the proceedings against corruption offenders in Indonesia reduces the effectiveness of imposing the death penalty.
 9. The law enforcement system in Indonesia is influenced by political interests, resulting in intervention and influence in determining the verdict for suspects. This indicates that Indonesia is not yet free from an unclean system.
 10. Controversies and conflicts, including human rights institutions, are factors that affect suboptimal implementation of the death penalty in corruption cases (Kristina Dwi Putri, 2021). This contradicts Article 3, which states that everyone has the right to life, liberty, and personal security. The death penalty violates these rights as it deprives someone of their life, liberty, and personal security. Furthermore, institutions such as ICJR, LBHM, and Transparency International Indonesia disagree with the death penalty for corruptors. Such action is considered a dead-end in handling corruption cases.
 11. The increase in corruption cases is a sign of the state's failure to address corruption. Corruption is not limited to the central government.
 12. In imposing punishment, judges exercise their independence by considering several criteria. However, these criteria indicate that judges are not entirely independent. Judicial independence is regulated in Article 3, paragraphs (1) and (2) of Law No. 48 of 2009 on the Judicial Power.
 13. The leniency of sanctions against corruption can undermine efforts to combat corruption itself. Furthermore, the aspirations of the Indonesian people are not heard, indicating a lack of openness and public participation. This intentionally and systematically weakens law enforcement against corruption.

14. The judge's assessment of the death penalty verdict becomes a factor in the successful implementation of the death penalty because the judge's discretion in imposing criminal sanctions is regulated in Article 24, paragraph (1) of Law No. 48 of 2009 on the Judicial Power. However, the assessment of fairness in the judge's decision may differ from the assessment of the public. The role of the judicial power in imposing the death penalty for corruptors relates to the principle of proportional punishment and the goal of the defendant's rehabilitation.

The Supreme Court of Indonesia has issued Supreme Court Regulation (Perma) Number 1 of 2020 concerning Sentencing Guidelines for Article 2 and Article 3 of the Anti-Corruption Law. This regulation has received appreciation from various parties, including the Parliament (DPR), the Corruption Eradication Commission (KPK), and others. In this Perma, the Supreme Court categorizes corruptors into five levels: the most severe, severe, moderate, light, and the least severe. For corruptors classified as the most severe category, judges can impose a life sentence or even the death penalty.

In terms of the provisions of this Supreme Court Regulation (Perma), the Supreme Court demonstrates its seriousness in imposing the death penalty. The following are the requirements for imposing the death penalty on corruptors according to Perma No. 1/2020:

1. No mitigating factors were found in the defendant's case.
2. The criminal act was committed against funds that should have been used for emergency response, national natural disasters, the handling of widespread social unrest, economic and monetary crisis management, as well as repeated acts of corruption.
3. The defendant is involved in a corruption case involving a sum of Rp100 billion or more.
4. The defendant has a significant role in the commission of the crime, both individually and collaboratively.
5. The defendant acts as an instigator, director, or perpetrator of the corruption offense.
6. The defendant employs sophisticated modus operandi or technology in committing the crime.
7. The defendant commits corruption during a disaster or an economic crisis affecting the entire country.
8. The corruption offense committed by the defendant has national implications.
9. The corruption committed does not yield any benefits whatsoever.
10. The corruption committed by the defendant causes suffering to vulnerable groups of society, such as the elderly, children, the impoverished, pregnant women, and people with disabilities.
11. The defendant acquired wealth amounting to 50 percent or more from the proceeds of corruption.
12. The amount of money returned from the corruption offense is less than 10 percent.

The corruption law in Indonesia has regulated the threat of the death penalty for corruptors but has not been implemented. Despite the legal recommendation for the death penalty since 1999 by the Anti-Corruption Law, no corruptors have been sentenced to death so far (Yuhermansyah, 2017). The state of emergency becomes a factor that aggravates the imposition of the death penalty for corruptors and is considered by judges based on the principle of harm that affects society. Specifically, judges as the forefront of enforcing anti-corruption laws can impose the death penalty more decisively. This is due to the social impact of corruption, such as the moral decay of law enforcement officials, the greed of politicians, hindrance to the government's goal of improving people's welfare, and threats to national stability and security. However, it becomes difficult to implement if the perpetrator has remorse and receives clemency from the president (Law No. 1 of 2023 Article 99). Article 67 of the Penal Code states that the death penalty is always an alternative punishment, and Article 68 paragraph 3 stipulates that in certain cases, a fixed-term imprisonment can be imposed as an alternative punishment. Article 100 of Law No. 1 of 2023 provides the possibility for judges to impose a death sentence with a probationary period of 10 years, considering the defendant's remorse and hope for rehabilitation or the defendant's role in the

criminal act. If during the probation period, the convicted person displays commendable behavior, the death penalty can be commuted to life imprisonment through a presidential decision after obtaining the consideration of the Supreme Court. The life imprisonment is counted from the date the presidential decision is determined. However, if the convicted person does not display commendable attitude and behavior and there is no hope for rehabilitation, the death penalty can be carried out upon the order of the Attorney General. With the existence of Law No. 1 of 2023 that regulates these various articles, law enforcement in implementing the death penalty will become difficult (Anjari, 2023). These articles indicate that in Indonesia, education and protection of society are prioritized in the criminal justice system, so the use of the death penalty is considered incompatible with the goal of rehabilitation.

The concept of prevention in law enforcement is divided into general prevention and specific prevention with the aim of rehabilitation through education and socialization of prisoners. However, in corruption cases, aggravating factors are disregarded unless they are directly related to taking lives, such as in premeditated murder cases. This is due to the humanitarian factors in corruption cases, where the corruptor does not directly cause loss of life but corrupts funds that should have been used for disaster relief. Subjectivity in interpreting and implementing the death penalty in corruption cases in Indonesia is one of the obstacles.

According to the author, the death penalty for corruptors is an alternative sentence based on Law No. 1 of 2023. This sentence must consider aggravating factors, as regulated in Articles 57 and 58. Aggravating factors of the crime include the perpetrator violating their official duties or abusing their authority, using state symbols during the commission of the crime, or repeating the offense. However, when faced with the Anti-Corruption Law (Law No. 31 of 1999) Article 2 paragraph 2, the death penalty is mainly applied in cases of disasters and financial crises. In this case, Article 100 makes it difficult to impose the death penalty on corruptors because the 10-year probation period, remorse, and the possibility of clemency reduce the likelihood of a death sentence. There needs to be an exception in Article 100 of Law No. 1 of 2023 for the death penalty to be imposed on corruption offenses if the aggravating factors and requirements in the Anti-Corruption Law Article 2 paragraph 2 are met. This is due to the fact that corruption offenses indirectly not only harm the state financially but also cost lives during disasters when the people need assistance from the government/state. Therefore, a revision of the Anti-Corruption Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 or the creation of a presidential regulation regarding the implementation of the death penalty for violators of Article 2 paragraph 2 is necessary. Thus, Law No. 1 of 2023 can be implemented through other regulations without considering the probationary period. The author's goal is for corruptors who lack humanity to be punished according to the circumstances and timing in which the corruption occurred during a disaster.

IV. CONCLUSION

The uncontrollable level of corruption, including during times of disaster, can have negative impacts on the national economy and the life of the nation. One contributing factor to the high level of corruption in Indonesia is the ineffectiveness of punishments for corrupt individuals. Therefore, the use of the death penalty against corrupt individuals who harm the state and society, especially during disasters, can be seen as an appropriate measure. However, unfortunately, until now there has not been an absolute and legally binding death penalty verdict in corruption cases. Many individuals oppose the use of the death penalty, making its application for corrupt individuals in Indonesia still a subject of debate.

In the Corruption Criminal Law, the implementation of the death penalty has not been realized. This can be seen from several aspects, such as the complexity of corruption crimes involving sociological, economic, political, and psychological aspects. Imposing the death penalty can not only lead to injustice but also uncertainty in the legal enforcement system. Therefore, clear regulations regarding death penalty verdicts in the Corruption Criminal Law Article 2 paragraphs 1 and 2 are needed. Furthermore, a reevaluation of the revision of Article 100 of Law No. 1 of 2023, which regulates conditional death penalty verdicts, is necessary. Article 3 paragraph 1 of Law No. 1 of 2023 states that if there are changes to the legal regulations after the crime is committed, the new legal regulations shall apply. Therefore, even though the decision on the death penalty verdict remains valid after the decision is made, if the decision was issued before Law No. 1 of 2023 took effect, the provision of Article 3 paragraph 1 of Law No. 1 of 2023 still applies. This means that the evaluation regarding specific circumstances in imposing the death penalty, as stated in Corruption Criminal Law Article 2 paragraphs 1 and 2, cannot be fully implemented. The death penalty verdict itself is regulated in Article 100 of Law No. 1 of 2023, namely the conditional death penalty verdict.

The Criminal Code, which was enacted on December 6, 2022, explains that the convict will be given a probationary period of 10 years in prison. If the convict behaves well during that probationary period, their sentence can be commuted to life imprisonment through a Presidential Decision. Therefore, the appropriate step to implement the death penalty verdict for corrupt individuals is by examining Law No. 1 of 2013 concerning the Criminal Code, especially regarding the regulation of the death penalty for corruption offenders. The Corruption Criminal Law also provides for the death penalty for corrupt individuals who commit corruption during a state of emergency. However, this provision is not included in the Criminal Code.

In cases of corruption committed under certain circumstances, the death penalty can be imposed in accordance with Article 2 paragraph (2) of the Corruption Criminal Law. However, the process of the death penalty must still go through a probationary stage. With the increasing number of corruption cases in Indonesia, a clear threat of the death penalty in the provisions of the Corruption Criminal Law and Law No. 1 of 2023 is crucial as an effort to reduce corruption by officials. The death penalty verdict, as the most severe criminal punishment, can be used to deter and deter new corrupt offenders, so that the public is no longer involved in corruption. Additionally, the death penalty can also help restore the situation to its original state (*resitutio in integrum*) and protect society from the crime of corruption.

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