DEATH PENALTY FOR CORRUPTION CRIMES REVIEWED FROM A HUMAN RIGHTS PERSPECTIVE

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ABSTRACT

Prevention & eradication of criminal acts of corruption in Indonesia has been very intensively implemented because corruption in Indonesia is now so rampant, acute, and systemic. The existence of firm and harsh criminal sanctions has a very important role in the process of eradicating corruption. In Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes or what is called the PTPK Law, there is a juridical space that can be used to impose death penalty sanctions on perpetrators of criminal acts of corruption, namely in Article 2 paragraph (2) The PTPK Law stipulates that if the criminal act of corruption as intended in paragraph (1) is committed under certain circumstances, the death penalty can be imposed." However, until now in its implementation, there has never been a single court decision in Indonesia that dared to use this article. Apart from that, imposing the death penalty sanction is not easy because there is still debate because not all people agree with this heaviest sanction, they argue that imposing the death penalty sanction is considered to violate human rights. The issue of protecting human rights, especially the right to life, has so far been the main reason for imposing the death penalty for perpetrators of criminal acts of corruption. Furthermore, those who oppose the imposition of death penalty sanctions feel that the right to life is an absolute right that cannot be revoked by anyone except God, and this right is protected by the 1945 Constitution, Article 28 I paragraph (1). Given this, the enforcement of death penalty sanctions against perpetrators of criminal acts of corruption will of course become an obstacle in its enforcement in the future.

Keywords:

Corruption, Death Penalty, Human Rights

INTRODUCTION

In the history of human civilization, one of the oldest crimes in the world and the most difficult to eradicate is corruption (Brioschi, 2017). According Gayus Lumbuun, a member of the House of Representatives of the Republic of Indonesia Commission III, argues that: "it is said that there is not a single country in the world that is free from acts of corruption". Likewise in Indonesia, even in this country corruption has spread widely and evenly from Sabang to Marauke. The practice of implementing central and regional governments has also shown that corruption is rooted and entrenched. Of course, this is very unfortunate considering that the reform mandate that is a decade old emphasizes more on eradicating corruption. The fight against corruption should be the first and main goal to achieve *good governance* and *clean governance* (Novita & Tasya, 2024). This idealism is still far from being roasted. The role of judges in issuing verdicts plays a very important role in providing a deterrent effect for perpetrators of corruption crimes and most importantly has provided a sense of justice for the community (Prakoso & Richard, 2024). If there is a controversial or inconsistent judge's decision, then it can be said that the decision does not support the nation's desire to fight corruption at all (Amagnya, 2024). Corruption in Indonesia has been so acute, epidemic, and systemic (Supriadi et al., 2021).

The existence of strict criminal sanctions has a very important role in the process of eradicating corruption, including as a tool to provide a deterrent effect, break the corruption paths that are built with the perpetrators who are subject to criminal sanctions, and at the same time educate so that the crime is not repeated or imitated by others. The effect of criminal sanctions is not solely shown to the perpetrators of crimes, but also to influence societal norms not to commit crimes.

Theoretically, heavy sanctions will make criminals afraid so that they undo their intention to commit

crimes. The magnitude and severity of sanctions usually reflect the severity of the impact of the crime committed and the government's seriousness to address it. So in the process of law enforcement, the public often sees the size of the sanctions imposed and the few or many criminals who are sentenced to criminal sanctions as a benchmark for the success of law enforcement. Although such an assumption is not entirely correct, it is true and reasonable for the community. The public in general does not all understand how to enforce the law, what they know and want is to see how the law can be enforced as firmly as possible, especially for corruptors to create a sense of justice for the community. The imposition of strict sanctions is a form of repressive effort to eradicate corruption crimes.

If there is a decision with too light a criminal sanction or an improper imposition of sanctions against corruptors, then it can be said that the decision is not in line with efforts to eradicate corruption. Harsh and indiscriminate in imposing criminal sanctions should be a doctrine in the strategy to eradicate corruption in Indonesia so that the eradication of corruption in this beloved country does not run place. But unfortunately, so far only a few corruptors have been sentenced to severe criminal sanctions. Evidently, there are not a few corruption cases in this country that are not decided with the maximum punishment by the judge. In fact, not a few verdicts handed down by judges are not verdicts that meet the public's sense of justice. Not a few corruptors are "spoiled" by judges with free verdicts or very light verdicts.

Since the promulgation of the PTPK Law, there has only been one corruptor who has been subject to the maximum criminal sanction, namely prosecutor Urip Tri Gunawan who was sentenced to 20 years in prison, while other corruptors were only sentenced to about 3-5 years in prison and many even less than that. Especially for the imposition of the death penalty sentence for corruptors, there has never been a story in this country. Furthermore, if corruption crimes are carried out against funds intended for countermeasures due to widespread social unrest, they are also prone to corruption. Considering that today the Indonesian nation often has widespread social riots, for example, wars between tribes or disputes that carry the name of religion. Likewise, corruption crimes are committed against funds intended for the management of economic and monetary crises where the country's economic condition is falling like in 1997-1998. Meanwhile, corruptors who repeat corruption crimes also deserve the heaviest criminal sanctions so that other people or other former corruptors do not do the same thing.

The death penalty can be said to be one of the oldest and most controversial types of criminal sanctions in the world. Controversial in the sense that there are two thoughts with the same base of rejection but end up with opposite results. The pros and cons of this criminal sanction are inseparable from the development of criminal theories. The death penalty sanction contained in the PTPK Law is not something new, because previously in the Criminal Code (KUHP) in Article 10 there was also a death penalty sanction as one of the main types of criminal sanctions. However, it is not easy to apply this heaviest criminal sanction. In addition to the need for firmness from law enforcement officials, in this case, prosecutors and judges, they also need support from the community. But unfortunately, not all people agree with this sanction, they argue that the imposition of the death penalty is considered a violation of human rights. The issue of the protection of Human Rights (HAM), especially the protection of the right to life, has been a major *stumbling block* to the imposition of the death penalty for corruptors, even though corruptors are considered as *public waste* and corruption has caused various kinds of problems in this country.

The discussion about the protection of this right has indeed been quite long in the discourse of criminal law, but it seems that it will never be obsolete to be studied because once this right is taken away, no matter how sophisticated the technology and how powerful a person is, he will still not be able to restore this right as it was. The protection of the right to life is part of the many human rights protections provided by the 1945 Constitution. "The human rights provisions in the 1945 Constitution have provided human rights guarantees to every citizen, all of which boil down to the principle of equality *before the law"*.

RESEARCH METHODS

Legal research is a scientific activity that is based on certain methods, systematics, and thinking that aims to study something or some specific legal phenomena by analyzing them. This research is a type of normative juridical law research. Normative juridical research is research conducted by examining laws or regulations related to legal issues. The results of the study can be used to solve the legal problems being researched The type of normative juridical research is based on the argument that this research study is legal research as well as looking at the mutual relationship between the parties. In this research, many research results and logical reasoning are revealed in qualitative analysis, namely by making descriptions based on existing data

RESULTS AND DISCUSSION

Scope of corruption crimes

In essence, state wealth assets are wealth derived from public funds, so it is appropriate for the public to have the right to the proceeds of the state wealth. By returning these assets, it is hoped that it will have a direct impact on restoring state finances or the state economy, which ultimately leads to the welfare of a just and prosperous society based on Pancasila and the 1945 Constitution.

However, efforts to recover corrupted state assets tend to be difficult to do because the perpetrators of corruption crimes have extraordinarily wide access and are difficult to reach in hiding the proceeds of corruption crimes. The problem is becoming more difficult because the hiding place of the proceeds of the crime has exceeded the country's borders. For developing countries, especially Indonesia, penetrating various asset return problems that touch the legal provisions of major countries will be difficult. Especially if Indonesia does not have a good cooperative relationship with the country where the stolen assets are stored. In addition, according to Article 33 and Article 34 of the PTPK Law, in the event of the death of the suspect, the state can file a civil lawsuit against his heirs. These provisions, of course, considering that Indonesia is still in the category of developing countries, so for this reason, the return of state assets is an important thing because it is to facilitate the growth and continuity of national development that demands high efficiency.

Thus, it can be concluded that the crime of corruption can be imposed on any person who unlawfully commits an act of enriching himself or another person or a corporation that can reduce all or part of the state wealth in any form, separated or unseparated, including all parts of state wealth and all rights and obligations arising from being in control, management, and accountability of State-Owned Enterprises or Regional-Owned Enterprises, foundations, legal entities, and companies that include state capital, or companies that include third-party capital based on agreements with the state. The change in the explanation of what is meant by certain circumstances above has the consequence that: "it is no longer the time that is determined, but the allocation of money for that particular circumstance that is corrupted"[32] which determines the possibility of the death penalty. This explanation is a criminal penalty that can be imposed, so for the perpetrator of the crime of corruption it is not necessary to prove that the perpetrator knows the existence of certain circumstances at the time of committing the crime In terms of terminology, the word emergency comes from the Arabic language, *dhauri,* which means an unusual or abnormal situation. In Wikipedia, a state of affairs is formulated as "a government statement that may change the functions of government, warn its citizens to change their activities, or order state agencies to use emergency response plans.". The existence of an emergency must be officially declared by the government so that this emergency is de *jure* or *emergency de jure*, but if the government does not officially declare an emergency, then this emergency is *de facto* or *emergency de facto,* meaning that it *is indeed a de facto* emergency, but de *jure* not an emergency or considered a normal situation. Such a situation is very vulnerable and easy to abuse or weak in its legitimacy.

The threat of death penalty sanctions for perpetrators of corruption crimes is not only subject to the provisions of Article 2 of the PTPK Law but can also be subject to the provisions of other articles in the PTPK Law where the provisions of these articles have criminal sanctions that are similar to criminal sanctions in Article 2 of the PTPK Law. Criminal acts whose criminal sanctions are equated with Article 2 of the PTPK Law are criminal acts in Articles 15 and 16 of the PTPK Law. This can be seen in Article 15 of the PTPK Law which formulates that: "... shall be punished with the same crime as referred to in Article 2 ..." Meanwhile, Article 16 of the PTPK Law formulates that: "... convicted of the same crime as the perpetrator of the crime of corruption as referred to in Article 2 ...". The similarity between criminal sanctions and perpetrators who indirectly commit corruption crimes with perpetrators of corruption crimes is because corruption crimes have seriously harmed the state's finances or the country's economy, so the provisions in the article are made into separate offenses and threatened with the same criminal sanctions. Thus, it is possible that the perpetrator of the crime of corruption who has fulfilled the intention as a possibility is "the perpetrator only has a shadow of the possibility that the result will occur without the intended result, the result that is clearly not desired and only possible will occur".[59] The perpetrator at the time of his act to cause an effect prohibited by law is aware of the possibility of a consequence other than the one he intended. The intentionality of the perpetrator is shown against the possibility of other consequences, which are not his goal and which may arise from the execution of the act.

The provisions in Article 15 of the PTPK Law are special rules because the main criminal threat in assisting to commit a corruption crime is not reduced by 1/3 of the criminal threat, but is still threatened with the same criminal threat as the criminal threat of the perpetrator of a corruption crime that has been completed. This is different from the provisions contained in Article 57 paragraph (1) of the Criminal Code where in general the criminal threat in assisting a criminal act is reduced by 1/3 of the criminal threat. Likewise, if the assistance of a crime that is threatened with the death penalty as stipulated in Article 2 paragraph (2) of the PTPK Law or the threat of life imprisonment, it is not changed to a maximum of fifteen years in prison as is the case in Article 57 paragraph (2) of the Criminal Code. Criminal threats for perpetrators of corruption crimes are still threatened with the death penalty, the same penalty as the criminal threat for perpetrators of corruption

crimes that have been completed.

The imposition of the death penalty on criminals has been a debate throughout the history of life. As if it never goes out of style, this debate is related to what the criminal law wants to achieve through the application of penalization. The question that arises is whether or not the death penalty sanction is contrary to the concept of society, namely social rehabilitation, and reintegration, which then returns the prisoner to community life as before he committed the crime and was sentenced to criminal sanctions, considering that the death penalty sanction is still felt to be based on the purpose of revenge or retribution. Thus, the focus of this debate concerns the purpose of the crime.

In its development, the purpose of penal crime has changed from a long series of history. This development began when the purpose of criminalization as a tool to deal with crime from a way of retaliation against people who commit crimes turned into a tool to protect individuals from other individual disturbances in society and to protect society from criminal interference.

Death penalty for corruption from the perspective of human rights

Criminal sanctions are an absolute consequence that must exist as a retaliation for the person who committed the crime. Crime is seen as an immoral and immoral act in society so the perpetrators of crime must be retaliated with the imposition of criminal sanctions. When someone violates the law and harms people or society by violating a rule, there will be a social and moral imbalance in justice that can only be restored by punishing the perpetrators. Usually, the perpetrator is punished according to the severity of the violation committed by him. Proportionality is the key to the concept of retribution theory. The main measure and proportionality are all measures of the level of punishment that must not cross the limit under the seriousness of an act. This act of retaliation is based on the idea that each individual is responsible and has full freedom to make rational decisions.

This demand for absolute justice has received support from scholars, for example, Immanuel Kant with his theory *de Ethisce Vergeldingstheori* argued that: "Evil causes injustice, so it must be repaid with injustice as well. Criminal is an absolute demand of law and decency that is firmly upheld". Kant's opinion made the demand for retaliation an ethical condition. Only justice can justify being sentenced. Then Hegel in his theory *de Dialectische Vergelsingstheorie* argues that: "law or justice is reality, so if a person commits a crime it means that he denies the existence of law or justice, it is considered unreasonable. Thus, the situation of denying justice must be eliminated by injustice as well, namely by being sentenced because the crime is also an injustice."

Based on Article 1 paragraph (3) of the 1945 Constitution formulates that: "The State of Indonesia is a state of law". According to Kansil, as "a state of the law with the rule *of law at its core*, it must meet two conditions, namely *supremacy before the law* and *equality before the law".*[84] *Supremacy before the law* means that the law is given a supreme position and *equality before the law* means that all people are of equal status before the law.

Furthermore, the thinking of the state of law according to Julius Stahl85 is characterized by four main elements, namely:

1. Recognition and protection of human rights;
2. The state is based on *the trials political theory;*
3. The government is organized based on law;
4. There is a state administrative court.

The first element above contains the provision that in Indonesia there is guaranteed protection of human rights based on legal provisions and not the will of a person or group that is the basis of power. Every state administrator must uphold justice and truth based on the law. Human rights guarantees, especially the right to life-related to the imposition of the death penalty for perpetrators of corruption crimes, have indeed been debated for quite a long time, but it seems that it will never be obsolete to be studied. In the 1945 Constitution, the provision of everyone's right to life has been regulated in 2 articles, namely Article 28 A of the 1945 Constitution. This means that everyone has rights, and those rights are inherent in oneself which is a gift from God Almighty that cannot be reduced under any circumstances. Human beings do not have the right to determine someone's life or death because the one who has the right to determine someone's life or death is God.

Regarding this view, it is not wrong and it is true. However, what needs to be pondered is that the way to live or die a person is not God who determines, but it goes back to man himself who determines his way of life and how he dies in this world. Everyone who lives will die, but how to choose death whether to die in good conditions or die in bad conditions, humans are the ones who choose. If man wants to determine how not to die in a bad way, then he should not have committed a crime. If a human being commits a crime in his life, then in fact he has chosen not to die in a good state, especially if he is an educated person and has an honorable status in the eyes of the public because he must have known that what he is doing is an act that violates the teachings of religion and state law. the absoluteness of human rights. If you look at the arrangement of articles contained in the 1945 Constitution that regulate provisions related to the protection of human rights, it will

appear that there is a restriction on human rights contained in the last article. Article 28 J paragraph (1) of the 1945 Constitution has required everyone to respect the human rights of others in the order of life in society, nation, and state.

As a right, everyone is obliged to respect and uphold that right, in other words, there must be a balance between rights and obligations. If a person does not perform these obligations or violates the rights of others, then the state can revoke or limit the rights of that person in accordance with the law. For this reason, systematically, after Article 28 J paragraph (1) of the 1945 Constitution which requires respect for the rights of others was violated, it continued to Article 28 J paragraph (2) of the 1945 Constitution which regulates how human rights can be restricted. So that the restriction of a person's human rights, including the right to life, has been justified by the constitution through Article 28 J paragraph (2) of the 1945 Constitution which is the closing article of the human rights provisions. With the placement of Article 28 J paragraph (2) of the 1945 Constitution as a closing article, it means that it has provided a systematic interpretation that human rights regulated in Articles 28 A to 28 I of the Constitution are subject to the provisions of the restriction of rights contained in Article 28 J of the 1945 Constitution. This means that the provisions of Article 28 J paragraph (2) of the 1945 Constitution have provided a basis for restricting human rights that are not allowed to violate the human rights of others or in other words the Indonesian constitution does not adhere to the principle of absolute human rights where human rights can be revoked by the state. Thus, the imposition of death penalty sanctions for corruptors who have been hindered by human rights issues can be enforced. Similarly, if the judge feels that it is appropriate to impose the death penalty for the perpetrators of corruption crimes, then the decision is not contrary to a person's right to life because the PTPK Law itself provides a way for it. Not all cases of corruption can be sentenced to death. The imposition of the death penalty can only be imposed by a judge on the perpetrator of a corruption crime if the allocation of money for a certain situation is corrupted as referred to in the provisions of Article 2 paragraph (2) of the PTPK Law. This particular circumstance is the criminal burden so that the right to life of the corruptor is not absolute to be protected, so that the judge cannot arbitrarily impose a death penalty decision.

Furthermore, the eradication of corruption crimes that must be carried out extraordinarily has included corruption as one of the most serious crimes. This provision is in line with the interpretation given by the UN Human Rights Committee. Thus, it is not wrong if the PTPK Law has provided a formulation of the death penalty sanction in Article 2 paragraph (2). The crime of corruption is not a crime whose direct purpose is to kill a person's life, unlike the crime of terrorism or premeditated murder which can instantly kill a person's life. However, the consequences of these corruption crimes can kill many people en masse indirectly. Let's say that the funds for victims of natural disasters are corrupted, the people who should be very entitled to these funds to meet basic needs or medicines for their survival, are in danger of not being able to be fulfilled so that sooner or later they will starve or suffer from diseases that all lead to death. Their right to life will be deprived as a result of corrupt acts committed by these corruptors. The emergence of several parties who reject the imposition of the death penalty in the name of human rights needs to be looked at more closely, human rights should not be looked at lightly. Often the first argument they make is that the imposition of the death penalty has violated the right to life, but if you look closely, the crimes that are threatened with the death penalty are precisely crimes that directly or indirectly attack the right to life, which is none other than the right that is the main basis of the defense of the view that the death penalty should be abolished.

The next argument is based on the reason for the imperfection of the criminal justice system so that it allows for mistakes, namely the imposition of the death penalty on innocent people. This kind of argument is not fully acceptable because there are no facts or data that show the percentage of errors that have occurred in the imposition of the death penalty in a certain period of time. By still acknowledging the imperfections of the criminal justice system, the judge is not an angel who is always right, he is also an ordinary human being who can be wrong, but with the abolition of the death penalty on the one hand, it still does not necessarily make the criminal justice system perfect and on the other hand, the abolition of the death penalty sanction will hurt the sense of justice of the community. If it is felt that the judge's decision has been wrong in making a decision, of course the aggrieved party, especially the defendant, will file an appeal until review. If the judge from the first level to the judge at the review examination and all of them corroborate each other's verdict that the defendant is guilty and deserves to be sentenced to the death penalty, it is quite difficult to say that the judge has wrongly given a verdict because every legal remedy will definitely be corrected by a higher court.

In addition, by highlighting the possibility of mistakes in imposing the death penalty on innocent people, the public will be led by fixating on the mistake and forgetting the substance of the real debate, namely why the defense of the right to life against the perpetrators of crimes threatened with the death penalty becomes more valuable than the defense of the right to life of the victims of the crime. Furthermore, the view that wants the abolition of the death penalty with the argument that the existence of the death penalty has failed to build a deterrent effect by often submitting statistical data that shows that the death penalty does not reduce the quantity of crimes, doubting the adequacy of its argumentative value. This is because these statistical data are not specific data related to corruption crimes that are threatened with death penalty sanctions, but only corruption

crimes that are not threatened with death penalty sanctions. Therefore, the question arises, even though the quantity of corruption crimes increases, whether the quantity of corruption crimes threatened with the death penalty is also The higher the quality of the crime, the higher the quality of social disharmony it causes in society. Corruption crimes, which are included as one of the high-quality crimes, have greatly harmed harmony in society. Poverty, famine, hunger, ignorance, and other bad things have been believed by the community to be the result of this crime. Moreover, when funds intended for the management of dangerous situations, national natural disasters, measures due to widespread social unrest, economic and monetary crisis management are corrupted or former corruptors repeat their corrupt acts, it will result in a considerable and widespread shock to social harmony. Not only the people who are actually entitled to these funds will denounce but also all levels of society in Indonesia will denounce the acts of the corruptors. The impact of these crimes will result in hunger, disease, all of which lead to death.

Thus, a crime or criminal act of corruption is a crime that has directly or indirectly attacked the right to life and the right to life. Restoring the perpetrators of crimes that have caused disharmony is a form or effort to restore social harmony in the community. The imposition of the death penalty imposed on the perpetrators of corruption crimes must be seen as a restoration as an effort to restore social harmony that has been disturbed as a result of the crime. Still according to the Constitutional Court Decision above, if the abolition of the death penalty sanction is carried out, it will certainly hurt the community's sense of justice because of the lack of social harmony caused by the occurrence of crimes threatened with the death penalty. Justice is only felt by the community when social harmony has been restored. The abolition of the death penalty in Indonesia must be understood that the historical awareness of the Indonesian people has not been able to accept the abolition of the death penalty. Von Savigny, the pioneer philosopher of the Mahzab of History, argued that: "the law is based on the national character and the national soul of the nation concerned *(volkgeist).* Law is like a language that grows and develops in national relations and becomes common property and also common consciousness".[95] According to the Mahzab of History, each nation has a different history, so this makes each nation have different laws and justice according to the character or soul of each country

CONCLUSION

That the regulation of death penalty sanctions in the PTPK Law is stated in Article 2 paragraph (2) which formulates "in the event that the crime of corruption as referred to in paragraph (1) is committed in certain circumstances, the death penalty may be imposed". From the formulation of this article, it can be seen that for the implementation of Article 2 paragraph (2) of the PTPK Law, it is required first to fulfill the provisions contained in the formulation of Article 2 paragraph (1) of the PTPK Law. Crimes in the form of corruption crimes are very detrimental to the state. Then in certain circumstances what is referred to is a circumstance that can be used as a reason for criminal punishment for the perpetrators of corruption crimes, namely if the criminal act is committed against funds intended for the management of dangerous situations, national natural disasters, countermeasures due to widespread social unrest, economic and monetary crisis management, and repetition of corruption crimes. In addition to the provisions of Article 2 of the PTPK Law, the threat of death penalty for perpetrators of corruption crimes can also be imposed on criminal acts for the provisions contained in Articles 15 and 16 of the PTPK Law. Article 1 paragraph (3) of the 1945 Constitution. In this sense, the state of law is the protection of human rights, including the right to hudup. The right to life is regulated in Article 28 A and Article 28 I paragraph (1) of the 1945 Constitution. Although the right to life has been guaranteed by the constitution, the Indonesian constitution does not adhere to the principle of absolute human rights, this can be seen from the provisions of Article 28 J paragraph (2) of the Constitution as the closing article of the chapter on human rights. The placement of this article as a closing article means that it has given an interpretation that Articles 28 A to 28 I that precede it are subject to the provisions of human rights restrictions contained in Article 28 J of the 1945 Constitution. Thus, the imposition of the death penalty for corruptors who have been hindered by human rights issues, especially the right to life for a person.

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