

CHALLENGES TO THE DEATH PENALTY FOR PERPETRATORS OF CORRUPTION IN INDONESIA

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Abstract

Corruption as an extraordinary crime provides regulations regarding the death penalty for its perpetrators. The purpose of this study is to explore the challenges of implementing the death penalty for corruption crimes, which are considered extraordinary crimes that seriously undermine national stability and governance. The methodology used includes a comprehensive review of laws, regulations, and academic discussions on the topic, as well as an analysis of public opinion and human rights considerations. The results show that although there are strong arguments for the death penalty as a deterrent to corruption, there are many obstacles, including the need for legal reform and compliance with international human rights standards. It can be concluded that a balanced approach is needed to effectively combat corruption while respecting human rights, with suggestions to focus more on strengthening the existing legal framework and law enforcement mechanisms and encouraging the impoverishment of corruptors through the instrument of asset confiscation and restrictions on political rights.

Keywords: human rights; death penalty; corruption; crime.

INTRODUCTION

Indonesia is a country of law, one of the types of laws in Indonesia is criminal law. Criminal law is the entire rule that regulates crimes and obligations. If a person commits a crime, he will be sanctioned in his life. Criminal sanctions consist of several types, one of which is the death penalty which until now is still a polemic. Criminal acts or acts that are contrary to the rules of criminal law consist of two, namely general criminal acts and special criminal acts, one of the rules for special criminal acts, namely corruption. Corruption is an ³⁴*extraordinary crime* that has become a serious obstacle in the legal order of a country. Corruption can damage the social, economic and political order of a country and can threaten national stability and security.⁵

Corruption itself has the origin of the word, namely from the Latin word Corruption which can be interpreted as a bad deed, can be bribed and deviates from one's holiness. Meanwhile, in the Great Dictionary of the Indonesian Language, corruption is defined as rotten, bribery, as well as embezzlement and embezzlement for one's own interests. The definition of corruption according to the Corruption Crime Law, defines that corruption is any person who violates the law, enriches himself or others or industry, and who directly or indirectly harms

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³ Ahmad Mukhlis Fariduddin and Nicolaus Yudistira Dwi Tetono, "The Imposition of the Death Penalty for Corruptors in Indonesia in the Perspective of Utilitarianism," *Integrity: Journal of Anti-Corruption* 8, no. 1 (June 25, 2022): 1–12, <https://doi.org/10.32697/integritas.v8i1.903>.

⁴ Nadela Ramadhanty and Caesarani Lahay, "QISTINA," *Indonesian Multidisciplinary Journal* 3, no. 2 (2024).

⁵ Journal of Education and Counseling, "Analysis of the Death Penalty as a Prevention of Corruption Crimes Based on the Perspective of Legal Effectiveness," vol. 5, t.t.

the country's finances and/or the country's economy, or is known. This is detrimental to the country's finances and the national economy.⁶

Corruption in Indonesia is an extraordinary crime that has a wide impact on the economy and people's welfare. In a study, it was stated that corruption causes great losses to the state and harms the public interest, thus causing social unrest. Indonesia, as it is known to have the title of the highest corruption case in Southeast Asia, is a bad image, but that is the fact that so many corruption convicts have alternated incessantly in this country, it is a very slap in the face for all of us. This condition clearly shows how bad the social impact of humanity is caused by these acts of crime which can be said to be extraordinary crimes, can condemn the morals of the young generation where this generation will continue and lead our country, can endanger the balance and values or views of the Indonesian state towards the international arena.⁷⁸

Various efforts have been made to eradicate corruption, ranging from the establishment of the Corruption Eradication Commission to special legislation. One of the efforts that is often debated is the application of the death penalty for corruptors. In Law Number 31 of 1999 jo. Number 20 of 2001 concerning the Eradication of Corruption states that the death penalty can be imposed as a punishment for corruption crimes. However, this provision only applies in "*certain circumstances*" such as a state violation, natural disaster, or other emergency situation. The conditions of *this particular state* have not been expressly formulated, thus giving rise to normative debates about their scope and application.⁹

The corruption law stipulates the death penalty as the most severe form of punishment for corruption, but so far, the death penalty for corruptors in Indonesia has never been imposed. The heaviest sanction ever imposed in Indonesia against corruptors is life imprisonment, although in fact some of the charges against corruption have included demands for the death penalty, such as in the case of Heru Hidayat in the alleged corruption case of PT Asabri. The existence of ¹⁰*certain conditions* in Article 2 paragraph (2) of the Corruption Law contributes to this. The article only allows the death penalty if the elements of *corruption in certain circumstances* are met. However, the interpretation of this phrase is wide open by the apparatus of other countries and is difficult to measure objectively.¹¹

In the last two years, the portrait of the handling of corruption cases in Indonesia shows an alarming trend. Based on the Indonesia Corruption Watch report, in 2022 there were 252 corruption cases with the number of suspects reaching 612 people. The potential state losses incurred from these cases are estimated to reach Rp33.6 trillion. Indonesia's Corruption

⁶ Alima Tsusyaddya Alias and Suryaningsi Suryaningsi, "The Death Penalty of Corruption Perpetrators in the Perspective of Law and Human Rights," *Nomos : Journal of Legal Research* 2, no. 4 (September 28, 2022), <https://doi.org/10.56393/nomos.v1i6.601>.

⁷ August Hamonangan, "The Implementation Of The Death Penalty In Corruption," *Awang Long Law Review*, vol. 3, 2021, <http://m.kompasiana.com/post/read/619364/2/hukuman-mati-bagi-koruptor-bisa-segera-diterapkandi->.

⁸ Alias and Suryaningsi, "The Death Penalty of Perpetrators of Corruption in the Perspective of Law and Human Rights."

⁹ "CENDEKIA: Journal of Legal, Social & Humanities Barriers and Challenges of Death Penalty Implementation against Corruption Crimes Perpetrators in Indonesia," t.t., <https://doi.org/10.5281/zenodo.12741592>.

¹⁰ Fariduddin and Tetono, "The Imposition of the Death Penalty for Corruptors in Indonesia in the Perspective of Utilitarianism."

¹¹ "CENDEKIA: Journal of Law, Social & Humanities Barriers and Challenges of Death Penalty Implementation against Corruption Crimes Perpetrators in Indonesia."

Perception Index also showed a significant decline, from a score of 38 in 2021 to 34 in 2022, placing Indonesia in 110th place out of 180 countries.¹²

The situation will not improve in 2023. One of the indications of the worsening corruption eradication is the appointment of the Chairman of the Corruption Eradication Commission Firli Bahuri as a suspect in the alleged extortion case against the former Minister of Agriculture. This incident further strengthens the integrity crisis in the highest law enforcement agencies in corruption matters. On the other hand, the Anti-Corruption Behavior Index released by the Central Statistics Agency also showed unsatisfactory results, namely 3.93 on a scale of 0–5, still below the target of the National Medium-Term Development Plan. So there is a public insistence that the death penalty be applied more firmly.¹³

Romli Atmasasmita also explained that the imposition of the death penalty for perpetrators of corruption crimes was effectively implemented in the People's Republic of China, and it turned out to be quite successful in reducing corruption crimes. This can certainly be used as an example by Indonesia in imposing the death penalty for corruptors. Debate by various parties, who say that the application of the death penalty is contrary to Articles 28A, 28I of the Constitution of the Republic of Indonesia of 1945, Article 4 and Article 9 of Law Number 39 of 1999 concerning Human Rights¹⁴.¹⁵ The Human Rights Approach highlights that the death penalty has the potential to conflict with the constitutionally guaranteed right to life. Article 28I paragraph (1) of the 1945 Constitution affirms that "*The right to life... cannot be reduced under any circumstances.*" This view is supported by Komnas HAM and some experts who state that the execution actually reduces the right to life as the most basic right.¹⁶

Juridically-normatively, the death penalty policy for corruptors is contrary to the principles of legality and legal certainty. Vague legal provisions such as "*certain circumstances*" violate the principle of certainty (legal certainty) because their interpretation is open. In addition, the latest Regulations in lieu of laws or the Draft Criminal Code, namely Law Number 1 of 2023, which regulates the new Criminal Code, also require a probation and pardon period for corruption convicts to drop the death penalty. According to this rule, if a corruption convict shows good faith during the 10-year probation period, then the threat of the death penalty will not be carried out even if the element of corruption is fulfilled. The new provision actually further shows that the death penalty for corruptors has so far been more theoretical than practical, and creates ambiguity in legal certainty.¹⁷¹⁸

Based on the description above, there are various challenges in the application of the death penalty for corruption perpetrators. First, the confusion of legal norms and practices obscures the certainty of the application of the most severe sanctions. Second, concerns about human rights violations undermine the legitimacy of the death penalty, considering that Indonesia has a strong human rights commitment in its constitution and international treaties.

¹² Indonesia Corruption Watch, "ICW 2022 Year-End Report," https://antikorupsi.org/id/laporan-akhir-tahun-icw-2022?utm_source=chatgpt.com, June 29, 2022.

¹³ Indonesia Corruption Watch, "ICW 2023 Year-End Report," https://antikorupsi.org/id/laporan-akhir-tahun-icw-2023?utm_source=chatgpt.com, June 7, 2024.

¹⁴ Koko Arianto Wardani and Sri Endah Wahyuningsih, "The Policy of Formulation of the Death Penalty Law for Perpetrators of Corruption Crimes in Indonesia," t.t., [https://doi.org/Jurnal of Khaira Ummah Law](https://doi.org/Jurnal%20of%20Khaira%20Ummah%20Law).

¹⁵ Ni Putu Riska et al., "The Death Penalty Policy for Perpetrators of Corruption Crimes in the Perspective of the Law on the Eradication of Corruption Crimes," *Kertha Wicara Journal*, Vol. 10, T.T.

¹⁶ Kristina Dwi Putri, "The Effectiveness of the Implementation of the Death Penalty for Perpetrators of Corruption in Indonesia," vol. 4, 2021.

¹⁷ "CENDEKIA: Journal of Law, Social & Humanities Barriers and Challenges of Death Penalty Implementation against Corruption Crimes Perpetrators in Indonesia."

¹⁸ Piong Khoyfung, "International Journal Of Sociology, Policy And Law (IJOSPL) The Implementation of The Death Penalty In Cases of Corruption According to," 2023, <http://www.ijospl.org>.

This condition shows that there is still tension between the interests of law enforcement and the protection of human rights. The dilemma between the desire to create a deterrent effect through the death penalty and the state's obligation to guarantee human rights is a serious challenge that must be faced by lawmakers and judicial institutions.

Against this background, this study aims to critically analyze the challenges of applying the death penalty for perpetrators of corruption crimes in Indonesia with a Human Rights and juridical-normative approach. The study was conducted on corruption case data, laws and regulations, and the latest academic literature to highlight policy shortcomings and human rights implications that emerge. The findings are expected to provide a comprehensive understanding of the points of conflict between the goal of eradicating corruption and legal principles that uphold human rights.

METHOD

This research is a juridical-normative research that relies on a literature study that examines positive legal norms, legal principles, legal theory, and relevant doctrines to answer certain legal problems and This study uses a qualitative approach with a descriptive analysis method. The data sources used are secondary data, in the form of laws and regulations, documents and related journals. This research is focused on the study of the legal norms that regulate the death penalty in corruption crimes.¹⁹

RESULTS AND DISCUSSION

The death penalty is one of the most severe types of crime for perpetrators. This type of crime is in the form of taking the life of the perpetrator of a criminal act as a result of the criminal act he committed. In its development, the death penalty has become a controversy along with the increasing understanding of Human Rights. Juridically, the formal application of the death penalty in Indonesia still has legality.²⁰

The death penalty in this country has basically been described in the Criminal Code, in which there is a general regulation book Chapter II Article 10 concerning Crime. Based on the provisions in articles 10 and 11 of the Criminal Code, it is known that the general provisions governing the death penalty are contained in two articles, namely Articles 10 and 11 of the Criminal Code. The death penalty often has advantages as well as disadvantages. However, the death penalty is legally justified. The death penalty is definitely needed considering the various crimes against humanity that are thought to be intolerable. However, legally this will reduce Human Rights. Indonesia has a juridical principle to always realize the death penalty for perpetrators of crimes that are categorized as extraordinary crimes in the International Covenant on Civil and Political Rights, this regulation regulates the death penalty. The death penalty has been considered inconsistent with the obligations of the nations that have ratified and signed the International Covenant on Civil and Political Rights. Based on these several provisions, the death penalty does not conflict with national and international provisions.²¹²²

¹⁹ Soerjono Soekanto, *Introduction to Legal Research* (Jakarta: UI Press, 2014).

²⁰ Yuliana W Yuli, "The Application of the Death Penalty for Perpetrators of Corruption Crimes Based on Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption," t.t., <https://doi.org/10.37817/ikraith-humaniora.v8i1>.

²¹ Moses Darwin Pane, "Death Penalty Policy Reviewed from a Perspective of Positive Law and Human Rights," *Res Nullius Law Journal*, vol. 1, t.t., <http://ojs.unikom.ac.id/index.php/law>.

²² Anjari W, "The Application of the Death Penalty to Convicted Corruption Cases," *Journal of Legal Issues*, 2020.

The rise of corruption cases in Indonesia has certainly made various views arise from a negative perspective, of course, not only to the nation but to the wider community. The fight against corruption today should not use a simple legal tool, it should use an amazing legal instrument. Efforts to include corruption crimes in the category of humanitarian crimes Where the handling of this crime uses devices, technicians, and regulatory procedures in violations. The existence of legislation and a culture of humiliation (shame) that the Indonesian people have as a character, this reality cannot reduce and is effective in making corruptors aware. Corruption cases have created the beginning of disasters and criminal crimes, namely the root of all crimes which in fact can be said to be very far dangerous than the crime of terrorism.

The death penalty for corruption perpetrators has actually been regulated in Indonesia's positive legal system, but with very limited conditions. The regulation of the death penalty/death penalty in the Corruption Crime Law has 1 article that regulates it, which is contained in Article 2 of Law Number. 31 of 1999 jo Law Number. 20 of 2001 concerning the eradication of corruption which only allows the death penalty if corruption is committed under "certain circumstances". Article 2 paragraph 1 of the Corruption Law itself only threatens a maximum of 20 years (or life) imprisonment for corruptors who harm the state's finances, while paragraph 2 adds the option of the death penalty as a ballast if the elements of crisis are met, What is also meant in "certain circumstances" here is the situation that can make an argument for imposing criminal penalties for corrupt perpetrators, namely if the crime with funds (money and so on) is intended for dangerous situations, national natural disaster management facilities, facilities for dealing with the impact of widespread social unrest, facilities for dealing with economic and military crises, and facilities for eradicating corruption.²³

In other words, not all forms of corruption meet the requirements for the death penalty, only very large-scale corruption in emergency situations can be subject to this threat. Until now, there has never been a corruption court in Indonesia that has actually imposed the death penalty for corruptors. Apart from corruption, the Criminal Code also contains a number of articles that regulate the death penalty for certain serious crimes (e.g. premeditated murder, treason, or treason, but the crime of corruption itself is not listed in the Criminal Code. Overall, the national legal framework does recognize the death penalty both in the Criminal Code and in specific Laws (narcotics, terrorism, Human Rights, and so on). However, its application to corruption cases is very strict. Efforts to compare the death penalty in the Narcotics Law who are convicted of drug offenses, the death penalty in the Corruption Law are far from perfect. As we know, narcotics crimes and corruption crimes have similarities, namely extra ordinary crimes. Some of them are in several articles of Law Number. 31 of 1999 jo Law Number. 20 of 2001 concerning the eradication of corruption, only controlling prison sentences and fines.

The death penalty for corruption criminals has a facultative nature, that is, even if the Corruption Prosecutor commits his crime in certain situations, the perpetrator may not be decided with a death sentence. As we know, even though there are regulations in the corruption crime law that provide for the death penalty for corruptors, the implementation of the death penalty until now is endless and endless among legal practitioners, non-governmental organizations, academics, and the general public.²⁴

The inability to enforce the substance of the law in terms of the structure contained in Article 2 paragraph 2 of the Corruption Law which provides for the determination of the death penalty can be given to corruption convicts who have committed despicable acts with certain situations have the word "can" where it is known that the word can be interpreted in a subjective way which is interpreted can have a double meaning or is misunderstood in giving it a sentence

²³ Warih Anjari, "The Application of the Death Penalty to Convicted Persons in Corruption Case 1," t.t.

²⁴ Katimin H, "State Financial Losses or State Economy in Determining the Death Penalty in Corruption Crimes," *Sasi Journal*, 2020.

for the convict corruption. Sourced from a previous research entitled "The Implementation of the Death Penalty for Perpetrators of Corruption Crimes" researched by Muwahid, the author concluded that in the future through criminal law policies, the element of the word "can" should be changed to be imperative. This means that the element of the word "can" is changed to be sentenced to death accompanied by formulating special crimes for corruption perpetrators who are really seen as very detrimental and damaging to the life of the nation and state, both in terms of quantity, substantivity, and status of the perpetrator.²⁵

The 1945 Constitution as a constitution also guarantees the right to life of everyone (Article 28A). This creates normative tensions: on the one hand Article 2 (2) of the crime of corruption opens up the possibility of the death penalty, on the other hand the right to life is constitutionally protected. Then, stated in Article 3 of the Universal Declaration of Human Rights that "everyone has the right to life, liberty and security of person", "every individual has the right to life, liberty and security of self". Although this Article does not specifically regulate the death penalty, as it has progressed, it has been interpreted implicitly in favor of the abolition of the death penalty. In the context of international instruments aimed at abolishing the death penalty, Article 3 of the Universal Declaration of Human Rights is often cited as the legal basis for prioritizing human rights. This shows that the interpretation of Article 3 of the Universal Declaration of Human Rights implies the abolition of the death penalty as a form of partiality against universally recognized human rights values.

The imposition of the death penalty intersects with the right to life, which is a human right. Indonesia is one of the countries that upholds the right to life, which is placed on a non-derogable right. However, the criminal penalty of revocation of the right to life is still applied to the perpetrators. From the perspective of criminal policy, the imposition of the death penalty is a penal means to achieve the welfare of the community. However, Indonesia, which is a country based on Pancasila, the purpose of implementing the penalty, especially the death penalty, must be in line with the values contained in Pancasila. In applying the death penalty, it is necessary to pay attention to the harmony between the public interest violated and the imposition of the penalty.

From a human rights perspective, the death penalty raises a sharp debate. The amendment to the 1945 Constitution and various human rights instruments affirm that the right to life is the most fundamental right that must be protected. Komnas Hak Humanos emphasizes the right to life as an absolute right, the state is actually judged by its commitment to upholding human rights, not just a deterrent effect. Article 6(2) of the Convention on Civil and Political Rights stipulates that the death penalty should only be imposed for ²⁶*the "most serious crimes"* (typically gross human rights violations such as genocide, war crimes, enforced disappearances) and corruption generally does not fall into this category. The National Commission on Human Rights concluded that although the ICCPR allows for the death penalty on a limited basis, it "applies only to the most serious criminal acts (gross human rights violations)", With this analogy, they assert that the death penalty for corruptors ²⁷*is not in accordance* with international standards.

²⁵ Risva Fauzi Batubara, "The Policy of Formulation of the Death Penalty for Perpetrators of Corruption in Indonesia," *Law Reform* 10 (2014).

²⁶ Komnas HAM of the Republic of Indonesia, "Komnas HAM: The Death Penalty Is Not a Solution to Eradicate Corruption," <https://www.komnasham.go.id/index.php/news/2021/3/12/1709/komnas-ham-hukuman-mati-bukan-solusi-pemberantasan-korupsi.html#:~:text=Taufan%20lantas%20menilai%20vonis%20hukuman,terhadap%20standar%20hak%20asasi%20manusia>, March 12, 2021.

²⁷ Komnas HAM of the Republic of Indonesia.

Regarding the meaning of serious crime, no indicators were found in the ICPPR. According to the Preamble to the 2003 United Nations Convention Against Corruption (UNCAC), corruption is a serious crime. In addition, based on the considerations of the Corruption Law states that corruption crimes that have occurred widely have not only harmed the state's finances but have also been a violation of the social and economic rights of the community at large, so that corruption crimes need to be classified as crimes whose eradication must be carried out extraordinarily. Therefore, the application of the death penalty is still possible for corrupt perpetrators according to international and national regulations.

The ICW and other human rights organizations actively reject the death penalty discourse for corruption. ICW researcher, Kurnia Ramadhana, explicitly stated that the death penalty is *"contrary to Human Rights"* and does not automatically have a deterrent effect. This statement is in line with the findings of international institutions that there is no clear evidence of a link between the imposition of the death penalty and a decrease in crime. In Indonesia, Law No.39/1999 on Human Rights also states that the right to life should not be arbitrarily deprived, confirming the spirit of such a prohibition. In other words, in theory there is a tension between the interests of crime prevention and the protection of the right to life. As revealed by the Chairman of the National Commission on Human Rights, Ahmad Taufan Damanik, the application of the death penalty is not an effective solution for the eradication of corruption and is considered to violate human rights norms. Seeing the Potential for Legal Errors, the Human Rights Perspective recognizes that the judicial system is not perfect and there is a risk of legal errors. In the case of the death penalty, the wrongs cannot be corrected if it is proven that the perpetrator is actually innocent. Therefore, human rights emphasize the importance of avoiding the death penalty as a form of inverse punishment.²⁸

Empirically, data on the enforcement of corruption cases in Indonesia shows that the death penalty has never been applied. The Corruption Eradication Commission, for example, recorded thousands of corruption cases handled, but none of the convicts received a death sentence. Even the Corruption Eradication Commission once demanded a life sentence (which is the maximum requirement of the Corruption article) in the case of Chief Justice of the Constitutional Court Akil Mochtar, but did not ask for the death penalty. After the codification of corruption crimes, examples of major cases such as former minister Juliari Batubara (corruption of COVID-19 social assistance) were sentenced to 12 years, or Edhy Prabowo was sentenced to 5 years in prison (lobster seed export case). This case is related to the misuse of social assistance funds that should have been given to people in need, but were used illegally by Juliari Peter Batubara and related parties in this corruption case but far below the threshold of the death penalty. Anti-corruption activists had indeed demanded severe punishment, but legally this opportunity was difficult to open.²⁹³⁰

The ICW institute released Indonesia's gloomy corruption trend: the Corruption Perception Index (CPI) is stagnant low (score around 34, ranked 115th in the world in 2023).

²⁸ Kompas.Com, "ICW Disagrees with the Death Penalty for Corruptors, Deterrent Effect," <https://nasional.kompas.com/read/2022/05/25/19562741/icw-tak-sepakat-hukuman-mati-koruptor-sebut-tak-akan-beri-efek-jera#:~:text=JAKARTA%2C%20KOMPAS.com%20,mati%20pada%20terpidana%20kasus%20korupsi,> May 25, 2022.

²⁹ Indonesia Corrryption Watch, "The Death Penalty and the Eradication of Corruption," <https://antikorupsi.org/id/article/hukuman-mati-dan-pemberantasan-korupsi#:~:text=Tuntutan%20seumur%20hidup%20yang%20diajukan,Namun%2C%20kemudian%20muncul%20pertanyaan%20besar,> July 4, 2014.

³⁰ Team detik.com, "KPK Action Designates 2 Ministers as Suspects in a Span of 2 Weeks," <https://news.detik.com/berita/d-5283420/aksi-kpk-tetapkan-2-menteri-jadi-tersangka-dalam-rentang-2-pekan,> December 6, 2020.

The CW highlighted the weak commitment to legislation and law enforcement: for example, there is no effective Asset Forfeiture Law, the Draft Law on Restrictions on Cash Transactions has stalled, and the incomplete revision of the Corruption Law requires more measurable additional penalties (fines/apologies). Meanwhile, in the trial process, ICW observed that law enforcers tend to be lenient: "both the public prosecutor and the judiciary are more often seen as defenders of corruptors, rather than punishing them severely".³¹ The ICW's findings add to the evidence that, despite the death penalty discourse, the practice of corruption justice in Indonesia still provides opportunities for perpetrators to receive light and lenient sentences.

In formal law, the main challenge is the confusion of the terms of "certain circumstances" in the Corruption Act. The definition of when *a country is in a state of danger, national disaster, or economic crisis* is never clearly specified. Finally, enforcement agencies must "imagine" these conditions in corruption cases, this makes the application of the death penalty very rare, if not impossible, because national emergency conditions are difficult to declare for economic crimes that are latent. In court practice, proving these circumstances and the malicious intentions of the perpetrator is a major obstacle, potentially causing legal uncertainty or suspicion of due process if the death sentence is handed down progressively.

Actually, the factors that hinder Indonesia in eradicating corruption cases include: there is a lack of efficiency in terms of taking a policy of the death penalty for corruption perpetrators as only threatened in article 2 paragraph 1 and the explanation of Article 2 paragraph 2 of the Corruption Law, weak legal structures such as the Corruption Eradication Commission, the Police, prosecutors, and judges in an effort to enforce strict laws against corrupt perpetrators, as well as the pros and cons in society against the death penalty for corruption perpetrators that it is very contrary to Pancasila and human rights. Meanwhile, for the group's opinion that the death penalty should be applied to corrupt perpetrators, he said that the death penalty should be maintained to provide a deterrent effect to the perpetrator.³²³³

Politically and socially, the discourse on the death penalty for corruptors also triggers polarization. Anti-corruption activists often push for harsh punishment as a reaction of the people to the suffering caused by corruption, while human rights groups strongly resist on moral and effective grounds. For example, in public discussions, two opposing "schools" were found, some demanding the death penalty, and others warning of the implications of human rights. Governments and policymakers are under this pressure. President Prabowo's discourse statement (a kind of proposal for a peaceful fine for corruptors) caused mixed reactions: He said he would forgive the corruptors if they returned the money stolen from the state. He conveyed this in a speech to Indonesian students at Al-Azhar University, Cairo, Egypt, Wednesday, December 18, 2024, and the House of Representatives has not sought to revise the death penalty norms in the Corruption Law. In fact, Komnas HAM reminded that the focus on eradicating corruption should not ignore the commitment to international human rights standards.³⁴

³¹ Kompas.Com, "ICW Disagrees with the Death Penalty for Corruptors, Deterrent Effect."

³² AM Endah Sri Astuti, "Juridical Problems of the Application of the Death Penalty to Corruption Crimes According to Law Number 31 of 1999 Jo Law Number 20 of 2001," *Diponegoro Law Journal* 5 4 (2016).

³³ Daniel Sutoyo, "A Theological Review of the Discourse on the Implementation of the Death Penalty for Perpetrators of Corruption Crimes in Indonesia," *DUNAMIS: Journal of Christian Theology and Education* 3 (2019).

³⁴ Tempo.com, "Discourse on Peace Fines for Corruptors, Prosecutor's Commission: Must Have a Strong Legal Foundation," <https://www.tempo.co/politik/wacana-denda-damai-bagi-koruptor-komisi-kejaksaan-harus-punya-landasan-hukum-kuat-1192321>, January 10, 2025.

In terms of implementation, another challenge is the trial and execution mechanism. The death penalty is an *irreversible punishment* that requires a high level of *due process* guarantees. The absence of a death sentence to date has made the execution procedure untested, alternative punishments (such as life imprisonment or asset forfeiture) have been applied more widely. Groups that oppose the death penalty also point to practical examples, such as Komnas HAM and ICW suggesting a combination of maximum prison sentences, fines, and revocation of political rights (such as Article 10 of the Criminal Code) as options that remain onerous without violating the right to life.

Overall, the death penalty policy for corruptors faces double challenges. Legally and politically, a clear consensus is still needed on the procedures and objective considerations of the imposition of corruption, as well as the consistency of law enforcement without voting. In terms of human rights, Indonesia faces an important question: whether the application of the death penalty is still in accordance with the noble values of the constitution and international commitments, or whether it is a bad precedent highlighted by the global community. UN resolutions even advocate the abolition of the death penalty. Thus, any discourse on the application of the death penalty for corruption must be faced with an in-depth study of the normative implications and values of the state of law and human rights, so that criminal policies are truly effective and fair.

The formulation of the death penalty policy against the perpetrators of corruption crimes in Indonesia in the future can be enforced with certain conditions, such as the obligation of the perpetrator and his family to hand over all their property. This provision is adjusted to the principle of proportional justice to the impact caused by corruption crimes on the state, economy, and social conditions of the community. The application of this exception to the death penalty can be analyzed through a penal model that focuses on the value of economic losses, where the model ensures that the amount of sanctions is imposed rationally and commensurate with the losses due to acts of corruption. Ultimately, this rational approach to punishment will affirm that crime does not bring profit (crime doesn't pay).

CONCLUSION

Based on normative analysis and human rights approaches, it can be concluded that the policy of implementing the death penalty for perpetrators of corruption crimes in Indonesia faces serious challenges both juridically, constitutionally, and in practice. The provisions of Article 2 paragraph (2) of the Corruption Law, which allows the death penalty to apply only in "certain circumstances", give rise to a narrow interpretation and are difficult to apply objectively. From a human rights perspective, the application of the death penalty for corruption is contrary to the principle of protection of the right to life guaranteed by the constitution and international instruments such as the ICCPR. In addition, there is no strong empirical evidence that the death penalty is more effective in having a deterrent effect than life imprisonment or asset forfeiture. Therefore, if this policy is to be implemented, it is necessary to reformulate clearer legal norms, a strict evidentiary system, and be careful not to violate the principles of the state of law and human rights. A more realistic and just alternative is to consistently strengthen law enforcement, optimize the maximum available punishments, and encourage impoverishment of corruptors through instruments of asset confiscation and restrictions on political rights.

REFERENCES

Alias, Alima Tsusyaddya, and Suryaningsi Suryaningsi. "The Death Penalty for Corruption Perpetrators in the Perspective of Law and Human Rights." *Nomos : Journal of Legal Research* 2, no. 4 (September 28, 2022). <https://doi.org/10.56393/nomos.v1i6.601>.

- AM Endah Sri Astuti. "Juridical Problems of the Application of the Death Penalty Sanction for Corruption Crimes According to Law Number 31 of 1999 Jo Law Number 20 of 2001." *Diponegoro Law Journal* 5 4 (2016).
- Anjari, Warih. "Application of the Death Penalty to Convicted Corruption Case 1," t.t.
- Arianto Wardani, Koko, and Sri Endah Wahyuningsih. "Policy on the Formulation of the Death Penalty Law for Perpetrators of Corruption Crimes in Indonesia," t.t. [https://doi.org/Jurnal Khaira Ummah Law](https://doi.org/Jurnal%20Khaira%20Ummah%20Law).
- Coal, Risva Fauzi. "Death Penalty Formulation Policy for Perpetrators of Corruption in Indonesia." *Law Reform* 10 (2014).
- "CENDEKIA: Journal of Legal, Social & Humanities Barriers and Challenges of Death Penalty Implementation against Corruption Crimes Perpetrators in Indonesia," t.t. <https://doi.org/10.5281/zenodo.12741592>.
- Darwin Pane, Moses. "The death penalty policy is reviewed from a positive legal and human rights perspective." *Res Nullius Law Journal*. Vol. 1, p. <http://ojs.unikom.ac.id/index.php/law>.
- Dwi Putri, Kristina. "The Effectiveness of the Implementation of the Death Penalty for Perpetrators of Corruption in Indonesia." Vol. 4, 2021.
- Fariduddin, Ahmad Mukhlis, and Nicolaus Yudistira Dwi Tetono. "The Imposition of the Death Penalty for Corruptors in Indonesia in the Perspective of Utilitarianism." *Integrity: Anti-Corruption Journal* 8, no. 1 (June 25, 2022): 1–12. <https://doi.org/10.32697/integritas.v8i1.903>.
- H, Katimin. "State Financial Losses or State Economy in Determining the Death Penalty for Corruption Crimes." *Journal of the Month*, 2020.
- On the other hand, August. "The Implementation Of The Death Penalty In Corruption." *A Long Law Review*. Vol. 3, 2021. <http://m.kompasiana.com/post/read/619364/2/hukuman-mati-bagi-koruptor-bisa-segera-diterapkandi->.
- Indonesia Corruption Watch. "ICW 2022 Year-End Report." https://antikorupsi.org/id/laporan-akhir-tahun-icw-2022?utm_source=chatgpt.com, June 29, 2022.
- . "ICW 2023 Year-End Report." https://antikorupsi.org/id/laporan-akhir-tahun-icw-2023?utm_source=chatgpt.com, June 7, 2024.
- Indonesia Corrryption Watch. "The Death Penalty and the Eradication of Corruption." <https://antikorupsi.org/id/article/hukuman-mati-dan-pemberantasan-korupsi#:~:text=Tuntutan%20seumur%20hidup%20yang%20diajukan,Namun%2C%20kemudian%20muncul%20pertanyaan%20besar>, July 4, 2014.
- Khoyfung, Piong. "International Journal Of Sociology, Policy And Law (IJOSPL) The Implementation of The Death Penalty In Cases of Corruption According to," 2023. <http://www.ijospl.org>.
- Komnas HAM of the Republic of Indonesia. "Komnas HAM: The Death Penalty Is Not a Solution to Eradicate Corruption." <https://www.komnasham.go.id/index.php/news/2021/3/12/1709/komnas-ham-hukuman->

mati-bukan-solusi-pemberantasan-korupsi.html#:~:text=Taufan%20lantas%20menilai%20vonis%20hukuman,terhadap%20standar%20hak%20asasi%20manusia, March 12, 2021.

Kompas.Com. "ICW Disagrees With Corruption Death Penalty, Deterrent Effect." <https://nasional.kompas.com/read/2022/05/25/19562741/icw-tak-sepakat-hukuman-mati-koruptor-sebut-tak-akan-beri-efek-jera#:~:text=JAKARTA%2C%20KOMPAS.com%20,mati%20pada%20terpidana%20kasus%20korupsi>, May 25, 2022.

Education, Journals, and And Counseling. "Analysis of the Death Penalty as a Prevention of Corruption Crimes Based on the Perspective of Legal Effectiveness." Vol. 5, t.t.

Ramadhanty, Nadela, and Caesarani Lahay. "QISTINA." *Indonesian Multidisciplinary Journal* 3, no. 2 (2024).

Riska, Ni Putu, Chandra Dewi, Diah Ratna, Sari Hariyanto, Anak Agung, and Ngurah Wirasila. "The Death Penalty Policy for Perpetrators of Corruption Crimes in the Perspective of the Law on the Eradication of Corruption Crimes." *Kertha Speech Journal*. Vol. 10, t.t.

Soekanto, Soerjono. *Introduction to Legal Research*. Jakarta: UI Press, 2014.

Yours truly, Daniel. "A Theological Review of the Discourse on the Implementation of the Death Penalty for Perpetrators of Corruption in Indonesia." *DUNAMIS: Journal of Christian Theology and Education* 3 (2019).

Tempo.com. "Discourse on Peace Fines for Corruptors, Prosecutor's Commission: Must Have a Strong Legal Foundation." <https://www.tempo.co/politik/wacana-denda-damai-bagi-koruptor-komisi-kejaksaan-harus-punya-landasan-hukum-kuat-1192321>, January 10, 2025.

Team detik.com. "KPK Action Designates 2 Ministers as Suspects in 2 Weeks." <https://news.detik.com/berita/d-5283420/aksi-kpk-tetapkan-2-menteri-jadi-tersangka-dalam-rentang-2-pekan>, December 6, 2020.

W, Anjari. "Application of the Death Penalty to Convicted Persons in Corruption Cases." *Journal of Legal Issues*, 2020.

Yuli, Yuliana W. "The Application of the Death Penalty for Perpetrators of Corruption Crimes Based on Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption," t.t. <https://doi.org/10.37817/ikraith-humaniora.v8i1>.