

THE REPEAL OF INDONESIA'S DEATH PENALTY FOR CORRUPT OFFICIALS

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Abstract

The implementation of the death penalty for corruptors in Indonesia is criticized for its ineffectiveness in deterring corruption and its inconsistency with the country's commitment to upholding human rights. While some nations enforce the death penalty for corruption with minimal success, others achieve better results through preventive measures that do not involve capital punishment. The death penalty is seen as contradicting Indonesia's legal framework and international human rights obligations, as it is equated to state-sponsored premeditated murder. As an alternative, this paper proposes impoverishing corruptors by recovering misappropriated state assets and imposing restrictions on their civil and political rights, thereby preventing recidivism and reducing future harm to the state. This approach would align with human rights principles while fostering a more effective anti-corruption strategy.

Keywords: corruption, death penalty, government strategy.

INTRODUCTION

Corruption is defined as rottenness, ugliness, depravity, dishonesty, the ability to be bribed, immorality, and a divergence from holy values. Corruption is defined as willfully deviating from a position's official obligations in order to receive benefits in the form of status, riches, or money for people, close relatives, or one's own group. The definition of corruption is also formulated in Article 2 paragraph (1) of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which reads: "Any person who unlawfully commits an act of enrichment for himself, another person, or a corporation that can harm state finances or the state economy". Article 3 of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which states that "Any person who abuses the authority, opportunity, or means available to him because of his position or position which can harm state finances or the state economy, with the aim of benefiting himself or another person or a corporation". In Law No. 31 of 1999 and Law No. 20 of 2001 Concerning the Eradication of Criminal Acts of Corruption, corruption is classified into thirty forms/types of criminal acts of corruption.

These articles describe in detail the acts that can result in criminal consequences for corruption. The thirty forms/types of criminal actions of corruption can generally be categorized as follows: State financial losses, bribery, office embezzlement, extortion, fraudulent actions, procurement conflicts of interest, and satisfaction. Corruption is a severe national problem that is classed as an unusual crime with far-reaching consequences for people's lives. As a result, corruption cases must be handled precisely and thoroughly by a particular entity, in this case, the Corruption Eradication

Commission (KPK). Corruption in Indonesia is like an infection that spreads throughout the body. Corruption cases in Indonesia can be fairly high at times. In 2021, Indonesia Corruption Watch (ICW) said that the results of its monitoring of corruption cases carried out by the KPK, the Attorney General's Office, and the Police recorded 553 corruption cases with 1,173 suspects, resulting in a possible state loss of IDR 29,438 trillion in 2021.⁴ According to data from Indonesia Corruption Watch (ICW), this figure would rise by 8.63% in 2022 to 579 corruption cases with 1,396 suspects. Data was again made public by Indonesia Corruption Watch (ICW) in 2023, and this time it showed an increase to 791 cases with 1,695 suspects. Given this astounding statistic, it is not surprise that the debate over the death sentence for corruptors is still going strong because the existing penalty is thought to have no effect on discouraging corrupt behavior. Law No. 31 of 1999's Article 2 paragraph (2) permits the death penalty to be imposed on corrupt officials. The piece states, "In the event that the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed". The meaning of "certain circumstances" is defined in the explanation of the a quo article.

This provision is intended to aggravate the punishment of corrupt perpetrators if the crime is committed when the country is in danger under applicable laws, when a national natural disaster occurs, when corruption is repeated, or when the country is in an economic and monetary crisis. This indicates that under this rule, the death penalty is not immediately applicable in corruption cases unless specific conditions are met, even if the state's losses are significant.

In the midst of the discussion over whether the death penalty should be used against corruptors, the author takes a stand opposing its use. Not without reason, the urgency of this rejection stems from the fact that the death sentence is not always helpful in preventing or creating a deterrent impact for criminal actors, and it even tends to seal the door on eradicating large-scale, organized corruption instances. Furthermore, from a humanitarian perspective, Indonesia, a nation that respects human rights, naturally opposes the application of the death penalty to corruptors since it goes against the fundamental human rights principles that underpin a state of law and democracy, which it has long upheld. The author will base her argument on five different points of view: legal, philosophical, theoretical, historical, and sociological.

RESEARCH METHOD

This study employs a normative juridical method with a qualitative approach. Normative juridical research is conducted through document studies, including primary, secondary, and tertiary legal materials. Primary legal sources include the 1945 Constitution, relevant laws such as the Indonesian Anti-Corruption Law, and international human rights treaties ratified by Indonesia. Secondary legal sources consist of books, journals, legal commentaries, and research findings related to the

death penalty, corruption, and human rights. Tertiary sources include legal dictionaries and encyclopedias.

The research begins with an analysis of legal norms regarding the death penalty in Indonesia's legal system, focusing on its application to corruption cases. The approach includes statutory, conceptual, comparative, and case study methods. The statutory approach examines national and international legal frameworks governing capital punishment and anti-corruption measures. The conceptual approach explores legal theories related to punishment, deterrence, and human rights principles. The comparative approach analyzes the effectiveness of the death penalty for corruption in other countries, while the case study approach reviews specific corruption cases and their legal consequences in Indonesia.

Data collection is conducted through literature studies, where primary and secondary legal materials are gathered and analyzed qualitatively. The analysis follows a systematic, logical, and sequential approach to provide a comprehensive understanding of the research problem. This study also explores the causal relationship between capital punishment for corruptors, its effectiveness as a deterrent, and its alignment with Indonesia's human rights commitments. By examining these legal issues in depth, the research aims to propose alternative legal measures, such as asset recovery and civil rights restrictions, as more effective and human rights-compliant strategies for combating corruption.

RESULT AND DISCUSSION

Legally, Indonesia has ratified both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The ratification of these international accords has the logical consequence that the State of Indonesia is required to respect and uphold the varied provisions included therein. According to Article 3 of the Universal Declaration of Human Rights, "Everyone has the right to life, liberty, and security as an individual".

This article attempts to secure the fulfillment of human rights, namely the right to life as a gift from God. As a result, enforcing the death sentence violates Article 3 of the Universal Declaration of Human Rights. Furthermore, imposing the death penalty on corruptors violates Article 6 paragraph (1) of the International Covenant on Civil and Political Rights (ICCPR), which states, "Every human person has the fundamental right to life. This right needs to be protected by law. No one may be arbitrarily denied his or her right to life." And Article 7 of the International Covenant on Civil and Political Rights (ICCPR) stipulates, "No one shall be tortured or subjected to cruel, inhuman, or degrading treatment or punishment." In particular, no one may be subjected to medical or scientific experimentation without their free agreement". The death sentence is viewed as a cruel and brutal punishment. It also prevents the criminal from making

positive changes. As a result, imposing the death sentence on corruptors violates Article 7 of the International Covenant on Civil and Political Rights.

The Republic of Indonesia Constitution of 1945, which serves as the legal foundation for the state, includes the notion of human rights as a guarantee that the state is dedicated to upholding them. This is stated in Article 28 A of the Republic of Indonesia's 1945 Constitution, which states, "Everyone has the right to live and the right to defend his life and existence". Furthermore, it is reiterated in Article 28 I of the Republic of Indonesia's 1945 Constitution, which states: "Human rights that cannot be reduced under any circumstances are the right to life, the right to be free from torture, the right to freedom of thought and conscience, the right to religion, the right to be recognized as an individual before the law, and the right not to be prosecuted on the basis of retroactive law".

The implementation of the death penalty to corruptors is clearly inconsistent with Articles 28A and 28I of the Republic of Indonesia's 1945 Constitution. Indonesia, a country devoted to upholding its citizens' human rights, has enacted Law No. 39 of 1999 Concerning Human Rights. According to Article 9 of Law No. 39 of 1999 on Human Rights, "Everyone has the right to live, to maintain life, and to improve their standard of living". It is evident that the right to life is a right that must be upheld and not diminished in any way, as stated specifically in international accords, the constitution, and the laws that have been agreed upon as the foundation for living in our republic. Philosophically, the second principle of Pancasila addresses humanitarian issues as well. The second principle states: "Just and civilized humanity." Pancasila, as the nation's guideline and philosophy, holds a strategic and important role, serving as the identity, personality, morality, and direction of national safety. Pancasila serves as a legal ideal for law enforcement, requiring all laws to align with its values. The second principle of human values emphasizes treating others with dignity and respect, recognizing equality of rights and obligations, fostering tolerance and compassion, and defending truth and justice.

Human rights in Pancasila are based not only on individual freedom, but also on societal responsibility. Prof. Notonagoro believes that every nation, as a human group, is an individual with natural and moral rights to stand alone or live freely. The death penalty for corruption criminals is clearly inconsistent with the second principle's meaning. Repressive tactics to eradicate corruption are ineffective in creating a corruption-free country. According to the thoughts and meaning contained in the second principle, the eradication and prevention of corruption should be motivated by emphasizing human values, morality, and conscience as a highly realistic and reasonable endeavor to combat corruption. Theoretically, the death penalty contradicts Indonesia's rule of law theory and the doctrine of natural human rights, which served as the foundation for the passage of Law No. 39 of 1999 respecting Human Rights.

According to Article 1 paragraph (3) of the Republic of Indonesia's 1945 Constitution, "the State of Indonesia is a state of law".

According to Mochtar Kusumaatmadja, the concept of a state of law or a state founded on law is basically defined as power subject to the law, with everyone having the equal position before the law. According to the rule of law doctrine, all good deeds performed by rulers and people must be law-based and legally accountable in order to ensure societal justice. Julius Stahl proposed the following elements of a rule of law: recognition of human rights, legal certainty, separation or division of governmental power, law-based government, and administrative justice. In the notion of the rule of law, the acknowledgment and protection of human rights are basic elements that the state must safeguard. The protection of human rights is one of the objectives of a state of law, and the protection of citizen rights is an expression of people's sovereignty, which is a key component of the state of law and democratic notion. Human rights recognition is the first and most crucial requirement for a state of law to exist and achieve its goals. As a law-abiding state, Indonesia should preserve and defend its citizens' human rights. The application of the death penalty to corruptors clearly opposes the doctrine of a state of law, which is the polar opposite of the theory of an absolute state that disregards human rights. The guarantee of human rights is stated in the 1945 Constitution of the Republic of Indonesia, the ratification of international agreements, and Law No. 39 of 1999 concerning Human Rights, which has become positive law in Indonesia. The implementation of the death penalty for corruptors will also undermine the principle of legal certainty, which is one of the goals of the rule of law. This is because it will impede the effort to eradicate organized and systematic corruption, which has an impact on legal certainty. Human rights are known as *droits de l'homme* in French, human rights in English, and *huquq al insan* in Arabic.

Human rights are described as rights inherent in human dignity as God's creations; these rights have existed since humans were born on Earth, hence they are natural and not granted by humans or the state. Human rights, according to Baharudin Lopa, are natural rights bestowed directly by God the Creator. Human rights are fundamental rights given to and inherent in every individual by God, according to the notion of natural rights, which was begun by John Locke. These rights may not be limited in any way, at any time or from any location. According to John Locke, all persons are endowed by nature with inherent rights to life, liberty, and property, which they possess and cannot be transferred or canceled by the state without the owner's agreement. Human rights are classified into two categories: fundamental rights and derivative rights. Fundamental rights are the most basic rights that every human being born into the world has; these rights include the right to life, the right to free expression, and the right to own a certain thing. These fundamental rights cannot be restricted, curtailed, or repealed since, in addition to being a direct gift from God Almighty, they also involve the existence of humans as full beings. While derivative rights are derived

rights created by laws based on mutual agreements, they may be limited in certain instances.

As a result, the death penalty is clearly incompatible with the notion of human rights, especially as it eliminates one of the most fundamental human rights, the right to life, which should not be limited, reduced, or even extinguished. Historically, under Article 2 paragraph (2) of Law No. 31 of 1999 about the Eradication of Corruption, the death penalty has been imposed in certain cases. However, no corruption prisoner has ever been sentenced to death because certain prerequisites were not met. Several countries around the world still use the death sentence for corruptors, including China, Vietnam, Thailand, Myanmar, North Korea, and others. However, countries that use the death sentence for corruption culprits are still far from successfully eradicating corruption at its source. According to the 2023 Corruption Perceptions Index, China ranks 76th out of 180 countries with a score of 42, Vietnam 83rd with a score of 41, Thailand 108th with a score of 35, and Myanmar 162nd with a score of 20. In fact, North Korea, which has officially asserted and continues to enforce the death penalty for corruptors in its country, is ranked 172nd with a score of 17. Indonesia itself is placed 115th, with a score of 34. According to the data obtained, the death sentence for corruptors, which should have a deterrent impact and so enhance the corruption index, has not been very helpful in eradicating corruption. In fact, countries with the lowest corruption index and free of corrupt practices, such as Denmark (ranked first with a score of 90), Finland (ranked second with a score of 87), and New Zealand (ranked third with a score of 85), do not use the death penalty for corruptors at all. As a result, the death sentence is ineffective in rooting out and eradicating corruption. As a result, the abolition of the death penalty for corruptors will undoubtedly have a positive sociological impact by fulfilling the guarantee of human rights stated in the international convention on human rights, the Indonesian constitution, and Indonesian laws and regulations as the State's responsibility to protect its citizens.

Furthermore, the elimination of the death penalty for corruptors allows the state to gather detailed evidence in order to eradicate a huge, coordinated, and systematic corruption case. Corruption eradication can then be carried out in a more effective and long-term preventive manner, yielding more significant outcomes in achieving a clean country free of corrupt activities that harm the Indonesian people. The negative impact of implementing the death penalty for corruptors is the inconsistency of the Indonesian State as a legal state that upholds human rights, which has implications for the principle of legal certainty and can also stymie efforts to eradicate corruption in major corruption cases involving multiple people in an organized and systematic manner.

CONCLUSION

The death sentence for corruptors is ineffective in eradicating and deterring corruption. The death penalty for corruptors contradicts Indonesia's commitment to

humanitarian values and the human rights covenant. Furthermore, the death sentence is regarded as premeditated murder committed by the state against its inhabitants. The application of the death penalty does not always produce a deterrent impact and is more effective at eradicating corruption; this is demonstrated by various countries that use the death penalty for corruptors but do not achieve the best outcomes for eradicating corruption.

In fact, countries that do not use the death penalty can achieve better outcomes by using a variety of preventive measures that are more efficient in eradicating corruption. The abolition of the death sentence for corruptors will have a good impact on the implementation of human rights in Indonesia, which is still in the global limelight in terms of human rights. Furthermore, the possibility to destroy corruption will be much greater than selecting to sentence corruption prisoners to death, whose knowledge might be used to eradicate corruption that is not limited to one or two persons.

The author's suggestion to convey a sense of deterrent to corruption perpetrators is to bankrupt them by retrieving all public assets lost in the corruption case without exception. This will protect the state from economic losses caused by corrupt practices that drain the state purse. Furthermore, restrictions on corruptors' civil and political rights must be imposed so that they cannot run again as leaders or government officials, preventing corrupt recidivists from repeating their mistakes and causing further harm to the state. The rights that are being discussed are civil and political rights, which John Locke refers to as derivative or derived rights because they are not original or basic rights and can be restricted under specific conditions.

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