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Death Penalty for Corruptors from a Human Rights Perspective in Indonesia

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ABSTRACT. The death penalty for corruptors, gaining a place in Indonesia's positive criminal law. As a country that makes Pancasila an ideology, it is interesting to be reviewed in this paper on the existence of the death penalty for the corruptor from a human rights perspective in Indonesia. Therefore, the author raised two issues, namely the *first*, how is the death penalty for corruptors in Indonesia's positive law? *second*, what about the death penalty for such corruptors if reviewed from a Human Rights perspective in Indonesia? To answer this, the authors chose legal research with a normative approach as part of its research methods. Based on the study obtained that the death penalty for corruptors does not conflict with Indonesian human rights values, because it is seen as the most serious crime. Even the formulation of the death penalty is currently seen as in line with the direction and ideals of reforming Indonesia's criminal law, which is increasingly humanist and puts forward the purpose of justice and benefit.

KEYWORDS. Death penalty, corruption, criminal law, human rights in Indonesia.

Death Penalty for Corruptors from a Human Rights Perspective in Indonesia*

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Introduction

The development of human civilization has been experiencing rapid development, which is gradually heading on the life of the modern. The development of human civilization is also followed by the development of types, forms, perpetrators, victims, to the impact caused by the crime. The development of such put crime as a problem of social a country, both in scope and global scope. Saiichiro Uno said that crime is a universal phenomenon because the crime is constantly increasing the number and quality compared to the past.[2] All countries in the world are always faced with the problem of evil and how to overcome them. All countries in the world are always faced with the problem of evil and how to handle it, then street crime such as murder, robbery, persecution, up to white-collar crime such as corruption, banking crimes and so on.

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2 Muhammad Hatta, *Kejahatan Luar Biasa (Extra Ordinary Crime)*, Lhokseumawe, Unimal Press, 2019, p.1

There are several types of criminal or punishment as a means to provide a deterrent effect as well as eradicate a variety of crimes. Until today, the death penalty is often used as one of the sanctions for the perpetrators proven to have committed one of the crimes. The death penalty is one criminal type that is most controversial in the world. Death penalty always gets the spotlight of various circles all over the world. there are various kinds of arguments and reasons from different points of view put forward to support or oppose the entry into force of the criminal is dead, start from the side of religion, human rights, law, social culture, and even on the understanding that embraced a nation. Not only in Indonesia, the pros and cons of the enactment of the death penalty in almost all countries in the world. Any legal experts, human rights activists and others always attribute the opinions of the pros and cons in the institution of the death penalty with reasons that are logical and rational.

The existence of the death penalty in Indonesia alone get a place as one of the forms of criminal sanctions contained in Chapter 10 of Indonesia Criminal Code (KUHP), so its existence is to get the legality of the legal authority of Indonesia. It is also the one who then underlying the adoption of a death penalty as one form of criminal sanctions for criminal acts of corruption. There is one article regulates the death penalty for criminal acts of corruption, namely in Article 2 paragraph (2) of Indonesia Law Number 31 of 1999 concerning Eradication of The Criminal Act of Corruption (hereinafter as UU Tipikor). The existence of the death penalty in UU Tipikor seen as realistic, given the corruption is seen as one of an extraordinary crime because it is done in an organized and capable of providing great impact and wide to finance and the economy of the country. As an extraordinary crime than in tackling corruption also required the efforts of juridical special and extraordinary.

See data compiled by Indonesia Corruption Watch (ICW) shows that in 2018 there 1.053 cases with 1.162 defendants are severed at the three levels of court. Overall, the ICW then divide the verdicts of corruption cases in several categories. Indonesia Corruption Watch then divides the verdicts of corruption cases in several categories. *First*, the mild category (the punishment of 1-4 years imprisonment): 918 the defendant, *Second*, the medium category (More than 4 years-10 years in prison): 180 defendants, *Third*, the category of weight (above 10 years): 9 defendants.[3] Then 2019 at

[3] Dylan Aprialdo Rachman, "ICW: Tahun 2018, Rata-Rata Vonis Koruptor 2 Tahun 5 Bulan", *Kompas.com*, 28 April 2019, https://nasional.kompas.com/read/2019/04/28/17302541/icw-tahun-2018-rata-rata-vonis-koruptor-2-tahun-5-bulan, accessed on 2 July 2020.

least of 1019 cases with the number of defendants as much as 1.125 people. Although up slightly compared to 2018, the average verdict this year is still relatively light i.e. 2 years 7 months in prison. While the verdict is all 2019 is recorded 16.9 % or 173 of the defendant. While the verdict is heavy with punishment is 10 years in prison of as much as 0.8 % or 9 people. To verdict, smoke rises sharply to 46 defendants, while the previous year recorded 26 defendants. While to the verdict of the form of the indictment is proved but is deemed not a crime, as many as 13 defendants.[4]

Pay attention to the description above, the types of sanctions commonly imposed against the corruptor is a type of sanctions of prison and fines, as well as some type of additional sanctions as the sanction of revocation of certain rights and sanctions the deprivation of certain goods. Remember also from the above data, the sanctions imposed lightly. So that it will have implications on the figures of corruption in Indonesia. This can be seen in the 2015-2018 period, the number of corruption cases in Indonesia that were successfully prosecuted by the Corruption Eradication Commission (KPK), the Police and the Prosecutor's Office has fluctuated, but still in large numbers. In 2015 there were 550 cases and decreased in 2016 to 482 cases. In 2017 there were 576 cases of corruption, then the number decreased in 2018, namely as many as 454 cases of corruption. Furthermore, in 2019 the number almost fell by 50% to 271 cases of corruption that were revealed.[5]

Therefore, it should be studied the existence of the death penalty in this paper, as an idea to reduce the number of corruptions in Indonesia significantly. So in this paper, the author will raise two problems: *first*, how the sanctions the death penalty for the corruptor in Indonesian positive law? and *second*, what sanctions the death penalty for corruptors is if viewed from the perspective of Human Rights in Indonesia? So it is expected that through this paper can contribute ideas and thoughts efforts combating corruption in Indonesia in the future, in particular by involving the existence of criminal sanctions dead as one of the sanctions that are still recognized in the draft of the Indonesia criminal code (RKUHP).

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4 Tim CNN Indonesia, "ICW: 4 Tahun Berturut-turut Koruptor Rata-rata Terima Vonis Ringan", *CNN Indonesia*, 20 April 2020, https://m.cnnindonesia.com/nasional/20200419190921-12-495064/icw-4-tahun-berturut-koruptor-rata-rata-terima-vonis-ringan, accessed on 2 July 2020.

5 Rizky Oktavianto & Norin Mustika Rahadiri Abheseka. "Evaluasi Operasi Tangkap Tangan KPK". *Jurnal Antikorupsi INTEGRITAS*, Vol. 5 No. 2, 2019. Pp. 117-131.

Method

This paper uses the normative legal research method, which studies or analyzes secondary data in the form of primary, secondary and tertiary legal materials, by understanding law as a set of regulations or positive norms in the Law system that regulates human life. This research refers to legal norms contained in statutory regulations and court decisions where the data source is obtained from literature or secondary data consisting of primary legal materials, including the preamble to 1945 Constitution of The Republic of Indonesia (UUD 1945)**,** the body of the UUD 1945, related laws and regulations. with corruption and human rights, as well as secondary legal materials, including books, scientific articles, and opinions of experts regarding the object of research.[6] The statutory approach used aims to examine the application of the death penalty in corruption in accordance with statutory regulations.

Death Penalty in Indonesia According to the Corruption Eradication Law

The death penalty is believed to be one of the efforts to punish the perpetrators of crimes in the world. Indonesia is one of the countries that enforce and recognizes the legality of the death penalty. In addition to being the most severe punishment, the death penalty is also very frightening especially for criminals who are awaiting execution. One of the crimes that can be sentenced to death is the crime of corruption. In principle, the death penalty is believed to be one of the punishments that can have a deterrent effect for those who have not committed a crime. Also, the death penalty is believed to have the power to inflict deterrent effects on others. The ideal punishment when implemented is the extent to which it can give the psychic intimidation power to another person, with the intention that the person does not commit the same act.[7] Nowadays various cases of crime are often found

[6] Bungasan Hutapea. "Alternatif Penjatuhan Hukuman Mati di Indonesia Dilihat dari Perspektif Ham". *Jurnal Penelitian HAM*, Vol. 7 No. 2, 2016, pp. 69-83.

[7] Amir Ilyas, *Asas-Asas Hukum Pidana Memahami Tindak Pidana Dan Pertanggungjawaban Pidana Sebagai Syarat Pemidanaan*, Yogyakarta, Rangkang Education Yogyakarta & PuKAP-Indonesia, 2012, p. 14 and p. 100

where the perpetrator of the crime who is a recidivist repeatedly commits a crime, this happens allegedly due to a light sentence.

Historically, the death penalty is not unusual for the Indonesian people. In the era of Majapahit kingdom has known the death penalty, in addition to the punishment of cutting limbs, fines, damages, *pangligawa* or *putukucawa*, as well as additional penalties such as ransom, confiscation and *patibajambi* (money buyers of drugs).[8] The existence of the death penalty continued until the enactment of *Wetboek van Stafrecht* (WvS) by the Dutch when colonizing Indonesia, until the enactment of *WvS* as Indonesia's positive criminal law in the era of independence until now known as the KUHP. Thus, in other words, the regulation of the death penalty in the UU Tipikor has been spelt out in advance *lex generalist* in the KUHP listed in the first book of General Rules Chapter II Article 10 about criminal sanctions. The existence of the death penalty in Indonesia is seen as continuing in the future, because in the RKUHP draft 2019 regulates the death penalty, namely in Article 98 which states that "*pidana mati secara alternatif dijatuhkan sebagai langkah untuk mengayomi masyarakat"* (the death penalty is alternatively dropped as a step to protect society). The enacting of the death penalty as one of the means of overcome crimes is essentially a legal policy choice,[9] especially in a country's penal policy.

UU Tipikor regulates the death penalty, which is contained in Article 2 paragraph (2), which reads "*dalam hal tindak pidana korupsi sebagaimana dimaksud dalam ayat (1) dilakukan dalam keadaan tertentu, pidana mati dapat dijatuhkan*" (In the event that the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, the person concerned can be sentenced to life imprisonment). Meanwhile, Article 2 paragraph (1) reads:

> "*(1) Setiap orang yang secara melawan hukum melakukan perbuatan memperkaya diri sendiri atau orang lain atau suatu korporasi yang dapat merugikan keuangan negara atau perekonomian negara, dipidana penjara dengan penjara seumur hidup atau pidana penjara paling singkat 4 (empat) tahun dan paling lama 20 (dua puluh) tahun dan denda paling sedikit Rp.*

[8] Ali Dahwir. "Pengembanan Filsafat Pancasila Dalam Sistem Pemidanaan di Indonesia". *Solusi*. Vol. 17 No. 1, 2019, pp. 14-22

[9] Hikmah & Eko Sopoyono. "Kebijakan Formulasi Sanksi Pidana Mati Terhadap Pelaku Tindak Pidana Korupsi Berbasis Nilai Keadilan". *Jurnal Pembangunan Hukum Indonesia*, Vol. 1 No. 1, 2019. pp. 78-92.

> *200.000.000,00 (dua ratus juta rupiah) dan paling banyak Rp. 1.000.000.000,00 (satu milyar rupiah).*"
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> "Anyone who illegally commits an act to enrich oneself or another person or a corporation, thereby creating losses to the state finance or state economy, is sentenced to life imprisonment or minimum imprisonment of 4 (four) years and to a maximum of 20 (twenty) years, and fined to a minimum of Rp 200,000,000,- (two hundred million Rupiahs) and to a maximum of Rp1,000,000,000,- (one billion Rupiahs)".

The formulation of Article 2 explains the possibility of the imposition of the death penalty against the perpetrators of corruption, which is indicated by the phrase "can" (*dapat*). So it can be interpreted that the death penalty for corruptors in the article is placed in an optional position, where there is nothing that obliges judges to impose death penalty sanctions for corruptors who commit corruption in certain circumstances.

So, what is the meaning of the phrase "*certain circumstances*" as stated in the formulation of Article 2 paragraph (2)? The Explanatory Section of Article 2 paragraph (2) states that "certain circumstances" in this case are when corruption is committed:

a) "*Pada situasi dan kondisi pada waktu negara dalam keadaan bahaya sesuai dengan undang-undang yang berlaku*" (In the circumstances and conditions at the time the state is in a state of danger in accordance with applicable law);
b) "*Pada waktu terjadi bencana alam nasional*" (In the event of a national natural disaster);
c) "*Sebagai pengulangan tindak pidana korupsi*" (As a repetition of corruption crimes); *atau* (or)
d) "*Pada waktu negara dalam keadaan krisis ekonomi dan moneter*" (At a time when the country is in a state of economic and monetary crisis).

These conditions are alternative (marked with a conjunction "or" / "atau") which function as reasons for the weight of the crime. According to Adami Chazawi, punishments in general criminal law include: (1) because it has a position; (2) basic ballast because it uses the national flag; (3) basic weight due to repetition (recidive), in addition to other criminal weightings scattered in the articles of the KUHP.[10]

Further in the Explanation Section explains that Article 2 paragraph (1) is classified as a type of formal delict. As is well known, in the doctrine

[10] Adami Chazawi, *Pelajaran Hukum Pidana I*, Jakarta, PT. Rajawali Pers, 2013, p. 121

of criminal law, there are various types of delict, including formal and material delict. Most criminal law experts define a material delict as an offence whose completion is when the result of the desired action has been accomplished/achieved, while a formal delict is an offence whose completion lies in the achievement of an act which is prohibited.[11] So that a person can be subject to Article 2 paragraph (1) of the UU Tipikor does not have to wait for economic or financial losses to the state, but sufficient to fulfil the element of action in the form of enriching oneself or another person or a corporation. Even regarding the possibility/potential loss of the state, it can already be the basis of investigating a person's involvement in a corruption crime.

The act of "enriching" according to the author is an act that is classified as an abstract act, wherein a certain event it must be manifested in more concrete action. For example, a corrupt person has been proven to enrich himself in a bridge construction project owned by a local government, by marking up the value of objects to exceed rational limits. In this case, his concrete action is to do a markup, which can give himself more wealth. Indonesia Dictionary (KBBI) defines enrich is "*menjadikan lebih kaya*" (make richer),[12] so that the indicator of the action is the added value of a person's / corporation's wealth as a result of concrete action. The definition of the language according to the author is slightly expanded its meaning in the Corruption Act, so that "enrichment" in this case does not have to have an increase in wealth, but is sufficient to be based on an indication or the potential to harm the economy or state finances. This elaboration of meaning is a result of the provisions regarding formal delict for Article 2 paragraph (1) UU Tipikor.

The use of this type of formal delict is vulnerable to being a means of legalizing repressive efforts by law enforcement, not least for Article 2 or Article 3 of the UU Tipikor. If you are not careful and careful in applying the formal delict, instead it undersized the values of justice and the benefits of what criminal law aspires to.[13] As of 25 January 2017, the Constitutional Court of the Republic of Indonesia (MK) issued verdict No. 25/PUU-XIV/2016 concerning the test of the material of the UU Tipikor, especially Article 2 paragraph (1) containing the word "can". On the warning of its verdict, MK states that the word "can" in Article paragraph (1) and Article 3

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[11] *Ibid.*, p. 119 -120 and p. 125-127

[12] Badan Pengembangan dan Pembinaan Bahasa, Kementerian Pendidikan dan Kebudayaan Republik Indonesia, "KBBI Daring", *Kementerian Pendidikan dan Kebudayaan Republik Indonesia*, https://kbbi.kemdikbud.go.id/entri/kaya, accessed on 2 July 2020..

[13] Ali Zaidan, *Menuju Pembaruan Hukum Pidana*, Jakarta, Sinar Grafika, 2015, p. 368

of the UU Tipikor is contrary to the UUD 1945 and has no binding legal force. The reason is according to the Court, the word "can" has created legal uncertainty because one can be found to have acted corruptly based on a probable or potential loss, rather than an actual loss. Also, the court considered that the word "can" infringed the principles of *lex scripta* (punishment must be based on written law), *lex stricta* (it has to be interpreted as it is written (strict interpretation)), and *lex certa* (it should not be multi-interpretative) and, therefore, it violates the Constitution. Moreover, MK concurred that the word "can" had created undesirable fear among decision-makers. They have become reluctant to take important decisions or to exercise discretion related to government spending. MK stated that, as government spending may trigger economic multiplier effects, this unwillingness to take decisions may hamper Indonesia's economic development.[14]

The court's verdict gives juridical implications, in the form of changing the type of delict in both articles into a type of material delict. Thus associated with the existence of the death penalty in Article 2 paragraph (2), it gives little idea that the death penalty is positioned as the most recent sanction and it is facultative. This is seen as linear with what is being done in the RKUHP, which imposes the death penalty as a form of special sanction. Because of the various formulations of the RKUHP, the death penalty has been removed from the main criminal type section, which is different from the position of the death penalty in Article 10 of the current KUHP which is placed as the principal criminal. It is also an overview of the direction of the death penalty in this UU Tipikor has moved towards the humanization of criminal law as the spirit of criminal law reform that pays attention to humanitarian values and is more aimed at improving a person's offenders,[15] no exception for corruptors though.

Death Penalty for Corruptors in the Perspective of Human Rights in Indonesia

Human rights are basic rights/natural rights/absolute rights belonging to mankind, which are owned by mankind from birth to death (in implementation accompanied by obligations and responsibilities as human

[14] Richo Andi Wibowo. "When anti-corruption norms lead to undesirable results: learning from the Indonesian experience". *Crime Law and Social Change*, Vol. 70 No. 3, 2018, pp. 383-396.
[15] Maroni, *Pengantar Politik Hukum Pidana*, Lampung, Aura Publishing, 2016, p. 76

beings)[16]. Considering that human rights are the basic rights brought by humans from birth as a gift from God, the true human rights do not come from the State but God as the creator of the universe and its contents. So that human rights are non-derogable rights, which must be protected by the state. Human rights can also be interpreted as basic rights inherent in human identity naturally and universally and serve to maintain the integrity of their existence, relating to the right to life, safety, security, liberty, justice, welfare togetherness, and the right to progress as God's creation that should not be ignored or deprived.[17] Furthermore, Jimly Asshiddiqie and Hafid Abbas stated that human rights exist not because of society or the good of the state, but rather on the basis of his dignity as a human being.[18]

The existence of human rights in Indonesia cannot be separated from Pancasila as the main source of the law so that any laws and regulations must not conflict with Pancasila. Philosophically, human rights in Indonesia derive from and lead to Pancasila, so that human rights receive strong guarantees from Pancasila as the nation's philosophy. Human rights in Indonesia must pay attention to the lines that have been determined in the provisions of the values of Pancasila, which do not mean to implement freely but must pay attention to the provisions contained in the view of the life of the Indonesian nation mandated by Pancasila.[19] This can be understood because there are no rights that can be exercised absolutely without regard to the rights of others. If this is not controlled, it could result in a conflict of rights or interests in the life of the community, nation and state.[20]

Indonesia as a Pancasila state, in understanding human rights, cannot be separated from the existence of the second principle which reads "*Kemanusiaan yang adil dan beradab*" (Just and civilized humanity), which the author can understand as a description of the position of a man with nature, dignity and values. This was further strengthened by the amendments to the UUD 1945 which later confirmed various human rights in chapter X A section starting from Article 28A to Article 28J. Seeing these two provisions as the basis of ideal and constitutional basis, it can be concluded that Indonesia recognizes and upholds human rights and basic human freedoms as rights which are inherently inherent and inseparable from humans that

[16] M. Ali Zaidan, *Op.cit*., p. 259
[17] *Ibid.*, p. 259
[18] Majda El Muhtaj, Hak Asasi Manusia Dalam Konstitusi Indonesia: Dari UUD 1945 Sampai Dengan Perubahan UU 1945 Tahun 2002, Jakarta,Kencana, 2015, p. 1.
[19] Dicky Febrian Ceswara & Puji Wiyatno. "Implementasi Nilai Hak Asasi Manusia dalam Sila Pancasila". *Lex Scientia Law Review*, Vol. 2 No. 2, 2018. pp. 227-241.
[20] *Ibid*.

must be protected, respected and upheld to improve human dignity, welfare, happiness, and the intelligence and justice of Indonesian people.[21]

When talking about capital punishment, inevitably it will intersect with one of the basic human rights, namely the right to live. The right to life itself is recognized in Article 28A of the UUD 1945, which reads: "*bahwa setiap orang memiliki hak untuk hidup dan mempertahankan hidup dan kehidupannya*" (that everyone has the right to live and defend his life and his life). This provision is further strengthened in Article 28I paragraph (1) of the UUD 1945, which confirms one (of several) basic human rights that cannot be reduced under any circumstances (Non-Derogable Rights), is the right to life. In order to be more applicable at the empirical level, the right to life is regulated in Indonesia Law Number 39 of 1999 concerning Human Rights (hereinafter as UU HAM), starting in Article 4. Apart from the UU HAM, the right to life is also protected in the provisions of Article 3 of the Universal Declaration of Human Rights.

Seeing the various regulations regarding the protection of the right to life of a human being, the existence of the death penalty in Indonesia will certainly lead to debate because it is considered that it violates the right to life owned by a person. Even though he is a criminal, he still has the right to life which deserves to be respected and protected by the state, including in this case a criminal act of corruption. Because the right to life is a *conditio sine qua non* (absolute condition) to become a human being, so without that right, a person cannot be called a human. Meanwhile, death penalty deprives a person's right to life, so that the existence of this type of punishment is a form of denial of the right to life which is inherent or inherent in the nature of a human being, even though he is a criminal. In addition, the death penalty is considered to have overstepped God's authority, because it gives authority to external parties such as the state or someone to revoke life in a human being.[22]

Apart from this basis, the parties who reject the existence of the death penalty are based on the argument that a sanction is a form of punishment that degrades human dignity.[23] Besides, capital punishment cannot provide a

[21] Veive Large Hamenda. "Tinjauan Hak Asasi Manusia Terhadap Penerapan Hukuman Mati di Indonesia". *Lex Crimen*, Vol. 2 No. 1, 2013. pp. 113-119.
[22] Yohanes S. Boy Lon, *Pendidikan HAM, Gender, dan Antikorupsi*, Ruteng: STKIP Santu Paulus, 2017, p. 59
[23] Elsa R.M. Toule. "Eksistensi Ancaman Pidana Mati Dalam Undang-Undang Tindak Pidana Korupsi". *Jurnal Hukum PRIORIS*, Vol. 3 No. 3, 2013. pp.103-110.

deterrent effect, which can reduce the crime rate, as Schultz argues.[24] He argues that the ups and downs of crime in a country are related to the operation or functioning of major cultural changes in people's lives, not simply because of changes in law or court decisions. Specifically for corruption crimes, according to the 2012 Transparency International Corruption Perceptions Index, countries that do not carry out the death penalty are in the highest-ranking as countries that are relatively clean from criminal cases of corruption, namely Denmark (90), Finland (90), New Zealand (90), Sweden (88), and Singapore (87).[25] Another reason for rejecting the death penalty was that there was no longer any chance for the perpetrator to improve himself, as well as the reason that there was a possibility that the Judge made a mistake in making a decision.[26]

Meanwhile, those who support the existence of capital punishment in Indonesia are based on the argument that the death penalty is believed to affect preventing corruption.[27] When compared with countries that apply the death penalty, including Saudi Arabia, has a low crime rate.[28] Another argument that supports the application of the death penalty is that corruption is an extraordinary crime that commits blasphemy against humans, and is a crime against humanity that violates the right to life and human rights of not just one person, but millions of people. According to Modderman, capital punishment can and must be applied for the sake of creating public order, but its application is only as a last resort and must be seen as an emergency authority which in exceptional circumstances can be applied.[29] Also remembering that the issue of criminal sanctions often describes the socio-cultural values of a nation, because it contains values in society regarding what is good and bad, what is moral and what is immoral and what is allowed and what is prohibited.[30]

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[24] Lidya Suryani Widayati. "Pidana Mati Dalam Ruu Kuhp: Perlukah Diatur Sebagai Pidana Yang Bersifat Khusus?". *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan*, Vol. 7 No. 2, 2016. pp. 167-194.

[25] Natalia Soebagjo, "Corruption Perception Index 2012", *Transparency International Indonesia*, 5 Desember 2012, https://riset.ti.or.id/corruption-perception-index-2012/, accessed on 7 August 2020

[26] Fransiska Novita Eleanora. "Eksistensi Pidana Mati Dalam Perspektif Hukum Pidana". *Majalah Ilmiah Widya*. Volume 219 Number 318, 2012. pp. 10-14.

[27] Elsa R.M. Toule. *Loc.Cit*

[28] Roby Arya Brata, "Pro Kontra Hukuman Mati (Bagi Pelaku Kejahatan Narkoba)", *Sekretariat Kabinet Republik Indonesia*, 9 March 2015, https://setkab.go.id/pro-kontra-hukuman-mati-bagi-pelaku-kejahatan-narkoba/, accessed on 24 August 2020.

[29] Elsa R.M. Toule. *Loc.Cit*

[30] Ali Dahwir. *Loc.Cit*

Constitutional Court once rejected the judicial review regarding the death penalty contained in Indonesia Law Number 22 of 1997 concerning Narcotics. The reasons for the Court rejecting the matter of capital punishment in the decision include:[31] *first*, that narcotics crimes are classified as particularly serious crimes. *Second*, capital punishment does not contradict the right to life guaranteed by the UUD 1945, because the Indonesian constitution does not adhere to the absolute principle of human rights. Regarding the first reason, in the ICCPR (which has been ratified by Indonesia through Law Number 12 of 2005) Article 6 paragraph (2) allows ratifying countries to impose capital punishment, specifically for crimes categorized as the most serious crime.[32] Regarding the limits of the most serious crime, the Court has also stated in the decision Number 15/PUU-X/2012, in which the most serious crime is a crime that creates tremendous fear and psychological effects on society.[33] While according to the International human rights committee, the most serious crime is an international crime committed deliberately or planned and has tremendous consequences on the country or the wider community, involving an extra-large amount of money, carried out in a very bad way (crimes with extremely heinous methods), cruel beyond the limits of humaneness, as well as posing a threat or endangering the security of the state.[34]

Regarding the second reason, it is in line with what was stated by Satjipto Rahardjo. According to him, the actual application of human rights varies from country to country, because it adjusts the history, social, economic and cultural conditions of a country so that human rights have their own social character and social structure.[35] If specifically linked to the existence of Pancasila as the ideal foundation of the Indonesian nation, Bambang Poernomo,[36] argues that capital punishment can be accounted for in the Pancasila state as a manifestation of individual protection as well as protecting society for the sake of creating justice and truth in law based on the "Ketuhanan Yang Maha Esa" (One Godhead). The existence of the death

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[31] Yan David Bonitua, Pujiyono, Purwoto, "Sikap Dan Pandangan Mahkamah Konstitusi Terhadap Eksistensi Sanksi Pidana Mati Di Indonesia". *Diponegoro Law Journal*, Vol. 6 No. 1, 2017. pp. 13.

[32] Sefriani. "Karakteristik The Most Serious Crime Menurut Hukum Internasional Dalam Putusan Mahkamah Konstitusi: Kajian Putusan Mahkamah Konstitusi Nomor 15/PUU-X/2012". *Jurnal Yudisial*, Vol. 6 No. 2, 2013. pp. 95-106.

[33] Yan David Bonitua, Pujiyono, Purwoto. *Loc.cit*

[34] Sefriani. *Loc.Cit*

[35] Satjipto Rahardjo, *Sosiologi Hukum: Perkembangan Metode dan Pilihan Masalah*, Yogyakarta, Genta Publishing, 2010, pp. 108-114.

[36] Denny Latumaerissa. "Tinjauan Yuridis Tentang Penerapan Ancaman Pidana Mati Dalam Tindak Pidana Korupsi". *Jurnal Sasi*, Vol. 20 No. 1, 2014. pp. 8-18.

penalty in Indonesia is further strengthened by the opinion of Maria Farida Indrati as a former Justice of the Constitutional Court. He thinks that the death penalty is imposed on a person because in exercising his / her human rights, the perpetrator has violated the human rights of others so that the sanction is intended to protect the community.[37] The author can conclude from the opinion of the legal experts above, that human rights from the perspective of Indonesia have a different character from human rights in the concept of Western countries. Human rights in the Indonesian concept emphasize the balance between the rights and obligations of each individual (mono-dualistic principle), which is in accordance with the communal view of life and Indonesian culture. Meanwhile, in the Western concept, human rights prioritize rights, while obligations are secondary, as a result of the influence of individualism and liberalism.

Taking into account what has been stated above, the author is of the view that in the criminal act of corruption, the death penalty is still needed in Indonesia. As stated by Bismar Siregar, the existence of capital punishment is maintained in Indonesia as an anticipatory means if needed in the future.[38] The requirement that the death penalty be imposed in the current UU Tipikor, which is regulated by limitation, gives the idea that:

a) A death penalty is a form of weighting against corruption cases which are considered to have exceeded humanitarian boundaries, threatening people's lives, as well as disrupting economic stability and even state security.
b) The death penalty has been placed as the last resort, where it is in line with the development of the national criminal law draft in the 2019 RKUHP which places capital punishment as a special form of sanction.
c) Death penalty in such a form is still relevant to be used for criminal acts of corruption in Indonesia which can be categorized as the most serious crime.

The death penalty (especially in the criminal act of corruption) is not against human rights from the perspective of Pancasila. During the trial, the process is carried out independently, impartially, and cleanly, and is not discriminatory so that it can reach actors from elite structures.[39] Given that corruption, apart from being categorized as the most serious crime, is also categorized as a white-collar crime involving perpetrators from among social

[37] Muhammad Amin Hamid. "Penerapan Hukuman Mati Bagi Terpidana Koruptor Ditinjau dari Perspektif Hak Asasi Manusia". *Legal Pluralism*, Vol. 5 No. 2, 2015. pp 171-201.
[38] Fransiska Novita Eleanora. *Loc.Cit*
[39] Denny Latumaerissa. *Loc.Cit.*

status and respectable positions.[40] So that death penalty must prioritize the principles of punishment in accordance with the Indonesian culture and in accordance with the philosophical views and principles of Pancasila.[41] Especially for criminal acts of corruption related to economic losses to the state, in the imposition of sanctions it is necessary to consider the issue of costs and results (cost-benefit principle),[42] if you want the return of state losses as a result of corruption by the perpetrator.

Conclusion

The death penalty is one type of sanction that can be imposed against the perpetrators of corruption crimes in Indonesia according to the UU Tipikor in Article 2 paragraph (1). The sanctions are special, as they require limited corruption committed under certain circumstances only. The issue of the decision of the Constitutional Court Number 25/PUU-XIV/2016 has implications for the change of the type of delict contained in Article 2 and Article 3 of the UU Tipikor, from formal delict to material delict. The changes indirectly place the death penalty as the ultimate sanction to be imposed against corruptors.

The formula of the death penalty for such a corruptor is seen as not contrary to Human Rights from Pancasila's perspective as the ideology of the Indonesian nation. In addition to Pancasila adheres to the principle of balance (monodualistic principle) between the rights and obligations of everyone, corruption in Indonesia is also seen as the most serious crime that is possible to be sentenced to death. Especially if the corruption is carried out under certain conditions as explained in the Explanation section of Article 2 paragraph (1) of UU Tipikor. When viewed as not contrary to Indonesia's human rights values, such a formulation of the death penalty has aligned with the direction and ideals of the renewal of national criminal law that leads to the humanization of criminal law and emphasizes more on the value of justice and efficacy for victims, perpetrators, communities, and countries.

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[40] *Ibid.*

[41] J.E. Sahetapy, *Suatu Studi Kasus Mengenai Ancaman Pidana Mati Terhadap Pembunuhan Berencana*, Jakarta, Rajawali Press, 1982, p. 284.

[42] Otto Yudianto. "Karakter Hukum Pancasila Dalam Pembaharuan Hukum Pidana Indonesia", *DIH: Jurnal Ilmu Hukum*, Vol. 12 No. 23, 2016. pp 35–44.

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LAW QUOTES

"A man who has never gone to school may steal a freight car; but if he has a university education, he may steal the whole railroad."

Theodore Roosevelt
The 26th President of United States of America