



## Legal reconstruction of the death penalty for corruptor based on the value of justice

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### Abstract

The aim of this research is to analyze and find weaknesses in the current regulation on the death penalty for corruptors and how to reconstruct the law based on the value of justice. The method used in this study uses a normative juridical approach with a constructivist paradigm.

Results of the research show the weaknesses in the current regulation on the death penalty for corruptors are that the criteria used as a condition for imposing capital punishment on perpetrators of corruption do not yet have clear and firm parameters. The phrases "may" and "under certain circumstances" have resulted in the application of the provisions of the article governing death penalty sanctions that cannot be applied optimally in corruption cases that occur in Indonesia, even though corruption is committed at the time of a disaster in accordance with the qualification requirements set out in Article 2 paragraph (2) Law No. 20/2001 regarding PTPK. Therefore, the legal reconstruction of regulations on death penalty sanctions for corruptors based on the value of justice is by changing the substance of Article 2 paragraph (2) of Law no. 20/2001 concerning PTPK, where the parameters or conditions in imposing the death penalty sanctions are seen from the nominal value of the corruption or the seriousness of the corruption that has been committed. Thus, the criteria that become parameters have legal certainty, both in their formulation and in their application stage.

**Keywords:** legal reconstruction, death penalty, corruptor, justice value

### Introduction

The main problem with the application of capital punishment as a criminal sanction in positive law in Indonesia is essentially starting from the problem of achieving the goal of the application of the death penalty itself, which is related to a projection regarding its effectiveness as a criminal sanction by looking at the goal to be achieved, namely as a means to preventing and suppressing the occurrence of a crime, in this case preventing and reducing the number of corruption crimes in Indonesia<sup>[1]</sup>.

Regarding the issue of legal effectiveness or enforceability of the law, including the effectiveness of death penalty sanctions against perpetrators of corruption in preventing and overcoming corruption crimes at this time, it is very difficult to measure, considering that these sanctions have been contained since the PTPK Law in 1999 until now. has never been applied to perpetrators of corruption, therefore no measure can be used as a basis for declaring the effectiveness of the application of the death penalty to perpetrators of corruption.

Considering that corruption in Indonesia continues to increase, both in terms of quantity and quality, it is not wrong if a group of people has high hopes for law enforcers so that the death penalty is applied to perpetrators of corruption, to create a deterrent effect and at the same time as an effort to prevent corruption crimes. However, even though the death penalty has been regulated in the PTPK Law, in its implementation the death penalty has never been used and applied to perpetrators of corruption.

In addition, the application of capital punishment under the PTPK Law is also still very limited, namely specifically for corruption that fulfills the elements of Article 2 paragraph (2) of the PTPK Law, so that its application will not apply

effectively in the context of preventing and combating corruption.

The handling of corruption crimes in Indonesia from the perspective of criminal policy is not only carried out through preventive efforts but also through suppressive efforts to create a deterrent effect (shock therapy) against perpetrators of corruption. One of the repressive efforts made in tackling corruption crimes is through enforcing criminal law against perpetrators of corruption and imposing severe sanctions on perpetrators as an effort to prevent and at the same time suppress corruption crimes.

Concerning the imposition of the death penalty for corruption perpetrators, there are not a few legal experts and human rights activists who reject the imposition of this punishment on corruption perpetrators, giving rise to pros and cons.

The pros and cons of the application of capital punishment can be seen in various studies that have been conducted, including research conducted by the Faculty of Law, Diponegoro University in collaboration with the Attorney General's Office from 1981 to 1982, in the research report it was stated that there was a tendency for those who regarding the application of death penalty both make Pancasila as a justification. This is because Pancasila is a national ideology that has been formed naturally and is based on customs and religion that prevail in Indonesia<sup>[2]</sup>.

Both parties, both those who are against and those who are pro-death implementation, have equally strong arguments. For those who are against it, the reason that forms the basis for refusing to apply the death penalty is that the death penalty is contrary to human rights as stipulated in Articles 28A, 28I of the 1945 Constitution of the Republic of Indonesia, Articles 4 and 9 of Law Number 39 of 1999 concerning Human Rights, and Article 3 of the Universal

Declaration of Human Rights. Those who are pro against the application of capital punishment argue that capital punishment is an act of retaliation for the consequences of their actions and this has been regulated in the provisions of the law. In addition, pro parties seek to defend capital punishment because capital punishment is under the religious teachings and the 1945 Constitution of the Republic of Indonesia.

Therefore, Based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Legal Reconstruction Of The Death Penalty For Corruptor Based On The Value Of Justice*" where the main problem discussed in this article is as follows

1. What are the weaknesses of The Death Penalty for Corruptor in Indonesia currently?
2. How is the Legal reconstruction of the Death Penalty for Corruptor Based on The Value of Justice?

### Method of research

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables.<sup>[3]</sup>

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of <sup>[4]</sup>:

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

### Research result and discussion

#### 1. Weaknesses of the death penalty for corruptor in Indonesia currently

The death penalty in Law no. 20/2001 concerning PPTK is formulated and regulated in Article 2 Paragraph (2). The

Government, in response, Formulate policies in efforts to deal with criminal acts of corruption make capital punishment a burden of punishment against perpetrators of corruption, for reasons indicating that the perpetrators of corruption have committed corruption in certain circumstances, as described in the elucidation of Article 2 Paragraph (2) of Law No. 20/2001 concerning PPTK.

Aside from being a form of criminal punishment for corruption perpetrators, the death penalty formulated in Article 2 Paragraph (2) of Law no. 20/2001 concerning PPTK, is also regulated as an alternative criminal sanction. This can be seen in the inclusion of the phrase "*can*" in the formulation of the article.

The phrase "*can*" in the formulation of articles in law can be interpreted or interpreted as a form of choice (alternative). So that the decision to impose capital punishment on corruptors is very dependent on judges. As a consequence, the death penalty which is stipulated as an alternative punishment becomes ineffective in its application. What's more, the judges don't seem to have the courage to apply the death penalty to the corruptors <sup>[5]</sup>.

In the Criminal Code, the position of capital punishment is classified as the main punishment which is in the first position sequentially with other criminal sanctions, namely imprisonment, fines, and confinement. As the main punishment, in criminal law, there is a prohibition to apply the main criminal sanctions simultaneously, except between imprisonment and fines, because the two criminal sanctions have different objectives from one another.

Regarding the prohibition on the imposition of cumulations of the main types of criminal punishment, it can be observed from the method of formulating and including the punishments that are threatened in each formulation of the articles contained in book II concerning crime and book III of Criminal Code concerning violations. Where some formulations of criminal acts that are punishable by more than one type of principal crime are determined to be alternatives.

The legal consequence of the stipulation of capital punishment as an alternative to punishment in Article 2 Paragraph (2) of Law no. 20/2001 concerning PPTK, is then there is no obligation for the public prosecutor to sue the accused and also the judge to impose the death penalty on corruptors, even though the actual actions committed by the corruptors have met certain conditions as referred to in the elucidation of Article 2 Paragraph (2) of the Law -Invite No. 20/2001 concerning PPTK.

The fundamental objection to the execution of the death penalty is that this sentence cannot be remedied if it is later proven that the judge's decision that imposed the death penalty was based on an error or statements that turned out to be untrue. However, this mistake will happen, because in imposing capital punishment against a defendant, a judge must have been based on the principle of prudence and sufficiently mature legal considerations.

So, in the author's opinion, the application of the death penalty against perpetrators of corruption in Indonesia has a strong legal basis (umbrella law), especially in cases of corruption committed under certain circumstances, including when the country is experiencing a disaster, especially the Covid-19 pandemic disaster which until now has not been completely eradicated <sup>[6]</sup>.

Based on the rule of law theory used in analyzing the problems raised and being the object of study for the

discussion of this research, the application of the death penalty to perpetrators of corruption during the Covid-19 pandemic is very fundamental legally.

For a country that declares itself as a rule-of-law state, including the state of Indonesia, then every administration of the state including law enforcement by law enforcement must be based on the rule of law. That is, law enforcement by law enforcers must be based on law. In other words, the sovereign in a rule of law is the law and every power must be obtained through law.

The application of capital punishment to perpetrators of corruption, in the context of Indonesia as a Pancasila legal state, it can be said that capital punishment is not contrary to the concept of a Pancasila legal state. It is known that the first Principle that forms the basis of the Indonesian people's philosophy of life is based on the values of Belief in the One and Only God, which concerning the application of the death penalty means that no human being on earth has the right to end human life wherever and for whatever reason. Because actually, the right to life that humans have is a basic right that is inherent in humans themselves, so it becomes a prerogative right from God. This is also the basis for the theory of refusal to apply the death penalty.

However, the reason stated above is very baseless as when viewed from the divine value contained in the first precept, countries with a religious concept, particularly Islam, such as Iran, Iraq, and Pakistan also make it customary to regulate the death penalty for corruption convicts. The countries mentioned have also begun to feel a significant impact due to the start of the collapse of the KKN mentality which on the other hand has benefited the demographics of its population. The death penalty is seen as an effective measure that provides a "deterrent effect" or a deterrent effect for perpetrators of corruption, although its manifestations are sometimes overshadowed by binding human rights law.<sup>[7]</sup>

However, it should be remembered that the purpose of applying criminal law is basically to maintain public order which is a condition for creating people's welfare as a goal to be achieved from the formation of the Indonesian state. To realize the goals of the state, the presence of the state in forming and regulating all actions in the field of law, whether civil, administrative, state, or criminal, is urgently needed. In this case, the state also has the authority to implement every legal provision that applies as positive law to create and maintain public order and security.

The most essential purpose of the law is to achieve justice, besides there are other goals that are also to be achieved and realized, namely realizing the certainty and benefits of the law. The essence of the purpose of the law is also a concept contained in Pancasila, namely the 5th precept of Pancasila which reads: Social Justice for All Indonesian People.

Based on the description above, in addition to the need to improve the formulation of the death penalty policy in Law no. 20/2001 concerning PPTK, another thing that also needs to be addressed is the role of law enforcers, especially the role of a police investigator, prosecutor or KPK and also judges in conducting investigations of suspects, the role of the prosecutor in prosecution and also the role of judges in examining trials accused of corruption.

Based on Article 284 paragraph (2) of the Criminal Procedure Code jo. Article 17 RI Government Regulation No. 27 of 1983 jo. Article 26 Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 concerning the

Eradication of Corruption jo. Article 44 paragraph (4) and Article 50 paragraph (1), (2), (3), and (4) of Law No. 30 of 2002 concerning the Corruption Eradication Commission jo. Article 30 letter d Law no. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, the Prosecutor's Office is one of the law enforcement institutions that is still authorized to conduct investigations and prosecutions of criminal acts of corruption.

In addition, the Indonesian National Police, based on Article 6 paragraph (1) letter (a) of the Criminal Procedure Code jo. Article 14 paragraph (1) letter g of Law no. 2 of 2002 concerning the Indonesian National Police and the Corruption Eradication Commission (KPK) based on Article 6 letter c of Law no. 30 of 2002 concerning the KPK, the KPK is not only given the authority to carry out investigations but can also carry out its prosecution of criminal acts of corruption.

## **2. Legal reconstruction of the death penalty for corruptor based on the value of justice**

According to the Constitutional Court, the human rights granted by the constitution to citizens starting from Article 28A to 28I Chapter XA of the 1945 Constitution, are limited by Article 28J, that a person's human rights are used by respecting and respecting the human rights of others for the sake of maintaining public order and social justice. This constitutional view is also confirmed by Law no. 39/1999 on Human Rights, which states that the limitation of a person's human rights with the rights of other people is for the sake of public order. So there is absolutely nothing against the constitution regarding this death penalty issue.

Furthermore, in Article 28 J paragraph 2 of the 1945 Constitution it is explained that in exercising his rights and freedoms, everyone is obliged to comply with the restrictions determined by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to meet just demands under moral considerations, religious values, security, and public order in a democratic society.

Concerning crimes punishable by death, the International Covenant on Civil and Political Rights (ICCPR) still tolerates countries that are parties to the ICCPR (one of which is Indonesia) which still carry out capital punishment but is limited to "*the most serious crimes*" or some very serious crimes.

The ICCPR does not provide further explanation regarding the definition of "*the most serious crimes*", however, Paragraph 7 General Comment No. 6 The ICCPR confirms that, "...*The Committee (Human Rights Committee) believes that the expression of "most serious crimes" must be read restrictively to mean that the death penalty should be a quite exceptional measure. The meaning of the words "the most serious crimes" was further explained in Paragraph 91 of the Report of Special Rapporteur (E/CN.4/1997/60), dated December 24, 1996, that crimes that can be sentenced to death must be limited to crimes that deadly or other very serious impacts. The Special Rapporteur concluded that the death penalty should be abolished for crimes such as economic crimes and drug-related offenses.*<sup>[8]</sup>

From a formal juridical point of view, the application of the death penalty in Indonesia is indeed justified. This can be traced from several articles in the Criminal Code which contain the death penalty. Apart from the Criminal Code, there are at least six laws and regulations that carry the

death penalty, such as the Narcotics Law, the Anti-Corruption Law, the Anti-Terrorism Law, the Human Rights Court Law, the Intelligence Law, and the State Secrets Law. In addition, philosophically, the application of the death penalty is also recognized and accommodated by the concept of a Pancasila legal state. This shows that the death penalty in Indonesia still exists in the laws and regulations in Indonesia. Moreover, the execution of the death penalty in Indonesia has shown an increasing trend since the reform era. Although it still maintains the death penalty in its positive law system, as a country that upholds human rights values, the Indonesian state imposes the death penalty specifically, carefully, and selectively.<sup>[9]</sup>

Currently, the death penalty is still needed, which views the threat and execution of the death penalty as a social defense. The death penalty is a social defense to prevent the general public from disaster and danger or the threat of a major crime that may occur which will befall the community, which has or will cause misery and disturb public order and security, in human relations in society and religion. The existence of grave dangers and crimes that befall and threaten people's lives, entitles the community as a whole to prevent and defend against crimes by using weapons, one of which is the death penalty.

It should be understood that corruption does not only harm the nation and state, but also damages the mentality of the people, both the government officials themselves and the wider community. The crime of corruption can create a kind of 'class grudge' amid a society that has so far felt marginalized from the arena of power. It was conditions like these that prompted Mahfud MD, when he was Chief Justice of the Constitutional Court, to launch a 'hot ball', namely that corruptors could be sentenced to death. Not only for corruptors who have bankrupted the country, as the result of the fatwa from the 2012 National Alim Ulama Conference and the NU Conbes Council but it can also be applied to all perpetrators of corruption in Indonesia.

Legal circles can categorize corruption as a crime against humanity, in which the handling of it also uses instruments and technical and procedural regulations on human rights violations. That way, corruption is no longer just a domestic problem of a country but becomes everyone's business without being limited by the state and nation's partitions. Therefore, the nations of the world have the right to participate in fighting and be aware of it as a crime that must be fought together. That is what makes corruption such a latent danger that is difficult to eradicate<sup>[10]</sup>. The existence of laws and a culture of shame that were once the character of our nation are still not able to provide shock therapy for people who commit corruption crimes in this country. It can be said that corruption has become a source of disaster or crime (the roots of all evils) which is relatively more dangerous than terrorism.

So, the application of the death penalty for corruptors can be justified, both legally (law) and for humanity (public interest). This is because the crime of corruption is related to the deprivation of the welfare rights of the wider community so its handling must also be oriented toward protecting these public rights. If the death penalty has no implications or is of no value to the perpetrator, then its value lies in its effect on others as a general deterrence.

Based on the discussion above, it is necessary to carry out a reconstruction of the provisions of Article 2 paragraph (2) of Law no. 20/2001 regarding PTPK. Reconstruction is

intended so that the application of the death penalty provides legal certainty, as well as at the same time realizing justice for the community so that it becomes: 1,000,000. 000 (one billion rupiahs), sentenced to death, life imprisonment, and 20 years in prison.

## Conclusion

Based on the results of the research, the following conclusions can be drawn:

1. Weaknesses in the regulation on the death penalty for corruptors currently is that the criteria used as a requirement in imposing capital punishment on perpetrators of corruption do not yet have clear and firm parameters. The phrases "may" and "under certain circumstances" have resulted in the application of the provisions of the article governing death penalty sanctions that cannot be applied optimally in corruption cases that occur in Indonesia, even though corruption is committed at the time of a disaster in accordance with the qualification requirements set out in Article 2 paragraph (2) Law No. 20/2001 regarding PTPK.
2. Reconstruction of regulations on death penalty sanctions for corruptors based on the value of justice is by changing the substance of Article 2 paragraph (2) of Law no. 20/2001 concerning PTPK, where the parameters or conditions in imposing death penalty sanctions are seen from the nominal value of the corruption or the seriousness of the corruption that has been committed. Thus, the criteria that become parameters have legal certainty, both in their formulation and in their application stage.

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