



RECONSTRUCTION OF DEATH PENALTY IN CORRUPTION CRIME BASED ON HUMANITY AND JUSTICE VALUES

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Abstract

Systemic corruption go into all sectors at different levels in all the central and local state institutions, whether executive, legislative and judicial. The Corruption Eradication Commission (KPK) revealed that corruption tremendous consequences in various aspects of community life, such as high rates of poverty, unemployment, rising foreign debt, as well as the destruction of nature. Besides corruption is an extraordinary crime group, so that follow corruption is very detrimental to the country's financial and hamper national development, and should be eradicated with extraordinary measure, as well as using law instruments also remarkable (extraordinary instrument) in order to create a society that is fair and prosperous based Pancasila and the Constitution of 1945 in Republic of Indonesia.

Keyword: *Reconstruction; Sanctions; Corruption; Humanity; Justice.*

1. Introduction

In Indonesia, the tangible case of corruption is public consumption that can be obtained through a variety of media, both print and electronic. Hardly a day passes without news of corruption. The Corruption Eradication Commission (KPK) revealed that corruption tremendous consequences in various aspects of community life, such as high rates of poverty, unemployment, rising foreign debt, as well as the destruction of nature.

According to the Central Statistics Agency (BPS) Indonesia experienced a low point in terms of the percentage of poverty since 1999, which amounted to 9.82 per cent in March 2018. With a percentage of 9.82 percent of poverty, or the number of poor people per capita monthly expenditure below the poverty line reached 25.95 million people. When compared with the previous period, namely September 2017, the poverty percentage was recorded at 10.12 percent or 26.58 million of the poorest in Indonesia.³ Although these figures show a decrease from the previous year but the level of social welfare and the number of poor people is still quite a lot.

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³<https://ekonomi.kompas.com/read/2018/07/16/130732026/bps-maret-2018-persentase-kemiskinan-indonesia-terendah-sejak-1999>, Accessed on January 2, 2018, at 9:54 pm.



Moreover, the debt of Indonesia today, Bank Indonesia (BI) said Indonesia's foreign debt reached 358 billion US dollars, equivalent Rp5.191 trillion (exchange rate of 1 US dollar = Rp14.500) per end of July 2018, up 4.8 percent compared to the same period of 2017. Despite the rise, when compared to the growth of the withdrawal of June 2018, Indonesia's foreign debt slowed, in June 2018, foreign debt rose 5.5 percent.⁴ In addition, forest destruction is an area of 3.8 million hectares, which is being cleared and exploited illegally. This condition by itself to put corruption as an extraordinary crime must be addressed with extra ways.

As efforts to combat corruption are included in the class of extraordinary crime, legislators formulate some important things, which are supposed to be used as a means to trap and bring a deterrent effect to the perpetrators, namely the principle of proof and severe sanctions, including criminal die. Policy formulation of the articles relating to both of these of course based on the premise and in the background backs by the desire to eradicate corruption. However, the formulation of the policy is not followed by an application policy. As the burden of proof reversed reluctant to be applied in the trial of corruption, the judge of corruption are also reluctant to impose capital punishment against perpetrators of criminal acts, although obviously the state lost billions, even trillions of rupiah and many community members miss the opportunity to enjoy welfare as a result of the criminal act.

2. Research Methods

The type of research is using descriptive type of legal research. Legal research analytic descriptive study that describes the legislation in force associated with legal theories and practice of positive law concerning the problem.⁵

3. Result and Discussion

a. Corruption

The word corruption comes from the Latin is *Corrupti* or *Corruptus*, which literally means decay, depravity, not honest, incorruptible, unscrupulous, deviation of holiness, words that are insulting or defamatory, as can be read in The LEXION Webster Dictionary.⁶ So that the terms of the language of corruption means the deterioration of which all good, wholesome and correctly into debauchery, rotten. Then the meaning of the word corruption that has been received in the Indonesian vocabulary, it was concluded by Poerwodarminto in Indonesian dictionary "corruption" for the foul deeds, such as embezzlement, receiving kickbacks, and so on.⁷ The term is derived from the criminal acts of a term known in Dutch law that is *strafbaar feit*. *Strafbaar feit* consists of three words that *straf*, *baar*, *feit*, which *straf* translated and criminal law,

⁴<https://www.wartaekonomi.co.id/read195477/utang-indonesia-saat-ini-naik-jadi-rp5191-triliun.html>, Accessed on January 2, 2018, 10:00 pm.

⁵Ronny Hanitijo Soemitro, *Metode Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta, 1988, p. 35.

⁶Andi Hamzah, *Korupsi di Indonesia Masalah dan Pemecahannya*, PT. Gramedia Pustaka Utama, Jakarta, 1984, p. 7.

⁷W. J. S. Poerwodarmito, *Kamus Umum Bahasa Indonesia*, Balai Pustaka, Jakarta, 1976, p. 454.



whereas *baar* translated to can and should be. While *feit* words translated by acts, events, violations and acts.

Meanwhile, an offense or a criminal act is an act which the perpetrator may be subject to criminal law. This is as Moeljatno opinion stating that:⁸

"That criminal act is prohibited by a rule of law. The prohibition is accompanied by threats (sanctions) in the form of certain criminal, for anyone who violates the ban. It can also be said that the criminal act is an act by a rule of law is prohibited and punishable, provided that in the meantime remember that the ban is shown to act (ie a situation or incident caused by the behavior of people), while the criminal threat is shown to the person who raises events".

It can be concluded that act corruption is an unlawful act such as embezzlement, receiving kickbacks and so on, which can be subject to criminal sanctions.

There are only two main goals of sentencing, namely the imposition of suffering proportionate to the criminals and crime prevention. The theory of punishment which requires integrative approach Itujuan integra-objective of sentencing, based on the recognition that the tensions that occur between the goals of punishment can not be solved thoroughly.

For reasons sociological, ideological and juridical above, Muladi conclude that the purpose of sentencing is to repair the individual and social damages caused by the crime. It is composed of a set of objectives that must be met sentencing. Device sentencing objectives referred to above are:

- 1) Prevention (general and specific);
- 2) Public Protection;
- 3) Maintaining Public Solidarity and
- 4) Offset.

b. Death Penalty of Corruption Crime in Indonesia

Corruption still has drawbacks, such as no provisions regulating sexual gratifikasi and provision of proof that is almost never used by law enforcement. Moreover, the death penalty is still retained in the draft Law Book Criminal Justice with special properties and always threatened by the alternative.

The debate about the effectiveness of the death penalty, especially for corruption still occurs. This debate is based on the assumption whether the imposition of capital punishment is effective in tackling crime (corruption). There are two (2) groups comprehensively submit their arguments, both against (abolitionist) and supporting (retentionist) the death penalty.

Abolitionist group relies on several grounds. First, the death penalty is a form of degrading punishment and is contrary to human rights. On the basis of this argument then many countries abolished the death penalty in its criminal justice system. Until now it has 97 countries abolished the death penalty. Member countries of the European Union banned the death penalty is based on Article 2 of the Charter of Fundamental Rights of the European Union in 2000. The United Nations General

⁸*Ibid.*, p. 71.



Assembly in 2007, 2008 and 2010 adopted a non-binding resolution (non-binding resolutions) calling for a global moratorium on the death penalty, Second Optional Protocol to the International Covenant on Civil and Political Rights / ICCPR eventually require every state to take steps to abolish the death penalty.

Abolitionist group also menolakalasan retentionist believe the death penalty a deterrent effect, and would therefore reduce the level of crime, especially corruption. There is no conclusive scientific evidence that proves a negative correlation between the death penalty and the level of corruption. Instead, based on Transparency International's Corruption Perceptions Index in 2011, precisely the countries that do not apply the death penalty was ranked highest as the country is relatively free of corruption, namely New Zealand (rank 1), Denmark (2) and Sweden (4).

Meanwhile, the retentionist group argued that supports the death penalty. The main reason is the death sentence give effect to prevent against public officials who commit corruption. When you realize you will be punished death, officials said at least will think a thousand times for corruption. Facts prove, when compared with developed countries that do not impose the death penalty, Saudi Arabia, which imposes Islamic law and the death penalty has a low crime rate. Based on data from the United Nations Office on Drugs and Crime in 2012, for example, the crime rate is only 1.0 murders per 100,000 people when compared with Finland 2.2, Belgia1,7 and Russia 10.2.⁹

Retentionist group also rejects the argument that the abolitionist groups say the death penalty (against criminals) against humanity. According retentionist group, instead of corruption is an extraordinary crime that outraged humanity. Corruption is a crime against humanity that violates the right to life and human rights are not only one, but millions of people. Indonesia is one of the countries that are de yure retentionist and de facto recognized the death penalty. Retentionist group in Indonesia argues, the death penalty against criminals does not violate the constitution as stated by the Constitutional Court. Moderman a scholar pro death penalty argue that capital punishment for the sake of public order can and should be applied, but this application only as a last target and should be seen as an emergency authority in exceptional circumstances can be implemented.

Poverty in Indonesia is one of the many effects of corruption by state officials. Poverty ruin lives of millions of Indonesian human rights, based on considerations of humanity and justice in the society, the death penalty for perpetrators of corruption still needs to remain encapsulated in the law to eradicate corruption in the future. The death penalty can be issued a strong warning to the public officials for not doing corruption. However, the death penalty should be clear and unequivocal formulation so as to avoid multiple interpretations and doubts in its application to be downed.

⁹ United Nations, World Drug Report, *United Nations Office On Drugs And Crime*, Vienna, New York, 2012



c. Reconstruction Of Death Penalty In Corruption Crime Based On Humanity And Justice Values

Besides the application of the death penalty in Indonesia is the legacy of the Dutch colonial laws, which to this day does not go completely corrected. Although in the Netherlands itself the practice of the death penalty has been abolished. In title II, Book I of the Code of Criminal entitled Punishment (*Straffen*), envisaged system of criminal penalties that apply in Indonesia. The system is simple, only mentioned in Article 10 of the Code of Penal No. 4 (four) kinds of punishment of principal, namely: (1) death, (2) imprisonment, (3) imprisonment, (4) penalties and there 3 (three) kinds of additional penalties, namely: (a) revocation of certain rights, (b) appropriation of certain items, and (c) the judge's verdict. The nature of this simplicity lies in the idea that punishment in principle be hung on the nature of the crime or a lighter weight.¹⁰

The death penalty is also a form of the most interesting criminal reviewed by experts because it has a high contradiction or conflict between that agree with that disagree. Opinions agree to say that the condemned person entitled to a death sentence for some of the reasons that led him as a deserving. While those who are against the death penalty is contrary to human rights, namely the right to life, which is a basic right for every individual. In the system in other countries, one by one removethe death penalty, then the opposite is happening in Indonesia.

In the perspective of Islamic law, the death penalty (*Uqbah al l'dam*) memangnyata found within 3 (three) forms of punishment, which *had/hudud*, *qishash* and *ta'zir*. The death penalty is the maximum sentence that always exist and be recognized kelegalannya by Islamic law. Islamic law retains the death penalty for certain crimes. The essence of the death penalty in Islamic law to protect the interests of individuals and society from criminal activities that endanger joints humanitarian grounds. Hence their common goal of punishment in Islam, including the death penalty, is to realize the benefit of the people (*mashlahah al-naas*) and justice (*daam al-adaalah*).

Penalty death penalty in corruption cases provided for in Article 2 paragraph (2) of Act No. 31 of 1999 on Corruption Eradication. In the aforementioned article states that: "In terms of corruption as referred to in paragraph (1) shall be done in certain circumstances the death penalty can be imposed". Regarding Article 2 (2) to the explanation in Act No. 31 of 1999 on Corruption Eradication explained that "what is meant by certain circumstances in this provision is intended as a weighting for perpetrators of corruption if the crime was committed during a state of danger in accordance with the legislation in force, at the time of national disaster, as the repetition of corruption, or at the time of a state of crisis economic and monetary."

However, after the amendment of these laws are superseded by Act No. 20 of 2001 on the Amendment of Act No. 31 of 1999 on Corruption Eradication, the elucidation of Article 2 paragraph (2) change even if the substance of the article remains the same. Elucidation of Article 2 paragraph (2) in the Act No. 20 of 2001 explain that "what is meant by particular circumstances in this provision is a condition that can excuse the

¹⁰Wirjono Prodjodikoro, *Asas-asas Hukum Pidana di Indonesia*, PT. Refika Aditama, Bandung, 2011, p. 174.



criminal weighting for perpetrators of corruption ie when the offense is committed against funds designated for coping with the hazards, national disasters, social unrest widespread economic and monetary crisis response and repeatability of corruption.”

One cause of non-application of capital punishment to criminals because the formulation of a sentence of death followed by a requirement in certain circumstances (Article 2 (2)). In explanation of this article is formulated that, is a state with a particular state in this provision is intended as a weighting for perpetrators of corruption if the crime was committed during a state of danger in accordance with the legislation in force, at the time of national disaster, as the repetition of corruption, or at the time of a state of crisis economic and monetary policy.

Based on the above provisions can be concluded that the express provisions of the corruption committed in time of national emergencies, natural disasters nationwide, repetition of corruption, or the state of economic and monetary crisis, even contradiction with the eradication of corruption because it is not clear parameters , Such a statement would be undisputed if confronted with the necessity of a judge to be creative within the meaning of the provisions of Article 5 (1) of Act No. 48 of 2009 regarding Judicial Power, in which the judge shall explore, and understand the legal values and sense justice in the society.

Thus, the uncertainty of the meter as mentioned above is not the reason which led up to now there has been no death penalty for corruption in Indonesia. However, when seen from the aspect of human rights, the Constitutional Court by the Constitutional Court decision No. 3 / PUU-V / 2007 on the effect that the death penalty against serious crime is a form of restriction of human rights or may be referred to as human rights violations.

4. Conclusion

Corruption is primarily a crime group were remarkable (extraordinary crime), and must be eradicated with extraordinary measure, as well as using instruments of the extraordinary law. The death penalty for perpetrators of corruption is deemed to be implemented in Indonesia, considering not jeranya the perpetrators as well as the percentage of corruption are increasing and causing a domino effect on the lives of many people, especially corruption by state officials. It would indeed need the death penalty for perpetrators of corruption in order to be a lesson for those who want to commit corruption in the country. The goal is to realize justice liability law would be a crime.

5. References

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