

## The Urgency of Death Penalty Implementation for Corruptors on Corruption Social Assistance Fund in Indonesia

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Article	Abstract
<p><b>How to cite:</b>                      Bagas Satria Wicaksono, 'The Urgency of Death Penalty Implementation for Corruptors on Corruption Social Assistance Fund in Indonesia' (2022) Vol. 2 No. 3 Rechtenstudent Journal Fakultas Syariah UIN KHAS Jember.</p> <p><b>Article history:</b>                      Submit 16 April 2022;                      Accepted 9 August 2022;                      Published 31 August 2022.</p> <p><b>ISSN:</b>                      2723-0406 (printed media)  <b>E-ISSN:</b>                      2775-5304 (online media)</p>	<p>The criminal law system is never separated from the legal values themselves. Starting from Pancasila to the 1945 Constitution, Article 3 paragraph 1 emphasizes that Indonesia is a state of law, so whatever the law is, it is the law that must be resolved. Like corruption, which from time to time is getting worse. The weakening of the regulation of capital punishment for corruptors is so lacking that it does not give rise to the principles of justice, expediency, and certainty. Injustice in law can and must be denied to form and have a legal character. Especially for the perpetrators of corruption in social assistance funds in Indonesia. The focus of the problems studied in this study are: 1). How is the Death Penalty Arranged for Corruptors in the Indonesian Criminal Law System? 2). Is the Implementation of the Death Penalty for Corruptors of Social Assistance Funds in Indonesia in accordance with Legal Values? 3). What is the Urgency of Implementing the Death Penalty for Social Assistance Fund Corruptors in Indonesia in the Future? As a means of supporting this research in identifying these problems, this research uses normative juridical analysis with library research. This research concludes: 1) the laws and regulations governing the eradication of corruption, Law no. 20 of 2001 regulates the death penalty in its law only in Law no. 31 of 1999, 2) Starting from the point of view of the death penalty for corruptors in terms of the value of legal certainty, the value of expediency, the value of legal justice, 3) To predict and apply the death penalty for perpetrators of corruption in Indonesia, it is necessary to compare the application of the death penalty in several other countries. China, Vietnam, Thailand.</p> <p><b>Keywords:</b> <i>Justice, Death Penalty, Corruption, Social Assistance Fund</i></p> <p><b>Abstrak</b></p> <p>Dalam sistem hukum pidana tidak pernah terlepas pada nilai-nilai hukum itu sendiri. Mulai dari Pancasila sampai Undang-undang Dasar 1945 Pasal 3 ayat 1 menekankan bahwa Indonesia adalah negara hukum, sehingga apapun persoalannya hukumlah yang harus menyelesaikan. Seperti halnya korupsi yang dari zaman ke zaman semakin memburuk. Melemahnya pengaturan pidana mati bagi koruptor sangat kurang sehingga tidak memunculkan adanya asas keadilan, kemanfaatan, dan kepastian. Ketidakadilan dalam hukum dapat dan harus ditolak untuk membentuk dan memiliki karakter hukum. Terutama bagi para pelaku korupsi dana bantuan sosial di Indonesia. Fokus masalah yang diteliti dalam penelitian ini adalah: 1). Bagaimana Pengaturan Pidana Mati bagi Koruptor dalam Sistem Hukum Pidana di Indonesia? 2). Apakah Penerapan Hukuman Mati bagi Koruptor Dana Bantuan Sosial di Indonesia telah sesuai dengan Nilai Hukum? 3). Bagaimana Urgensi Penerapan Pidana Mati bagi Koruptor Dana Bantuan Sosial di Indonesia Masa Mendatang? Sebagai sarana pendukung penelitian ini dalam mengidentifikasi permasalahan tersebut, penelitian ini menggunakan analisis yuridis normatif dengan penelitian kepustakaan. Penelitian ini memperoleh kesimpulan : 1) peraturan perundang-undangan yang mengatur tentang pemberantasan tindak pidana korupsi, UU No. 20 Tahun 2001 mengatur tentang pidana mati dalam undang-undangnya hanya dalam UU No. 31 Tahun 1999, 2) Mulai dari pandangan hukuman mati koruptor dalam segi nilai kepastian hukum, nilai kemanfaatan, nilai</p>

keadilan hukum, 3) Untuk memprediksi dan menerapkan hukuman mati bagi pelaku korupsi di Indonesia, maka dibutuhkan adanya perbandingan penerapan hukuman mati di beberapa negara lain China, Vietnam, Thailand.

**Kata Kunci:** Keadilan, Pidana Mati, Korupsi, Dana Bantuan Sosial

## Introduction

Pancasila has a very important position in establishing laws and regulations that are in accordance with the ideals of the nation, namely to provide equal justice for all Indonesian people. The presence of Pancasila clearly gives a signal to law enforcement officers that in carrying out the law enforcement process it must be carried out properly and correctly. As currently a developing country, Indonesia often experiences several problems with criminal acts, such as in cases of corruption. As in certain circumstances/events, what is meant is a country is at war, experiencing a natural or non-natural disaster, a financial crisis, or when the country is trying to minimize the negative impact of a disaster by using social assistance funds. Regarding the definition of social assistance funds, logically it is stated in the provisions of Article 1 point 1 of the Regulation of the Minister of Social Affairs Number 1 of 2019 concerning the Implementation of the Distribution of Social Assistance Expenditures within the Ministry of Social Affairs, which in this case provides an illustration that the social assistance funds are "nominal". or money, goods, or services to a person, then a family, and a poor group or community, which they cannot afford and are vulnerable to social risks."<sup>1</sup>

Seeing this event can provide a speculation, if corruption is said to be a disease in a country, then it is possible that crimes such as corruption will be carried out in the midst of a pandemic outbreak.<sup>2</sup> In a study, ICW said that there were violations of criminal acts of corruption against Covid-19 social assistance funds, including: First, the KPK appointed former Social Minister Juliari Peter Batubara, as the perpetrator of a corruption case in the form of bribery of social assistance funds for handling the Covid-19 pandemic for the Jabodetabek area on year 2020.<sup>3</sup> Second, Dorinus Dasinapa, the Regent of Mamberamo Raya, was named a suspect by the police in the alleged corruption case of misuse of Covid-19 funds for the 2020 fiscal year.<sup>4</sup> Third, Askari, the Head of Sukowarno Village, Sukakarya District, Musi Rawas Regency, South Sumatra, is said to be threatened with the death penalty for allegedly embezzling Covid-19 aid funds from the government of Rp. 187.2 million.<sup>5</sup> Fourth, Aa Umbara Sutisna, the Regent of West Bandung, is a defendant in a corruption case in the procurement of goods for the emergency response to the Covid-19 pandemic at the Social Service of the West Bandung Regency Government (KBB) in 2020.<sup>6</sup> Fifth, former Head of the General Bureau of the Ministry of Social Affairs, Adi Wahyono, was sentenced to 7 years in

<sup>1</sup> Sosial Enforcement regarding the existence of Article 1 number 1 concerning the Regulation of the Minister of Social Affairs Number 1 of 2019 concerning the Distribution of Social Aid Expenditures within the Ministry of Social Affairs

<sup>2</sup> Anisa Mufida, "Polemik Pemberian Hukuman Mati Pelaku Korupsi di Tengah Pandemi Covid-19, ISSN 2338 4638, Volume 4 Nomor 1", *Jurnal Hukum Buletin dan Keadilan*, 2020, 226

<sup>3</sup><https://www.cnnIndonesia.com/nasional/20210823061126-12-683785/eks-mensos-juliari-divonis-12-tahun-penjara-korupsi-dana-bantuan-sosial> (Accessed on 07 June 2022, 15.11 WIB)

<sup>4</sup><https://news.detik.com/berita/d-5644973/proses-kasus-korupsi-bupati-mamberamo-roya-polri-segera-izin-ke-mendagri> (Accessed on 07 June 2022, 15.32 WIB)

<sup>5</sup> Juan Maulana Alfredo dan Rama Halim Nur Azmi, "Sistem Informasi Pencegahan Korupsi Bantuan Sosial (Si Pansos) di Indonesia: Rumusan Konsep dan Pengaturan", (Fakultas Hukum : Universitas Brawijaya), 3

<sup>6</sup><https://news.detik.com/berita-jawa-barat/d-5715118/sidang-korupsi-dana-bantuan-sosial-aa-umbara-akan-dipindah-ke-rutan-bandung> (Accessed on 07 June 2022, 15.15 WIB)

prison plus a fine of Rp. 350 million, subsidiary to 6 months in prison, because he was proven to be an intermediary for receiving bribes worth Rp. 32.482 billion from 109 companies providing social assistance funds for COVID-19 basic necessities to the Minister of Social Affairs, Juliari Peter Batubara.<sup>7</sup>

Therefore, if it has been determined to be a last resort, then the enforcement of justice should not be done immediately and must be in accordance with the mistakes that have been made. In this case, the researcher is persistent and adheres to the principle that was uttered by *Lucius Calpurnius Piso Caesoninus "Fiatt Justitia ruuat caelum"* (which has the meaning: that if in the name of justice it is better, justice should be served, even though the sky will fall or be destroyed). Therefore, the researcher emphasizes that it is important to apply the death penalty for corruptors of social assistance funds, because the corrupted funds or social assistance budgets not only have a negative impact on state losses, but also make the community more miserable, even to the highest point, namely death. It is not wrong if corruptors are categorized as threats to crimes against humanity.

Because the impact of corruption is so extraordinary, it is also necessary to take extra action in overcoming it. From the results of this study *The Urgency of Implementing the Death Penalty for Corruptors in Corruption Crimes of Social Assistance Funds in Indonesia* so the researchers hope to find the best ideas as the foundation of law enforcement for corruption in the motherland, especially in the implementation of the death penalty in a fair, definite, and most importantly can provide benefits, because in the view of the researcher the death penalty is not a violation of human rights. humans, but more on repressive steps in causing a deterrent effect for criminals.

### Problem Issues

The issues raised as the main issues are as follows :

1. How is the Death Penalty Arranged for Corruptors in the Indonesian Criminal Law System?
2. How is the Implementation of the Death Penalty for Corruptors of Social Assistance Funds from the Viewpoint of Legal Values in Indonesia?
3. What is the Urgency of Implementing the Death Penalty for Corrupt Social Aid Funds in Indonesia in the Future?

### Research Methods

Research is a scientific effort to find data for certain purposes and uses in accordance with the problems to be solved. In legal research, the research method can be defined as a description of the systematic stages of legal objects, both scientific, dogmatic rules, as well as the implementation and response of the community to the existence of the law.<sup>8</sup> In this study, normative juridical research is used which is also called doctrinal law research. Based on this type, the legal concept is in accordance with statutory regulations (*law in books*), or the legal concept that is included is the qadiah and norms that form the basis of society.

In this study, three approaches were used as a reference, namely the *statute approach*, the *comparative approach*, and the *conceptual approach*. In collecting data, the researcher used library

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<sup>7</sup><https://m.hukumonline.com/berita/baca/lt61302f3803902/mantan-kabiro-umum-kemensos-divonis-7-tahun-penjara-terkait-korupsi-dana-bantuan-sosial/> (Accessed on 07 June 2022, 15.23 WIB)

<sup>8</sup> Basuki Kurniawan, *Logika dan Penalaran Hukum*, (Bondowoso: Licensi, 2021), 114.

research techniques, namely the study of information conducted by the author regarding the focus of the problem originating from various written sources that were widely published and needed by the author in the study.

## **Results and Discussion**

### **Regulation of the Death Penalty for Corruptors in the Indonesian Criminal Law System**

The difficulty of eradicating corruption can be seen from the number of defendants who have been acquitted in corruption cases or at least the punishment received by the accused is not commensurate with what he has done. This is very detrimental to the country and hinders the development of the nation. If this happens continuously for a long time, it can eliminate the sense of justice and public trust in the laws and regulations.<sup>9</sup> Among others :

1. Arrangements for Military Rulers, namely:
  - a. Military Service Regulation No. PRT/PM/06/1957 concerning the Enforcement of Corruption Eradication.
  - b. Military Service Regulation No. PRT/PM/08/1957 regarding Terms of Ownership of Goods.
  - c. Military Authority Regulation Number PRT/PM/011/1957 Regarding Investigation, Prosecution, and Review of Criminal Acts of Corruption and Property Rights.
  - d. Naval Chief of Staff Regulation No. PRT/Z.11/7/1958.
2. Law Number 24 concerning Investigation, Investigation and Prosecution (PrP) 1960.
3. Law Number 3 of 1971 concerning Systematics of Eradication of Criminal Acts of Corruption.
4. Law Number 20 of 2001 concerning the implementation of a criminal system for the enforcement and eradication of criminal acts of corruption.

The procedure for taking action to eradicate corruption in Indonesia has experienced several ups and downs depending on developments such as legal, social, cultural, economic, and political aspects. The introduction of legal instruments in the form of laws and regulations that are used as a means of eradicating corruption has shown the political will of state administrators in fighting corruption. Weaknesses in drafting laws and regulations, especially imperfections in the wording of the definition of crime, are examples of how eradicating corruption requires more than one effort in the form of protests and certain actions, but more than that. targeted efforts should focus on creating legal instruments.<sup>10</sup> Military Reign Period Military Leadership Regulation No. PRT/PM/06/1957 is issued by the military agency of the Indonesian National Army and applies in areas controlled by the Indonesian National Army. The basis for implementing this regulation, as stated in the preamble, is the absence of appropriate actions in an effort to eliminate behavior that is detrimental to the state's finances and economy, commonly known as corruption. Thus the formation of corruption based on this provision<sup>11</sup> :

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<sup>9</sup> Hartanti, *"Tindak Pidana Korupsi"*, Cetakan pertama, (Jakarta: Sinar Grafika), 2.

<sup>10</sup> Sudargo Gautama, *"Definisi Tentang Negara Hukum"*, (Bandung: Alumni, 1973), 31.

<sup>11</sup> Sudarsono, *"Problematika Korupsi di Indonesia"*, (Jakarta : Brathara, 2001), 50.

1. Any action taken by a person with the intention of obtaining personal gain, another person, or an organization so as to harm state finances or the state economy.
2. The existence of an official's action in receiving wages, salaries, or gifts from a financial institution, because his power or authority illegally benefits the institution, causing widespread negative impacts.<sup>12</sup>

Military Authority Order No. PRT/PM/08/1957 regarding Property. This arrangement was made in order to streamline the provisions of the previous law. This provision authorizes the military authority to own the property of any person or entity in its territory whose enrichment is obtained suddenly and suspiciously. Thus, it is possible to confiscate the property owned:

- a. Property or the price of goods that are indicated intentionally or negligently due to lack of clarity from the owners or managers.
- b. There is a treasure that it is not clear who owns it.
- c. Treasures that are obtained suddenly and cannot provide clarity on how to get them.

In addition, if the confiscated goods do not meet certain conditions, then the goods can be said to be state property. Therefore, the Military Sovereign Order Number PRT/PM/011/1957 concerning Ownership. It is the norm, enforced pending a Supreme Court decision, that military officials authorized to own assets may confiscate assets deemed to be proceeds of other acts of corruption. If examined more deeply, the Military Power of Attorney Number PRT/PM/08/1957 as well as the Officer's Order Number PRT/PM/011/1957 and the War Order of the Navy General Staff Office Number PRT/Z dated April 17, 1958 to July 11, 1958 there is still no article that explicitly regulates the death penalty. This regulation only makes the previous regulations more effective. With this provision, the military authorities have the authority to detain in their jurisdiction the property of a person or entity which is obtained suddenly and suspiciously. The Military Authority also regulates the authority to confiscate assets considered to be the result of corruption pending a High Court decision, and regulates investigations, prosecutions, investigations of records of criminal acts of corruption and property rights.<sup>13</sup>

**a. Period of Law Number 24 Regarding Examination, Investigation and Prosecution of 1960**

Along with the times, the state of emergency became a normal situation, the regulation of the central war power was taken over with the existence of law number 24 PrP 1960 with new provisions in article 1 paragraph 1 letters a and b, where the word action is considered logically as action. Because this law explicitly uses the phrase corruption in its preamble. From a historical perspective, Law Number 24 PrP of 1960 was changed to a law on investigation, prosecution and examination. Along with the change from "emergency situation" to "normal situation", the Central War Authority Regulation was taken over completely by Law Number 24 (PrP) of 1960 with

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<sup>12</sup> Wassertrom Richard, *Morality and The Law*, (California: Publishing, 1971), 32.

<sup>13</sup> Roger Hood Hondstand, *"The Dead Penalty to Justice For A Worldwide Perspective"*, (Third Edition : Oxford Univ. Press, 2002), 80.



minor improvements as in Article 1 paragraph (1) letters a and b. where the word "deed" is replaced with "deed" because this law uses the term "corruption crime" and not "corruption crime". The enactment of Law Number 24 (Prp) of 1960 began with the promulgation of Government Regulation in Lieu of Law Number 24 of 1960 concerning Investigation, Prosecution, and Examination of Criminal Acts on June 9, 1960. It has been refined from the previous regulation.

The criminal provisions in Law Number 24 (Prp) 1960 are regulated from Article 17 to Article 21, with the threat of imprisonment for a maximum of 12 years or a fine of a maximum of one million rupiah and the death penalty has not been regulated in this regulation. . Efforts to eradicate corruption through the enactment of Law Number 24 (Prp) of 1960 appear to have been less successful. Based on the reality on the ground, many things were found that were not appropriate, including:

- 1) Perpetrators of corruption only target public officials, but in reality, people who are not civil servants who are assigned and assisted by state institutions can also commit disgraceful acts such as cadres and civil servants.
- 2) Provisions must be made to facilitate evidence and accelerate the legal process that is currently in effect without having to pay attention to the human rights of the suspect or defendant.

**b. Period of Law Number 3 of 1971**

The Criminal Code Number 3 of 1971 is regulated by articles 28 to 35 with each life imprisonment or a maximum imprisonment of 20 years and a maximum fine of 30 million rupiah. However, this law also does not indicate the existence of the death penalty for corruptors. So that the basis of justice is only up to the maximum criminal threat regulated in this law is life imprisonment or 20 years imprisonment. However, the researcher sees that there are shortcomings or weaknesses in the Corruption Crime Law Number 3 of 1971 in this case the law has 3 (three) fundamental weaknesses, namely: First lies in the provisions relating to the formation of the content of the crime. In practice, the phrase "can" before the phrase "loss of state finances" or "state economy" as referred to in Article 1 paragraph (1) letter a and letter b is usually lower to be understood as something that must be proven. This is reinforced by the absence of an explanation in the article which confirms that the sentence must be interpreted as a formal offense.<sup>14</sup> The second weakness concerns criminal penalties which only stipulate general maximums and no specific minimums that allow prosecutors to have full discretion over their demands and judges to apply their own version of the law. But on the other hand, this decision is not supported by some minimal threats that will prevent or reduce injustice in the determination of criminal sanctions or criminal sanctions (*criminal disparity*), especially in cases of corruption that have a broad impact on welfare. from the community.

The third weakness is the legal subject covered by the 1971 Corruption Eradication Law, namely that legal entities are not subject to the law of this law, except

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<sup>14</sup> Adji Seno Andaran, "Korupsi dan Hukum Pidana dalam Naskah Akademik", (Jakarta : Kantor Pengacara, 2002), 89.

for every legal subject.<sup>15</sup> The fourth weakness lies in the proof system that still maintains a *"start of a negative trail"* which some legal experts view as the principle that makes the *"presumption of innocence"*,<sup>16</sup> without considering further the consequences of serious and widespread damage to society, the nation and the state. With this negative evidence system, corruption cases are difficult to prove in court because the prosecutor must have at least two sufficient pieces of evidence, and based on this evidence, the judge must also believe in the authenticity of the defendant's criminal conviction.<sup>17</sup>

**c. The period of Law Number 31 of 1999 Jo. Law Number 20 of 2001 Concerning Corruption Crimes**

To overcome the weaknesses mentioned above, Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption was promulgated by placing it in the State Gazette of the Republic of Indonesia of 1999 Number 140 and Supplement to the State Gazette of the Republic of Indonesia Number 3874. Article 44 of Law Number 31 of 1999 expressly states that Law Number 3 of the Republic of Indonesia Year 1971 is declared null and void. However, there is no *"transitional provision"* that confirms the effect of the 1971 anti-corruption law introduced before the enactment of Law no. 31 of 1999, caused controversy and questioned the negative tone of political intrigue surrounding the drafting of laws.

Article 2 paragraphs (1) and (2) of the Law on the Eradication of Criminal Acts of Corruption which regulates the death penalty for corruptors, but has never been applied in the practice of the criminal system, this is due to the non-fulfillment of a number of requirements which indicate that in addition to the crime of recidivism, the imposition of the death penalty against corruptors can only be applied if the country is in an *"abnormal"* condition, namely: the country is in a state of emergency according to the provisions based on applicable laws and regulations, a national disaster occurs or when the country is in a state of economic or monetary crisis. Unusual conditions whose parameters require long debate. Whoever unlawfully commits an act of enriching himself or another person or a corporation that can harm the state's finances or the state's economy as referred to in Article 2 paragraph (2) of the Corruption Law which is carried out in *"certain circumstances"* is a burden to the perpetrators of corruption.

## **Implementation of the Death Penalty for Corrupt Social Assistance Funds From the Viewpoint of Legal Values in Indonesia**

The death penalty has been neatly wrapped up in the constitutional hierarchy, so that if you look back at the legal basis for the death penalty for criminals, there is no need to question how the procedure is applied. Because most applications related to the death penalty are legally regulated in the provisions of the contents of the Criminal Code. Therefore, because it has a strong and comprehensive juridical power, it can be concluded that the death penalty has fulfilled the element of legal certainty. So in carrying out the death penalty is actually a

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<sup>15</sup> Artidjo Alkotsar, *"Keserasian Korupsi Politik dengan Hukum Pemerintahan Modern Era"*, (Semarang: Diponegoro University, 2007), 72.

<sup>16</sup> Ibid, 74.

<sup>17</sup> Sajipto Raharjo, *"Sisi lain dari Hukum Indonesia"*, (Jakarta: Media Nusantara, 2003), 60.

form of symbolization of the establishment of the rule of law which is currently one of the government's platforms.<sup>18</sup> The theory argues that the law has three principles, namely: legal certainty, expediency, and a sense of justice. To answer the existing controversy regarding the imposition of the death penalty, it is natural to look at the answer from the perspective of Gustav Radbruch's classification.

1. Legal certainty

One of the basic values of law (legal principles/legal foundations) is that the law must have certainty. The purpose of legal certainty is that a law has a definite attitude in expressing the contents of the applicable rules. Therefore, the Act may, directly or indirectly, extend the binding effect of all applicable provisions of the Act. The death penalty has been enshrined in the constitution of our country and the death penalty also has a solid legal basis because it has been regulated in the law and therefore it can be said that the death penalty.<sup>19</sup>

2. Legal Benefits

Invitation regulations are deemed necessary to positively influence the existence and diversity of the community in existing social life. The principle of interest in question is that laws and regulations can provide added value for public awareness efforts to create conditions conducive to people's lives.<sup>20</sup>

3. Legal Justice

*"Law is intended to satisfy a sense of justice"*, thus the purpose of law lies in society according to Aristotle's research. It can be concluded that in fact all forms of legal policy must be able to provide a sense of justice for all individuals who participate in society. Although it is very difficult to know the criteria of justice for the human heart. But at least the law must be able to bring a sense of justice in the human heart. On a philosophical level, it's just about putting things in their place. That is, to be able to convey a sense of justice, a person must give something that is equivalent to his value/deed.<sup>21</sup> Turn to the death penalty experiment in a genre that provides a sense of justice. According to the law, crimes punishable by the death penalty are terrorism, crimes against human rights, drug addiction, and corruption. Everyone knows that the above crimes have claimed the lives of many victims. Therefore, the validity of the death penalty provisions have been regulated in Article 10 of the Criminal Code:

- a. Denda Basic Crimes: Death Penalty, Imprisonment, Confinement, and Fines
- b. Additional Criminal: Revocation of certain rights, confiscation of goods owned by the perpetrator, and the official announcement of the judge's decision.<sup>22</sup>

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<sup>18</sup> Kurniar, *"Retorika Kritis Pelaksanaan Hukuman Mati di Indonesia"*, (Vol. 4 No. 1 November: Jurnal Bhineka Tunggal Ika, 2017), 47.

<sup>19</sup> Irvino Rangkuti, ...2019, 112.

<sup>20</sup> Barda Nawawi, *"Bunga Rampai Pondasi Kebijakan Hukum Pidana"*, (Bandung: Citra Aditya Bakti, 1996), 76-76.

<sup>21</sup> Muhammad Prima, *"Urgensi Mengenai Penerapan Pidana Mati Bagi Pelaku Tipikor Indonesia"*, (Andalas University: Media Press Garuda, 2011), 78.

<sup>22</sup> Mulya T. dan Lay, *"Kontroversi Falsafah Hukuman Mati, Perspektif Perbedaan Pendapat Hakim Konstitusi"*, (Jakarta: Kompas, 2009), 14.



## The Urgency of Implementing the Death Penalty for Corruptors of Social Aid Funds in Indonesia in the Future

Cases of massive corruption are difficult to reach because of the efforts to protect them from the authorities. The researcher also looks at some of the weaknesses of the corruption law in Indonesia's criminal system, such as:

### 1. Weaknesses of Legislation in the Eradication of Corruption in Indonesia

The difficulty of catching perpetrators of criminal acts of corruption not only requires innovation in evidence methods but also the formation of new institutions in an effort to eradicate them. Efforts to eradicate corruption have been carried out, both in terms of prevention and eradication. Even the corruption law itself has undergone several changes, starting from the enactment of the Military Authority Regulation to the last being Law no. 20 in 2001 but corruption is still debated.<sup>23</sup>

Therefore, the law that regulates the eradication of criminal acts of corruption still has a lot to be done. Corruption occurs systematically and widely, not only violating the state's finances and economy but also violating the economic and social rights of society in general, so that it is classified as an unusual (unusual) crime more than any other crime. So in this case the death penalty is an extraordinary way to eradicate corruption.<sup>24</sup> But the question is, does the policy have activities/functions that are effective enough to be implemented in the context of eradicating corruption in Indonesia? Considering that it has been more than 10 years since this law was enacted, not a single corruptor has been sentenced to death.

The state must be able to determine the nominal limit for corruptors who are sentenced to death, for example anyone who for their own interests or for other people or society abuses power, conditions, opportunities, or facilities available to you. by reason of his position or position which can harm the state finances or the state economy, up to Rp. 1,000,000,000.00 (one billion rupiah), shall be sentenced to death, life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 twenty) years and the assets of the company are confiscated for the benefit of the state.

### 2. Comparison of Death Penalty Regulations on Corruption in Other Countries

Thus, if corruption is considered a crime against humanity, the researcher also makes several comparisons of the application of the death penalty for corruptors in other countries so that it becomes literature in the enforcement or realization of criminal law in Indonesia, including:

#### a. Death Penalty Regulations Against Corruption in China.

Corruption is one of the greatest economic and political challenges facing China in the 21st century. Corruption is considered one of the biggest problems facing China today because, in addition to the economic, social and political harm it causes, its

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<sup>23</sup> Roeslan Saleh, *"Indikasi Logis Problematika Pidana Mati"*, (Jakarta: Aksara Baru, 1978), 60.

<sup>24</sup> Robert Klitgard Alexis, *"Pondasi Keadilan dalam Membasmi Korupsi"*, (Jakarta: Yayasan Obor Indonesia, 1998), 32.

distributional nature. corruption is also very widespread. The astonishing success of China's economic development since the 1990s has led some experts to refer to the 21st century as the "Chinese century". However, economic reform insights show that China's economic development is not as good as imagined. In fact, China's economy is facing problems of uneven development between the east and south coasts as well as the central and west regions, high unemployment, poor management of public enterprises. Weak banking system with corruption problem. Cases of corruption can be found in various historical documents of dynasties in China. The period of the national revolution and the war between regions after the People's Republic of China was founded in 1911 was also inseparable from corruption. China is trying to fight corruption in the country. This is evidenced by the implementation of the death penalty, China's toughest punishment for corruption. Criminal provisions for giving and accepting bribes are also regulated in the Chinese Criminal Code, especially Chapter VIII, namely:

*Article 383. Those who commit the crime of graft are to be punished according to the following stipulations depending on the seriousness of their cases : Individuals who have engaged in graft with an amount of more than 100,000 yuan are to be sentenced to more than 10 years of fixed-term imprisonment or life imprisonment and may, in addition, have their properties confiscated. In especially serious cases, those offenders are to be sentenced to death and, in addition, have their properties confiscated. In severe cases, corrupt people will be sentenced to death and their assets will also be confiscated. Therefore, President Hu Jintao clearly instructed that the fight against corruption is not only a matter of life and death, but also gives fear to the future.*

#### b. Death Penalty Regulations Against Corruption in Vietnam

Like many other countries, crimes in the Vietnamese Criminal Code are divided into main crimes and additional crimes. The main punishments include the death penalty which is only applied to those who have committed certain serious crimes and only under certain circumstances. The death penalty is the most serious crime in the Vietnamese criminal system, only applies to those who commit serious crimes, major crimes that harm the national interest, degeneration, corruption, confiscation of large sums of money or assets, property or property of the state. these people. Drug trafficking threatens the existence of the nation. The vast majority of executions on the death penalty in Vietnam are for drug-related offences followed by bribery. *"Article 278, Embezzling Property Committing the crime in one of the following circumstances, the offenders shall be sentenced to twenty years of imprisonment, life imprisonment or capital punishment":*

1. *Appropriating property valued at five hundred million dong or more*
2. *Causing other particularly serious consequences*

*"Article 279, Receiving bribes Committing the crime in one of the following circumstances, the offenders shall be sentenced to twenty years of imprisonment, life imprisonment or capital punishment" :*

1. *Appropriating property with valued at three hundred million dong or more*
2. *Causing other particularly serious consequences"*

Vietnamese law stipulates the death penalty in 2 special articles for those who commit embezzlement, namely Article 278 and Article 279. Both contents of these articles expressly state that whoever commits embezzlement starts from a nominal value of 500 million dong and 300 million dong then the punishment is 20 years in prison until the last point which is death .

c. Death Penalty Regulations Against Corruption in Thailand

Thailand is a country that applies the death penalty for corruption. The Thai government has issued provisions to regulate this crime. In Thai law, there are 2 articles which state that all criminal acts of corruption are punishable by the death penalty. This can be seen in the provisions of the Criminal Code 2499, 4 of which include corrupt practices::

1. Bribes committed to civil servants or ASN
2. There is gratuity
3. Misuse of position for personal gain
4. There are bribes to voters

The provisions of Article 148 are punishing abuse of just power by force or inciting for personal gain, punishable by imprisonment or imprisonment from 5 to a maximum of 20 years or life imprisonment. Regarding the award of a fine between 2,000 and 400,000 baht. Article 149 also alerts state officials and legislators to receiving compensation for them, which can carry a prison term of between 5 and a maximum of 20 years or life imprisonment, as well as the provision of a fine of 2,000 to 400,000 baht, or a death penalty. The Chinese, Vietnamese and Thai Criminal Codes clearly provide the view that if the perpetrators of corruption embezzle funds with a nominal value that has been determined by each Criminal Code, the punishment is inviolable and must be implemented. In this case, corruption is also considered a crime that threatens the scope of human rights or more easily referred to as a crime against humanity. How not, corruption committed in social assistance funds is a crime that has been carefully planned. Therefore, the urgency regarding the implementation of the death penalty against perpetrators of criminal acts of corruption in social assistance funds legally does not violate human rights, because seeing the impact of these actions not only kills one sector of the bureaucracy in Indonesia, but several sectors such as the economy, education, law, defense, health becomes weak and cannot provide equality for civil society.

## Conclusion

Based on the results of the research and discussion above, the researchers can draw the following conclusions:

1. Regulation of the Death Penalty for Corruptors According to the Laws and Regulations that regulate Corruption in Indonesia Considering the imposition of the death penalty in the articles of the Law on corruption crimes is not inconsistent with the 1945 Constitution and has not been implemented because it is very difficult to prove the crime of corruption to be embodied. Whereas corruption is detrimental to existence, and corruption is an extraordinary crime.

2. Implementation of the Death Penalty for Corruptors of Social Assistance Funds in terms of Legal Values in Indonesia The laws and regulations in Indonesia clearly regulate the existence of the death penalty and have established a mechanism for implementing the death penalty. In general, in discussing the existence or absence of a legal product, according to a scientific mechanism, it is necessary to systematically and systematically consider the existence of a legal product in the perspective of legal principles. Starting from the view of the death penalty for corruptors in terms of the value of legal certainty, which in this view supports that regulations regarding the death penalty for corruptors already exist in academic drafts and laws relating to corruption. Then on the value of expediency, the imposition of the death penalty for corruptors is not only a form of retaliation for their actions but it also has a fairly strong impact on the community. Because with the implementation of the death penalty for criminal acts of corruption in social assistance funds, the public will become more aware of the dangers of playing with corruption. So hopefully the number of corruption will decrease.

## **Bibliography**

### **Book**

- Asmarawati, Tina. 2013. *"Hukuman Mati dan Permasalahannya di Indonesia, Cetakan-1"*. (Yogyakarta : CV BUDI UTAMA)
- Arba'i, Yon Artiono. 2012. *"Aku Menolak Hukuman Mati"*, (Jakarta : Kepustakaan Populer Gramedia)
- Chaerudin, Dinar, Syaiful Ahmad. dan Fadillah, Syarif. 2008. *"Strategi Pencegahan dan Penegakan Hukum Tindak Pidana Korupsi"*, (Bandung: PT Refika Aditama)
- Echol, Jhon M. dan Shadly, 2003. *"Kamus Inggris Indonesia"*. Hassan Kata Korupsi sebagaimana yang diketahui oleh banyak orang sekarang ini berasal dari bahasa Inggris Corrupt, Corruption yang berarti jahat, buruk, rusak, cusang, suap. (Jakarta : Gramedia)
- Hamzah, Andi. dan Rahayu, Siti. 1983. *"Suatu Tinjauan Ringkas Sistem Pidanaan di Indonesia"*, (Jakarta: Akademika Pressindo)
- Hamzah, Andi. 1983. *"Sistem Hukuman dan Pidanaan Indonesia"*, (Jakarta : Pramidya Paramita)
- Hanafi, Ahmad. 1990. *"Asas-asas Hukum Pidana"*, (Jakarta : Bulan Bintang)

### **Journal**

- Anggraini, Lysa 2015. *"Jurnal Hukum Islam : Hukum Pidana Dalam Perspektif Islam dan Perbandingan dengan Hukum Pidana di Indonesia, Vol. XV, No. 1 Juni 2015"*, (Riau : Universitas Islam Negeri Sultan Syarif)
- Marpaung, Zaid Alfauna. 2019. *"Jurnal Ilmiah Hukum Advokasi : Kebijakan Hukuman Mati Pelaku Tindak Pidana Korupsi dalam Perspektif Hukum Pidana Islam, P. ISSN 2337-7216, E.ISSN 2620-6625"*, (Sumatera Utara)
- Mufida, Anisa. 2020. *"Jurnal Hukum Buletin dan Keadilan : Polemik Pemberian Hukuman Mati Pelaku Korupsi di Tengah Pandemi Covid-19, ISSN 2338 4638, Volume 4 Nomor 1"*, (Jakarta)
- Marpaung, Zaid Alfauza. 2019. *"Jurnal Ilmiah Hukum : Kebijakan Hukuman Mati Bagi Pelaku Tindak Pidana Korupsi Dana Bantuan Bencana Alam Dalam Perspektif Hukum Pidana"*

*Islam*, Vol. 07. No. 01, P.ISSN Nomor 2337-7216, E ISSN Nomor 2620-6625",  
(Sumatera Utara : Fakultas Syariah dan Hukum UIN Sumatera Utara)

### Thesis & Article

- Anwar, Ahmad Dianudin. 2010. *"Skripsi : Penerapan Hukuman Mati Bagi Pelaku Tindak Pidana Korupsi dalam Perspektif Hukum Islam"*. (Yogyakarta : Universitas Negeri Sunan Kalijaga)
- Jihad, Rijalul. 2019. *"Skripsi : Sanksi Pidana Mati Bagi Pelaku Tindak Pidana Korupsi dalam Keadaan Tertentu (Analisis Terhadap Pasal 2 Ayat (2) Undang-undang Nomor 31 Tahun 1999"*. (Banda Aceh : Universitas Islam Negeri Ar-Raniry)
- Nugraha, Azharul. 2017. *"Skripsi : Tinjauan Yuridis Terhadap Tindak Pidana Korupsi Yang Di Lakukan Oleh BUMN"*. (Makasar : Fakultas Hukum Universitas Makasar),

### Website

- CNN INDONESIA "Sentencing of Former Minister of Social Affairs <https://www.cnnIndonesia.com/nasional/20210823061126-12-683785/eks-mensos-juliari-divonis-12-tahun-penjara-korupsi-dana-bantuan-sosial> (Accessed on September 16, 2021, at 15.11 WIB)
- Detik News "Alleged Crime of Corruption in Covid-19 Aid Funds <https://news.detik.com/berita/d-5644973/proses-kasus-korupsi-bupati-mamberamo-roya-polri-segera-izin-ke-mendagri> (Accessed on September 16, 2021, 07.12 WIB)
- Detik News "Actions of Corruption by the Governor of West Java <https://news.detik.com/berita-jawa-barat/d-5715118/sidang-korupsi-dana-bantuan-sosial-aa-umbara-akan-dipindah-ke-rutan-bandung> (Accessed on September 16, 2021, 12:33 WIB)

### Statutory Regulations

- 1945 Constitution (Article 1 paragraph 3 Indonesia is a State of Law)
- Law of the Republic of Indonesia Number 20 of 2001 concerning Amendment Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption
- Law Number 31 of 1997 concerning Military Courts.
- Law Number 46 of 2009 concerning the Court of Criminal Acts of Corruption.
- Law Number 30 of 2002 concerning the Corruption Eradication Commission
- Law Number 48 of 2009 concerning Judicial Power.
- Law of the Republic of Indonesia Number 2 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Covid-19 Pandemic and in Facing Threats That Endanger the National Economy or Financial Stability