

# PRO CONS THE EXISTENCE OF DEATH PENALTY IN CORRUPTION ACT OF 1999 IN INDONESIA

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**Abstract :** Indonesia has 71 years building his conduct on the basis of civilization and cultural independence of the nation whose ideology Pancasila and the 1945 Constitution ideals to be realized is the realization of just and prosperous life of a nation that material and spiritual / devoted to God aimed as much as possible for the prosperity of the people. In realizing this, the problem of corruption is the biggest development and welfare of the Indonesian people. The lack of deterrent effect of criminal sanctions for the culprit causing the proliferation of perpetrators of corruption on all fronts. Under penalty of death penalty for perpetrators of corruption is considered to be one of the solutions deterrent for the perpetrators. Rules of the death penalty for perpetrators of corruption still causes a lot of pros and cons on the premises. In connection with this, this paper will outline the pros and cons of the existence of the implementation of the death penalty to cases of corruption in Indonesia.

## **A. Preface**

Indonesia has 71 years building his conduct on the basis of civilization and cultural independence of the nation whose ideology Pancasila and the 1945 Constitution ideals to be realized is the realization of just and prosperous life of a nation that material and spiritual / devoted to God. Successes have been achieved. Development with a planning model that determines the priorities of first choice in the implementation of development is the creation of national stability in the life of politics and security and accompanied by sufficient economic development for nations living social necessities it also raises new problems that must be addressed.

Corruption is one word that is quite popular in the community and has been the subject of daily conversation. Nevertheless, there are still many people who do not know what corruption. In 2001 an amendment to Act No. 31 of 1999 on the Eradication of Corruption Act No. 20 of 2001. In the new Act is more described elements in the articles of the draft Criminal Law ( Criminal Code), which was originally only mentioned only in Law No. 31 of 1999.

In general, people understand corruption as something merely state loss. Whereas in Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on Corruption Eradication, there are 30 kinds of corruption. All 30 types of corruption that can basically be grouped into seven, namely: i) the financial losses of the State; ii) bribery; iii) embezzlement in office; iv) extortion; v) skullduggery; vi) conflict of interest in procurement; and vii) gratification.

Formulation of capital punishment in the laws and regulations in Indonesia has always been polemics reap the pros and cons of various circles of society. Apart from that, the threat of capital punishment in Law Corruption does not seem to mean anything because the application is ignored by law enforcement officials.

The debate on the death penalty also remains grounded, because in reality, internationally and regionally, the countries in the world is being led to be in the thought and collective agreements to abolish the death penalty. Based on Resolution 2857 of 1971 and Resolution 32/61 of 1977, the United Nations has taken steps announced the abolition of the death penalty as a universal goal to be achieved, albeit on a limited basis applied for some crimes. Several regional conventions have also been agreed in order to encourage the abolition of the death penalty, including the European Convention on the Protection of Human Rights and Fundamental Freedoms, and the American Convention on Human rights. In other words, the legal system in the world getting away from the death penalty.

The debate about the death penalty has existed since the time of Cesare Beccaria around 1780, who once declared against the death penalty because they did not mahusiawi and ineffective. The debate about the effectiveness of the death penalty, especially for corruption still occurs. This debate is based on the assumption whether the imposition of capital punishment is effective in tackling crime (corruption)? There are two groups that comprehensively put forward their arguments, both of which oppose (abolitionist) and supporting (retentionist) the death penalty.

In connection with this, this paper will outline the pros and cons How does the existence of the implementation of the death penalty to cases of corruption in Indonesia ?.

## **B. Implementation Challenges Criminal Dead on Corruption**

As efforts to control corruption as an extraordinary crime, legislators formulated some important things, which are supposed to be used as a tool to ensnare and bring a deterrent effect to the perpetrators, the burden of proof reversed and severe sanctions, including the death penalty. Policy formulation of clauses relating to both of these of course are based on thinking and motivated by a desire to eradicate corruption. However, the policy is not followed by the formulation of policy application. As the burden of proof reversed reluctant to be applied in the trial of corruption, the judge of corruption are also reluctant to impose capital punishment against perpetrators of criminal acts, although clearly state lost billions, even trillions of rupiah, and many members of the public to lose the opportunity to enjoy prosperity as a result of the criminal act.

According to the Judicial Commission Chairman Busyro Muqodas, there are three main criteria that make a decent perpetrators of corruption was sentenced to death:

1. The value of the embezzled state funds of more than Rp 100 billion and massively scale has been detrimental to the people;
2. The perpetrator of corruption of the state officials;
3. The perpetrator of corruption has been repeatedly corruption. The death penalty has been stipulated in Article 2, paragraph 2 of Law No. 31 Year 1999 on Eradication of Corruption Act which states: (2) In the case of corruption as referred to in paragraph (1) shall be done in certain circumstances, the death penalty can be imposed. In the explanation of Article 2 paragraph (2) What is meant by "particular circumstances" in

this provision is a condition that can be a reason weighting punishment for perpetrators of corruption ie when the offense is committed against the funds earmarked for coping with the hazards, natural disasters national, social unrest is widespread, the economic and monetary crisis management, and the repetition of acts of corruption. One of the causes of the non-application of capital punishment to criminals for the formulation of a sentence of death, followed by the terms of the "particular circumstances" (Article 2 (2)). In explanation of this article formulated that, which referred to the situation with the "particular circumstances" in this provision intended as a weighting for perpetrators of corruption if the crime was committed at a time of national emergencies in accordance with the legislation in force, at the time of national disaster, as the repeated corruption, or at the time of a state of economic and monetary crisis.

The abovementioned provision received responses from Artidjo Alkostar, which states that the provision of corruption committed during national emergencies, natural disasters nationwide, repetition of corruption, or the country in a state of economic and monetary crisis, even contradiction with the eradication of corruption because it is not clear parameters. Such a statement would be undisputed if confronted with the necessity of a judge to be creative within the meaning of the provisions of Article 5 (1) of Law Number 48 Year 2009 regarding Judicial Power, in which the judge shall explore, and understand the values of law and a sense of justice in the society.

Thus, the vagueness of the parameters defined above is not the reason which led up to now there has been no death penalty for corruptors in Indonesia. The stiffest sentence ever imposed against corruptors in Indonesia is a life sentence ever subjected to Dicky Iskandar Dinata that time found guilty of corruption repeatedly, the Bank Duta and Bank BNI.

### **C. Pros Cons Execution of Criminal Dead In Case of Corruption**

Article 2 (2) of Law No. 31 of 1999 on Corruption Eradication governing may be liable to the death of a corrupt person, in fact never implemented because of certain requirements are not met by the state of criminals. This indicates that, regardless of the repetition of criminal acts, the imposition of capital punishment on criminals, it can only be done if the country is in a state of "exceptional," the country was in danger in accordance with the legislation in force, is going national disaster, or at the time of a state of economic and monetary crisis. An unusual circumstances, the parameters require a long debate.

#### **C.1. Parties Pro Against Execution of Criminal Dead In Case of Corruption**

The death penalty is now being done or is imposed in people who are guilty and who are forced to accept error friend or prosecutor who accepts money to judge someone. Nowadays a lot of people who think or begin to wonder why the death penalty is very often given when violating the concept of religion.

As we know that God forgive his people that a very large mistake. Make someone dies because it is also a violation of his right not our rights as human beings. Some people argue that the death penalty is still a positive law, because the death

penalty should be imposed on death row. Attitude is based on the implementation of restrictions on rights and freedoms, which reads: "In exercise their rights and freedoms, everyone shall be subject to the restrictions set forth ... ..In fact Act, the death penalty is still listed in the Criminal Code and the Act states this.

In terms of the law itself, we know that the death penalty is a form of criminal sanction that contain the entire provisions and restrictions as well as forcing the inmate. These sanctions aim to uphold the rule of law and preventively will make people afraid of offenses that have been set. The inmate became a frightening example for everyone to commit an offense.

The purpose of capital punishment is retaliation is more prominent in primitive societies, sin against the backdrop of religious views to erase mistakes with the suffering accordingly, a deterrent to perpetrators of other crimes. The death penalty is also intended to protect the public interest and improve the criminals who commit crimes.

Those who support the death penalty, said more severe punishment makes people more wary of crimes. They also say that the death penalty in accordance with legislation that recognizes the maximum punishment is the death penalty.

The legality of the death penalty in Indonesia was not derived from the Code of Penal (Penal Code). In the Book of the Law of Criminal Law (Penal Code), the death penalty is a principal punishments mentioned in addition to a prison sentence, a shortage, and fines. The death penalty in Indonesia is regulated in Article 10 of the Criminal Code.

In Article 10 of the Penal Code which contains two kinds of punishment, the principal penalty and additional penalties. Principal punishment, consisting of: The death penalty, imprisonment, imprisonment and fines; Additional punishment consists of: Deprivation of certain rights, deprivation of certain goods and the announcement of the verdict. Procedure for execution of the death penalty stipulated in Law 2 / Pnps / 1964 is guided to date.

In the Criminal Code there are several articles containing death threats, namely Article 104 of the Criminal Code on crimes against state security (treason), Article 340 of the Criminal Code on premeditated murder, Article 111 Paragraph (2) Criminal Code of conduct relations with foreign countries so that there is a war, Article 124 paragraph (3) Criminal Code of treason in time of war, Article 124 (bis) Criminal Code of inciting and eases the melee, Article 140 paragraph (3) Criminal Code on premeditated murder of the head of friendly countries, Article 149 k paragraph (2) Penal Code and o Article 148 paragraph (2) Criminal Code of crime low and medium low, Article 444 of the Criminal Code of sea piracy that resulted in the death and Article 365 paragraph (4) of the Criminal Code allied theft with violence resulting in serious injury or death.

The death penalty has been stipulated in Article 2, paragraph 2 of Law No. 31 Year 1999 on Eradication of Corruption Act which states:

(2) In the case of corruption as referred to in paragraph (1) shall be done in certain circumstances, the death penalty can be imposed.

Rules on capital punishment against perpetrators of corruption could not be implemented because until now there has been no further implementing rules on the matter. Groups for an argument that supports the death penalty. The main reason is the death sentence give effect to prevent against public officials who commit corruption. If realized would be put to death, officials said at least will think a thousand times for corruption. corruption is an extraordinary crime that outraged humanity. Corruption is a crime against humanity that violates the right to life and human rights are not only one, but millions of people. Indonesia is one of the countries that are de jure retentionist and de facto recognize the death penalty.

## **C.2. Parties Cons Against Execution of Criminal Dead In Case of Corruption**

The debate over the death penalty continues to be the pros and cons between various circles. Counter parties considered that the death penalty is inhuman and violates human rights (HAM). Also, as a form of punishment, the death penalty is considered not to cause an educative effect.

Since a few years ago, Indonesia already has legal instruments and Act (the Act) against the enforcement of human rights (HAM) is regarded as sufficient. This can be seen by Decree Number XVII / MPR / 1998 on Human Rights, Law No. 39 of 1999 concerning Human Rights and Law No. 26 Year 2000 on Human Rights Courts.

It can be said, this is a new milestone for the Indonesian nation in human rights enforcement efforts in Indonesia. Counter parties have argued that the death penalty is a denial of the "right to life" (right to life), as guaranteed by Article 28A and Article 28I of 1945. Based on the international human rights instruments, such as the International Convention on Civil Rights and politics (International Covenant on Civil and Political rights / ICCPR), the right to life is a right that can not be reduced (non-derogable).

There are several international human rights instruments abolishing the death penalty. Among others :

- 1) *Second Optional Protocol to the International Covenant on Civil and Political Rights,*
- 2) *Protocol to the American Convention on Human Rights to Abolish the Death Penalty,*
- 3) *Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1982 (European Convention on Human Rights,*
- 4) *Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms 2002 (European Convention on Human Rights).*

Of the four instruments above, only the first instrument that is international, while the next three are regional instruments. Second Optional Protocol to the International Covenant on Civil and Political Rights (SOP), which has the power by law (entry into force) since July 11, 1991 up to now been ratified by 49 countries and signed by seven other countries. This protocol requires that the countries that have ratified them (state parties) to abolish executions and the death penalty in legislation and in practice.

Second Optional Protocol to postulate the need for the death penalty removed, with reference to Article 3 of the Universal Declaration of Human Rights (Universal

Declaration of Human Rights), which reads: "Everyone has the right to life, the right to liberty and the right to security (life, liberty, and security of person), also on Article 6 of the International Covenant on Civil rights and Politics (International Covenant on Civil and Political rights / ICCPR) which reads: "Everyone has the right inseparable and are protected by law, namely the right to life".

No one should be taken for his life arbitrarily. The Universal Declaration of Human Rights (HAM) is not a legally binding document (legally binding). Nevertheless, it is a standard guideline implementation of human rights for the citizens of the world. As to the ICCPR and the SOP are two legal instruments binding on the parties thereto (state parties).

Indonesia is one country to the ICCPR, but did not participate in the optional protocol .. ICCPR, does not prohibit the possibility of the imposition of the death penalty, where this is different from the optional protocol. Because Indonesia is not a member state of the optional protocol to the ICCPR, the death penalty criminal believed not to violate their international obligations under the ICCPR, for the treatment of the defendants sentenced to death and executed their execution based on applicable international standards.

The problem of interpretation of Article 28I (1) of the 1945 Constitution of the Article 28J paragraph (2) of the 1945 Constitution is that sedikt opposites. Article 28 paragraph (1) of the 1945 Constitution reads: "The right to life, freedom from torture, freedom of thought and conscience, freedom of religion, the right not to be enslaved, the right to recognition as a person before the law, and the right not to be prosecuted on the basis of retroactive law, is a human right that can not be reduced under any circumstances ". But Article 28J paragraph (2) of the 1945 Constitution states: "In exercise their rights and freedoms, everyone shall be subject to the restrictions established by law with the sole purpose of securing due recognition and respect for the rights and freedoms of others and to meet the demands fair in accordance with considerations of morality, religious values, security and public order in a democratic society. "

Behold, Article 28J paragraph (2) of the 1945 Constitution is an exception to Article 28 paragraph (1) 1945. If merely reading Article 28 paragraph (1) of the 1945 Constitution that, impressions and captured the first message is as though our constitution " prohibit the death penalty ", but as we read as a whole Article 28 paragraph (1) of the 1945 Constitution and Article 28J paragraph (2) of the 1945 Constitution, then one can draw a conclusion that, the right to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be prosecuted based on retroactive law, is a human right that can not be reduced under any circumstances, but the exercise of these rights can be limited and even eliminated its implementation as long as:

- a. In accordance with the law;
- b. In accordance with moral considerations;
- c. In accordance with religious values;

d. In accordance with the security and public order.

In other words, "exclusion" guarantee the rights contained in Article 28 paragraph (1) of the 1945 Constitution it is possible if based on the law, considerations of morality, religious values, for the sake of security and public order. Even more important is the death penalty is still needed because of the actions of the perpetrators themselves were no longer pay attention to the humanitarian aspects of life (both of Pancasila Sila) and life full with social justice (fifth principles of Pancasila).

From the aspect of Human Rights, the Constitutional Court by the Constitutional Court decision No. 3 / PUU-V / 2007 basically stated the death penalty for serious crimes is a form of restriction of human rights. Note: Violation of human rights. In addition, the Indonesian Ulema Council through Fatwa On Death Penalty In Specific Crime asserted that Islam recognizes the existence of the death penalty, and the state must carry out the death penalty to the perpetrators of certain criminal offenses. MUI is not explained also that in Djinayah law (Sharia law) which threatened the death penalty defendant can pay diyat (cash compensation) and gain forgiveness from the families of the victims, was not sentenced to death.

Both of the above statement clearly indicates that the imposition of the death penalty is not something that dichotomy should be contrasted with the right to life as a non-derogable human rights of the corner. Nonetheless, the debate on the death penalty will remain to be done, because constitutionally, 1945 Constitution expressly provides protection against human rights, and therefore, making a person's right to life, whatever it is in violation of these rights. Crimes related to corruption is one that can lead to misery for the society. This debate also continues on the counter is not "begin to involve themselves" on their own volition.

In light of the "consequentialist", it is irrelevant that the various crimes committed "willfully and knowingly", where there is a direct relationship of cause and effect between the intensity to take the life with the consequences of such intensity or simply "realized", where estimated that the intensity for the loss of life is not a manifestation of the previous conditions, as long as it deprives another person's life. Viewed from the angle of sociology, based on the social contract (construction of the social contract), the perpetrators have been considered waived the right to life, protected by law, to perform acts that resulted in the loss of life of others. Therefore, by "knowingly" to kill others and be aware that they can berhujung on the death penalty, indirectly they have given "consent" to be punished with the death penalty. It should be recognized that the death penalty is a life sentence and is recognized in some communities in Indonesia. Thus, the loss of life by committing corruption crimes is not lighter than killing people directly, as the perpetrators of crimes are fully aware of his actions which may result in loss of life of others. Today anti death penalty is celebrated annually on October 10. This warning is set at a congress held in Rome in May 2002 by organizations that oppose the death penalty. Until now, the implementation of the death penalty for perpetrators of corruption are not implemented in Indonesia.

Basic arguments of these two groups can be used as a reference to determine the policy of the use of the death penalty to corruption in the future. By looking at the reality that Indonesia is now in the emergency corruption because it has led to poverty

and hence undermine the right to life of millions of people of Indonesia, it is based on the consideration of a sense of justice in the society, the death penalty is still necessary to remain encapsulated in the legislation combating corruption in the future. The death penalty can be issued a strong warning to the public officials for not doing corruption. However, the death penalty should only be imposed in the form of corruption of the most evil and broad impact, and formulation should be clear and unequivocal so as to avoid multiple interpretations and doubts in its application. Moreover, the death penalty must be very careful to be downed.

In the Indonesian criminal justice system which law enforcement officers are often involved in corruption as now, someone very likely to be victims of misguided justice (miscarriage of justice). Therefore, to prevent a miscarriage of justice accused of corruption should be given the right to take legal actions were fair. And if finally sentenced to death, convicted of corruption still have a chance to seek a pardon or get special nature of the imposition of the death penalty, as formulated in the concept of the national Criminal Code.

#### **D. Comparison Other countries Conducting Criminal Dead In Case of Corruption**

Corruption is a major problem that must be faced by each country. Not surprisingly, if a country a lot of corruption, that country will become poor. That's why corruption can be considered a parasite that must be eradicated. Talking about the law for the corrupt in Indonesia, is still quite weak. So there are many officials who dared to commit this heinous act.

However, in some other countries there is the death penalty for the corrupt. In fact, they did not hesitate to show the execution in public. Nothing else it is done so that the corrupt felt wary and did not dare to corruption. Reported from various sources, here are some countries that apply the death penalty for the corrupt.

##### **1. Singapore**

Although a small country, Singapore is a developed country with a prosperous society. In addition, Singapore is a country with the lowest corruption. Not because the punishment of criminals is death. In the period 1994-1999 the death penalty has been carried out more than a thousand people. Not only corruption was sentenced to death, the murderers, drug trafficking, and other top-level crimes can the death penalty is threatened.

##### **2. Vietnam**

Vietnam is also included as one of the countries that executed the corruptors. Usually the death sentence given to state officials convicted of corruption. In 2013 then, a government official Khai Quang was sentenced to death for corruption does. According to Vietnamese law, the graft is more than Rp 283 million will is threatened the death penalty.

##### **3. North Korea**

Kim Jong-Un, the leader of the socialist-communist state appeared to have a terrible way in terms of executing the corruptors. It was evident after Kim executing his uncle, Jang Song Thaek ugly manner. Having been sentenced to death, Song was



thrown into the kennels. Inside the enclosure, there are already 120 German shepherd dogs were deliberately deprived of food for five days. When the dogs tore the body of his uncle, other officials were forced to continue to witness the sadistic murder drama. Song Thaek was executed on charges of layered, such as corruption, women play and intends to overthrow the power in the Communist Party leadership in North Korea. In addition to Song, there are many other officials who had executed a variety of reasons, not just because of corruption.

#### 4. China

China is arguably the country did most of the death penalty for corrupt officials. For anyone that corruption is more than USD 193 million, could convict the death penalty. For example, the Chinese Ministry of Railways, Liu Zhijun, who was sentenced to death for corruption amounting to USD 13 million from the period 1986-2011. In addition there are many other criminals who have been sentenced to death.

#### 5. Taiwan

In Taiwan, the execution granted to perpetrators of corruption, murder and drug trafficking. Before the year 2000 was the level of the death penalty is carried out in Taiwan is very high. However, the figure declined after several protests. In law of Taiwan, corrupt actors who will be executed only for people who take money for natural disasters or funds to address the economic crisis.

### **E. Conclusion and Recommendation**

#### **1) Conclusion**

Combating corruption requires a willingness and seriousness of all parties, the executive, legislature and judiciary. A legislation on Prevention of Corruption good would just be words die if law enforcement officers do not have a good moral integrity to tackling corruption. Basic arguments of both groups are pros and cons to be used as a reference to determine the policy of the use of the death penalty to corruption in the future. By looking at the reality that Indonesia is now in the emergency corruption because it has led to poverty and hence undermine the right to life of millions of people of Indonesia, it is based on the consideration of a sense of justice in the society, the death penalty is still necessary to remain encapsulated in the legislation combating corruption in the future. The death penalty can be issued a strong warning to the public officials for not doing corruption. However, the death penalty should only be imposed in the form of corruption of the most evil and broad impact, and formulation should be clear and unequivocal so as to avoid multiple interpretations and doubts in its application. Moreover, the death penalty must be very careful to be downed. In the Indonesian criminal justice system which law enforcement officers are often involved in corruption as now, someone very likely to be victims of misguided justice (miscarriage of justice). Therefore, to prevent a miscarriage of justice accused of corruption should be given the right to take legal actions were fair. And if finally sentenced to death, convicted of corruption still have a chance to seek a pardon or get special nature of the imposition of the death penalty, as formulated in the concept of the national Criminal Code.

## 2) Recommendation

Noting the results of the above study, some recommendations can be submitted to the government is: a. To quickly create and design a Government Regulation on the Implementation of the death penalty for the perpetrators of Corruption if that is the death penalty for perpetrators of corruption still want to apply in Indonesia. b. In addition, it is necessary to work on improving the quality of mental and soul of the community, especially against officials and officials of this country in order to prevent corrupt behavior so that corruption does not occur so bring Indonesia better prepared in realizing the noble ideals that Indonesia free of corruption 2020.

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