

Formulation of Death Penalty for Criminal Act of Corruption in China, Vietnam, and Thailand

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ABSTRACT

The purpose of this study is to clarify the application of the death penalty against corruptors in other countries and to assess existing laws in Indonesia whether the death penalty is used against corruptors and causes conflict. The death penalty is classified as an extraordinary crime. This study uses research that uses prescriptive legal methods. This research is descriptive in nature. The analysis technique used is descriptive technique and the collection of legal material used is literature search. This study uses a statutory approach to evaluate existing regulations. The production of this journal is based on a comparative approach. This approach is carried out as a comparison of existing regulations in Indonesia with regulations in other countries. The conclusion from writing this diary is that there are differences in the rules for applying the death penalty for corruptors in Vietnam and in Thailand, where there is a degree of corruption that makes the death penalty a threat. On the other hand, in Indonesia, corrupt people can be executed because there is no fixed level of income from corruption. Another thing that affects the application of the death penalty in Indonesia is that Indonesia has regulations that conflict with

the death penalty.

Keywords: *Corruption; Death Penalty; Extraordinary Crimes*

I. INTRODUCTION

Corruption is a special crime that harms people's livelihood in a country instead of the state itself. Some factors are known to play roles when individuals commit corruption, including authority and opportunities. Being worsened by multi-interpretive regulation, these two factors may significantly affect people's resilience against corruption. Individuals commit corruption to gain benefits for themselves or their groups. Corrupt individuals tend to have good knowledge, but low integrity. In addition to the difficulty to prove, field fact shows that sometimes the punished individuals are merely assistants, not the main actor of the corruption. Exposing corrupt individuals is overwhelming jobs that require a legal approach with adequate political strategies.¹

While The Criminal Code does not stipulate the death penalty for corrupt officials, criminal acts of corruption are specifically regulated in the Law on Criminal act of Corruption. The death penalty provision in the Criminal Code is included in Article 10(a) as the main punishment. Long as the death penalty provision in the Criminal Code is not abolished, the country has a clear legal basis to implement the death penalty. However, the field fact shows that it is extremely difficult to impose the death penalty to corrupt officials. This difficulty emerges because the provision is multi-interpretive and does not stipulate death penalty in a specific manner. Consequently, corrupt officials do not meet the requirement to be imposed by the death penalty. In this regard, the government's serious attention is necessary to prevent widespread corruption.

Since no regulation stipulates serious punishment, corrupt individuals seem to have considered and calculated the consequence of their corrupt acts. In other words, legislative efforts to reduce the threat of crime should consider profits, not corruption alone, so that criminals can earn profits despite paying additional criminal penalties, i.e.

¹ Kasyanto, H. Agus. *Tindak Pidana Korupsi: Pada Proses Pengadaan Barang dan Jasa*. Jakarta, Prenada Media, 2018, p. 3.

finer. Indonesia urgently needs to apply the death penalty to prevent widespread corruption. Death penalty appears to be helpful to instill fear in perpetrators and to make them think twice before committing corruption. Developing countries like Thailand and Vietnam have advocated the death penalty for corrupt individuals.² Death penalty should be used as the primary legal effort and explicitly regulated in the anti-corruption law in Indonesia.

Disagreements with the death penalty in Indonesia stem from provisions of human rights, such as Article 28A, 28I, paragraphs (1) and (4) of the 1945 Constitution, and Article 9 paragraph (1) of the Law on Human Rights.³ The international instrument underlying the disagreement with the death penalty in Indonesia is the ICCPR, which has been ratified in Law No. 12 of 2005. Many corruption cases in Indonesia that could be sentenced to death against suspects have not obtained maximum results, which can trigger a question: If the death penalty could be imposed on the corrupt, why are most corruption cases not punished accordingly? In short, death penalty is an urgently necessary preventive measure to instill fears in corrupt individuals and to make them think more clearly before committing this extraordinary crime due to fear of its consequences. The death penalty is a necessary effort to reduce corruption rates. Indonesia needs to learn from other countries that implement death penalties and report decreased corruption rate. The reflection can be a reference to the creation of the Criminal Code law or the reform of a law in the implementation of the death Penalty for extraordinary crimes, in particular corruption.

This paper reflects the authors' standpoint with regard to the issues being discussed. Despite some similarity, the present paper took a different standpoint. Although this paper is similar to that written by Awaliyah Rizki Nurul in 2015.⁴ This paper focused on the similarity and difference of penal sanction between Indonesia and China. Another similar study was also conducted by Elizabeth Purba in 2018, entitled

² Wardani, Koko Arianto, et al. "Kebijakan Formulasi Hukuman Pidana Mati Terhadap Pelaku Tindak Pidana Korupsi di Indonesia." *Jurnal Hukum Khaira Ummah*, Vol. 12, No. 4, 2017, pp. 951-958, <http://jurnal.unissula.ac.id/index.php/jhku/article/view/2571/1928>.

³ Rahim, Abdur, et al. *Hukuman Mati Problem Legalitas & Kemanusiaan*. Malang, Intrans Institute, 2015, p. 12.

⁴ Awaliyah, Rizqi Nurul. "Perbandingan Pengaturan Sanksi Pidana Dalam Tindak Pidana Korupsi Berdasarkan Perundang-Undangan Indonesia dan China." *Jurnal Hukum Pidana dan Penanggulangan Kejahatan*, Vol. 4, No. 1, 2015, pp. 73-84, <https://doi.org/10.20961/recidive.v4i1.40551>.

“Hukuman Mati Terhadap Tindak Pidana Korupsi di Berbagai Negara yang Menerapkan Hukuman Mati (Indonesia, China, dan Thailand) (Death penalty for Corruption in Indonesia, China, and Thailand) focused on the execution of the corrupt in these three countries.⁵ This paper focused on comparing the implementation of the death penalty in several countries.

This paper applied a normative legal method by using primary and secondary legal sources. The secondary data in this study were books relevant with the topic discussed in this paper. Normative approach used in this paper was done by studying regulation related to the death penalty and reviewing the literature. Statute approach was also applied in this study. The study compared the death penalty for corruption in Indonesia to that in China, Vietnam, and Thailand. It was done by comparing the regulations in one country to another.

These three countries were selected because they have regulations about imposing the death penalty to corrupt officials. Indonesia needs to learn from Vietnam and Thailand that apply the death penalty for corruption. Data were analyzed descriptively to depict legal or non-legal and legal statements. The legal materials were collected from literature on relevant regulations.

This study compares the provision of death penalty for corruption in Indonesia to that in China, Vietnam, and Thailand with Indonesia. It also discusses the contradictions of death penalty in Indonesia with the existing regulations in Indonesia. In other words, it comparatively analysis the death penalty provisions in China, Vietnam, and Thailand to recommend more explicit death penalty in Indonesia. This paper is entitled “Formulation of Death Penalty for Criminal Act of Corruption in China, Vietnam, and Thailand”.

⁵ Purba, Elizabeth. “Hukuman Mati Terhadap Pelaku Tindak Pidana Korupsi di Berbagai Negara yang Menerapkan Hukuman Mati (Indonesia, China, dan Thailand).” *Jurnal Mahupiki*, Vol. 1, No. 4, 2018, pp. 1-21, [https://garuda.kemdikbud.go.id/doc uments/detail/1433357](https://garuda.kemdikbud.go.id/documents/detail/1433357).

II. DISCUSSION

1. Comparison of Death Penalty for Corruption in Various Countries

Crime is a humanitarian problem that causes social problems because it affects not only a certain group and also ends in the spread of crime. Corruption affects the lives of many people, and this practice can transform into a corrupt culture when left unattended. Due to its widespread state, corruption could be found not only at high-level officials but also at the lower groups, which may directly affect people's lives. Corruption is proven to threaten social norms with which individuals live their social life. Corruption is a crime against humanity that affects social reality. However, its causes are difficult to understand and may occur anywhere and at any time in the life of society. There are a range of crimes in this world, from ordinary to extraordinary crimes, and corruption has been categorized into the latter. Extraordinary crime refers to an offense that significantly affects aspects of society, nation, and state life.⁶ Crime standards, which can be called abnormal crimes, derive from human rights violations. Such violations include threats to security, peace, well-being, and human lives. For an offense to be categorized as an extraordinary crime should be planned, regulated, and implemented systematically at a high cost,⁷ which is reflected in the punishment for corruption.

Various countries around the world have various reasons not to implement or execute the death penalty towards corrupt individuals, and one of the most prominent reasons is that the penalty is deemed violating human rights. The application of the death penalty for corruption may act as an important preventive effort. In Indonesia, the application of death penalty as the *maximum remedium* or the last weapon to combat corruption still attracts pros and cons. No indication of decreased corruption rate in the country implies that the current punishment fails to deter the perpetrators.⁸ Indonesia

⁶ Dewi, Ni Komang Ratih Kumala. "Keberadaan Pidana Mati Dalam Kitab Undang-Undang Hukum Pidana (KUHP)." *Jurnal Komunikasi Hukum*, Vol. 6, No. 1, 2020, pp. 104-114, <https://doi.org/10.23887/jkh.v6i1.23444>.

⁷ Marbun, Roy Ganda, et al. "Tinjauan Yuridis Tindak Pidana Korupsi Sebagai Extra Ordinary Crime." *Jurnal Ilmiah Simantek*, Vol. 4, No. 3, 2020, pp. 234-243, <https://simantek.sciencemakarioz.org/index.php/JIK/article/view/184/161>.

⁸ Fagan, Jeffrey. "Death and Deterrence Redux: Science, Law and Causal Reasoning on Capital Punishment." *Ohio State Journal of Criminal Law*, Vol. 4, 2006, pp. 255-320,

needs to compare itself to other countries that implement the death penalty for corruption. By doing so, it is expected that the country could improve its criminal law.

1.1 Death Penalty for Criminal Act of Corruption in Vietnam

The death penalty provision in Vietnam applies to major crimes against the state, corruption, and drug trafficking. The Vietnamese Criminal Code of 1985 regulated 40 crimes that may be imposed by the death penalty, including corruption. Currently, there are 32 crimes that could be imposed with the death penalty in that country.⁹ Article 278 paragraph (4) of the Vietnamese Criminal Code reads: “Committing the crime in one of the following circumstances, the offenders shall be sentenced to twenty years of imprisonment, life imprisonment or capital punishment: (a) Appropriating property valued at five hundred million dong or more (b) Causing other particularly serious consequences.”

Furthermore, article 279 paragraph (4) stipulates that “Committing the crime in one of the following circumstances, the offenders shall be sentenced to twenty years of imprisonment, life imprisonment or capital punishment: (a) Appropriating property with valued at three hundred million dong or more; (b) Causing other particularly serious consequences.”

Vietnam does not have a specific regulation when the corruption is committed by the state official. Articles 278 (4)a and Article 279 (4)a state that corrupt individuals may be imposed by 20 years of imprisonment, life imprisonment, and death penalty. The weakness of the death penalty implementation for corruption in Vietnam lies in the absence of the classification of perpetrators who may be imposed on death penalty.

1.2 Death Penalty for Criminal Act of Corruption in Thailand

As an effort to combat the widespread corruption in the country, Thailand imposes the death penalty to individuals who commit a corruption. Some articles

https://scholarship.law.columbia.edu/faculty_scholarship/1427?utm_source=scholarship.law.columbia.edu%2Ffaculty_scholarship%2F1427&utm_medium=PDF&utm_campaign=PDFCoverPages.

⁹ Hood, Roger. *The Death Penalty: A Worldwide Perspective*, 3rd Ed. New York, Oxford University Press, 2002, p. 13.

stipulate death penalty for individuals violating these articles. The regulation is stated in articles 149, 201, and 202 of Criminal Procedure Code of Thailand *Criminal Procedure Code of Thailand (No.29), BE 2551 (2008)*. These articles read as follows:

Article 149 on bribery states that anyone who is an official, a member of the state legislative council, a Member of the changcuat assembly or a City Assembly, erroneously demands, receives or agrees to receive for himself or another any property or any other benefit for the performance or non-execution of any function, whether it is performing or not its functions incorrectly or not, shall be punished with a criminal sentence of imprisonment of five to twenty years and a fine ranging from two thousand to four thousand baht, or death.

Meanwhile, article 201 on bribery states that any court officer, public prosecutor, official conducting the case or investigative official, erroneously claiming, receiving or agreeing to receive the property or other benefits for themselves or others to move or not to do anything will be imprisoned from five years to twenty years or life imprisonment and fines ranging from twenty thousand baht to forty thousand Baht or death.

Lastly, article 202 states that anyone who, as a court officer, public prosecutor, officer conducting a case or an investigative official, performs or fails to perform any of his functions by considering property or other benefits that he has requested, received or agrees to receive before being appointed for that office, is threatened with a criminal sentence of five to twenty years in prison or life imprisonment and a fine of twenty thousand to forty thousand baht, or death.

Article 149 of the Criminal Procedure of Thailand (No.29), BE 2551 (2008) stipulates that perpetrators who are sentenced to death are state officials, members of the state legislative councils, a member of the changwat assembly or member of a city council. Meanwhile, Articles 201 and 202 stipulate that the subjects of death penalty are individuals in an official position and who conducts the court.

In Thailand, the death penalty provision emphasizes that corrupt state officials or legal agencies should be imposed by the death penalty as the maximum charge. The provisions related to corruption in this country also stipulate amounts of fines to

compensate for the state's loss caused by the corruption. However, the weakness of regulation lies in the absence of stipulation on the minimum amount by which a perpetrator could be sentenced to death. This absence potentially causes legal uncertainty, which gives an advantage for perpetrators due to difficulty in deciding the sanction. However, the regulation of criminal acts of corruption in Thailand treats every individual fairly with respect to the death penalty implementation, as shown by the article stating that any corrupt state official shall be imposed by death penalty.

1.3 Death Penalty for Criminal Act of Corruption in Indonesia

Punishment for corruption in Indonesia is regulated in Law No. 31 of 1999 on the prevention of criminal acts of corruption. Article 2 paragraph (2) of this law states that if the criminal offense referred to in paragraph (1) is carried out in certain circumstances, the death penalty can be imposed." The phrase "in certain circumstances" is further explained in article 2 paragraph (2) of Law No. 20 of 2001 on the Amendment of Law No. 31 of 1999 on Eradication of Criminal Act of Corruption, stating that the phrase "certain circumstances" refers to a condition that could be used as justification to impose more severe punishment to the perpetrator, such as funds for countermeasuring emergency conditions, national natural disasters, widespread social unrest, economic and monetary crises, and corruption.

A significant difference is noticed when comparing regulation of corruption in Indonesia to that of Thailand and Vietnam. The application of the death penalty for corruption in Indonesia can not be fully realized because 'the certain circumstances' do not often occur in the country, whereas the corruption rate continues to increase each year. Article 2 paragraph (2) is considered to cause legal uncertainty and multi-interpretive with respect to sanction for the corrupt. The death penalty rules need to be explicitly stipulated in the amended regulation and law to avoid multi-interpretation in determining the way to impose sanction to the perpetrator. Differences are noticed among Indonesia, Thailand and Vietnam with regard to their regulation on corruption. That is to say, Indonesia does not have a number of qualifications, while Thailand and Vietnam have some qualifications to impose the death penalty.

To make changes in the framework of the reform against corruption criminal laws it is necessary to design the nominal amount of corruption categorized so that the

implementation of such death penalties can bring about justice in the penal system. Indonesia needs to compare with other countries in drafting a regulation in order to produce new regulations on the elimination of this corruption crime in accordance with what is expected from both law enforcement and society. In order to carry out an adoption of the criminal settlement of death, the perpetrator of the crime of corruption in another country which is then designed to be a formulation in the rules must also be considered the philosophical aspects of the nation. The death penalty is a repressive effort to combat the corruption acts that are developing at the present time in Indonesia with the existence of the formulation against the rules in force, then the crime must be seen also from the perspective of the policy of criminal law (penal policy) so that the arrangement can prevent a corruption act. Corruption is a systematic crime with widespread impact that should be addressed using comprehensive extraordinary measures.¹⁰

2. Provision of Death Penalty for Corruption in Indonesia that Contradict Other Regulations in the Country

Death penalty in Indonesia could be imposed for extraordinary crimes. The advantages and disadvantages of the death penalty are often discussed when it comes to the existing regulation in Indonesia. Political interest such as to educate people not to be corrupt is not a sufficient reason to implement the death penalty. Basically, the death penalty contradicts the 1945 Constitution, Human Rights Law, and ICCPR which has been ratified in Law No. 12 of 2005 on the International Convention on Civil and Political Rights. Death penalty basically aims to prevent crimes, especially corruption, from recurring. The application of the death penalty also contradicts the state's philosophy, Pancasila, particularly the second *sila*, i.e., ... a just and civilized human being. Thus, it is clear that Pancasila disagrees with the death penalty in Indonesia. However, there are factors that support the enforcement of the death penalty. The legality of the death penalty is stipulated in the article 10 of Criminal Code. In the case of corruption that is still ongoing, the arrangement of the sentence must be adjusted by enacting laws and regulations that strengthen the execution of death penalty so as not to

¹⁰ Widodo, Eddyono Supriadi. *Politik Kebijakan Hukuman Mati di Indonesia Dari Masa ke Masa*. Jakarta, Tim Institute Criminal Justice Reform, 2017, p. 137.

collide either with the philosophical aspects of the state or the rules of existing laws, the government will be more cautious in eradicating corruption, both executive and legislative.

2.1 Articles of the 1945 Constitution that contradict the Implementation of Death Penalty for Criminal Act of Corruption

Article 28A of the 1945 Constitution states that Every person shall be entitled to live and be entitled to defend his/her life and living. This article clearly is in conflict with the death penalty provision for the corrupt. This article does not restrict a person's right to life. Article 28I (1) further states that The right to live, the right not to be tortured, the right of freedom of thought and conscience, the right of religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted under a retroactive law are human rights that cannot be reduced under any circumstance whatsoever. In other words, the 1945 Constitution does not restrict one's right to live and prohibit the deprivation of one's right during the trial. Death penalty is defined as the deprivation of a person's right to life by violence due to his/her crime. The 1945 Constitution, as the highest rule of law, has created a controversy regarding the validity of the death penalty in Indonesia, implying that the perpetrators' profit gained from their crime is nothing when compared to the death penalty imposed on them.¹¹

Death penalty also contradicts article 28I paragraph (4), stating that the protection, advancement, enforcement and fulfillment of human rights shall be the responsibility of the state, particularly the government. The article shows that the government is responsible for its citizen's rights. The government should protect and enforce its citizen's right and view the right as a need to be fulfilled. The government is also responsible for protecting one's right during the trial until the court issues a ruling.

The death penalty is absolute, as those sentenced to death will not return to life even if they are declared innocent in the future. The article asserts that the government

¹¹ Hamenda, Veive Large. "Tinjauan Hak Asasi Manusia Terhadap Penerapan Hukuman Mati di Indonesia." *Lex Crimen*, Vol. 2, No. 1, 2013, pp. 113-119, <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/1003/816>.

should protect human rights by becoming more selective in imposing the death penalty, and that the person who imposes the death sentence can be held accountable for his decision when the sentenced individual is later declared innocent. While the death penalty is considered to violate one's rights stipulated in Articles 28A and 28I, it is important to note that the implementation of these articles should also adhere to article 28J of the 1945 Constitution.¹²

Article 28J holds a power to legalize the death penalty against a person when his/her act of corruption affects the rights of many people. However, it is important to reconsider the implementation of the death penalty for corruption in order to minimize potential mistakes when making a ruling, as it significantly affects stigma in the community. Thus, in the establishment of the suspect and the imposition of the punishment against the perpetrator of criminal acts of corruption can provide justice that is fair to the falling of punishments in accordance with his acts and just to the rights that a person possesses even though the person has committed a crime. Taking article 28J of the 1945 Constitution into account, corruption could be viewed as deprivation of a person's right due to an opportunity and chance to commit corruption. It is clear that the criminal act of corruption deprives rights of many people and damages the society, nation, and the state.

2.2 Articles in Law No. 39 of 1999 on Human Rights that Contradict the Implementation of Death Penalty for the Corrupt

The death penalty imposed on the corrupt equals deprivation of one's right to live. Articles 4 and 9 of Law No. 39 of 1999 contradict the implementation of the death penalty for criminal acts of corruption. Article 4 states that the right to life, the right to not to be tortured, the right to freedom of the individual, to freedom of thought and conscience, the right not to be enslaved, the right to be acknowledged as an individual before the law, and the right not to be prosecuted retroactively under the law are human rights that cannot be diminished under any circumstances whatsoever. Meanwhile, article 9 paragraph (1) states that everyone has the right to life, to sustain life, and to improve his or her standard of living. Both articles above serve as the protector of a

¹² Soge, Paulinus. "Tinjauan Yuridis Eksekusi Pidana Mati di Indonesia." *Yustisia Jurnal Hukum*, Vol. 1, No. 3, 2012, pp. 94-104, <https://doi.org/10.20961/yustisia.v1i3.10092>.

person's basic rights granted directly by the One God, and hence must not be deprived by anyone. By these articles, the government is obliged to protect every human being as a living being who has rights that cannot be disturbed by any party. These rights must be upheld, respected, and enforced by every human person as a social being.

The concept of protecting human rights from the interests of the state is grounded upon the binding relationship between the state and its citizens, although they commit crimes, including corruption. In this case, the state reserves the right to regulate and restrict the rights of everyone, especially those who deprive others' right through corruption.¹³ A review of human rights law shows that the law also recognizes the restriction of individual rights, as well as the right of others to maintain order in society. Therefore, the death penalty can be viewed as the state's protection of the rights denied by a person when committing a criminal act of corruption that damages the state and society. However, it is also important to pay attention to the rights of the allegedly corrupt. In this regard, it is necessary to consider legal efforts made by the suspect to reduce his/her sentence, to obtain opportunities to prove his innocence and show that he does not deserve the death penalty. Criminal acts of corruption basically contain human rights violations to benefit individuals and groups.¹⁴

There is an international community movement to abolish the death sentence. However, despite the desire of the international community to abolish the death penalty, it can still be applied for extraordinary crimes. The prohibition of the death penalty is contained in Article 6 (1) ICCPR. This right must be protected by law. No one may be deprived of his right to live arbitrarily. This international instrument clarifies the legality of the application of the death penalty for those states which have not abolished it in accordance with applicable law, and has articles which apply to the most serious crimes, as referred to in Article 6 Paragraph (2), stating that in countries that have not abolished the death penalty, death can only be imposed for some of the most serious crimes according to the law in force at the time the crime was committed, and consistent with the provisions of the Convention on the Law of Prevention, which may only be enforced

¹³ Pratama, Widhy Andrian. "Penegakan Hukuman Mati Terhadap Pembunuhan Berencana." *SIGN Jurnal Hukum*, Vol. 1, No. 1, 2019, pp. 29-41, <https://doi.org/10.37276/sjh.v1i1.34>.

¹⁴ Yanto, Oksidelfa. "Penjatuhan Pidana Mati Pelaku Tindak Pidana Korupsi Dalam Keadaan Tertentu (Death Penalty to Corruptors in a Certain Condition)." *Jurnal Legislasi Indonesia*, Vol. 14, No. 1, 2017, pp. 49-56, <http://eprints.unpam.ac.id/id/eprint/6099>.

on the basis of a final judgment of a court. This article states that the right to life of a person is not entirely personal property, and that the state can exercise its right to punish extraordinary crimes and does not contradict the provisions of the Covenant.¹⁵ The ICCPR does not prohibit the death penalty, however, the justification to impose the death penalty for corruption as an extraordinary crime has not received special international attention. The international community tends to pay more attention to the death penalty than to the perpetrator, and especially in cases of corruption that violates the right to life, the violation of victims' rights are often ignored.¹⁶ In 2005, Indonesia ratified the ICCPR by issuing Law No. 12/2005. The convention was ratified because Indonesia is a part of the international community that respects and supports the provisions and goals of the United Nations and the Universal Declaration of Human Rights, as well as international principles and goals. The document fundamentally did not violate the hierarchy of the rules of the laws of Pancasila and the 1945 Constitution. Therefore, the ratification does not change the content of the treaty and establishes international instruments binding on the agreement in Indonesia.

The death penalty itself could be seen as a problem because it takes the right to life from a person who has committed an extraordinary crime, which is in contrast with the provisions referred to in a regulation relating to human rights.¹⁷ The Indonesian Constitution does not absolutely prohibit the application of a death penalty. However, some of its articles could be used as an alibi by a person who disagrees with the death penalty, thus demanding further consideration of rights of the corrupt individuals.

3. The Importance of Death Penalty in Criminal Act of Corruption in Indonesia

While debates between proponents and adversaries of the death penalty for criminal acts of corruption continue, both sides should agree that Indonesia is one of the

¹⁵ Krisnawati, N. dan Suatra Putrawan. "Penerapan Hukuman Mati Secara Massal di Mesir Ditinjau Dari Hukum Hak Asasi Manusia Internasional". *Jurnal Kertha Negara*, Vol. 3, No. 3, 2015, pp. 1-5, <https://ojs.unud.ac.id/index.php/Kerthanegara/article/view/15201/10062>.

¹⁶ Wicaksono, Setiawan. "Hambatan Dalam Menerapkan Pasal 6 Konvenan Internasional Tentang Hak-Hak Sipil Dan Politik Sebagai Dasar Penghapusan Pidana Mati di Indonesia." *Pandecta Research Law Journal*, Vol. 11, No. 1, 2016, pp. 65-79, <https://journal.unnes.ac.id/nju/index.php/pandecta/article/view/6682/4992>.

¹⁷ Anjari, Warih. "Penerapan Pidana Mati Terhadap Terpidana Kasus Korupsi." *Masalah- Masalah Hukum*, Vol. 49, No. 4, 2020, pp. 432-442, <https://doi.org/10.14710/mmh.49.4.2020.432-442>.

most corrupt countries in the Asia Pacific. Therefore, it is urgent to find ways to eradicate corruption, including the death penalty, as corruption has severely damaged the country's economy and causes poverty. The results of the survey Political and Economic Risk Consultancy (PERC) in 2010 that positioned Indonesia as the most corrupt country in Asia-Pacific, with a score of 9,07, should not be surprising. Indonesia was in the first position among corrupt countries in the region (previously on rank 7.69). Based on the score, PERC concludes that the corruption in Indonesia is worsening and occurs at all institutions and levels.¹⁸

PERC's conclusion should not be surprising, considering that Corrupt officials do not show deterrence and people who have not had an opportunity for corruption even aspire to commit ones when the opportunity comes. Thanks to this culture, the arrest of tens of officials, politicians, and private parties by the Corruption Eradication Commission (KPK) brings no deterrent effect. The corrupt officials believe that they are only unlucky when being arrested by KPK or other law enforcers. The phenomenon is the same as the Indonesian migrant worker. Many of the hardships and suffering experienced by the female migrant workers (TKW) overseas does not decrease women's interest in becoming TKW.

The corrupts would do anything to escape the law once they are caught, or at least Minimize the punishment and the fine. Therefore, the legal mafia lives happily in Indonesia and enjoy far higher salaries than the law enforcers. It should also be noted that the criminal act of corruption is a calculative behavior, meaning that the perpetrator would not go bankrupt when they are caught.

Indonesia's lack of assertiveness in addressing the national issues causes the problem not to be solved holistically. Major cases of corruption are difficult to investigate due to the protection given by powerful authorities.

The 9.07 of 10 points indicate that the corruption in this country is almost perfect, and PERC's conclusion convinces the public that the corruption eradication efforts and presidential instructions end up in vain and are meaningless due to poor implementation. The permit to investigate regional heads, which should be issued by the

¹⁸ Al-Faruqi, Jabir. "Sempurnalah Korupsi di Indonesia", *Antikorupsi.org*, 10 Maret 2010, <http://antikorupsi.org/indo/content/view/16577/7/>, accessed on 23 April 2023.

president, is still unclear. This nation should not hope to successfully eradicate corruption if today's culture persists. Hoping that corruption can be erased or the number is suppressed is actually a nightmare in the nightmare, because this nation is increasingly losing its character, initially this nation attached the hope of eradication of corruption to the figure of Susilo Bambang Yudhoyono (SBY), he was raised in the world of intellectual property so that he has a high discipline, in addition, his figure is considered relatively clean when compared with other figures.¹⁹

In the early stages of his leadership, the eradication of corruption was more fragile and flattered compared to his involvement in corruption. However, since the beginning of the second leadership period, it turned out that the smell and scourge of corruption increased. The peak of the anti-corruption imagery of the SBY regime has fallen since the fall of the Bank Century case. Although the final conclusion has already been delivered in the parliamentary meeting, the issue has not yet been resolved. The problems continued to develop until the term "tukar guling" and "barter" appeared in corruption cases to save bigger crucial problems.

The emergence of these terms indicates that this nation is not shy about exhibiting corrupt behavior in public. This reflects the increasingly unclear direction of corruption eradication as the spirit and enthusiasm has disappeared and is untraceable. If the PERC survey results released recently are contextualized with the recent reality in Indonesia, there really is nothing to exaggerate. Corruption is widespread, from policy makers to the lowest level.

Meanwhile, the campaign for reforming the public service sector with various innovations to facilitate and reduce service costs continues. The ending is how to reduce corruption in the public service. However, not all people could feel the impact of these efforts, and these public service innovations have not touched vital issues needed by the community, the performance of police services are still disappointing, the court is also still far from ideal to be a place to seek justice, even the treatment in correctional institutions is also full of corrupt mafia.

¹⁹ *Ibid.*

The country's education sector clearly fails to internalize honesty. The national exam with its quantitative score orientation encourages people in this sector to justify any means to obtain good grades and pass. So, it's not the students who are being tested, but the principals, teachers and parents. This condition appears to be the beginning of the corrupt mentality in this country. Pro-people programs, whether distributed through departments or directly to the community, are often corrupted and could not be addressed by law enforcement, as such corruption is done without feeling guilty. On the other hand, those who wish to improve the situation by combating corruption will be sidelined. The Buaya vs. Cicak case indicates that groups that wish to improve the situation will face serious obstacles, challenges, and even life-threatening hindrances. Therefore, it seems that all state administrators are willing to join together with corruption so that they are not expelled from their habitat, a condition that accounts for increasingly rampant corruption in Indonesia.

Indonesia is already at a very urgent point before the destruction of the economy and people's lives due to corruption. A solution must be immediately sought, including the consideration of imposing the death penalty for corrupt officials because it does not contradict the prevailing law.

3.1 Corruption as Crime Against Humanity

In Indonesia, the practice of corruption has become increasingly widespread and has even reached all aspects of life, both at the central and regional levels, corruption is like drug addiction which is difficult to eradicate because it has become a necessity that must be met at any time and is a way of life for the corrupt to obtain as much wealth as possible by ignoring the law and the principles of humanity.²⁰ Historically, corrupt behavior in Indonesia has become a habit that is difficult to eradicate, because there are many problems in various aspects that support the corruption itself. The complexity of this corruption does not seem to be a priority issue that must be resolved jointly but rather corruption is used as a tool for those in power and authority to provide opportunities and opportunities for themselves and their groups (parties) so that corruption is under their hands.

²⁰ Atmasasmita, Romli. *Teori Hukum Integratif*. Yogyakarta, Genta Publishing, 2012, p. 13.

This can be seen from various indicators, for example, starting from the legislation itself which provides weaknesses in the occurrence of corruption, it is only seen from the perspective of the regulations that provide opportunities or loopholes and opportunities for corruption to occur, not to mention the dilapidated system that is being treated by institutions. State institutions in general are uncontrolled and strangely people who behave well (pious) when they enter the dilapidated system even join in the system they don't want, so people are good, smart, professional, and have a good track record it is not a guarantee that he will be spared from the crime of corruption.²¹

Corruption is like a vicious circle that is difficult to get out of because its work is influenced by a bad system built by rulers who have power and authority. It should also be noted that the corruption stems from abuse of power and lack of public accountability and transparency. These factors make corrupt individuals use their power for their personal or group interests while ignoring the public interest they should fight for as the people's representatives (DPR) or as the law enforcer (Attorney General, judges and police). Corruption has brought poverty, unemployment, economic difficulty, and wider social gap. Therefore, it is safe to categorize corruption as an extraordinary crime, or even as a crime against humanity.²²

The crime of corruption is a crime against humanity within government institutions. These crimes were committed by government officials who are mandated as representatives of the people to protect people's rights. Ironically, they dare to abuse these rights for their own interests and those of their group. The phenomena of corruption, collusion and nepotism (KKN) as forms of crime that we encounter today are not much different from the royal feudal culture. It's just that the era and the working procedures and motives are different, but the substance remains the same, namely diverting public wealth and exploiting public rights using corrupt policies.

Corruption is essentially an act of economic sabotage, social sabotage and cultural sabotage. Corrupt individuals not only insult religious values, morality and humanity, but also create economic polarization, social amnesia and cultural decay as well as multi-layered poverty. The actions of the corrupt have betrayed millions of

²¹ *Ibid.*, p. 15.

²² Jaya, Nyoman Sarekat Putra. *Beberapa Pemikiran Ke Arah Pengembangan Hukum Pidana*. Jakarta, Citra Aditya Bakti, 2008, p. 69.

people in poverty. Thus, it is safe to declare corruption as a crime against humanity because it has caused poverty and misery for the people.

Indonesia is undoubtedly facing a serious problem. Public trust in law enforcement officers (police, prosecutors, judges and of course lawyers) is almost at its lowest point. Although many officials are good, but the most dominant appearance of these institutions is negative. Severe corruption can occur among people's representatives and officials, starting from the level of RT, village head, sub-district heads, regents, governors to higher levels, or carried out by bureaucratic apparatus from the lowest to the highest.

According to Islamic scholars, corruption is a serious betrayal of the mandate of the people, so that it can be categorized as a crime against humanity. Judging from the way it works and its impact, the prohibition of corruption exceeds the acts of theft (sariqah) and robbery (nahb). Corruption in its various forms, for example, bribery (risywah), mark-up (khiyanat), embezzlement (ghulul) and extortion (muksu), is the abuse of power and authority in order to benefit oneself and one's group and harm the state and the people at large. Corruption must be seen as a form of abuse of power, which is not only about money, but has also caused loss of opportunities to achieve common goals, both economically, socio-culturally and ecologically, and was followed by various forms of violence, terror, and a decrease in the quality of humanity.²³ The punishment should be ta'zir according to the severity of the damage caused and can be increased to the death penalty.²⁴

3.2 Death Penalty: A view from Legal Principles

The laws and regulations in Indonesia clearly regulate the existence of the death penalty and have determined the mechanism for carrying out the death penalty. In general, when conducting a discussion about whether or not a legal product is

²³ Balipost. "Korupsi: Kejahatan Moral dan Kemanusiaan." *Balipost.com*, <https://www.balipost.com/BaliPostcetak/2008/1/29/o2.html>, accessed on 23 April 2023.

²⁴ Anshoriy, H.M. Nasruddin. "Jihad Melawan Korupsi." *Ombudsman-asahan.org*, 2008, https://www.ombudsman-asahan.org/index.php?option=com_content&task=view&id=399&Itemid=74, accessed on 23 April 2023.

appropriate, a systematic review of the existence of the legal product must be carried out from the point of view of legal principles.

Thus, it is necessary to revisit Gustav Radbruch's theory of legal principles. The theory says that law has three principles, namely: legal certainty, utility, and fairness.²⁵ It is necessary to use these three principles to answer this controversy by looking at it from the point of view which has been classified by Gustav Radbruch.

3.2.1. Principle of Certainty

One of the basic legal principles are that law should have certainty. Legal certainty means that a regulation can consistently implement its stipulation, thus creating a binding effect. The death penalty has been regulated in our constitution and also has a strong legal basis because it has been regulated in law. Therefore, the death penalty can be said to have legal certainty because it already has a law as its juridical power to consistently deliver and implement the contents of all forms of regulations. The application of the death penalty is a symbol of legal certainty in Indonesia and also as a form of legal supremacy which is currently one of the government's platforms.

The recognition of the imposition of the death penalty constitutes an appreciation from the Indonesian legal community in seeing the power of the law in providing binding provisions.

3.2.2. The Principle of Utility

It is necessary for the law to be useful for the people's social existence and diversity. The principle of utility means that the law can provide a value-added to efforts of developing public awareness in order to create a conducive atmosphere among the community. Taking the principle of utility into account, any regulation should be useful for creating a conducive social life. A conducive atmosphere can only be felt when the criminal cycle can be minimized. Indeed, it must be realized, that in fact while there are still social relations that are fostered among the community, crimes will still

²⁵ Julyano, Mario and Aditya Yuli Sulistyawan. "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum." *Jurnal Crepido*, Vol. 1, No. 1, 2019, pp. 13-22, <https://doi.org/10.14710/crepido.1.1.13-22>.

exist, so that the law can only position itself as a useful instrument to minimize crime in society by providing a deterrent effect on perpetrators of crimes. On the other hand, the law must also be able to prevent the recurrence of the same crime, especially opportunities for perpetrators to repeat their crimes. In a broader perspective, the law is also required to make people who have not committed the crime not to commit the same crime. The point is the law must be able to provide a deterrent effect on perpetrators of crime and also be able to prevent the recurrence of the same crime, either for the same person or different people.

Regarding the death penalty controversy, the benefits of its implementation must also be unraveled. It is important to determine whether the death penalty can have a deterrent effect on perpetrators and prevent individuals from committing crimes that may lead to the death penalty. Even though this is not recognized by groups who reject the death penalty, it turns out that the death penalty can have a deterrent effect on perpetrators of crimes and those who have not committed them.

It is proven in China, a country which until now still considers it necessary to maintain the death penalty and also ranks highest in countries that carry out the death penalty the most. The death penalty was first introduced in China during the reign of Prime Minister Zhu Rongji to serve as a punishment for corrupt officials in this country. During his reign, he implemented a controversial policy, namely ordering 100 coffins for the corrupt officials. Unexpectedly, it turns out that this policy successfully instills fear in corrupt officials, as indicated by the decline in the corruption index in China. To date, this policy continues to apply in this Country.²⁶

There are many other examples that show the potential for the death penalty to have a deterrent effect on perpetrators and also prevent the crime from happening again, either by the same person or by someone who has not committed the crime. Death penalty could bring a deterrent effect on the perpetrator while instilling fear in individuals, preventing them from committing the crime.

²⁶ Irdini, Kesuma. "Legal Comparison against the Death Penalty Sanctions regulated in the Positive Laws of Indonesia and China." *Corruptio*, Vol. 2, No. 2, 2021, pp. 113-126, <https://doi.org/10.25041/corruptio.v2i2.2387>.

3.2.3. Principle of Fairness

"Law aims to fulfill a sense of justice", thus the purpose of law is in the midst of society according to Aristotle's study. In other words, any form of policy must be able to provide a sense of justice for every individual. Even though it is actually very difficult to know the fair criteria in the human heart. But at least the law must be able to allocate a sense of justice to the human heart. At the philosophical level, fair is placing something in its portion. In order to present a sense of justice, it is important to cover a loss using matters with equal values to the loss.²⁷

In accordance with the provisions stipulated by law, crimes that will be subject to the death penalty are terrorism, crimes against human rights, drug abuse and corruption. It is known that the crimes mentioned above have claimed many victims. These crimes have also violated many human rights.

For instance, gross human rights violations, such as the massacre of millions of Muslims in Bosnia, in which many lives were lost during this massacre. Some other people also survived the massacre. When the Bosnian people (survivors) which incidentally are the families and closest people of the victims were questioned as to what punishment was appropriate for those who carried out the massacre, they firmly answered, it was the death penalty that should be given to those involved in the massacre. They thought that the perpetrators of the massacre did not heed the values of the human rights of the victims, so there was no reason to respect the human rights of the perpetrators of these crimes. Life can only be replaced by life.²⁸

It was not only the victims of the Muslim massacre in Bosnia who thought that the death penalty should still exist, but one of the victims of the 1st Bali Bombing still agreed that the death penalty should still be applied, especially for the three Bali Bomb convicts, i.e., Amrozi and his gang. When interviewed by one of the national print media on the eve of the execution of the three convicts in the terrorism case, Bayu

²⁷ Nasution, Bahder Johan. "Kajian Filosofis tentang Konsep Keadilan dari Pemikiran Klasik sampai Pemikiran Modern." *Yustitia*, Vol. 3, No. 2, 2014, pp. 118-130, <https://doi.org/10.20961/yustisia.v3i2.11106>.

²⁸ Mahgfiroh, Afriza Fitri, et al. "Yurisdiksi Mahkamah Pidana Internasional Terhadap Kejahatan Kemanusiaan Dalam Perang Bosnia." *Lontar Merah*, Vol. 5, No. 1, 2022, pp. 452-460, <https://jom.untidar.ac.id/index.php/lontarmerah/article/view/2635/0>.

Galih, one of the many victims of the Bali Bomb 1 who is still alive, said that: “*saya setuju apabila Amrozi, dkk dijatuhi hukuman mati dan kami mengharapkan agar proses eksekusi dipercepat dan segera dilakukan.*” (I agree that Amrozi and his gang are sentenced to death and we hope that the execution process will be carried out immediately).²⁹ Based on the interview fragment, it can be concluded that the death penalty for the victim's family is a way that can provide a sense of justice, so that the death penalty is still considered appropriate to be used as a legal consequence but with the aim of providing a sense of justice.

Therefore, the discourse to abolish the death penalty from the conception and application of law in Indonesia must be reviewed by considering the country's cultural values and background. Instead of giving respect to a person's human rights, the abolition of the death penalty is a ridiculous step that will provide a broad space for every perpetrator to repeat his actions, which, to a longer extent, actually eliminates legal protection for human rights. In addition, the sense of justice that should be obtained for those who are victims of crime will not be accommodated if the death penalty is abolished.

It is suggested for groups that support abolition of the death penalty using human rights as an excuse to realize that human rights cannot be viewed from a universal point of view but must also be synchronized with the human rights perspective on a particular dimension, such as dimensions that involve socio-cultural conditions in a country. The point of view that respects human rights is not the concept adopted by the state.

III. CONCLUSION

The corrupt individuals who harm other people or take others' rights can be sentenced to death as a preventive measure. However, there are several problems with the application of the death penalty to corruption, such as a lack of explanation and ambiguous regulations. The application of the death penalty to perpetrators of

²⁹ Andalas, Eggy Fajar, et al. “Memori terorisme: Memori traumatis dan strategi mengatasi trauma korban Bom Bali I dalam teks sastra Indonesia.” *Satwika*, Vol. 6, No. 1, 2022, pp. 167-179, <https://doi.org/10.22219/satwika.v6i1.20347>.

corruption is contrary to: Article 28A and Article 28I paragraph (4) of the 1945 Constitution and Law Number 39 of 1999 concerning Human Rights which protect a person's right to life and human rights. The limitations given in Article 28J can be used as justification for imposing the death penalty on perpetrators of corruption in order to create justice. Therefore, the Indonesian government needs to strengthen the legal framework for implementing the death penalty in corruption cases, so that its application is in line with the legal and regulatory hierarchy in Indonesia.

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