

THE EXISTENCE OF THE DEATH PENALTY IN THE ANTI-CORRUPTION LAW

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DOI: 10.62567/micjo.v1i2.97

Article info:

Submitted: 27/03/24

Accepted: 25/04/24

Published: 30/04/24

Abstract

The death penalty is the heaviest criminal sanction in the criminal system in Indonesia. It can be said that this is because the death penalty takes a person's life, where the right to life is the basic right of every person. In Indonesia, the death penalty is applied to general crimes with serious qualifications and special crimes which are classified as serious crimes. One specific crime that can be sentenced to death is corruption because its impact is so dangerous for the survival of a country. This article will analyze the existence of the death penalty in anti-corruption laws. The results of this research indicate that the existence of the death penalty in anti-corruption law is specifically for corruption committed under certain circumstances. The particular situation in question is corruption carried out in an emergency situation.

Keywords : *death penalty, corruption, state of emergency*

Abstrak

Pidana mati merupakan sanksi pidana terberat di dalam stelsel pidana di Indonesia. Dapat dikatakan demikian sebab pidana mati merenggut nyawa seseorang, di mana hak untuk hidup merupakan hak dasar dari setiap orang. Di Indonesia pidana mati diterapkan pada tindak pidana umum dengan kualifikasi berat dan tindak pidana khusus yang tergolong kejahatan serius. Salah satu tindak pidana khusus yang dapat dijatuhi pidana mati ialah korupsi oleh karena dampaknya yang sedemikian membahayakan bagi kelangsungan hidup suatu negara. Artikel ini akan menganalisis mengenai keberadaan pidana mati dalam aturan undang-undang anti-korupsi. Hasil penelitian ini menunjukkan bahwa keberadaan pidana mati di dalam undang-undang anti-korupsi dikhususkan kepada korupsi yang dilakukan dalam keadaan tertentu. Keadaan tertentu yang dimaksud adalah korupsi yang dilakukan dalam keadaan kedaruratan.

Kata Kunci : pidana mati, korupsi, keadaan darurat

1. INTRODUCTION

In the National Long Term Development Plan for 2005-2025, it is formulated that the nation's ability to be highly competitive is the key to achieving national progress and prosperity. High competitiveness will make Indonesia ready to face the challenges of globalization and able to take advantage of existing opportunities (Sari, 2021) To strengthen the nation's competitiveness, long-term national development is directed, among other things, at carrying

out reforms in the field of law and state apparatus. Legal development is also directed at eliminating the possibility of criminal acts of corruption occurring and being able to handle and completely resolve problems related to corruption, collusion and nepotism (Risnain, 2014).

Legal development is carried out through updating legal materials while still taking into account the plurality of the prevailing legal order and the influence of globalization as an effort to increase legal certainty and protection, law enforcement and human rights, legal awareness, as well as legal services that have justice and truth, order and prosperity at the core in the context of improving state administration. orderly, orderly, smooth, and globally competitive.

Such a formulation indicates that corruption is a national problem which the process of overcoming continues to be pursued, and one of the efforts made is through updating legal materials, in this case statutory regulations (Muhtarom et al., 2022) This is important considering the impact of criminal acts of corruption which damage the foundations of national life in various aspects, and the process of overcoming them has been carried out based on several laws and regulations concerning Corruption Crimes, including Law 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Number 20 of 2001.

In the General Explanation of this law, it is stated that in order to achieve a more effective goal of preventing and eradicating criminal acts of corruption, this law contains criminal provisions that are different from previous laws, including the threat of the death penalty which is an aggravation of the crime (Leasa, 2020)

The formulation of the threat of the death penalty in Indonesian laws and regulations has always been a polemic that has drawn pros and cons from various circles of society. Apart from this, the threat of the death penalty in the Corruption Crime Law does not seem to have any meaning because its implementation is ignored by law enforcement officials

2. RESEARCH METHOD

This article was written using normative legal research methods. This approach to legal research uses a statutory approach. The legal materials used are primary legal materials and secondary legal materials. Techniques for collecting legal materials using library research. Legal material analysis techniques use deductive logic.

3. RESULT AND DISCUSSION

Corruption has become very widespread and has systematically penetrated all sectors at various central and regional levels, in all state institutions, both executive, legislative and judicial. Therefore, corruption is classified as an extraordinary crime. (Binaji & Hartanti, 2019) In Indonesia, in plain view, corruption cases are public consumption which can be obtained through various mass media, both print and electronic. Hardly a day passes without news about corruption cases.

This is explicitly acknowledged in the General Explanation of Law Number 20 of 2001, that corruption in Indonesia occurs systematically and is widespread so that it not only harms state finances, but also violates the rights of social and economic society at large. This condition is the basis for the government to make various efforts to eradicate corruption.

Transparency International revealed that the Corruption Perception Index (CPI) in 2010 was 2.8 and ranked 110th out of 178 countries. In 2011 it reached 3.0 and ranked 100th out of 183 countries. Meanwhile in 2012, Indonesia's CPI reached 3.2 but fell to 118 out of 182 countries (Kurnia, 2023). Corruption is carried out in various sectors, namely in tax revenues, non-tax revenues, expenditure on goods and services, social assistance, state or regional income and expenditure budgets. Several prominent cases (celebrity cases) that received great attention from the public, and required the efforts and hard work of law enforcement officials to reveal them, include tax corruption cases, the Hambalang project, driver's license simulators, and beef imports, involving tax officials, members of the House of Representatives, National Police officials, high-ranking political party officials even ministers.

The Corruption Eradication Commission revealed that criminal acts of corruption have extraordinary consequences in various aspects of people's lives, such as poverty rates, high unemployment, increasing foreign debt, and natural damage. The estimated poverty rate in Indonesia according to BPS, March 2012 was 29.13 million people or 11.96%; the number of unemployed was 7.6 million people; Foreign debt based on data from the Ministry of Finance in 2012 was 1,937 trillion. Loans amounted to 615 trillion, and debt securities amounted to 1,322 trillion. Meanwhile, forest damage amounted to 3.8 million hectares, namely those cleared and exploited illegally. This condition automatically places the criminal act of corruption as an extraordinary crime that must be dealt with using extra methods (Khairudin et al., 2021).

As an effort to overcome the criminal act of corruption as an extraordinary crime, the legislators formulated several important things, which are considered to be able to be used as tools to ensnare and have a deterrent effect on the perpetrators, namely the principle of reverse evidence and heavy sanctions, including the death penalty. The policy of formulating articles relating to these two things is of course based on thought and is motivated by the desire to eradicate criminal acts of corruption. However, this formulation policy is not followed by the application policy. Just as the principle of reverse evidence is reluctant to be applied in trials for criminal acts of corruption, judges for criminal acts of corruption are also reluctant to apply the threat of the death penalty against perpetrators of criminal acts, even though it is clear that the state has lost billions, even trillions of rupiah, and many members of society have lost the opportunity to enjoy prosperity as a result of these criminal acts.

One of the reasons why the death penalty threat is not applied to corruptors is because the formulation of the death penalty threat is followed by conditions in "certain circumstances" (Article 2 paragraph (2)). In the explanation of this Article, it is formulated that, what is meant by "certain circumstances" in this provision is intended as a burden for the perpetrator of the crime. Corruption crime if the criminal act is committed when the country is in a state of danger in accordance with applicable law, in One of the reasons for not applying the death penalty threat to corruptors is because the formulation of the death penalty threat is followed by conditions in "certain circumstances" (Article 2 paragraph (2)). In the explanation of this Article it is formulated that, what is meant by "certain circumstances" in this provision is intended as an aggravation for the perpetrator of a criminal act of corruption if the criminal act is committed at a time when the country is in a state of danger in accordance with the applicable law, at

The provisions mentioned above received a response from Artidjo Alkostar, who stated that the provisions on corruption which are carried out when the country is in a state of danger, there is a national natural disaster, a repetition of criminal acts of corruption, or the country is in a state of economic and monetary crisis, actually contradicts the eradication of corruption because the parameters are not clear. Such a statement will of course be refuted if it is confronted with the requirement for a judge to act creatively in accordance with the meaning of the provisions of Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, where judges are obliged to explore, follow and understand the legal values and sense of justice that exist in society.

Article 2 paragraph (2) of the Corruption Eradication Law, which regulates whether a corruptor can be sentenced to death, has in fact never been implemented because certain conditions have not been met by the corruptor. This indicates that, regardless of the repetition of criminal acts, the imposition of the death penalty against corruptors can only be carried out if the country is in an "extraordinary" situation, namely the country is in a state of danger in accordance with applicable law, a national natural disaster is occurring, or when the country in a state of economic and monetary crisis. An unusual condition, the parameters of which require long debate.

From the aspect of human rights, the Constitutional Court through its decision MK Number 3/PUU-V/2007 essentially states that the death penalty for serious crimes is a form of limitation of human rights. Note: Human rights violations. Apart from that, the Indonesian Ulema Council through its Fatwa Concerning the Death Penalty in Certain Crimes emphasized that Islam recognizes the existence of the death penalty, and the state may carry out the death penalty against perpetrators of certain criminal crimes. and obtain forgiveness from the victim's family, not be sentenced to death.

The two statements above clearly indicate that the imposition of the death penalty is not something that must be contrasted dichotomously with the right to life as a non-derogable right from a human rights perspective. Despite this, the debate about the death penalty will continue, because constitutionally, the 1945 Constitution of the Republic of Indonesia expressly provides protection for human rights, and therefore, taking someone's right to life, whatever form it takes, is a violation of those rights (Widayati, 2017).

The debate about the death penalty also remains reasonable, because in reality, internationally and regionally, countries in the world are being led to be in one mind and agree together to abolish the death penalty. Based on Resolution 2857 of 1971 and Resolution 32/61 of 1977, the UN has taken steps to announce the abolition of the death penalty as a universal goal to be achieved, even if it is applied in a limited way to some crimes. Several regional conventions have also been agreed upon as an effort to encourage the abolition of the death penalty, including the European Convention on the Protection of Human Rights and Basic Freedoms, and the American Convention on Human Rights. In other words, the legal system in the world is increasingly moving away from the death penalty

The abolitionist group bases its argument on several reasons. First, the death penalty is a form of punishment that degrades human dignity and is contrary to human rights. On the basis of this argument, many countries have abolished the death penalty in their criminal justice systems. To date, 97 countries have abolished the death penalty. European Union member states are prohibited from implementing the death penalty based on Article 2 of the Charter of Fundamental Rights of the European Union in 2000. The UN General Assembly in 2007, 2008 and 2010 adopted non-binding resolutions calling for global

moratorium on the death penalty. Optional Protocol II to the International Covenant on Civil and Political Rights/ICCPR finally requires every country to take steps to abolish the death penalty.

In the Indonesian criminal justice system, where law enforcement officers are often involved in corruption, as is now the case, a person is very likely to become a victim of miscarriage of justice. Therefore, to prevent miscarriage of justice, corruption defendants must be given the right to take fair legal action. And if ultimately sentenced to death, corruption convicts still have the opportunity to apply for clemency or obtain the application of the special nature of the death penalty, as formulated in the concept of the national Criminal Code.

4. CONCLUSION

The death penalty has indeed been avoided by the majority of countries that claim to be civilized nations. The Indonesian state still maintains the death penalty but does not absolutely make it a basic crime whose application takes priority. The death penalty is the only alternative to be implemented and is specifically for serious crimes. Corruption as a grave and serious crime requires serious criminal sanctions. The death penalty is still applied for cases of corruption in dangerous situations. This is because the impact of corruption is detrimental to humanity and is a violation of human rights.

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