

# Implementation of the death penalty for perpetrators of corruption criminal disaster management fund pandemic Covid 19

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**Abstract:** *Corruption crimes can be sentenced to death in Indonesia, but until now, after the birth of the corruption law of criminal eradication Law number 31 year 1999 Jo. Law number 20 of year 2001 has not been implemented, only widely applied to narcotic criminal acts. According to the Institute for Criminal Justice Reform (ICJR), more than 30 criminal acts are entered into 13 Indonesian laws which can be used to impose death crimes. Regarding the death penalty, which is widely questioned in the wider community and social media users is "Why the corruptors are not sentenced to death", under the existing law, corruption crime that is threatened by death penalty is an example of embezzling natural disasters or relief fund Covid 19. In the Act of Eradication Law in article 2 paragraph (2) of law No. 31 of 1999 Jo 20 years 2001 conditions where the death penalty can be applied if the corruption is executed at the time of natural disasters or the embezzlement of the Covid 19 pandemic disaster fund that technically the rules can, but never applied. Indonesia's step in enforcing the death penalty is also "unique" because it does not comply with international provisions as stated in the Treaty of Civil and political Rights, the International Covenant on Civil and Political Rights (ICCPR) which has been signed by Indonesia in 2006. In Indonesia, there are still many disagreements (pros and cons) of the enforcement of the death penalty, especially for corruption perpetrators. Indonesia is quite unique because there is no special backup to determine the criminal can be sentenced to death or not. The Indonesian state has ratified ICCPR, and a criminal offence (which can be sentenced to death) is mentioned as most serious crime, and the UN has set up, including the intention to kill, one of which. However, in Indonesia, almost some criminal acts do not relate to most serious crimes. With the death of a criminal threat, therefore awaited the breakthrough of the law enforcement officers in Indonesia in the application of the death penalty for the Corruptors.*

**Key Words:** Law Enforcement, Pandemic Covid 19, Death Penalty.

## 1. INTRODUCTION:

The English adage says "money is the root of all evil", meaning money is the root of all evil. The saying is very appropriate to the anatomy of a corruption crime, because it is in contact with or synonymous with economic, office, power, and political issues that eventually fall into material identical to money. (Edi Setiadi and Rena Yulia, 2010) Corruption crimes are one of the forms and dimensions of crime development that is currently being the center of attention as well as becoming an international world. (Edi Setiadi and Rena Yulia, 2010) Corruption is not really new in Indonesia, because it has been around since the 1950's. Corruption seems to have been a part of life, being a system and integrated with the governance of the state. The phenomenon of corruption in Indonesia has actually been around for a long time in people's lives, even before independence that was during the colonial period. One of the evidence that suggests this is by the tradition of giving tribute by some of the specific societies to local rulers or to the invaders of the time. Then after the Second World War, there emerged a new era where the corruption turmoil escalated in developing countries, the new country gained independence. Corruption is very dangerous because it can destroy social networks, which indirectly weakens the national resilience and existence of a nation. Reimon Aron (a sociologist) argues that corruption can invite the turmoil of the revolution, a powerful tool for crediting a nation. Corruption in Indonesia has been increasingly severe and acute such as a malignant cancer that propagates to the cells of public organs, contracting to higher institutions of the country such as legislative, executive, and judicial institutions to the State. There are so many depictions of corruption practices that are exposed to the surface, whether it is corruption in small amounts or in extraordinary numbers. Especially considering the end of the new order, corruption is almost met everywhere, ranging from small officials to high officials. (Rohim, 2008) In the past month, government efforts were overcoming the growing impact of the Covid-19 spread. One of them, the publication Perppu No. 1 year 2020 on the national financial policy and financial system stability for the handling of pandemic Covid-19 and/or in order to deal with threats that endanger the national economy and/or stability of the financial system that was signed by President, on March 31, 2020. Through the regulation, the government disbursed additional funds in the BUDGET 2020 for Covid-19, a total of Rp. 405.1 trillion. The details are as Berikut:

- Rp. 75 trillion in health expenditure;
- Rp. 110 trillion social protection;
- Rp. 70.1 trillion taxation and Stimulus credit for People's Business (KUR);
- Rp. 150 trillion financing of national economic recovery Program. Including credit restructuring and business guarantee and financing by reallocate and refocusing the APBN 2020 and APBD in each local government.

Obviously, the Covid-19 countermeasure fund is so great it should be right on target as per its designation. Government officials in both the central and local governments who are given the mandate to manage these funds must be careful and do not misuse their authority in order to use them appropriately. If the Covid 19 response Fund is not appropriate to its target, there is a threat of criminal penalties/death penalty when it is misusing the funds if it is done in a catastrophic state, as it does today, with public health emergency status and national disasters due to Covid-19 pandemic outbreaks. This death criminal threat is governed by article 2 paragraph (2) Law No. 31 of 1999 on Corruption Eradication (Tipikor) which threatens death penalty for the corruption perpetrators under certain circumstances. In fact, the Chairman of the Corruption Eradication Commission (KPK) Firli Bahuri has reminded criminal acts of corruption when disasters, such as the corona-virus pandemic that occurs today can be threatened by death. "We're facing a Covid-19 outbreak. Masa, there is still corruption, there is no empathy to the NKRI. Therefore, in the opportunity to give direction to all the regional head in Indonesia related to the prevention of corruption procurement of goods/services acceleration handling Covid-19, chairman of KPK Firli Bahuri remind the procurement of goods/services related to disaster needs is the responsibility of the budget user (PA), and the KPK ask that there is no excessive fear to inhibit disaster management. Lord Acton in Ermansyah Djaja's book, eradicate corruption with the KPK, once made a linking phrase between "corruption" with "power", namely "Power tends to corrupt, and absolute Power corrupts absolutely" that power tends to be corruption and absolute power tends to absolute corruption. (Ermansyah Djaja, 2008) That is, power is a very vulnerable part of corruption. Indirectly, this suggests that power can be used as a means of making it easier for the Pemangkunya to become a corruptor. Corruption crime has become a serious problem in Indonesia, because it has spread in all areas and sectors of community life in a widespread and systematic manner. Corruption is a tangible manifestation of the social rights of society that is begun to be endemic and systematic. Corruption was also done by the official or former head of government during the reign/leadership even after not serving (high profile crime) and most of the results of the corruption is kept overseas. (Frans H. Winarta, 2009) Corruption is also one of the root problems that exacerbate the economic crisis that is happening in the country and impede the course of law-mandated legal systems. Corruption is no longer perceived as something that only harms the financial and/or state economy alone, but it should also be seen as something that violates the social and economic rights of society as part of human rights. Therefore, there is quite a rational reason to categorize corruption as an extraordinary crime, so that pemberantasannya need to be done in extraordinary ways also (extraordinary measure) and by using extraordinary legal instruments (extraordinary instrument), too. (Elwi Danil, 2011).

## 2. METHOD:

This research is normative juridical research, (Soerjono Soekanto, 2004) with a of approach, conceptual approach, and a comparative approach (comparative approach) The legislation approach is used by researchers to analyse the application of death penalty in corruption as stipulated in statutory regulations. The concept approach was used by researchers to analyse the concepts of death sentences in the eradication of corruption crimes and their application. While the comparison approach was used by researchers to compare the application of death penalty in some countries. The data used in this study consisted of primary and secondary data. Primary Data is obtained from legislation consisting of:

- Contitutional 1945 Article 28A-Article 28 J on human rights.
- Law No. 31 of 1999 on the eradication of corruption crimes.
- Law number 20 of 2001 on the amendment to law Number 31 year 1999 on corruption eradication.
- Law No. 39 year 1999 on human Rights.
- Law No. 6 of 2006 on human rights courts.
- Penal CODE (Criminal Law Code)

Secondary Data is derived from general criminal law books and special Criminal law, legal journals, jurisprudence (ruling judges), legal dictionaries, legal encyclopedia, and articles related to death penalty in corruption crimes. Data collection techniques are conducted with document studies. (Burhan Chamin, 2001) Documents are written materials or objects relating to a particular event/activity. (Burhan Chamin, 2001) Document studies are conducted by conducting searches to find data relevant to the legal issues encountered. The data that has been obtained is further recorded, edited, studied, and then taken as the core theory, idea, concept or the relevant legal provisions, all data is recorded using the card system (card system), which is a research card containing notes on the results of the study.

Furthermore, the data is collected and compiled, and grouped according to the issues researched. Data processing is preceded by conducting a selection of the collected data, both primary, second, and tertiary data materials. The Data is then selected and sorted according to the needs that will be used to analyse and explain the legal issues or problems expressed in this research.

## 3. DISCUSSION:

### 3.1. Setting the death penalty in the Corruption Eradication Act:

Before describing the death penalty/criminal arrangement in the Corruption criminal Act, first outlined the setting of the death penalty in the penal criminal code as *lex generalist*. The death penalty in Indonesia has been essentially introduced in the criminal code, contained in the book general rule Chapter II article 10 of the crime (type of punishment). The death penalty is essentially a form of classical punishment, which is assumed to be a form of punishment that is able to ensnare for those who have not committed a criminal offense. The form of death sentence, still a punishment that has power and power to make others deterrent. Ideal punishment of substance when applied, is that the sentence is able to terror psychic to others, not to be doing similar deeds. In many cases, there are rarely perpetrators of criminals who are dissenters who continue to repeatedly commit crimes because of their light penalties. Often the rejection of the death sentence is based solely on the humanitarian side of the perpetrator without seeing the humanitarian side of the victim's own, family, relatives or community dependent on the victim. Another case if indeed the families of victims have forgiven the perpetrators of course the verdict can be changed with a clear prerequisite. (Burhan Chamin, 2001). Setting the death penalty in the Corruption criminal act is only 1(One) the article that set up, namely Article 2 Law No. 31 year 1999 Jo. Law No. 20 of 2001 on the Eradication of Corruption criminal Act, which reads as follows:

(1) Any person who is against the law commits self-enrichment or any other person or corporation that may harm the country's finances or the country's economy, sentenced to life imprisonment or imprisonment for a period of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (Two hundred million rupiahs) and at most Rp. 1,000,000,000.00 (one billion rupiahs).

(2) In the case of corruption crimes as referred to in paragraph (1) shall be carried out under certain circumstances, criminal death may be dropped.

Article 2 explanation mentions:

"In accordance with the law" in this article includes deeds against the law in the sense of *formil* as well as in the sense of material, namely although the deed is not regulated in the legislation, but if the deed is deemed deplorable because it is not in accordance with the sense of justice or norms of social life in society, then the deed can be sentenced. In these terms, the word can be before the phrase "financial harm or the state's conjectives" indicates that the Corruption criminal act is a *formil*, i.e. a criminal offense is sufficient with the fulfillment of elements of deed that have been formulated not by the onset of result".

"What is meant by" certain circumstances "in this provision is a condition that can be used as the reason for criminal protection for perpetrators of corruption crimes, if the crime is committed to the funds allocated to the prevention of the danger, national natural disasters, countermeasures due to widespread social unrest, response to economic and monetary crisis, and counteract corruption.

The provisions of the criminal offence contained in article 2 paragraph (1) shall constitute *Delic formyl*. In the general explanation of law number 31 of 1999 is also described as follows: "In this law, the Corruption criminal Act is explicitly formulated as a criminal offence *Formiil*. It is very important to prove. In a *FORMIIL* formula adopted in this law, although the result of corruption has been returned to the state, the perpetrators of corruption crimes are still presented to the court and remain convicted".

With the formulation of criminal acts of corruption as the proceeding *Formiil*, the loss of State or economic loss of the country should not have occurred, because the meaning of *Formiil* is proceeding which is deemed to have been completed by the action that is prohibited and threatened with punishment by law. (R. Wiyono, 2008) Thus so that people are convicted to have committed a criminal act of corruption as specified in article 2 paragraph (1), there is no need for evidence to prove that it has indeed been a loss of state or state economy. When compared to the corruption crime provisions contained in article 2 paragraph (1) of Law No. 20 of 2001 with article 1 paragraph (1) letter A of Law No. 3 of 1971, it can be noted that the provisions contained in article 2 paragraph (1) of Law No. 20 of 2001 constitute *formiil* proceeding, while provisions contained in article 1 paragraph (1) letter A of Law No. 3 year 1971 is a material proceeding, which is a proceeding that is deemed to have been caused by the result of being banned and threatened with punishment by law. (R. Wiyono, 2008)

### **3.2. The Application Of The Death Penalty For Corruption Perpetrators Of Criminal Aid Fund Pandemic Covid 19:**

If we look textual, then the application of the death penalty is contrary to human rights as included in article 28A, and 28I 1945, article 4 and article 9 of Law No. 39 year 1999, and article 3 DUHAM. Article 28A UUD 1945 which determines: "That every man has the right to live and defend his life and life". Article 28I paragraph (1) specifies: "The right to life, the right to not be tortured, the right to freedom of mind and conscience, the right of religion, the right not to be enslaved, the right to be recognized as a person in the presence of the Article 4 of Law number 39 year 1999 specifies: "The right to life, the right Not to be tortured, the rights of personal freedom, mind and conscience, religious rights, the right to unenslaved, the right to be recognized as private and equal in the presence of the law, and the right not to be prosecuted on the basis of valid legal suurt is a human right that can not be reduced under any circumstances and by anyone". For writers, corruption crimes remain the most serious type of crime (extra ordinary crime) then the form of death sentence is an ideal punishment and equal to the type of deeds. Moreover, the death penalty applied to the

perpetrators of corruption criminal aid fund Pandemi Covid 19, the Universal Declaration of Human Rights (DUHAM) expressly considers that the death penalty is no longer ideal as a form of punishment applied. The process of making a corruption criminal becomes a sadarpun takes a very long time, because the weak form of punishment received. The form of death penalty in the LAW of the Tipikor in article 2 paragraph (2) is the death penalty in certain cases or circumstances), in this context, the application of the death penalty for the Corruptor is not a violation of human rights, and the death penalty is an effective tool for combating corruption to Keakar-akarnya, therefore there has never been a case of corruption in Indonesia, if we have hoped if there is misuse of the fund relief pandemic Covid 19, the perpetrator must be sentenced to death.

#### 4. CONCLUSION:

- Criminal arrangement of death in the Eradication Act of criminal corruption, there is only one article governing the article 2 paragraph (2). In the passage it is explained that the death penalty can be applied to the perpetrators of corruption crimes in "certain circumstances". There are two things that cause death penalty in the act of corruption are never brought down by judges; First, the clause "can" in article 2 paragraph (2) of the Anti-Corruption Act means a factorative, not a meaningful imperative; Secondly, the clause "under certain circumstances" gives meaning that the death penalty cannot be applied to any corruption, but only against corruption committed under certain conditions. Therefore, the law enforcement should be able to apply in the death of a criminal offence against corruption perpetrators of the Covid 19 disaster Management Fund, in order to become jurisprudence, and the Jera effect will take place when criminal death penalty can be applied as optimally as possible.
- Optimizing the application of criminal death penalty for corruption perpetrators in Indonesia until now has not been applied, because the law enforcement officials until now never demanded and prosecute the perpetrators of corruption crimes with article 2 paragraph (2) U. U Tipikor, even before the time of Pandemic Covid 19, also many corruption criminals yng the social Assistance fund, such as Natural Disaster Fund (flood , Earthquakes, volcanic eruptions etc), so application of the death penalty if only studied in a textual order, then law enforcement in Indonesia assumes that the application of death penalty is contrary to human rights as listed in article 28A paragraph (1), 28I paragraph (1), Jo Article 4 Act No. 39 year 1999, Jo Article 3 Universal Declaration of Human Rights. However, if examined contextually using extensive and teleological interpretation, the actual application of the death penalty is not contrary to human rights. The argument given is that the consequences caused by corruption crimes are far greater than the crime of genocide, terrorism, narcotics, and other humanitarian crimes.

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