KnE Social Sciences

5th Sores
Social and Humaniora Research Symposium (SoRes)
Volume 2023

Knowledge E
enriching | engaging | empowering

Research Article

Criminal Law Policy in Tackling Corruption Crimes in Indonesia Through the Death Penalty is Linked to the Principle of Justice

Herman Suherman*

Bandung Islamic University, Bandung-Indonesia

ORCID
Herman Suherman: https://orcid.org/0009-0000-6413-5383

Abstract.

The research focuses on Law of the Republic of Indonesia Number 31 of 1999, in conjunction with Law of the Republic of Indonesia Number 20 of 2001, concerning the Eradication of Corruption. This normative juridical study primarily revolves around Article 2 paragraph (2) of the Corruption Law. The approach utilized includes a statute approach, case approach, and conceptual approach. Secondary legal materials were collected through literature studies. The study identifies several reasons that have led to the implementation of the death penalty for corruption perpetrators in Indonesia. Consequently, updating criminal law policies is essential. The basis for this renewal lies in the fact that law enforcement consists of three interconnected aspects: legal substance, legal structure, and legal culture. To overcome corruption, four models of renewal are proposed: Firstly, improving legal institutions entails strengthening the authority and professionalism of officials in the police, prosecutors, and the Corruption Eradication Commission (KPK). It is vital for these institutions to synchronize their efforts and adopt a unified legal stance on corruption cases, eliminating any sectoral rivalry and ego. A cohesive framework and shared perspective on corruption cases are crucial. Secondly, legislative improvements involve reevaluating, reorienting, and reformulating the application of corruption laws, encompassing both the formulation of acts and the sanctions system, particularly those related to the death penalty. Thirdly, enhancing the legal culture of the community is crucial. By fostering a legal culture that discourages corruption, the likelihood of crime prevention through death penalty sanctions aligned with a sense of justice increases. By implementing these three models of legal reform, it is hoped that corruption can be effectively prevented through the judicious application of the death penalty.

Keywords: death penalty, corruption, fair

Corresponding Author: Herman Suherman; email: hs2139627@gmail.com

Published 30 October 2023

Publishing services provided by Knowledge E

Selection and Peer-review under the responsibility of the 5th Sores Conference Committee.

1. INTRODUCTION

The law enforcement discourse in Indonesia as one of the dominant discourses, meets its meaning when it comes to the alternative context of legal development against corruption crimes that have distorted the joints of national and state life. Globalization and liberalization as well as the development of science and technologi have also encouraged the growth of various new crimes in the economic, business and financial fields where the resulting impact of these crimes is much more dangerous than conventional crimes or crimes such as robbery, fraud and ordinary theft. [1] The results of the research also show that corruption has increased from time to time, both in quantity and quality, indeed, current criminals have experienced an increase and shift from what was originally only conventional crimes (ordinary) [2], corruption has shifted to become a very extraordinary crime *(extra ordinary crimes*), in line with Indonesia's predicate as a corrupt country. This is recognized by the international community as formulated by the United Nations Convention Against Corruption 2003 [3].

Although it is difficult to define corruption precisely, there is consensus that corruption refers to acts in which the power of public offices used for personal gain in a manner that contravenes the rules of the games.[4]Corruption has become a complex phenomenon in Indonesia that often involves government, legislative and judicial officials. Members, bankers, conglomerates, and also corporations that misappropriate state finances. As a result, Indonesia had to suffer heavy losses that had a significant impacton the people's economy. Reality shows that the value of the State's losses is much more comparable to the money that has been successfully returned to the state. [5]

This crime must however be taken seriously because it has become a national and international problem. Various efforts have been made to eradicate corruption in Indonesia. The methods carried out as explained in the Law on the Eradication of Corruption Crimes, are no longer ordinary methods, considering the widespread and massive corruption in Indonesia. But still corruption has not completely disappeared. Conditions like this are what prompted Prof. Mahfud MD, former chief justice of the Constitutional Court, to say that corruptors can be punished with death [6], because one of the efforts in overcoming and eradicating corruption is to use the means of criminal law.corruption crimes in Indonesia have reached alarming levels and are sistimic, endemic which has a very broad impact (*shistimatic and widespreadspread*). Death penalty was born and developed along with the emergence of human crimes which could not only be detrimental to certain people, but also detrimental to society in general. [7]

Criminal law policy with its severe sanctions is expected to reduce the level of corruption [8]. There are many cases where the death penalty has the potential to be implemented in Indonesia, for example, BLBI is a assistance scheme (loan) provided by Bank Indonesia to banks that experienced liquidity problems during the 1998 monetary crisis in Indonesia. This scheme is carried out based on Indonesia's agreement with the IMF (*International Monetary Fund*) in dealing with crisis issues. The CPC's audit of the use of blbi funds to the 48 troubled banks concluded there had been indications of irregularities amounting to 138 trillion.

The last case that was discussed was the criminal act of bribery allegedly committed by JPB as the active Minister of Social Affairs at that time. The debate that arises is whether the criminal acts allegedly committed by JPB can be subject to the death penalty, considering that the crime was committed in the midst of the covid-19 outbreak. The Law on the Eradication of Corruption Crimes does recognize the death penalty, but after identification that criminal acts allegedly committed by JPB cannot be subject to the death penalty, even though the Corruption Eradication Law is one part of the special criminal law in addition to having certain specifications that are different from the general criminal law, when viewed from the material, it is directly or indirectly intended to suppress the possibility of leakage and irregularities in the country's finances and economy. [9]

In comparison we can see how the tension of corruption crimes in China. the Chinese government's commitment to eradicating corruption is undoubtedly, mere rhetoric, as in Indonesia, but is evidenced by the death penalty of corrupt officials. China has indeed long been known to be the hardest at dealing with corruption. Although modern times, public executions are still carried out for corruptors. [10] Then Saudi Arabia is one of the countries that applies the death penalty to corruptors in a pancung way. In this Country corruptors are treated the same as thieves, they are greedy criminals who eat money not his in large quantities. There is something unique and interesting in the implementation of the death penalty between china and Saudi arabia, china as a communist country recognizes the death penalty while Saudi arabia as an islamic country also recognizes the death penalty. This is certainly motivated by the seriousness of the government in maintaining the existence of the death penalty and seriousness in tackling corruption. However, in Indonesia until now the death penalty as a means of tackling the crime of corruption has never been applied.

2. RESEARCH METHODS

This research is a normative juridical research with a starting point from Article 2 paragraph (2) of Law of the Republic of Indonesia Number 31 of 1999 Juntco of the Law of the Republic of Indonesia Number 20 of 2001 concerning the Eradication of Corruption Crimes. The approach in this study is through a *statute apppoach* approach, case *approach* and conceptual *approach*. This research uses secondary legal materials with the data collection method used is a literature study.

3. DISCUSSION

Corruption is an *extra ordiary crime* and treason of trust. The logical consequence that corruption is *an extra ordinary crime,* it requires countermeasures from an extraordinary juridical aspect, and an extraordinary set of laws. Conventional methods have proven to be unable to eradicate corruption, even the tendency is increasingly sophisticated both from the modus operandi and from the perpetrators [11].

Law Number 31 of 1999 as amended by Number 20 of 2001 concerning the Eradication of Corruption Crimes formulates severe sanctions. Article 2 paragraph (2) of Law of the Republic of Indonesia Number 31 of 1999 Juntco Law of the Republic of Indonesia Number 20 of 2001 concerning the Eradication of Corruption Crimes. The article provides for the death penalty for perpetrators of corruption crimes committed under certain circumstances. The provision of the death penalty to perpetrators of corruption crimes is expected to be able to provide a deterrent effect to the perpetrators and make others afraid to commit these acts. This is in line with the nature of punishment which is integratively oriented towards retaliation, prevention so that others do not commit the act and Education so that the perpetrator does not repeat his actions again. In Indonesian criminal law, the use of the death penalty is felt to be still very effective in preventing serious crimes from occurring. This can be seen from the National Criminal Code which still places the death penalty as the main crime in addition to the criminal law outside the Criminal Code, there are also some who place the death penalty as a sanction for violating the act. Even in the Draft Criminal Code, the death penalty is still included as the main but special crime which is threatened in an alternatif.

The motive behind the use of the death penalty as a political tool in Indonesia is: The death penalty has a higher level of effectiveness than other punishment threats, which has a frightening effect in addition to being more efficient. The death penalty is used so that *eigenrichting* does not occur in society. In thioritis, the death penalty will also

cause a very high *deterent effect (detterent effec*) so that it will cause people to undo their intention to commit a criminal act, so that it can be used as a good tool for general prevention and special prevention.

The policy formulation of articles related to the death penalty is based on thinking and is motivated by the desire to eradicate corruption. However, this formulation policy is not followed by the application policy, so corruption judges are also reluctant to apply the threat of the death penalty against perpetrators of corruption crimes, even though the state has been harmed by billions, even trillions of rupiah, and many members of the public have lost the opportunity to enjoy welfare as a result of the crime. The emergence of several opinions about the weakness of the formulation of the death penalty in the anti-corruption law is the main thing that is often used as a reason why the death penalty against corruption perpetrators in Indonesia has never been applied, in addition to non-juridical reasons. Thus, it is necessary to reorent and reformulation related to criminal sanctions in tackling corruption crimes through the death penalty that meets the sense of justice, and this is certainly inseparable from criminal law policy.

Equitable punishments related to punishment should be analyzed integrally and holistically. The principle of justice in question is legal justice (*gerectigheit)* this principle is reviewed from a philosophical point of view, where justice is the equal rights of all people before the court. Then to arrive at a fair sentence, it must be analyzed systematically, because the case that occurs is a system. Related to the term ”system” it turns out that many experts have formulated, sothat the sounds, definitions, and limitations are different from each other [12].

Gabriel A.Ahmad, for example*, interprets the system as an ecological concept that shows the existence of an organization that means one environment that affects and is influenced by it* [13].

Thinking systemically means thinking thoroughly, the things approached no longer start from parts, but rather come from the whole, thinking systemically that is thinking parts to get a complete understanding and thinking as a whole to get an understanding part by part. [14]

In terms of the formulation of criminal sanctions as a very substantive feature of the criminal law, it has not been as a whole that can be applied, especially in the imposition of criminal sanctions for perpetrators of corruption crimes, for example in the application of the death penalty, this is because the articles on the Death Penalty are experiential**.** In fact, various theories that discuss the reasons that *justify (justification*) the imposition of criminal sanctions if applied to the perpetrators of TIPIKOR will have a significant impact as explained in the theory and purpose of punishment, for example in absolute theory,

relative and combined theory. According to the Absolute theory (*Vergeldingstheorie*), the punishment is imposed in retaliation against the offender for having committed a crime that has resulted in misery against another person or member of society.

Talking about the death penalty in the context of legal renewal is inseparable from the politics of the law. Article 2 paragraph (2) of Law Number 31/1999 Jo Law Number 20 /2001 is an implementation or establishment of a law on punishment for perpetrators of corruption crimes in Indonesia. Legal politics is a concept of the formation of laws that are enforced in society, nation and state and are directed towards realizing common goals. According to Bernard L. Tanya's view, the politics of law, is more like an ethic, which demands that a chosen goal must be justified by a common sense that can be tested, and the established means of achieving it must be testable by moral criteria. While Soedarto (chief drafter of the Criminal Code), legal politics is the policy of the state through state bodies that have the authority to establish the desired regulations, which are expected to be used to express what is contained in society and to achieve what is aspired to. Moh. Mahfud MD defines legal politics as [15]*a legal policy* or official line (policy) on the law that will be enacted both by the creation of new laws and by the replacement of old laws, in order to achieve the goals of the state.

Thus, the politics of law is a choice about the laws to be enacted as well as a choice about the laws to be repealed or enacted, all of which are intended to achieve the objectives of the state as stated in the preamble to the 1945 Constitution [16].

The various definitions put forward above us usher in an understanding to us that the political study of law includes *legal policy* (as the official policy of the state) on the law to be enacted and other matters related to it. There is a difference in scope between the politics of law and the study of legal politics, the former being more formal on official policy while the second includes official policy and other matters related to it. Thus, the study of legal politics includes, at least three things, namely: *first*, state policy (official line) on the law to be enacted in the framework of achieving state goals; *second*, the political, economic, social, cultural background (poleksosbud) of the birth of legal products; *third*, law enforcement in the reality of the field. In Bernard L. Tanya's view, the scope of legal politics includes three things, namely: 1) the (ideal) goal to be achieved through law, 2) the right way/method to achieve that goal, and 3) the effective legal configuration of realizing that goal. In this context, legal politics must be based on the objectives of the state and the legal system prevailing in the country concerned which in the Indonesian context the objectives and systems are contained in the preamble to the 1945 Constitution, especially Pancasila, which gives birth to legal guiding rules. Thus, when in terms of the application of the death penalty for

perpetrators of corruption in Indonesia feels rigid, it is necessary to analyze carefully in order to be upright, straightforward, and firm the law in Indonesia. In the context of legal reform concerning Article 2 paragraph (2) of Law No.31/1999 Jo Law No. 20/2001 concerning the Eradication of Corruption, this is part of legal politics.

Criminal law policy is essentially how to strive or make and formulate a good (rational) criminal law, in addition to making a new criminal law, also one of which is by trying to improve or revise (update) the applicable law (positive criminal law or *constitutum* criminal law) to achieve the criminal law to be aspired to (*constituendum* criminal law).

Thus, the criminal policy focuses on the renewal of criminal law (*penal reform*), which in essence contains meaning, an effort to reorient and reformulate criminal law in accordance with the central values of sociopolitics, sociopoliopical, sociocultural, or from various aspects of policy, especially social policy, criminal policy and law enforcement policy. Thereare several weaknesses and obstacles in the application of the death penalty in the eradication of corruption, one of which is the death penalty as a burden only punished for certain corruption crimes and is not intended for all forms of corruption crimes.

There are many reasons, the death penalty for corruption perpetrators has never been applied in Indonesia, including:

1. The substantive (juridical) reason is that there are many weaknesses in the Law related to the imposition of the death penalty related to the eradication of corruption. The existence of an article that is not flexible and thorough.
2. Philosophical Reasons

The application of the death penalty must be careful because it concerns a person's life. The pros and cons regarding the death penalty do not seem to have an end in the debate. Therefore, the consistency of the application of the death penalty in the world has always been controversial, both among the government, legal practitioners, and the community itself, because the death penalty is considered to violate the most basic right for humans, namely the right to live and improve life. The death penalty also violates the right to life stipulated in *the Declaration of Human Rights* (UDHR)

1. The reason for the legal culture, that is, it is no secret from the law that the Indonesian people are the people who like to break the law. As long as there is a legal loophole, the community will continue to commit acts of violating the law, both the amended law and the law enforcement officers, the community will try to realize these wishes.

The formulation of the death penalty in Article 2 paragraph (2) there are words in certain circumstances (*Death penalty to corruptor a certain condition)*, the death penalty can be imposed. It is these particular circumstances that are the standard for the death penalty to be imposed. What are the specific circumstances?, In the Article it is not stated what are the specific circumstances, certain circumstances are in the explanation of the Article. And what is meant in certain circumstances is a situation where funds for the management of dangerous circumstances, national natural disasters, monetary crises are used to harm the country. And the death penalty can be imposed for resedivists or people who repeat criminal acts. Thus the death penalty must be in accordance with certain circumstances and can be proved with a minimum of two pieces of evidence so in case there is no one in the death penalty, there may not be anyone who dares to commit corruption in certain circumstances. Although it has been contained in the Law and there is also an explanation of the article, but still this law has the disadvantage of not explaining the Article cannot be used as a binding legal basis because it is only an explanation in the Article which is assessed as not explaining its content or intention so that the explanation cannot be sanctioned, but if there is still corruption as article 2 paragraph (2) earlier, the death penalty can still be applied only with the appearance of the explanation, it looks more complicated even though it could be about certain circumstances directly entered in Article 2 paragraph (2) without there having to be an explanation.

The renewal of criminal law ultimately contains the meaning of an effort to reorient and repormate criminal law in accordance with the central values of socio-political socio-philosopy and socioculturalization of Indonesian society which underlies social policies, criminal policies, and law enforcement policies in Indonesia. Thus,a brief reform of the criminal law must essentially be taken with a *policy-oriented approach* as well as a value-oriented *approach*.

There are three reform models that can be implemented to overcomecorruption, namely first, improvements to legal institutions. Here, there must be a strengthening of the authority and strengthening of the professionalism of the officials who fill the legal institutions, the police, prosecutors, and the KPK must be able to synergize and have a *unifed legal opinion* on corruption cases, the most overtake and sectoral ego in the eradication of corruption must be eliminated. The main thing is to realize a framework and a unified view on corruption cases. Second, improvements in the legislation in the sense of reevaluation, reorentation, and reformulation of the applicability of the corruption law, both the formulation of acts and the sanctions system, especially related to the death penalty. The aspect that is in the public spotlight is that criminal sanctions

imposed by the courts often do not meet the wishes of the community. Here the role of the judge is very important, the judge must be able and responsive to the wishes of the people in the eradication of corruption in a way that is not shackled by the soundness of the text of the law, but must be able to give meaning to the content of the law. Improvement through justice will be done faster than waiting for improvement in parliament. The improvement fund in the courts will one day manifest the jurisprudence of the Supreme Court in corruption cases and will then be used as a guideline by other judges when adjudicating an existing case. Third, improvements in the legal culture sector of society. it is no secret to the law that the Indonesian people are the people who like to break the law. As long as there is a legal loophole, the community will continue to commit acts of violating the law, both the amended law and the law enforcement officers, the community will try to realize these wishes.

The institutional structure of the state and government filled with leaders of this integrity will create and increase systematic corruption and its reach is expanding. Thus, if conditions like this are left without a comprehensive and continuous policy, it will form a group of people who are corruptive and the birth of a corruptive culture and can even form a corruptive area. We are delighted to hear the threat of the plight of the chairman of the KPK, Agus Raharjo, who will give a grievous suffering to the perpetrators of corruption crimes. Concrete steps, of course, we are waiting. However, it should be borne in mind that perpetrators of corruption are very difficult to reach by law except in OOT. The crime of corruption is often said *to be beyond the law* and in the form of corruption crimes is *untouchable by the law* so it needs extraordinary enforcement. [17]

From the reasons mentioned above, the researcher argues that in order to activate Article 2 paragraph (2) of the TPIKOR Law, reformulation of the article must be carried out or addition of paragraph to article 2. With the provision that the new article is kholistic and detailed does not cause much multi-interpretation, so it is able to accommodate, especially related to the death penalty for perpetrators of corruption crimes. As for in terms of Philosophists, the author argues that the death penalty against corruptors does not violate human rights . It is based on the repercussions that occur as a consequence of the crime. Then in Islampun it is strictly forbidden to acquire property in a different way,this is explained in the Quran Surah An-Nisa verse 29,

Which means, ”O You who believe, do not eat one another’s wealth in a bathil way, except in a trade that takes place on the basis of love among you. And do not kill yourselves, indeed, Allah is merciful to you.”

So that corruption in Islam can be included in the *façade of Fil Ardhi,* it is based on that corruption is very damaging to the order of people's social life.

4. CONCLUSION

1. There are many reasons, the death penalty for corruption perpetrators has never been applied in Indonesia, including:

First, substantive reasons. (juridical) i.e. seeing that the law related to the application of the death penalty to perpetrators of corruption crimes still contains weaknesses. From its existence, which is experiential, the law is not flexible and holistic so that it is unable to accommodate the problem of corruption as a whole. Second, philosophical reasons, namely the application of the death penalty must be careful because it concerns a person's life. The pros and cons regarding the death penalty do not seem to have an end in the debate. Therefore, the consistency of the application of the death penalty in the world has always been controversial, both among the government, legal practitioners, and the community itself, because the death penalty is considered to violate the most basic right for humans, namely the right to live and improve life. The death penalty also violates the right to life stipulated in the Declaration of Human Rights (UDHR). Third, the reason for the legal culture, namely the improvement in the legal culture sector of the community.

1. There are three reform models that can be implemented to overcome corruption, namely first, improvements to legal institutions. Here, there must be a strengthening of the authority and strengthening of the professionalism of the officials who fill the legal institutions, the police, prosecutors, and the KPK must be able to synergize and have a *unifed legal opinion* on corruption cases, the most overtake and sectoral ego in the eradication of corruption must be eliminated. The main thing is to realize a framework and a unified view on corruption cases. Second, improvements in the legislation in the sense of reevaluation, reorentation, and reformulation of the applicability of the corruption law, both the formulation of acts and the sanks i system,especially related to the death penalty so that a sense of justice can be realized. Aspec that is in the public spotlight is that criminal sanctions imposed by the courts often do not meet the wishes of the people. Here the role of the judge is very important, the judge must be able and responsive to the wishes of the people in the eradication of corruption in a way that is not shackled by the soundness of the text of the law, but must be able to give meaning to

the content of the law. Improvement through pengadilan will be done faster than waiting for improvement in parliament. The revamping in the courts will one day manifest the jurisprudence of the Supreme Court in corruption cases and will then be used as a guideline by other judges when adjudicating an existing case. Third, improvements in the legal culture sector of society. it is no secret to the law that the Indonesian people are the people who like to break the law. As long as there is a legal loophole, the community will continue to commit acts of violating the law, both the amended law and the law enforcement officers, the community will try to realize these wishes. The institutional structure of the state and government filled with leaders of this integrity will create and increase systematic corruption and its reach is expanding. Thus, if conditions like this are left without a policy that iscomprehensive and continuous, it will form a group of people who are sangat corruptive and the birth of a corruptive culture can even form a corruptive area.

References

[1] Kristian. Sistem Pertanggungjawaban Pidana Korporasi Buku 2, I. Bandung: PT Refika Aditama; 2016.

[2] Setiadi E, Kristian. Sistem peradilan pidana terpadu dan sistem penegakan hukum di Indonesia, I. Jakarta: Prenadamedia Group; 2017.

[3] Atasasmita R. Anti-Corruption Strategy and Policy After the 2003 UN Convention Against Corruption: Countering Corporate Crime. Jakarta: Paper, 2006.

[4] Jain AK. Corruption: A review. Journal of Economic Surveys. 2001;15(1):71–121.

[5] Mahmud A. Urgensi Penegakan Hukum Progresif Untuk Mengembalikan Kerugian Negara Dalam Tindak Pidana Korupsi. Masalah-Masalah Hukum. 2020;49(3):256–271.

[6] Akbar M. “Mahfud Dukung Hukuman Mati Bagi Koruptor,” Rapublika, Sep. 17, 2012.

[7] Mastalia A. Kedudukan Pidana Mati Sebagai Sanksi Dalam Pidana Korupsi. Syiar Hukum Jurnal Ilmu Hukum. 2017;15(1):1–16.

[8] Parman L. Prinsip Individualisasi Pidana dalam Sistem Pidana Minimum Khusus Tindak Pidana Korupsi di Indonesia. Malang: Universitas Brawijaya; 2014.

[9] Gultom M. Suatu Analisis Tentang Tindak Pidana Korupsi di Indonesia. Bandung: PT Refika Aditama; 2018.

[10] Wardhani P. “Hukuman Korupsi di Berbagai Negara Beragam, Ini 7 Contoh Ekstrem yang Bikin Koruptor Jera,” Hipwee, Jan. 30, 2017.

[11] Mulyadi L. Tindak pidana korupsi di Indonesia: Normatif, teoritis, praktik dan masalahnya. Bandung: Alumni; 2017.

[12] "Analisa Konsep Aturan Keadilan, Kepastian, Dan Kemanfaatan Dalam Penegakan Hukum Tindak Pidana Pertambangan Di Indonesia," 2021 Aug.

[13] Mufiz A. Pengantar Ilmu Administrasi Negara . Tangerang Selatan: Universitas Terbuka, 2022.

[14] Ravena D, Kristian. Kebijakan kriminal = criminal policy. Jakarta: Kencana; 2017.

[15] Sudarto, Hukum pidana dan perkembangan masyarakat: Kajian terhadap pembaharuan hukum pidana. Bandung: Sinar Baru; 1983.

[16] Safudin E. Dasar-dasar ilmu hukum. Malang: CV. Cita Intrans Selaras, 2017.

[17] Setiadi E. Paradoks dalam Hukum Pidana Paradoks dalam Hukum Pidana dan Sistem Peradilan Pidana. Bandung: Simbiosa Rekatama Media; 2020.