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Social Loss Corruption Cases in Indonesia: How Should the Corruptors Punished?

Suci Nabila[1]
[1] *Faculty of Law, Universitas Negeri Semarang, Central Java, Indonesia*

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Abstract

Corruption is a serious problem that occurs in a country including Indonesia. In various countries the way to punish perpetrators of corruption is very diverse. In Indonesia alone the punishment used is a sentence of imprisonment. But the sentence of confinement in Indonesia is considered to have a deterrent effect. It is appropriate for a corruptor to be given severe sanctions and give a deterrent effect, one of which is a death sentence. But in Indonesia there are pros and cons regarding this death sentence. The problems are what the sentences that appropriate to corruptor in Indonesia and should the death penalty give to corruptor. The goals in this study are to know the sentences that appropriate to corruptor in Indonesia and should the death penalty give to corruptor. Corruptors should be punished severely by taking all their property, revoking and blocking the register of themselves from a government or a certain institution, or also being sentenced to death as developed countries that have carried out this sentence for a long time. even though the death penalty must be taken seriously because it eliminates someone's right to life and also leaves grief for corrupt families.

Keyword: corruption, rulers, punishment, pros and cons, death penalty

INTRODUCTION

In Indonesia Corruption is known as KKN which stands for corruption, collusion and nepotism. Corruption has become a habit that is mushrooming in a country, especially in Indonesia. Based on annual reports from internationally renowned institutions, Political and Economic Risk Consultancy (PERC), Indonesia is the country with the third highest number of corruption cases in the world in its survey results in 2001 together with the country of Uganda. Indonesia is also the most corrupt number 4 in 2002 together with Kenya. Corruption in Indonesia has not happened recently, but has been going on for a long time. When the practice of Corruption, Collusion and Nepotism was rampant, almost all government agencies and institutions and people's representatives could not function properly. Various kinds of programs that are in the name of people's interests, but in reality only benefit a small group of

**Email: sucinabill888@gmail.com*
Address: Jln. Taman Siswa, UNNES Sekaran Campus, Gunungpati, Semarang, Indonesia

economic elites and officials, so that in almost all of the country many officials carry out KKN practices for personal gain.

Many of the negative effects of these acts of corruption, including the decreasing public confidence in the performance of people's representatives. In terms of the economy, the impact is the decreasing quality of government services to the community because of the increasingly minimal budget. Acts of corruption are included in the category of action a very large criminal and very detrimental to the nation and state in a country region. In order to prevent the increasingly widespread corruption, corruption laws and the justice system were formed with the toughest penalties, namely threats death penalty. But the death penalty in Indonesia itself has pros and cons. Because it concerns human rights in the law, Corruption is not only a problem for developing countries but also developed countries, although the level of corruption in developed countries tends to be lower than in developing countries.

A community norms and system transparency also become of the challenges especially in developing countries. In developed countries, corruption is considered a common enemy of the nation so that people are not tolerant of corruption. This is followed by strict legal rules accompanied by law enforcement that are consistent and apply equally to all. The role of the elements of civil society and mass media is very significant as a means of control. All of these conditions allow the code of ethics for state administrators to be firmly attached. Corruption prevention is not only limited to the public sector, but also applies in the business world. Indonesia should learn from the State China and Latvia have implemented capital punishment sanctions on perpetrators corruption in his country and proven to reduce the level of corruption in his country. Unfortunately, Indonesia has laws and regulations discussing capital punishment sanctions listed in article 2 paragraph (2) of Law No. 31 of 1999 jo. Law 20 of 2001, shows a futile impression, because of the difficulty the application of capital punishment sanctions that appear to be selective in the beloved Indonesia this. If this is allowed then, it does not rule out the possibility of destruction extraordinary economy in Indonesia. Because with the increasing number of corruptors in government, the more money the State will corrupt, while Indonesia's debt itself until now has not been able to be repaid.

The importance of the implementation of capital punishment sanctions on criminal acts of corruption for cause a deterrent effect on the perpetrators of corruption. Even though criminal sanctions death for corruption cases has never been applied by the panel of judges who checks and adjudicates corruption cases, because in article 2 paragraph (2) Law No. 31 of 1999 jo. Law 20 of 2001 still has certain circumstances making it difficult for the perpetrators of corruption to be sentenced to death. So that corruption offenders are not decreasing, they are increasing every year. Corruption has a major impact on the lives of the poor. According to the World Bank, corruption prevents poor people from accessing health services so that it has an impact on public health. The lack of access forces them to bribe in order to get that access. Consistently poor people spend 12.6 percent of their income on bribes. Globally, every year, money to bribe or bribe in business or personally reaches 1.5 trillion dollars. This amount is equivalent to 2 percent of global GDP or 10 times greater than foreign development assistance funds. So reducing corruption is a goal of Sustainable Development Goals. In fighting corruption, each country has its own rules which can be seen from various forms of punishment for corruptors. China is one of them who is trying to fight corruption by setting anyone who is proven to have committed corruption in excess of 100 thousand Yuan or around Rp194 million will be sentenced to death.

Meanwhile in Indonesia, non-governmental organizations in the field of

monitoring and eradicating corruption Indonesia Corruption Watch (ICW) stated, during the first semester of 2015, judges averaged only sentences of 25 months or two years in prison to corrupt defendants. That does not include remission which will certainly shorten the detention time. That means alleviating corrupt punishment. Corruption in Indonesia has overtaken. Occurs in various regions and in various layers ranging from state officials, politicians, regional heads to people's representatives. The corruption case that is still warm is the corruption of e-KTP which has dragged various public officials to people's representatives. There is also Qur'anic corruption which confirms that corruption is a "chronic disease' in Indonesia. The Corruption Eradication Commission was formed with the aim of suppressing corruption in Indonesia. But not infrequently in some cases, there has been criminalization and engineering of cases against KPK leaders and officials, to the weakening of the KPK. In order to combat the increasingly rampant corruption, corruptors will be punished death sentence to give a deterrent effect like China and Vietnam did. On the other hand the death penalty is considered to violate human rights, and thus creating a dilemma. Prisons and fines do not make corruptors deterred. Then the problems are what the sentences that appropriate to corruptor in Indonesia and should the death penalty give to corruptor. The goals in this study are to know the sentences that appropriate to corruptor in Indonesia and should the death penalty give to corruptor

RESEARCH METHOD

The research was normative legal research, that examines laws and regulations concerning to the criminal sanction of corruptors on corruption case in Indonesia. The research focus on the social loss and punishment for corruptors based on Indonesian Anti-Corruption Act and other related laws.

FINDING AND DISCUSSION

General Condition of Corruption: From Theory to Cases

In terminology, corruption comes from corruptie or corruptus latin languages. It is from this Latin that languages fall in various languages in Europe, such as English, corruption, corrupt, French, corruption, and corruptie (Korruptie). Furthermore, it is stated that corruption itself also comes from the original word corrumpere, an older Latin word which means damage or depravity, other than that it is also used to indicate a bad condition or action. Corruption comes from the word corrupt, which means bad, damaged, rotten, likes to use goods (money) entrusted to it; can be bribed (using his power for personal gain). Corruption according to terminology is fraud or misuse of state money (companies, organizations, foundations and so on) for personal or other people's benefit. Corruption is the behavior of public officials, politicians and civil servants, who improperly and illegally enrich themselves or enrich those close to them, by abusing public power entrusted to them. Corruption is a difficult phenomenon that is precisely defined and comprehensive.

This is due to differences in the assessment / perception of corruption that exists in each community group. In fact, corruption is also related to the history and system of government of a country. In North Korea, bringing newspapers and / or books that are contrary to the philosophy of the North Korean state can be categorized as corruption (Bardhan, 1997). Thus the definition of corruption is also influenced by

the norms and culture of each society. So in general the definition of corruption according to experts is the misuse of resources and public office for personal gain. According to the Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, what is meant by criminal acts of corruption is any action that can harm state finances and hinder national development. However, because of the widespread impact of corruption, according to Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999, what is meant by corruption is not only detrimental to state finances but also has violated the social and economic rights of the community at large therefore according to the Anti-Corruption Law, corruption should be classified as a crime that must be eradicated in an extraordinary manner. Of the many definitions of corruption, the definition often used as a reference in cross-country corruption studies is the definition of corruption according to Transparency International. According to Transparency International, corruption is an abuse of authority entrusted to personal interests (the abuse of entrusted power for private gain)(KPK, 2016). Corruption is also interpreted as behavior that deviates from legitimate duties as a public official or a position he carries out because of status (property and throne) that concerns the person (individual, close family, own group), or violates the rules for implementing some personal behavior(Klitgaard, 2001). Corruption is defined as fraud or misuse of state money (companies etc.) for personal or other people's benefits (KBBI). Cambridge Advanced Learner's Dictionary (2003) defines corruption as illegal, immoral or dishonest behavior, especially by people in positions of power. Variations in the definition and scope of corruption tend to vary among scientists.

The definition and scope of corruption also varies between countries and this can not be separated from cultural, social, moral and legal factors that vary between countries (PBB, 2001; Ertimi & Saeh, 2013). The results of a study from Sandholtz and Koetlze (2000) show that the definition of corruption is influenced by culture and social conditions in each society. In North Korea, for example, bringing newspapers and/or books that conflict with the country's philosophy are categorized as corruption (Bardhan, 1997). One definition of corruption that is often used as a reference in cross-country corruption studies is the definition of corruption according to Transparency International (TI), where corruption is "the abuse of public office for private gain". Rose-Ackerman (1997) states that corruption is not limited to the public sector but also the private sector because corruption occurs due to the interaction of interests between the public sector and the private sector. Corruption is an economic crime, however, the negative impact of corruption affects various aspects of life, weakens the joints of nationality, destroys the pillars of law, ethics and social norms, and is even a crime of humanity. In the introduction to UNCAC, Kofi A. Annan, former Secretary General of the United Nations, described the chronic effects of corruption on the joints of the nation and state with free translation as follows (UN, 2004):

> *"Corruption is like an infectious disease that spreads slowly but deadly, creating extensive damage in society. Corruption undermines democracy and the rule of law, encourages violations of human rights, distorts the economy, decreases the quality of life and enables criminal organizations, terrorism and various threats to security to develop "*

So much the social costs caused by corruption because corruption weakens the joints of the state, government and society. Social costs of corruption it not only burdens the current generation, but it will also be a burden for generations to come, which in fact

is the generation of our grandchildren. Corruption is a barrier factor for people in a country to achieve national goals them, and this is no exception also applies to Indonesia. Never dream of achieving national goals, as stated in the Opening of the fourth paragraph of the 1945 Constitution, when corruption is still prevalent in this country. For the leaders of the country, do not ever expect that the mission and vision they carry out during the General Election will be achieved when corruption is still common. So much is the social cost of corruption that it is not surprising that corruption is seen as a form of extraordinary crime. Seeing in a broad sense, corruption is an action taken for enrich yourself in order to gain an advantage both personally and group. Activities to enrich themselves by using positions, where the person is a person who has served in a private department or government department. Corruption itself can appear everywhere and not limited. According to the legal perspective, the definition of corruption is clearly explained in 13 articles in Law No. 31 of 1999 which has been amended by Law No. 20 of 2001 concerning Eradication of Corruption Crimes. Based on these articles, corruption is formulated into 30 forms/types of corruption. The article describes in detail the actions that can be subject to criminal sanctions for corruption. The thirty forms / types of corruption can basically be grouped as follows:

1. State financial losses
2. Bribery
3. Darkening in positions
4. Extortion
5. fraudulent acts
6. Conflict of interests in procurement
7. Gratification

In addition to the forms / types of corruption that have been described above, there are still other criminal acts that are related to corruption committed in Law No. 31 of 1999 jo. Law No. 20 of 2001. The types of criminal offenses relating to criminal acts of corruption are:

1. Obstructing the process of examining corruption cases
2. Not giving information or giving incorrect information
3. Banks that do not provide information on suspect accounts
4. Witnesses or experts who do not give information or give false information
5. The person holding the secret of position does not give a statement or give a false statement
6. The witness opens the identity of the reporter

To conclude whether an act including corruption, must fulfill the following elements:

1. Every person or corporation;
2. against the law;
3. Enrich yourself, other people or a corporation;
4. Can be detrimental to the country's finances or the country's economy.

History of Regulations on Eradicating Corruption in Indonesia

History of Eradicating Corruption and its arrangement basically has been started since 1953 (old order) until now. Eradication and corruption eradication arrangements can be classified or divided into several stages, namely:

1. *In the old order (period 1957 - 1960)*

Corruption has occurred in the government. Nationalization foreign companies are considered the starting point of corruption in Indonesia. Some regulations are used as the legal basis for eradication corruption, namely:

a) Military Rule Regulation No. PRT/PM/06/1957 concerning work procedures break through congestion in eradicating corruption;
b) Military Rule Regulation No. PRT/PM/08/1957 concerning ownership property;
c) Military Rule Regulation No. PRT/PM/11/1957 concerning confiscation property resulting from corruption, investigation, prosecution and examination corruption;
d) Regulations of the War Authority Center Chief of Staff AD No. PRT/ PEPERPU/031/1958;
e) Regulations of the War Authority Center Chief of Staff AL No. PRT/z.1/I/ 7/1958

At this time the State Apparatus Retooling Committee was formed (Paran), led by A.H. Nasution was assisted by Prof. M. Yamin and Roeslan Abdul Gani. But because of the strong reaction from officials corrupt, Paran ends tragically, deadlock, and finally to the Cabinet
Juanda.

2. In the period 1960 - 1971

Eradication of corruption is carried out based on UU Number 24 Year Prp 1960 concerning Investigation, Prosecution and Criminal Examination Corruption by increasing the formulation of existing corruption in the Criminal Code and a special Institution to eradicate was formed corruption, namely:

a) Operation Budhi (Keppres No. 275/1963)
b) The High Command Retooling Revolutionary Apparatus (Kontrar) with the chairman President Soekarno was assisted by Soebandrio and Ahmad Yani.
c) Corruption Eradication Team (Keppres No. 228/1967)
d) Four Commission Team (Keppres No. 12/1970)
e) Anti-Corruption Committee / KAK (1967)
f) But the corruption eradication agency was unsuccessful because there is no formulation concerning financial loss country.

3. During the New Order (Period 1971 - 1999)

Law No. 3 of 1971 concerning Eradication of Action Corruption Crime where the formulation of criminal acts of corruption refers to the articles in the Criminal Code and their formulations use offenses formal. As an executor, the OPSTIB Team was established according to the Inpres No. 9/1977, but the OPSTIB Team's performance was vacuumed, and in the year 1999 Organizers' Wealth Examination Commission was formed State / KPKPN with Presidential Decree 127/1999

4. During the Reformation (Period 1999 - 2002)

Law No. 3 of 1971 is no longer compatible with development legal requirements then passed Law No. 31 of 1999 and carried out changes with Law No. 20 of 2001 concerning Eradication Corruption as a refinement of formulation corruption in Law 3/1971 (active corruption and passive corruption). Affirmation of the formulation of corruption in formal and offenses expand the understanding of civil servants. Besides that, Act was born Law No. 28 of 1999 concerning the Implementation of the State Clean, Free of Corruption, Collusion and Nepotism. In addition to law enforcement carried out by the National Police and the Attorney General's Office, then with the intention to accelerate the eradication of corruption formed the Joint Team for

Combating Corruption / TGTPK with PP 19/2000.

5. *Establishment of the Corruption Eradication Commission (2002)*

After the revision of various laws and regulations but the eradication of criminal acts of corruption that have not been achieved optimally implemented and government agencies that handle it cases of corruption are not functioning effectively and efficiently in combating corruption, so the Commission was formed Corruption Eradication by UU No. 30 Th 2002.

6. *Timtikipikor*

The Corruption Eradication Coordination Team is a government institution in following up on corruption cases that are formed and responsible answer directly to the president based on Presidential Decree No. 11 of 2005. The Timtaspikor membership was drawn from Prosecutor's Office of the Republic of Indonesia, Republic of Indonesia National Police and the Financial and Development Supervisory Agency. But because of that the existence of the Timtastipikor is considered to be less effective and decisive as well its authority overlaps with other government actions such as the police, prosecutors and KPK so that Presidential Decree No 10 of 2007 concerning Termination of Duty and Dissolution of the Team Coordination of Eradicating Corruption.

7. *Corruption Court*

Results of evaluation of eradication and law enforcement practices corruption and development of national law and international law has pushed for changes in material criminal law and formal criminal law in handling corruption and corruption the last is the promulgation of Law No. 46 of 2009 about the Corruption Court as a special court who prosecute cases of corruption and change has brought legal implications to the provisions of other laws(The National Legal Development Agency of Ministry of Law and Human Rights, 2011).

Factors Causing Increased Corruption in Indonesia

Every action taken by someone has a purpose and purpose, there is a good goal, there is also a purpose bad intent. There are also goals that they think are good for themselves themselves but make bad results for others. Related with the discussion in the thesis, namely corruption, is a good action according to or for themselves but is very detrimental to others in matters this is the people, nation and state. Along with the development of technology systems in The Indonesian state, this is also what makes tradition or culture. Corruption in Indonesia it also participates in increasing or developing levels and procedures committing Corruption Crime. In the times or can be in said as the era of globalization, where the era was a development of existing or previous eras, then every individual's needs will be more personal personality. This is also the cause from the increasing culture of corruption. Technology sophistication, economic needs, and the minimum income earned is the things that become the foundation of people doing corruption and what makes them to improve corruption procedures to make a profit for his own personality. There are also other opinions about the causes of corruption from a number of expert jurists especially in the field of corruption.

Klitgaar Hamzah, Lopa states that the causes of corruption are as follows:

> "Employee descriptive is too large, low public accountability.Weak leadership, the salaries of public employees are below the necessities of life, poverty, low moral or low discipline. Besides that, also the nature komsumtif, supervision in organizations is lacking, opportunities are

> available, external supervision is weak, legislative institutions are weak, culture giving tribute, permissiveness (all allowing), not wanting to know, greed, and weak law enforcement"(Cahaya, 2011)

The Ilham Gunawan states that corruption can occur due to various reasons factors like the following:

The absence or weakness of leadership in capable key positions give inspiration and influence behavior that tames corruption.

a. Weaknesses of religious and ethical teachings.
b. As a result of colonialism or the influence of a foreign government is not inspiring loyalty and compliance needed to stem corruption.
c. Less and weak influence of education.
d. Structural poverty.
e. Weak legal sanctions.
f. Less and limited anti-corruption environment.
g. Soft government structure.
h. Radical change, so disturbance of mental stability. When a the value system underwent a radical change, corruption emerged as a traditional disease.
i. The condition of society due to corruption in a bureaucracy can provide a reflection of the overall state of society.

Corruption Eradication in Indonesia

The first anti-corruption institution in Indonesia was formed in the late 1950s. Through the Dangerous Situation Act, a Retooling Committee (Paran) was formed consisting of one chairman and two members. The existence of Paran soon disappeared after it was considered contrary to the authority to eradicate corruption in the hands of the President and finally Paran was dissolved after going through political turmoil. In 1963, President Soekarno issued Presidential Decree No. 275 of 1963 which issued the Operational Budhi institution which was tasked with ensnaring companies and state institutions that committed acts of corruption. The beginning of Operation Budhi's performance was seen as promising because he managed to save Rp. 11 billion in state money. Operation Budhi was disbanded when it wanted to ensnare the Director of Pertamina and was replaced with a new institution, the High Command Retooling Apparatus of the Revolution (Kontrar), which was considered not to have a significant record in eradicating corruption. Kontrar broke up when Soekarno was no longer president. On August 16, 1967, at the beginning of the New Order (Orba), Soeharto criticized the failure of Soekarno (the Old Order or Orla) to eradicate corruption. This was conveyed by Suharto during a state speech, as the Corruption Eradication Team (TPK) was formed, chaired by the Attorney General. TPKs were seen as failing to have the ability and willingness to eradicate corruption when the corruption cases at Pertamina proposed by the TPK were not responded to by other law enforcement institutions. The weakening of the TPK encouraged the formation of an Orderly Operation (Opstib) to eradicate corruption. This opstib is not functioning because of an internal dispute. Learning from the New Order government which is full of collusion, corruption and nepotism, the Reformation Decree No. 9/1998 passed on the implementation of a clean and free country from corruption, collusion and nepotism. It should be noted that TAP MPR 9/1998 contains the mandate of reform, and this can be seen in one of the considerations used in compiling the MPR TAP (consideration of TAP MPR 9/1998 c points):

"That the demands of the people's conscience require the existence of state administrators who are capable of carrying out their functions and duties seriously and responsibly so that development reform can be efficient and successful"

The main mandate of the reforms stated that the commitment of the Indonesian people no longer wanted the practice of collusion, corruption and nepotism to grow and develop in Indonesia. In the reform era, B.J. Habibie issued Law No. 28 of 1999 concerning the Organization of a Clean and Free of Corruption, Collusion and Nepotism at the same time the establishment of an anti corruption institution of the State Official Wealth Supervisory Commission (KPKPN), Business Competition Supervisory Commission (KPPU), and Ombudsman. During the administration of Abdurrahman Wahid, PP No. was issued. 19 of 2000 which formed the Joint Team for Combating Corruption Crime (TGPTPK). When TGPTPK has demonstrated various approaches to eradicating corruption in Indonesia, through a judicial review of the Supreme Court, TGPTPK was dissolved on the grounds that it contradicted the existing UU no. 31 of 1999 is considered by the Supreme Court to be contrary to PP No. 19 of 2000. In this period anti corruption institutions in Indonesia are only KPKPN, but KPKPN is deemed not supported by a strong legal infrastructure so that it does not have strong authority.

In 2002, President Megawati Soekarnoputri issued UU No. 30 of 2002 along with a new anti corruption institution, the Corruption Eradication Commission (KPK). Along with this law, the KPKPN was merged into the KPK. The KPK was officially established in 2004 and began handling cases in 2005. Since the establishment of the KPK, law enforcement officials in the field of corruption included the National Police, KPK and the Attorney General's Office. Throughout 2004 to 2015, the KPK has handled various cases related to corruption. The KPK has succeeded in ensnaring high-ranking officials from various backgrounds such as the national party general chairman, minister of state, governor, judge of the Constitutional Court. The KPK is the first anti-corruption institution to obtain praise from the international community and get international awards. In 2001, the FATF included Indonesia in the list of non-Cooperative Countries and Territories, which meant that Indonesia was seen as a country prone to money laundering. In 2002, the anti money laundering law was passed and at the same time saved the establishment of the PPATK. PPATK was established in 2003 and began full operation in 2004. The function of the PPATK at that time tended to be passive and did not have a direct link with other law enforcement agencies. There is no obligation from PPATK to investigate suspicious financial transactions independently without a request from law enforcement officials.

This institutional deadlock was solved by the ratification of Law 8/2010. In accordance with the mandate of Law 8/2010, the PPATK is obliged to carry out data sharing on the results of its investigations to all law enforcement agencies (Police, Prosecutors and Corruption Eradication Commission), and has the right to trace the shared data that has been shared with relevant agencies. Since then there has been a clear mechanism of linkages between law enforcement officers and the KPK. On the basis of the Act 8/2010 allows prosecution of corruption cases by the Corruption Eradication Commission related to TPPU.

Based on the Corruption Perception Index (CPI) from various ASEAN countries, in general, the level of corruption in Indonesia has not experienced many changes. In 1995, Indonesia had a 1.9 GPA and changed to 3.2 in 2013, up 1.3 points for 19 years (less than 0.1 point per year). With this relatively stagnant condition, the level of

corruption in Indonesia has improved but there has been no jump in performance in tackling corruption. For 19 years, Indonesia remains one of the countries with the highest level of corruption among members of ASEAN countries. But what's interesting is that the difference in the value of Indonesia's GPA with ASEAN members has narrowed after 19 years.

Implementation of Impoverished Corruptors

Corrupt impoverishment this is actually already possible in the game this time. At least hope to do impoverishment of perpetrators of corruption can be done through Law No. 8 of 2010 concerning prevention and eradication money laundering (TPPU) and in article 18 of Law No. 31 of 1999 about eradicating criminal acts of corruption which contains additional criminal sanctions can be imposed on perpetrators of corruption. With impoverishment corruptors, the cost is an urgent burden social corruption to the culprit, namely corruptor. Corrupt impoverishment can also be decide the flow of money issued by corruption perpetrators who are live blood the crime. Thus, the perpetrator cannot use his assets to protect himself too for commit other crimes. Impoverishment corruptors can serve officials in the color of reasonableness. This is press the officers to be transparent and observant in collecting his property, not make assignments a place to collect treasure. Corrupt impoverishment too can be an alternative to watching dead which is still a controversy in its application.

Corruption impoverishment can be applied through the regulations already exists. Article 18 of Law No. 31 of 1999 has made it possible to seize property practices that result from corruption as well complicated emotional money same as assets obtained from corruption. This can still be maximized again with participate in implementing the Act Number 8 in 2010 about prevention and eradication washing speech act money (TPPU) in case enforcement corruption. The practice of money laundering is one, they're ways to do disguise or concealment of results corruption. Implementation of the TPPU Law in the case corruption gives second breakthrough law, namely cumulative prosecution and proof upside down on property cruel person. In an effort to implement it must use more proof upside down. In addition, in the future the Corruption Bill must adjust the threat again fine with current conditions and changes convicted person additions in article 18 Law No. 31 of 1999 became a convict which is strong in its application. In law enforcement against corruption, there needs to be a firmness from various parties especially law enforcement officials in an effort to prevent and eradicate corruption. Law enforcement officers must have to firm and hard in handling corruption cases. Law enforcer also must stay away from a gentle attitude against corruption so that it doesn't get stuck inside it.

Urgency of Death Penalty for Corruptors

If seen from the danger caused, the perpetrators of corruption crimes are indeed deserved to be sentenced to death. The consideration, this crime turned out to cause tremendous destruction for the survival of the nation. The community until the nation's grandchildren later suffer and suffer the consequences. The existence of this nation has become cornered and humiliated internationally, because of the rampant culture of uncontrolled corruption. In formal jurisdiction, the application of the death penalty in Indonesia is indeed justified. This can be traced from several articles in the Criminal Code (KUHP) which contain the threat of capital punishment. Outside the Criminal

Code, there are at least six laws and regulations that have the threat of death penalty, such as Narcotics Law, Anti-Corruption Law, Anti-terrorism Law, and Human Rights Court Law, Intelligence Law and State Secrets Law. Besides that, philosophically, the application capital punishment is also recognized and accommodated by the concept of the state of Pancasila law. This shows that the death penalty in Indonesia still exists in the rule of law in Indonesia.

Moreover, the execution of capital punishment in Indonesia has shown an increasing tendency since the reform era. Although it still retains the death penalty in its positive legal system, but as a country that upholds the values of human rights, the Indonesian state imposes a death penalty specifically, carefully, and selectively (Lubis & Lay, 2007). In the context of democracy, the stipulation of the death penalty in a number of laws in Indonesia has basically been discussed in the legislature, which in fact is the people's representatives, as a representation of all the people of Indonesia. According to van Bemmelen, citing the opinion of J.J. Rousseau, basically the law as a whole relies on a community agreement in which shared will is expressed(Bemmelen, 1987). If there is behavior that according to the collective will must be punished, then it must be described from the beginning from the law.

Detailed breakdown is intended to avoid violations of individual freedom, because in a community agreement, everyone is only willing to give up a small portion of his freedom into the joint container(Bemmelen, 1987). Similarly, the death penalty. If the death penalty is still appropriate to be applied and accepted by the common will, then the sentence must be stated in the form of a written law (law). This means that the provisions of the death penalty in the laws in Indonesia are basically in accordance with the theory of community agreement or constitution. Therefore, it is very relevant to relate the provisions of Article 28A and Article 28I Paragraph (1) of the 1945 Constitution to Article 28J of the 1945 Constitution. In this case, Article 28J of the 1945 Constitution determines:

1. Everyone is obliged to respect the human rights of others in an orderly, national life, and state.
2. In exercising their rights and freedoms, each person must submit to the restrictions set by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with moral considerations, values religion, security, and public order in a democratic society.

Thus, the provisions of Article 28A and Article 28I Paragraph (1) of the 1945 Constitution are limited by the provisions of Article 28J of the 1945 Constitution. Therefore, to protect greater national legal interests, in understanding criminal or capital punishment provisions in Indonesia not only reading the provisions of Article 28A and Article 28I of the 1945 Constitution, but must also pay attention to and relate them to the provisions of Article 28J of the 1945 Constitution. So, the application of the death penalty for perpetrators of corruption can be justified, both legally (in law) and in humanity (public interest). This is because corruption crimes are related to the seizure of the welfare rights of the wider community, so that the handling must also be oriented to the protection of public rights. If the death penalty has no implication or no value to the perpetrator, then its value lies in its impression of others as general prevention.

Polemic of Death Penalty: Does the Penalty is Fair?

Although it has become a classic discourse, the pros and cons around the application of the death penalt (Hamzah & Simanglipu, 1985) remain a serious debate among the world community, including in Indonesia. In the midst of the global trend of

a moratorium on the death penalty, this practice is still commonly applied in Indonesia. those who agree, capital punishment is a very effective form of punishment that is also adopted by many countries in the midst of increasingly complex crimes and disturbing society. However, along with the rise of ideas of humanism or universal humanitarian values that spread after the second world war, the existence of punishment death is considered illogical in today's modern life. According to human rights defenders, the dynamics of criminal law in the world today has shifted from the theory of retaliation to the theory of rehabilitation, where the theory is clinic treatment.

In a human rights perspective, the emergence of a lawsuit against the application of the death penalty in Indonesia is based in more detail as follows: First, the current death sentence is unable to meet the demands of a sense of justice in modern society because it leaves a life-death decision not spared from mistakes. Second, the death penalty is not always effective as an effort to prevent or deter people from committing crimes. Third, on the basis of humanitarian considerations, the death penalty violates human rights values that cover the opportunity for a convict to repair themselves (Salmi, 1985). From here, activists and human rights defenders consider the death penalty to be a form of heritage that must be abandoned. Although not an act that opposes the right to live directly, the application of the death penalty is actually a form of murder that has been planned in the name of (state) law (Nawawi Arief, 1994). From this perspective, the application of the death penalty can be classified as a cruel and inhuman punishment, as stated in Article 3 of the Universal Declaration of Human Rights, which reads, "Every person has the right to life, freedom and safety as individuals". This guarantee is confirmed by Article 6 paragraph (1) and Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and strengthened by the Second Optional Protocol to the International Treaty on Civil and Political Rights in 1989 concerning the Elimination of Death Penalty. Thus, capital punishment basically contradicts human rights principles and must be eliminated or abolished. Death penalty may making the crime of the offender avenged, at least for the family of the victim, and will make other people afraid of committing similar crimes, but it clearly will not be able to repair the perpetrator, because the opportunity for life is gone. On the contrary, even without being sentenced to death, a criminal can feel retaliation for his actions with other forms of punishment, for example being sentenced to life or imprisonment. Here, the death penalty is considered no longer effective as a deterrent form of punishment, because the modern criminal system continues to lead to efforts to rehabilitate convicts (treatment) (Salmi, 1985). From here, human rights defenders seek to eliminate the death penalty from the provisions of law and legislation in Indonesia in order to protect citizens' living rights in an absolute way.

Furthermore, death penalty in the perspective of Islamic Law, as one of the pillars in the establishment of a legal system in Indonesia, in addition to Western law and Customary law, Islamic law has a great interest in fighting for the existence of capital punishment, as a form of maximum punishment and has a strong legal basis. This shows that Islamic law still maintains the death penalty for action certain crimes, where the essence of their application to to protect the interests of individuals and the public from crime which endangers the basic foundations of humanity. In Islamic law, the death penalty can be found in three forms of punishment, namely qishsh, had (hudûd) and ta`zìr. In the case of qishsh, the threat of the death penalty is intended for the intentional or planned perpetrators of murder, where the intentional perpetrator of the murder must also bear the appropriate legal reward. In the hudud issue, the threat of the death penalty is intended for zina muhshàn, hiràbah, bagy , and riddah. Whereas in the ta`zìr problem, the threat of the death penalty is intended for perpetrators of crimes outside qishsh and

hudd who are deemed very dangerous by the state (ruler) for the survival and benefit of the community. In the context above, the death penalty imposed on certain cases, such as drugs, terrorism and corruption, includes the category of ta`zìr punishment called 'al-qatl al-siyàsi', namely the death penalty which is not regulated by the Koran and Sunnah but it is surrendered to the authorities or the state, both the execution or the execution procedure. The maximum sentence (death) may be imposed by a country if it is seen as an effective effort to maintain order and benefit the community (Sirin, 2000).

The threat of death penalty in Islam, according to Barda Nawawi Arief, in essence it is not the main means for regulating, regulating, or protecting the community, but rather is the last legal way. Thus, there are certain criteria that regulated in Islamic law that allows a crime to be sentenced to death. The terrible impression behind the death sentence is the popular impression that surrounds the application of Islamic criminal law in this modern society. Such impressions or criticisms, initially launched by the West, are not simply because they do not like the concept of physical punishment, but rather because of their moral feelings that have not been fully awakened. The existence of such criticism is also due to not realizing the religious (spiritual) reason of the punishment, namely that punishment is not cruelly imposed on someone others, but solely for the sake of carrying out the provisions contained in the doctrine of religious (Islamic) law which are encompassed in maqashid al-sharia (Iqbal Siddiqi, 1985). Islamic law actually pays close attention to the basic humanitarian values in a world covered in five things, namely religion (*al-dìn*), soul (*al-nafs*), wealth (*al-màl*), reason (*al -aql*), and offspring (*al-nasl*). The protection of these rights is not at all a gift of authority or a gift of society, but is a gift from Allah SWT. In order to preserve these five basic human rights, Islamic law consequently includes the death penalty as one of the basic punishments, as well as maximum punishment. Therefore, the imposition of the death penalty should not be compared or confronted (vis a vis) with the human rights of the perpetrators of the crime, but must be seen from the interests of many people. The death penalty in Indonesia must be interpreted that we - as a community - have agreed to give the sentence. That is, for the perpetrators of corruption crimes, the death penalty is still needed because of the actions of the perpetrators themselves who no longer pay attention to aspects of humanitarian life (the second principle of Pancasila) and a life full of social justice (the 5th principle of the Pancasila). So, as a nation and country that has the philosophy of Pancasila, the enforcement of the death penalty in our country should be addressed democratically, namely the Indonesian people today still want the death penalty to apply in Indonesia as a consequence of the nation's and state's current legal paradigm. After all, the death penalty only applies to certain crimes, such as narcotics, terrorism and corruption.

Death Penalty as a Progressive Law

If corruption is placed as a crime of humanity, then the legal paradigm in corruption cases should be changed, from the principle of resisting the law formally to material. At present, based on Article 2 paragraph 1 of Law No. 31/1999 jo Law No. 20/2001 concerning Eradication of Corruption Crime (Tipikor), to determine a person as a suspect, investigators cannot only base that the suspect violates the principle of propriety, justice, or social norms only (acts against material law), but must prove the existence or absence of violations laws and regulations (formal legal acts). Moreover, on July 26, 2006, the Constitutional Court revoked the contents of the Explanation of Article 2 paragraph 1 of Law No. 31/1999 jo Law No. 20/2001 concerning Eradication of Corruption Crime (Tipikor). The formal approach in corruption cases is currently

very difficult to do, because corruption is often carried out systematically and involves powerful people.48 This means that corruption based on local regulations, presidential decrees, ministerial decrees or joint decisions will be difficult to prosecute if must use formal offenses, because formally the act is legal.

Therefore, this country must be courageous to use the principle of violating the law materially in order to absorb the law and justice live in the community. Many actions that are not punishable by formal law, but according to custom and the spirit of social justice can be punished. The inclusion of whether or not the material is against the law materially in the law actually does not have much effect, because basically the materially against the law is inherent in inappropriate and disgraceful actions. More than that, the government must dare to impose a reverse proof principle or the principle of presumption of guilt for corruption cases, as an attempt to ensnare and drag the perpetrators of corruption crimes that have been difficult to reveal to prison. This reversed proof is intended to prove the property acquired by someone, especially an official, who is suspected of committing corruption completely violates the law or not. For example, any official who does not want or is reluctant to report the assets or gifts he receives, then his unwillingness can be indicated that these assets were obtained from illegitimate methods.

That was what Satjipto Rahardjo called progressive law, which is a law that emphasizes action paradigms rather than normative paradigms, and looks more at the results achieved rather than citing regulations. That is, the law must not be allowed to become an esoteric domain, which is only concerned with rules and logic, relying on procedures and bureaucracy. Law needs to be drawn out of the esoteric realm and enter the social sphere. Law must be able to provide social services and services to its people. Law must be directed to deliver justice and prosperity to the people (bringing justice to the people) .52 This can be done if law enforcement dares to free itself from the status quo and not only prioritize rules, but also pay attention to behavior . The power of progressive law — as an action paradigm — will look for various ways in order to stifle corruption as a strength of the status quo. Rules and systems are not the only ones that determine. Here, the spirit of bringing justice to the people (bringing justice to the people) is felt to be much stronger in order to overcome the bad conditions that have been caused by the existing system and culture. This is what Bismar Siregar and Bustanul Arifin have done when they were judges, where the spirit and morality of justice can be used as a source of law (Auda, 2008). From here, the government must immediately design concrete processes, mechanisms and legal rules as a reference for legal products to resolve cases corruption cases in Indonesia.

CONCLUSION

Eradicating corruption does not merely return state money. More important than that, the prosecutor's office must take firm action against corruptors and impose the most severe penalties on corruptors. So, in addition to subsidiary and returning state assets that have been corrupted, corruptors must also be severely punished. The implementation of corruptor penalties that have not been able to reduce corruptors and eliminate corruption. So the corruptors need to be given a punishment that has a detrimental effect, not just imprisoning for a short time like this happened. With severe penalties, those who do will feel afraid of corruption. Corrupt practices are very detrimental in all aspects. A sanction given to corruptors by imprisoning them does not necessarily make them deterred. Corruptors should be punished severely by taking all their property, revoking and blocking the register of themselves from a government or a

certain institution, or also being sentenced to death as developed countries that have carried out this sentence for a long time. even though the death penalty must be taken seriously because it eliminates someone's right to life and also leaves grief for corrupt families. But so far, corruptors in Indonesia are increasing because there is no deterrent effect from the sentences imposed. The practice of corruption will continue to exist if strict sanctions are not enforced by the government. In Indonesia, even law enforcement officials can be bribed using money. This is what causes corruption practices to continue to exist. That is what the government and all law enforcement agencies in Indonesia must seriously do. Corruption has become an acute disease that has plagued the life of the nation and has caused misery for the current generation. Therefore, corruption must be eliminated from this republic.

BIBLIOGRAPHY

Auda, J. (2008). *Maqàsìd Sharì'ah as Philosophy of Islamic Law*. London: The International Institute of Islamic Thought.

Bemmelen, J. M. van. (1987). *Criminal Law I: Criminal Law Material General Section, Indonesian Edition*. Bandung: Binacipta.

Cahaya, S. dan S. (2011). *Strategi dan Teknik Korupsi Mengetahui untuk Mencegah*. Jakarta: Sinar Grafika.

Hamzah, A., & Simanglipu, A. (1985). *Death Penalty in Indonesia in the Past, Present and Future* (Cetakan II). Jakarta: Ghalia Indonesia.

Iqbal Siddiqi, M. (1985). *The Penal Law of Islam*. Lahore: Kazi Publication.

Klitgaard, R. (2001). *Membasmi Korupsi*. Jakarta: Yayasan Obor Indonesia.

KPK. (2016). *Social Impact of Corruption Mold 1*. Jakarta.

Lubis, T. M., & Lay, A. (2007). *Death Penalty Controversy; Differences in Opinion of Constitutional Judges*. Jakarta: Gramedia Kompas.

Nawawi Arief, B. (1994). *Policy in the Prevention of Crime with Prison Crimes*. Semarang: CV Ananta.

Salmi, A. (1985). *Existence of Death Penalty*. Jakarta: Literacy Press Persada.

Sirin, K. (2000). The Execution of the Bali Bombing Trio. *Koran Tempo*.

The National Legal Development Agency of Ministry of Law and Human Rights. (2011). *Final Report Law Compendium Team on Corruption Eradication Institution*.

Law Quote

"There is no greater tyranny than that which is perpetrated under the shield of the law and in the name of justice."

Charles-Louis de Secondat, baron de la Brède et de Montesquieu,
The Spirit of the Laws