



## The Reformulation of Legal Reformulations in Death Crimes Against Corruption in Indonesia

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### **Abstract**

The death penalty is one of the criminal sanctions that are still enforced in Indonesia. The provision for capital punishment is regulated in Article 10 of the Criminal Code (KUHP). Ernest van den Hag, in his article on deterrence and the death penalty, gives five crucial notes in the application of the death penalty, first, demands for the abolition of the death penalty because it does not provide a deterrent effect, second, against certain countries for certain crimes and the conditions that accompany them, death can provide a deterrent effect, thirdly, there is no significant statistical data on whether the death penalty in the case of the crime of murder will have a deterrent effect on the perpetrators of the crime itself, fourth, sometimes the death penalty is preferable to imprisonment because it provides a deterrent effect, fifth, the death penalty considered important to provide a balance for the victims. The knife of analysis in this study is the theory of law enforcement systems and the theory of punishment. The results of this study explain the application of the death penalty law formulation policy against perpetrators of criminal acts of corruption in Indonesia currently following the implementation of the death penalty in several countries such as China, Iran, Pakistan, Saudi Arabia, and others. However, the policy embodied in the regulation still leaves difficulties where there are still many rejections of the policy and in the process of implementation it has not been able to. In Article 67 of the RKUHP, which reads that a special crime as referred to in Article 64 letter c is a death penalty which is always threatened with alternatives. In contrast to the Criminal Code which places the death penalty as one of the main crimes, the Draft Criminal Code places the death penalty as the last punishment imposed to prevent criminal acts from being committed. Which means that the existence of a criminal is in accordance with the *ultimum remedium* principle, namely that criminal law should be used as a last resort in terms of law enforcement.

**Keywords:** *Capital Punishment; Corruption; Criminal Punishment*

## **Introduction**

The republic of Indonesia is a democratic state of law based on Pancasila and the constitution of 1945. Not by mere power, it has the sense that the laws of this country are strategically placed within strategic convergence. In order for the law as a country to run well and properly in national, state and society, it is necessary for law-enforcement institutions as instrument enforcement.

Indonesia as a law state that advocates human rights and guarantees all citizens together the characteristics of its position in law and government and is obligated to uphold laws and governments without exception, therefore, all aspects of life in the social, political, cultural, economic and other areas are governed and governed by law, whether it is written, that is, a positive law made and regulated by legislature or an unwritten law, A law that is alive and observed and held in high esteem by all parties, both rulers and the general public, in carrying out their rights and duties.

The death penalty is one of the most common criminal penalties still in effect in Indonesia. The death penalty is set in article 10 of the penal code (criminal law). The death penalty was an exception to the principle of concordancies in application of Dutch code to the Dutch east Indies system in 1918, since the actual Dutch crime had been abolished in the Dutch penal system since 1870<sup>1</sup>

Today, capital penalties have been abolished in many parts of the world, but there are countries that still maintain capital punishment in its prevention system. Roger hood grouped the four state groups in a penal code. The first state that has abolished the death penalty for all crimes, the two nations that abolished the death penalty for common crime, the three that abolished DE facto death penalty, the fourth, the state that maintains the death penalty.<sup>2</sup>

Among the countries that follow the death penalty arrangement is Indonesia. This policy on the law of the death in Indonesia was based in 2001 on a change to act no. 20 of 1999 on the elimination of criminal corruption, which is aimed at criminal corruption. However, many people in Indonesia are more likely to be affected by death and struggle to eliminate capital punishment in Indonesia, citing the effectiveness of the 2001 no. 20 year law on the development of the number 31 in 1999 law on the elimination of corruption crimes, to achieve a real deterrent to criminal corruption.

Mars icitur ultimum ultilictium, death is the law of the damned. Ce's le crime fait la honter, et non pas vechfaus, an embarrassing crime, not his death. That the main two arguments are the death penalty as retribution or vengeance and salvation<sup>3</sup>. Even retribution is not only a part of the dead criminal himself that breaks down is the key in the criminal justice system, especially the classical flow in the criminal law itself.<sup>4</sup> That the death penalty is reduced as a sacrificial reclamation for criminals who have bad morals.

Ernest van den hag, in his article on on deterrence and the deat penalty, gave five crucial records in application of the death penalty, first, the removal of the capital for not taking a punt, second, against certain crime states and the accompanying circumstances, the death penalty can provide a lasting witness, All three have yet to be a significant statistic data as to whether the death penalty in the crimes of murder would have a real deterrent to the perpetrators themselves, four, the death penalty is often preferred to the prison crimes because it provides the jera effect, the five death crimes are deemed necessary to conclude

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<sup>1</sup> Sahetapy, JE. dan Pohan. Agustinus. 2007. Hukum Pidana. Bandung : Citra Aditya Bakti. Hlm. 14

<sup>2</sup> Andi Hamzah. 2005. Pemberantasan Korupsi melalui Hukum Pidana Nasional dan. Internasional. Jakarta: Grafindo Persada. Hlm. 226

<sup>3</sup> Charles L. Black jr, 1974, Capital Punishment: The Inevitable of Caprice And Mistake, Secod Edition, Augmenetd, W.W Norton & Company Inc, New York, Hlm 24.

<sup>4</sup> Victor Streib, 2008, Death Penalty In A Nutshell, Third Edition, Thomson West, Hlm 10

for their victims.<sup>5</sup> That consideration of such considerations can be seen that the death penalty will not forever hold a lasting deterrent to criminals who commit crimes and then there is no very specific data that the death penalty will have a real deterrent to corruption crimes in Indonesia.

But on the other hand, the application of the policy on capital punishment is also aimed at responding to the content of the bill, which also states that the widespread corruption of crime, not only affects the public's social and economic rights, So it is necessary to classify criminal corruption as a crime of extraordinary magnitude, and that to further ensure certainty of the law, to avoid the diversity of interpretations of the law and to protect society's social and economic rights, fair treatment in the elimination of criminal corruption is required.

In article 2 of the 1999 article no. 31 of the 1999 law on the fight against corruption that has been changed and contained in article 1 of the article no. 20 of 2001, also specifying each of these chapters in terms of the specific act of corruption as referred to in the verse (1), the death penalty can be imposed.

The death penalty in the above act must be a recent phenomenon in Indonesia's corruption prevention efforts, since the issuance of the death penalty is expected to have a harmful effect on both the perpetrator and other potential perpetrators. This should provide an anchor for law enforcement officers in the future to be able to bring death sentences to corruption offenders who meet elements in article 1 verse (1) of act no. 20 in 2001 on changes to act no. 31 in 1999 about the elimination of criminal corruption.

Looking at some of the foregoing explanations, Prof. Romli atmasasmita also explains that the implementation of capital punishment for criminals of corruption is effectively implemented in the People's Republic of China (China), and has proved to be quite successful in reducing criminal corruption. It is certainly feasible by Indonesia in rendering capital punishment to corrupt. That in the People's Republic of China in its data it says the death penalty is sufficient to have a learned effect on its country's capital executions, which it must be known that China is a communist state which then has considerable differences in politics, culture, values, social or our own state system as subject to Pancasila, even though in legislation it provides a pretty firm basis, But the regulation to date of realization has been nothing and merely a discourse, and therefore has not been able to provide a deterrent to corrupt persons, so it is necessary to review the policy of applying capital punishment to the perpetrators of the corruption crime.

Based on the above description, an update would be needed to address the death penalty in Indonesia. The authors are interested in creating this paper under the title "legal formulations in death crimes against corruption in Indonesia.

### ***Formulation of the Problem***

1. What is the death penalty policy against perpetrators of corruption in Indonesia?
2. How can capital punishment be carried out against perpetrators of corruption in Indonesia in criminal law reform?

### ***Research Methods***

The study is categorized into normative-law study types it is based on issues and or themes that are raised as research topics. As for the research approach used are conceptual, legislation, comparative

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<sup>5</sup> Hugo Adam Bedau, 1977, The Courts, The Constitution And Capital Punishment, Lexington Books D.C. Heath and Company  
Lexington, Toronto, Hlm 45.

research that focuses on rational views, critical and philosophical analyses, and concludes with conclusions aimed at producing new discoveries in answer to the established subject matter. And will be analysed using analytical analytics, which are illustrating the regulations of legislation that apply to the theory of law and the positive law enforcement practices that are associated with the problem.<sup>6</sup>

## ***Discussion***

### **1.The Implementation of Policy Formulating the Death of Criminal Law Against Corruption in Indonesia Today**

The implementation of death policy policy on corruption in Indonesia today follows death penalty in some countries, such as China, Iran, Pakistan, Saudi Arabia, somalia, Egypt, Chad, yemen, Taiwan, South Sudan, Bangladesh, Singapore, Sudan, Jordan, Afghanistan, north Korea, Malaysia, north Korea, and Vietnam. The policy is taken asa result of the crimes committed by the corrupt one met the most serious criteria of crime that brought harm to the state, which is a violation of the social and economic rights of society at large, and is a crime beyond measure, by which the sentencing of this criminal is consistent with an explanation in article 6 of the international convention on civil and political rights.

These formulations of penal law are adopted as a response from governments which are further used to address real threats to state security and public safety on all aspects of both political, economic, social and security security, despite the current condemnations of the death penalty. The application of this penal law is further intended to prevent self-imposed ACTS of corruption and the subsequent crimes that are expected to have a real deterrent to other corrupt people, whose hope is effective in preventing criminal corruption.

The policy of formulating the formulation of the law on corruption in Indonesia at present includes law no. 20 in 2001 on a change to act no. 31 in 1999 on the elimination of corruption on a crime committed against corruption. But the policy embodied in the policy still leaves behind the difficulty of turning down that policy, while defining the standards of idomy for good corrupt criminals, "good" remains to be seen as having no real deterrent to perpetrators. This can be seen from the large number of evidence that the death penalty was imposed but to date the convict remains alive and free to move about, as the corruption gaius tamcan see. He said the rupiah was expected to strengthen to rp9,100 per dollar in the Jakarta interbank spot market on Tuesday.

### **2.Whether It Is Necessary to Execute Capital Crimes Against Perpetrators of Corruption in Indonesia in Return for Criminal Law in Indonesia**

The policy of PPN on state revenues from excise receipts in the first semester of 2007 reached rp779.9 trillion, according to a report made available here on Tuesday. For the exception of the sentence, it can be seen using a value-based model of economic damage. Where the model has guaranteed the weight of the sanctioned rendered can be calculated rationally and have equivalence with damages resulting from an act of corruption. In the last instance, such rational penalties impair crime doesn't pay.

In view of the proposed RHP formulation there is a change in the penal code, that the capital punishment in the bill is still under criminal penalties but is no longer listed with the other basic penal groups. In the 67th article of RHP which reads the specific criminal referred to in article 64 letter c is the death penalty constantly threatened alternative. Unlike the criminal code that places the death penalty among the principal criminal, the criminal law places the death penalty as the most recent criminal to be

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<sup>6</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2011, hlm. 22

dropped to prevent a crime. Which means criminal existence according to the *ultimum remedium* principle of the penal law let it be made a final effort in the matter of law enforcement.

Therefore, it should always be threatened alternative to another type of criminal, a life sentence in prison or 20 at the most (twenty years). The opinion of criminal law professor Dr. Barda nawawi arief, s.h. which declares "the main consideration of the disposition of the dead criminal position to be based on the thinking, that according to the purpose of idering and the use of criminal law (as one of the means of" criminal policy "and" social policy "), capital punishment is not necessarily the primary means of governing, policing, and rehabilitative society itself, Because the death penalty was only an exception.

Criminal code forms a code that accumulates ina document or book as a uniform or as a code. It includes criminal ACTS of theft, murder, rape, fraud, assault, forgery, etc. In other words, legislation is the set of the various crimes that are systematically drafted into one document. By understanding the criminal code as a code or set of crimes, the purpose of this identification is to facilitate both law enforcement and the general public's finding of criminal ACTS because it has been assembled in one book.

That if in the RHP which has been passed today and will be legalized by the legislator to become the book of criminal law in the near future will be the first step in the reforms of Indonesian penal law, which then that RHP law, specifically criminal law in academic context, it would be best for criminal law to have a uniform principle which can be practiced upon the entire rule of criminal law. But as it turns out, there must be specific rules that either rule or exclude the principles of common criminal law because of its necessitating need. However, the corruption must be based on a sufficient basis or consideration, not merely on the constituency of the law, which, if the death penalty remains in the law no. 31 of 1999 on corruption corruption, should be made public by the RHP bill to be ratified by the parliament in 2022, and the government in the process, in Indonesia, should pay attention.

## **Conclusion**

Based on the results of the change, the policy formulating the death law against corruption perpetrators in Indonesia is currently being implemented in article 2 verse (2) act no. 31 in 1999 on the elimination of corruption that has been altered and contained in article 1 (1) article no. 20 in 2001. Also, mentioning each of these chapters basically formulates in the case of the corruption that is referred to in the verse (1) done under specific circumstances, the death penalty can be meted out. The policy of formulating the formulation of the law on corruption in Indonesia at present includes law no. 20 in 2001 on a change to act no. 31 in 1999 on the elimination of corruption on a crime committed against corruption. But the policy embodied in the policy still leaves behind the difficulty of turning down that policy, while defining the standards of idomy for good corrupt criminals, "good" remains to be seen as having no real deterrent to perpetrators

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