

## Obstacles to the Implementation of Death Penalty Sanctions for Perpetrators of Corruption in Indonesia

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**Abstract.** *The implementation of the death penalty remains controversial, especially when viewed through the lens of human rights such as the right to life and freedom from torture. In Indonesia, the death penalty is enforced for serious crimes, but not yet applied to corruption. This research explores the possibility of applying the death penalty to corruption cases and identifies the obstacles hindering its enforcement. Using a normative legal research approach, this study examines both primary and secondary legal materials. Corrupt acts in Indonesia are punishable by imprisonment, restitution, and in severe cases, the death penalty. The enforcement of penalties is part of Indonesia's criminal justice system, encompassing legal substance, legal structure, and legal culture. From a criminal policy perspective, the death penalty may serve as a deterrent and contribute to social welfare. However, its implementation faces challenges, including weak legal foundations, concerns over human rights, and pressure from international human rights agreements.*

**Keywords:** *Corruption; Death Penalty; Human Rights*

**Abstrak.** Penerapan hukuman mati masih menjadi perdebatan, terutama jika dilihat dari sudut pandang hak asasi manusia seperti hak untuk hidup dan bebas dari penyiksaan. Di Indonesia, hukuman mati diterapkan untuk kejahatan berat, namun belum diterapkan untuk kasus korupsi. Penelitian ini bertujuan untuk mengkaji kemungkinan penerapan hukuman mati terhadap tindak pidana korupsi serta hambatan-hambatan dalam pelaksanaannya. Dengan pendekatan penelitian hukum normatif, studi ini menganalisis bahan hukum primer dan sekunder. Pelaku korupsi di Indonesia dapat dikenai pidana penjara, pembayaran uang pengganti, hingga ancaman hukuman mati. Penjatuhan hukuman merupakan bagian dari sistem peradilan pidana Indonesia yang mencakup substansi hukum, struktur hukum, dan budaya hukum. Dari perspektif kebijakan kriminal, hukuman mati dapat menjadi sarana penjeratan dan mendukung kesejahteraan sosial. Namun, penerapannya menghadapi berbagai hambatan, seperti lemahnya landasan hukum, kekhawatiran pelanggaran HAM, serta tekanan dari perjanjian internasional tentang HAM

**Kata kunci:** Hak Asasi Manusia; Hukuman Mati; Korupsi

### 1. BACKGROUND

Punishment or criminal witness is a feeling of pain decided by a judge with a verdict to someone who is proven to have violated a rule of law. Criminal witnesses consist of various types, one of which is the death penalty or death penalty. Indonesia is currently one of the countries that still applies the death penalty for certain criminal offenses (Fariduddin & Tetono, 2022). The death penalty is an endless debate, the application of the death penalty is used as an effort to create law enforcement. Criminal policy related to sanctions for the implementation of the death penalty is very important in the concept of punishment (Pane & Pudjiastuti, 2021). According to the Relative Theory, the death penalty can be carried out because the purpose of punishment is to eliminate the perpetrators of criminal acts from society with severe punishment, if necessary with punishment or the death penalty

(Wahyuni, 2017). The death penalty is only aimed at a crime, it does not apply to offenses. Packer argues that crime or a criminal offense will always be related to *punishment*. The imposition of punishment involves things related to suffering or pain (Rozah, 2015).

The practice of imposing the death penalty is polemical in most countries, and its position can differ in political ideology or cultural areas of commonality. Amnesty International and several other organizations maintain that the death penalty violates human rights, including the right to life, and the right to live free from torture. Amnesty International is an organization that disagrees with the death penalty without any exceptions in a case. The campaign that this organization conducts is the total abolition of the death penalty. In 2022 Indonesia recorded 112+ (one hundred and twelve more) death sentences but recorded 0 (zero) executions. In contrast to neighboring Singapore, which in 2022 recorded 5 (five) death sentences and there were 11 (eleven) executions carried out.

In Asia, Malaysia took the decision to make the death penalty mandatory, which is different from Indonesia, which last year passed a new Criminal Code that made changes to the death penalty. In the new Criminal Code, as stipulated in Law Number 1 of 2023, the implementation of the death penalty is regulated more progressively through the implementation of a ten-year probation period before execution can be carried out. During this period, the convict's behavior will be evaluated based on the level of remorse, personal rehabilitation efforts, as well as his contribution to the crime committed. If the convict shows significant positive changes, the death penalty can be converted into life imprisonment through a Presidential Decree after considering the opinion of the Supreme Court. Furthermore, Article 3 paragraph (1) of the new Criminal Code emphasizes that changes to laws and regulations must benefit parties who are undergoing legal processes, whether as a reporter, suspect, defendant, or convict. Therefore, all executions that have not yet been carried out must be suspended until the probationary period provisions can be effectively implemented. In addition, executions can only be carried out after the clemency application has been rejected by the President, making the clemency process a juridically valid basis for postponement (Manzilati, 2024).

The application of the death penalty in the new Criminal Code (Law No. 1 Year 2023) is maintained as a form of response to extraordinary crimes, including premeditated murder, corruption crimes, narcotics crimes, terrorism, and gross human rights violations. However, the position of the death penalty has undergone a fundamental shift: it is no longer considered as the main punishment, but as a special punishment that is an alternative to life imprisonment or imprisonment with a maximum period of 20 years. Its imposition is also

subject to a ten-year probation period prior to execution, taking into account factors such as remorse and the potential for rehabilitation of the convict. Normatively, the provision of the death penalty against corruption offenders has been accommodated in the new Criminal Code, although its implementation is still limited and has caused debate among legal practitioners and academics. Figures such as Mahfud MD and several judges have also voiced the urgency of using the death penalty in corruption cases as a repressive measure to eradicate this extraordinary crime more firmly.

Usually people think that corruption is an act that harms state finances only. However, Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, defines that corruption has 30 types of criminal acts that include various forms of corruption that are not only limited to embezzlement of state finances. Simply put, corruption is the abuse of power and trust for personal gain. Corruption is an act that harms the social system. The reason for the current lack of success in eradicating corruption is due to the minimal level of community involvement. There is a pessimistic and powerless attitude that must be corrected, which will provide an effective social force in eradicating corruption and carrying out the function of social control (Wijayakusuma, 2003).

Corruption is a *White Collar Crime* in which the crime is committed dynamically from all sides, making it an invisible crime that requires criminal law policies in overcoming it. Not only in developing countries, corruption is also a chronic disease for developed countries. Indonesia once occupied the 96th position out of 180 countries that had the lowest ranking regarding this corruption case (Putra & Linda, 2022). corruption in Indonesia seems difficult to eliminate and has become part of the habit. In some ways, lawlessness has become the norm. Ironically, despite the spirit of reform and transparency promoted by the government, corruption continues to rise, highlighting a significant irony. Those most affected by corruption are those in government, both at the central and local levels. In the five years from 2015 to 2020, state losses due to corruption continued to increase while the number of cases and suspects brought to justice decreased (Chariri, 2022).

To tackle and deal with corruption, the force of law is not enough. The Corruption Eradication Commission (KPK), as a stand-alone institution to get rid of corruption cases, takes preventive action against corrupt behavior by integrating anti-corruption education into the education system, starting from elementary school to university level (Zulqarnain, et.al, 2022). However, until now, corruption cases in Indonesia have never been resolved. The application of the death penalty can be one way to stop corruption that disrupts the country's finances and economy. But it is still debated by experts, experts reject the use of the death

penalty on perpetrators of corruption crimes because it is potentially contrary to human rights. In addition, experts argue that the sanctions applied to perpetrators of corruption crimes to date have not provided a deterrent to perpetrators of corruption crimes. Based on the explanation above, this article will highlight the existence of the application of the death penalty against corruption crimes and the obstacles to its implementation in Indonesia.

## **2. KAJIAN THEORITIS**

The application of the death penalty for perpetrators of corruption is an issue that is full of debate, both from a juridical, philosophical and sociological perspective. In the context of criminal law, the theory of punishment objectives becomes a fundamental framework for reviewing the effectiveness and legitimacy of the death penalty. The absolute theory, which emphasizes retribution as the main objective of punishment, can be used as the basis for the application of the death penalty as a form of retribution for the huge losses caused by corruption to the state and society. On the other hand, relative theories, especially general and specific prevention theories, assess punishment from its ability to prevent similar criminal acts in the future. In this context, the application of the death penalty is expected to be able to create a deterrent effect and strengthen public confidence in the criminal justice system.

However, the application of the death penalty for corruption offenders faces various obstacles, both normative and practical. Lawrence M. Friedman's theory of legal effectiveness emphasizes the importance of three elements: legal substance, legal structure, and legal culture. From the substance side, obstacles arise due to the indecisiveness of legal norms in formulating corruption offenses that deserve the death penalty, except in certain situations such as extraordinary crimes in an emergency. From the legal structure aspect, the implementation of death penalty sanctions is hampered by the weakness of law enforcement agencies in identifying and proving aggravating elements objectively. Meanwhile, the legal culture of Indonesian society, which mostly prioritizes humanism and religious values, tends to reject the death penalty, thus creating social resistance and moral dilemmas for law enforcers.

Previous studies, such as those conducted by Mahfud MD (2007) and Hikmahanto Juwana (2012), show that the main obstacle in applying the death penalty for corruption cases is the political aspect of the law that has not been consistent. In addition, studies by Transparency International and the Corruption Eradication Commission (KPK) confirm that the deterrent effect is not always positively correlated with the threat of severe punishment,

but rather on legal certainty and consistency of law enforcement. These findings show that the death penalty without fair and transparent implementation has the potential to become a repressive tool that does not solve the root causes of corruption.

By referring to the theory of legal system, crime prevention, and institutional strengthening, this study aims to identify and analyze the factual and normative obstacles in the application of death penalty for corruption offenders. This study does not explicitly formulate hypotheses, but rests on the assumption that the effectiveness of severe punishment does not only depend on the severity of the punishment, but on the overall integration between legal norms, law enforcement officials, and public acceptance of the policy. Thus, this study provides theoretical and practical contributions to criminal law policy reform in combating corruption in a fair, effective and constitutional manner.

### **3. RESEARCH METHODS**

The method applied in this research is an approach in legal research that focuses on analysis and research of primary and secondary literature. This research uses normative case studies in the form of legal behavior products, such as examining laws related to the theme of this article, namely the death penalty for corruption criminals. primary legal sources include laws, court decisions, etc. secondary legal sources include research results, scientific works, etc. and tertiary legal sources include dictionaries, encyclopedias, and others.

### **4. RESULTS AND DISCUSSION**

#### **Existence of Death Penalty for Corruption Convicts in Indonesia.**

Corruption is a challenge and a disease that requires serious handling. Because corruption is included in extraordinary crime, even its handling must also be done in an extraordinary way. Until now, corruption cases often occur in almost all institutions that allow corrupt practices. Not a few officials ranging from village heads, regional heads, businessmen, to ministers have been convicted of corruption cases. This is one of the proofs of the high level of corruption in Indonesia (Fattah, 2022). In fact, many cases of corruption also occur in the world of higher education.

Transparency International asserts that there is a direct correlation between crime rates and corruption. The frequency of crime increases with the level of corruption. Conversely, public trust in law enforcement will always increase as long as the level of corruption decreases. Rationally, the crime rate will decrease if there is public awareness (marginal deterrence). This situation will only be realized if there is an adequate level of legal and

public awareness. The prolonged impact in all fields such as in the economy and other fields caused by corruption crimes has a negative impact on the survival of many people. In fact, there are still many acts of corruption committed by greedy corruptors who eat up state money without thinking about the high level of poverty in Indonesia. To satisfy their own desires, corruptors ruthlessly spend money that does not belong to them to use. As people in positions of authority, they never consider the fact that there are still many people living in poverty when they should have the right to live honorably (Amrullah, 2022).

The government has failed to address corruption as a legal problem in Indonesia. Lawmakers and law enforcers lack courage, and using the old ways, corruption is becoming increasingly difficult to eradicate (Maulana, 2025). Corruption violates the law to enrich oneself at the expense of the country's money and economy. The death penalty remains one of the criminal threats for extraordinary crimes, such as corruption, narcotics, terrorism, and gross human rights violations, where the death penalty is still regulated. The death penalty is considered as the last alternative, and is always alternated with life imprisonment or imprisonment for a maximum of twenty years. In Indonesia, the death penalty for corruptors has been the subject of debate and controversy, including from officials, academics, and the public. The death penalty is considered a deterrent effect and social justice by some parties, including Mahfud MD, and some judges. However, the death penalty has not been widely implemented, and is currently being discussed and tested in the Constitutional Court.

Corruption is a criminal offense that can harm the state regardless of the nominal amount, even the punishment that should be received by corruptors is the death penalty as stipulated in the UUTPK. The death penalty is seen as the heaviest punishment for criminal offenders (Putra & Susanti, 2020). The main punishment in Law Number 1 Year 1946 on Criminal Law Regulation is a form of retaliation or pain in the form of loss of life of a person who commits a criminal offense as a result of his own actions. However, Law Number 1 Year 2023 on the Criminal Code makes death penalty no longer the main punishment, because the concept of Law Number 1 Year 2023 does not only apply absolute or retributive theory but also applies relative or objective theory which provides the concept that retribution is not an objective of punishment. The provision on death penalty is general in nature which means that its application can be in criminal offenses regulated in the Criminal Code and criminal offenses regulated outside the Criminal Code unless the regulation regulates it differently. One of the criminal offenses that regulates the death penalty is the UUTPK or the Corruption Crime Law. In addition, the Constitutional Court (MK) Decision strengthens the existence of the death penalty, namely in Decision Number 2-3/PUU-V/2007

which states that the death penalty is not contrary to the 1945 Constitution (Anjari, 2020).

People who are against the death penalty provide explanations that include the imposition of the death penalty resulting in injustice because crime is not only a matter of criminal law but also related to sociology related to economics, politics, and psychology, then the main reason is that the death penalty is contrary to the right to life of a person because the punishment is in the form of deprivation of a person's life, and other reasons provide an explanation that the death penalty is not able to provide a deterrent effect and stop crime and the application of the death penalty is not in accordance with correctional education and resocialization of convicts which is the purpose of punishment (Riyadi & Prasetyo, 2021).

However, in Law Number 1 Year 2023, the execution of the death penalty can only be carried out after the clemency request is rejected and the 10-year probation period ends. Unlike the mechanism in UUTPK which is more direct without probation as in the new Criminal Code, the implementation of the death penalty for corruptors becomes more selective and last resort, due to the probation period and alternative sentences. This shows the evolution of Indonesian criminal law that balances law enforcement with the protection of human rights. So in this case the application of the death penalty is no longer based on retributive theory.

The imposition of death penalty always touches on human rights. Indonesia is one of the countries that strongly protects the right to life for its citizens. However, in reality, the revocation of the right to life in the form of death penalty is applied to the convicts. In the view of criminal policy, the application of death penalty is a penal tool to achieve public welfare. This is inversely proportional to the Indonesian state which has the foundation of Pancasila and places Pancasila as the *grundnorm*. Which means the purpose of punishment in the form of death penalty must be in accordance with all the values of Pancasila. The death penalty in its application must harmonize *the* public interest that has been violated with the imposition of punishment. The imposition of death penalty can be carried out by criminal offenses that threaten the lives of many people, violate the boundaries of humanity, damage the order of national life, and destroy the country's economy.

### **Obstacles to the Imposition of Death Penalty for Corruption Offenders in Indonesia.**

Corruption in Indonesia remains a complex problem with serious impacts on economic, social and political stability. Corruption cases continue to increase, involving various groups from central to local government and the private sector. ICW data shows 791 corruption cases in 2023 with 1,695 suspects, a significant increase from the previous year.

Meanwhile, Indonesia's Corruption Perception Index (CPI) declined from a score of 40 in 2019 to 34 in 2023, placing Indonesia 115th out of 180 countries. This decline shows the weakening response of the public and the government to corrupt practices. If there is no strict law enforcement, corruption in Indonesia will continue to grow without control (Djamil, 2023).

In its implementation, the imposition of the death penalty has experienced obstacles that have become a problem until now it has not been imposed at all on anyone in the crime of corruption. The obstacles in the application of the death penalty in Indonesia to perpetrators of corruption include:

- **Weaknesses of Indonesia's Legal Aspects**

One of the main obstacles to the application of the death penalty for corruption offenders in Indonesia is the clash in the legal framework. Although Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 allows the death penalty under certain conditions, Article 28A of the 1945 Constitution states that everyone has the right to life. This is often used as an excuse that the death penalty violates human rights. Given that the 1945 Constitution is the highest rule of law that reflects the values of Pancasila and the ideals of the state, all laws, including the criminal law of corruption, must be in harmony and must not contradict it (Salam & Karim, 2021).

The values contained in Pancasila, as reflected in the 1945 Constitution, should be the main basis in forming and implementing legal regulations, including special regulations under it. However, in practice, there is often a clash between the application of death penalty law and the principles of Pancasila, especially in the context of state life. In addition, the provisions on the right to life in Article 28A and 28I paragraph (1) of the 1945 Constitution, as well as Article 9 of Law No. 39/2009 on Human Rights, are also considered contrary to the concept of the death penalty.

The right to life is a basic right that should not be reduced under any circumstances, including in the criminalization process. Therefore, imposing the death penalty on perpetrators of corruption must really consider the principle of proportionality-the punishment must be equal to the crime. The legal process must also be very careful and follow strict procedures, because the death penalty is final and cannot be overturned. This is what then creates a big dilemma in interpreting whether the death penalty for corruptors is in line with the protection of human rights or is actually contrary to the spirit of the constitution.



- **Perspectives on Human Rights Violations by Law Enforcement Officers**

Human rights are basic rights inherent in humans whose existence cannot be reduced or revoked and must be respected and protected. In this case, the state has the obligation to protect the human rights of its citizens. In the implementation of the death penalty, especially for corruptors as the perpetrators of the crime of corruption, it becomes an obstacle that is questioned over its application in punishment. It can be interpreted that the death penalty is a criminal sanction in the form of a legal policy that legalizes the state or legal system to impose the death penalty on the perpetrator, where the death penalty in this case means the loss of life (Dwiyanti, et.al, 2024).

Eliminating someone's life means eliminating the right to life as well, which is one of the most basic human rights. This is contained in Article 28 I paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that the right to life is a human right that cannot be reduced (Zulfa, 2015). On this basis, the implementation of the death penalty in Indonesia is hampered because of the understanding of human rights violations that conflict with the right to life. In the event that a corruptor commits a corruption crime and the death penalty is imposed, then in addition to the right to life that is lost there are also other rights that will be lost and cannot be owned by the perpetrator.

Corruption crimes are basically carried out with reverse proof, where the proof system is imposed on the defendant to prove his innocence (Pujiyono, 2023). Where after it cannot be proven and there is a judge's decision stating that the corrupt defendant is guilty, he should be sentenced according to how big or severe the crime he committed. After the judge decides that the corrupt defendant is guilty, the decision must be sentenced in accordance with the level of guilt and severity of the crime committed. As the court's decision is binding and final, the execution of the sentence must be subject to the decision. However, Law No. 1 of 2023 also regulates the human rights of convicted persons, including the possibility of new facts that may prove the innocence of the accused after the court decision. In the case of the death penalty, the new Penal Code establishes a ten-year probation period prior to execution. During this period, the accused can make an assessment of their remorse and their self-improvement. The death penalty can be postponed or commuted to life imprisonment if new evidence is found that exonerates or demonstrates innocence. This is very important because the death penalty is inalienable and deprives the defendant of the right to life for a long time. As a result, the probation and clemency system stipulated in the new Criminal Code

protects the execution of the death penalty from fatal errors, especially in complicated corruption cases with new evidence.

- **International Pressure on Human Rights Treaties**

Human rights are still a major concern for the world, especially regarding the application of the death penalty for perpetrators of serious crimes. In the international realm, many countries have committed to abolishing the death penalty, one of which is through the establishment of the International Covenant on Civil and Political Rights (ICCPR). Although Article 6 of the ICCPR still provides room for the application of the death penalty in cases of serious crimes, this covenant also emphasizes the protection of the right to life as a fundamental right that must not be violated, even by the state.

In Indonesian law, corruption is categorized as a serious criminal offense. However, there is a view that serious crimes in the international perspective refer more to gross violations of human rights. Therefore, before imposing the death penalty on perpetrators of corruption, it is necessary to consider the impact in depth and be reviewed from the principles of justice and prudence. Many parties consider that because corruption is not a violent crime, the application of the death penalty is considered disproportionate and has the potential to violate the right to life.

In addition, seeing that the death penalty is still a global debate often influences decision making in court decisions on corruption crimes that occur. The assumption that the death penalty violates human rights causes countries that have the *power* to influence the Indonesian government. This includes international organizations engaged in upholding human rights which often voice that the practice of the death penalty for the sake of respecting rights can put pressure on Indonesia's diplomatic relations with other countries. Therefore, international pressure is able to influence the implementation of the death penalty for corruption in Indonesia to be hampered.

Seeing the obstacles that arise over the application of the death penalty for corruption crimes is basically based on the assumption of human rights violations. Legal structures and international pressure can influence the implementation of policies and decision making by law enforcement. The existing legal construction in Indonesia must be balanced with the courage of law enforcers to take firm action against perpetrators of corruption crimes if the death penalty is appropriate to be imposed, while still considering the protection of fair human rights for both the state and the perpetrators as citizens.

## 5. CONCLUSIONS AND SUGGESTIONS

Indonesia as a state of law still faces many problems, one of which is corruption. In the Law on the Eradication of Corruption (UUTPK), sanctions against corruptors include imprisonment, fines, restitution, and the death penalty. However, the death penalty is controversial. The pro group considers it appropriate for the sake of deterrent effect and justice for state losses, while the contra group considers it violates the right to life and human rights. The death penalty in UUTPK can only be imposed in "certain circumstances" such as national disasters, monetary crises, or repetition of criminal acts, which makes its application limited and until now has never been imposed by judges. Although the death penalty is legally possible, its application has drawn strong pros and cons, both among the public and law enforcers. The main obstacle in the application of death penalty is the legal aspect itself. The 1945 Constitution as the highest law guarantees the right to life (Article 28A), so the death penalty is considered contrary to the constitution and the values of Pancasila. In addition, the application of reverse evidence in corruption cases can pose a great risk if new evidence emerges after the verdict, because the death penalty cannot be revoked. Another inhibiting factor is international pressure from countries and global human rights organizations that encourage the abolition of the death penalty for the sake of respect for human rights. This pressure has the potential to influence Indonesia's legal policies and diplomatic relations. With these various obstacles, both in national law, human rights, and global pressure, the death penalty in corruption cases in Indonesia is difficult to realize.

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