




# Punishment Weighting for Criminal Acts of Corruption in Indonesia

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Article Info	Abstract	
<p><b>Keywords:</b></p> <p>Weighting; Punishment; Perpetrators; Corruption; Indonesia</p>	<p><b>Introduction:</b> Corruption in Indonesia is categorized as an extraordinary crime where an extraordinary measure is needed to give a deterrent effect to the perpetrators.</p> <p><b>Purposes of the Research:</b> This study aims at analyzing the various penalties contained in the corruption eradication law as a weight in an effort to reduce the number of corruption in Indonesia.</p> <p><b>Methods of the Research:</b> This type of research is legalistic, doctrinal or normative. The approach used in normative or legalistic research include a concept approach, a statute approach, historical approach, case approach, and comparative approach. However, this study only uses legal approach since it analyzes the severity of punishment for perpetrators of criminal acts of corruption in Indonesia. The provisions used in this research are Law no. 31 of 1999 jo. Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption and other related laws.</p> <p><b>Results of the Research:</b> The punishments applied in the law range from imprisonment, additional punishment to the death penalty. In addition, the punishment applied in this provision is in the form of punishment for revocation of political rights, dismissal, and impoverishment. Therefore, the Corruption Eradication Commission does not only use the Corruption Eradication Law in applying these punishments, but also Law no.8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering.</p>	

## 1. INTRODUCTION

Corruption cases usually involve two parties, namely government officials and the community. However, from the perspective of the law, embezzlement is also considered a criminal act of corruption, although this type of corruption does not involve citizens directly since it is only carried out by one party, namely the state apparatus. Embezzlement is a form of corruption and abuse of power which has always been a mode of corruption in the most corrupt countries.

The most common cases of embezzlement include protecting business interests using political power. In some other countries, the cases found are characterized by nationalizing foreign companies, merging or separating a company, property rights, monopoly rights, and their distribution to groups which are close to those who hold power. Such cases also

occur in Indonesia, but the difference is that from all cases of corruption, only a few can be acted upon by law enforcement officers.<sup>1</sup>

The problem of the stagnation of eradicating corruption in Indonesia is actually more complex.<sup>2</sup> It is not only the problem involving the content of policies and the arrangement of laws and regulations governing the eradication of corruption itself, but also other factors that directly affect the chain of policy formulation itself. A Strong political will should be the basis so that the policy for eradicating corruption will get sufficient and effective legitimacy, but unfortunately the political will itself is still weak. This is indicated by the fact that whenever laws are enforced against perpetrators of criminal acts of corruption which involve elite groups and big names, the law enforcement become extremely challenging.

The indications that corruption is still rampant in this country can be seen from the persistent of low number of the perception of corruption in Indonesia. Several surveys conducted by independent international institutions prove this fact, although with different languages, instruments, and approaches. This situation clearly involves many parties. Efforts to eradicate corruption involve all parties. Corruption involves all parties, all sectors and all components of policy makers, both the government and other state administrations, and members of the community.

The entire potential of this country must be mobilized to eradicate corruption. Handling corruption must be done the way other general crimes are handled. Eradicating corruption is not a behavior of only government employees or officials, but it is a collective behavior that involves almost all elements in society. The practice of corruption is only possible if the formal system provides an opportunity to commit criminal acts of corruption, in addition to being supported by the complementary behavior of the stakeholders and the shareholders.

According to Satjipto Rahardjo, handling corruption in Indonesia cannot be carried out with ordinary ways (ordinary measures) using Law no. 31 of 1999 Jo. Law No. 20 of 2001, concerning the eradication of criminal acts of corruption. This is because corruption is considered as an extraordinary crime. The corruption crimes should be handled by using an extraordinary way (extra ordinary measure), namely progressive law enforcement and a strong spirit to eradicate corruption. The extraordinary nature of corruption comes from the fact that it is systematic, organized, transnational, and multidimensional in the sense that it is correlated with the system, juridical, sociological, cultural, economic of each countries.<sup>3</sup>

To give a deterrent effect to the perpetrators of corruption, the government issued Law no. 31 of 1999 Jo. Law No. 20 of 2001 concerning the eradication of criminal acts of corruption by applying heavier penalties compared to the application of punishments for other crimes. Punishment for corruption is considered very important because punishment is an instrument that cannot be separated in eradicating corruption in Indonesia. This study aims at analyzing the various penalties contained in the corruption eradication law as a weight in an effort to reduce the number of corruption in Indonesia.

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<sup>1</sup> Sadhono Hadi, Achmad Nurmandi, Trisno Rahardjo, Ulung Pribadi, "Corruption of the Local Leaders in Indonesia: An Expository Study," *Jurnal Media Hukum*, 27, no. 2, (2020): 241-255.

<sup>2</sup> T. Kurniawan & E. Prasajo, "Corruptive Behavior of the Heads of Local Governments in Indonesia," 18, no. 22 (2017): 73-87.

<sup>3</sup> Anisa Dewi Arismaya, "Facts, causes and corruption prevention: Evidence In Indonesian ministries," *Journal of Contemporary Accounting*, 1, no. 2, (2019): 95-106.

## 2. METHOD

This type of research is legalistic, doctrinal or normative. Normative research aims to find, explain, study, analyze and systematically present certain facts, principles, concepts, theories, and laws in order to find new knowledge and ideas to be suggested into a change or renewal. In this study, all documents, references, facts, theories, doctrines and laws related to health will be studied, especially those relating to the weighting of penalties for perpetrators of corruption. The approach used in normative or legalistic research include a concept approach, a statute approach, historical approach, case approach, and comparative approach.<sup>4</sup> However, this study only uses legal approach since it analyzes the severity of punishment for perpetrators of criminal acts of corruption in Indonesia. The provisions used in this research are Law no. 31 of 1999 jo. Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption and other related laws.

## 3. RESULTS AND DISCUSSION

### 3.1 Definition of Corruption Crime

The word corruption comes from the Latin *corruptio* or *corruptus*. *Corruptio* comes from the original word “*corrumpere*” which means “known earlier” or “older”. This word the adopted into many languages in the world. In English it is called “corruption” or “corrupt”. In French it is called “corruption”, and in Dutch it is called “*corruptive*”. Then from the Dutch language, the word was passed down from generation to generation into Indonesian which was then referred to as “*korupsi*”.<sup>5</sup>

Moreover, there are other terms that were created and developed by several countries and are also used to denote the circumstances and acts of corruption. For example, *Gin mung* comes from the Thai language which means “eat the nation”. *Tanwu* comes from the Chinese language which means “stained greed”. *Oshoku* comes from Japanese which means “dirty work”.<sup>6</sup> In Arabic it is known as *riswah*, which means embezzlement, gluttony, immorality, and all deviations from the truth.<sup>7</sup> In the Malaysian language, corruption is referred to as “*rasuah*” which means giving to pound the ribs or act of bribery or bribery.<sup>8</sup>

The literal meaning of corruption is rottenness, ugliness, depravity, dishonesty, can be bribed,<sup>9</sup> immorality, deviation from chastity, insulting or slanderous words or speech.<sup>10</sup> In the General Indonesian Dictionary, the definition of corruption is an act that is rotten, bad, depraved, can be bribed, or likes to be bribed.<sup>11</sup>

Corruption in Islamic law is called *ghulul* or *khiyanah* (treason),<sup>12</sup> different from the crime of theft (*sariqah*). Stealing is a criminal act of taking other people's property by stealth,

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<sup>4</sup> I Made Pasek Diantha, “*Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*,” (Jakarta: Prenanda Media Group, 2017), p. 41.

<sup>5</sup> Andi Hamzah, Andi Hamzah, *Indonesian Criminal Law* (Jakarta: Yarsif Watampone, 2010), p. 425.

<sup>6</sup> Ibid.

<sup>7</sup> Albert Siahaan, *Penyebab dan Dampak Korupsi* (Semarang: Mataram Press, 2013), p. 2.

<sup>8</sup> Nurisyal\_Muhamad, “A decade of corruption studies in Malaysia,” *Journal of Financial Crime*, 27, no. 2 (2020): 423-436.

<sup>9</sup> M. Hamdan, *Tindak Pidana Suap dan Money Politics* (Medan: Pustaka Bangsa Press, 2015), p. 30.

<sup>10</sup> Ibid.

<sup>11</sup> Poerwadarminta, *Kamus Umum Bahasa Indonesia* (Jakarta: Balai Pustaka, 1981), p. 89.

<sup>12</sup> Ahmad Warson Munawwir, *Al Munawwir kamus Arab-Indonesia* (Yogyakarta: Unit Pengadaan Buku-buku Ilmiah Keagamaan Pondok Pesantren “Al Munawwir, Krapyak, 1984), p. 1089.

either from the view of the owner of the stolen property or another party according to the opinion of the person who stole it, while the stolen property has been completely guarded (locked). Stealing is an unlawful act and is a major sin. Corruption (*ghulul*) or betraying other people's property, although not included in the category of stealing, is actually an act of betraying trust in other people's property entrusted to him. The act of betraying trust is a sin in the sight of Allah.<sup>13</sup>

In al-Nihayah's dictionary, corruption is every possible way to achieve goals. Achieving goals is the main purpose in the practice of corruption, hence every manner to achieve that purpose will be executed. This definition is taken from the Arabic word *rasya* which means "rope dipper" which is used to fetch water from a well. While the word *arasyi* is a person who gives something (eg money) to a second party who is ready to help evil deeds (*bathil*). The word *raisy* can mean a mediator or intermediary between the giver and the recipient, while *al-murtasyi* is the recipient of the money from corruption.

According to Webster's Third New International Dictionary (1961), corruption is an incentive (a government official) based on bad etiquette (such as a bribe) to cause him to violate his obligations.<sup>14</sup> Thus, the definition of corruption has a very broad scope. Corruption does not happen in the financial sector, but it can also be carried out in the political arena to get a position.

Junaidi Soeratojo defines corruption as a behavior or an action of a person who does not follow, or violate the norms and ignores affection and help in the life of the state, in society by selfishness of the individual, group, and class. A corruption perpetrators are characterized as those who does not follow or ignore self-control so that interests emerges, and physically and spiritually unbalanced, harmonious and in harmony. They put priority on external interests in the form of putting down excessive worldly desires so as to harm state finances or the interests of the community, either directly or indirectly.<sup>15</sup>

Rubio stated that corruption has three meanings:<sup>16</sup>

- a) Controlling and obtaining money from the state illegally and used it for their own interests.
- b) Abuse of power, in which the authority is misused to provide other facilities and benefits.
- c) Illegal levies which is an interaction between two people, usually officials and the community. Usually the official person provides facilities or service to people, and the people who are benefited from the facilities give compensation for what the official has done.

Syed Hussein Al-Atas, also divides the notion of corruption into three elements, but different from Rubio's definition. Hussein Al-Atas asserts that corruption includes the acts of bribery, extortion and nepotism (a kind of priority to relatives or family of his own group).<sup>17</sup> Hussein Al-Atas further formulated the sociological understanding of corruption. It is an act when a civil servant accepts a gift offered by someone with the intention of

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<sup>13</sup> *Ibid.*

<sup>14</sup> Muhtar Lubis, *Bunga Rampai Korupsi* (Jakarta: Cipta Budaya, 1981), p.86.

<sup>15</sup> Junaidi Ahmad, *Korupsi dan Dampak Negatifnya* (Jakarta: Restu Agung, 2021), p. 13-14.

<sup>16</sup> D.F.Rubio, *Corruption in Indonesia* (Jakarta: Transparency International, 2018), p. 14.

<sup>17</sup> *Ibid.*

influencing him to pay special attention to the interests of the giver.<sup>18</sup> This understanding also includes extortion or the request for gifts in return to the service or facilities the public servant provides to a particular individual.<sup>19</sup>

Based on a new understanding and dimension of crime that has a development context, according to Adji.<sup>20</sup> The notion of corruption is no longer associated with embezzlement of the country's money. Acts of bribery (bribery) and receiving commissions illegally (kickbacks) are also considered a crime. The same assessment is also given to disgraceful actions by government officials such as corruption (bureaucratic corruption), which is categorized as a form of crimes beyond the reach of the law (offences beyond the reach of the law).

Many examples are given for these crimes, such as tax evasion, credit fraud, embezzlement and misappropriation of public funds, and various other typologies of crimes referred to as crimes involving invisible crime, either due to the difficulty of proving it or the high level of professionalism of the perpetrators.

Glendoh states that corruption is realized by the bureaucratic apparatus by using state funds that should be used for the public interest for personal interests. Corruption is not always synonymous with bureaucratic disease in government agencies, even in private institutions, corruption is often carried out by the bureaucracy, as well as in cooperative institutions. Corruption is a dishonest act, an act that is detrimental and an act that damages the joints of the life of agencies, institutions, corps and workplaces of bureaucrats. In this regard, corruption can appear in various forms, including collusion, nepotism, facilitation payments, and facilitation payments.<sup>21</sup>

Glendoh stated that collusion is a secret agreement between two or more people with the aim of deception or embezzlement through conspiracy between several parties to obtain various facilities for the benefit of those who conspire. Nepotism is the wisdom of putting family, relatives and friends first. Nepotism can thrive in Indonesia because of the sticky patrimonial culture since ancient times.<sup>22</sup>

Meanwhile "facilitating money" often arises because the work procedures and bureaucracy in the government office are very convoluted and take a long time. This encourage people to use undesirable ways to make the process considerably short. Facilitation payments are a common form of corruption, especially when it is related to the issuance of particular documents such as certificates, recommendations, permits and other documents. Usually the people who bribe initially do not intend to violate regulations, they simply want the paperwork and communication to run quickly, so that decisions can be made quickly as needed.

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<sup>18</sup> *Ibid.*

<sup>19</sup> Syed Hussein Al-Atas, *The Sociology of Corruption, The Nature Function, Cause and Prevention of Corruption* (Singapore: Times Book International Singapore, 2018), p. 11.

<sup>20</sup> Indriyanto Seno Adji, *Menuju UU Tindak Pidana Korupsi yang Efektif*, accessed January 13, 2021, [http://www.kompas.com/9709/25/OPINII menu htrnl](http://www.kompas.com/9709/25/OPINII%20menu%20htrnl).

<sup>21</sup> Glendoh, *Kejahatan Korupsi*, accessed January 13, 2022, <http://www.peatra.ac.id/english/science/social/korup.html>

<sup>22</sup> *Ibid.*

Another opinion says that corruption occurs in developing countries usually triggered by an abuse of power and authority by state officials.<sup>23</sup> Abuse of power and authority can occur in developing countries, because the notion of democracy is more interpreted and determined by the rulers themselves.<sup>24</sup> In this regard, Masood Ahmed, the World Bank's director of poverty reduction and economic management, reminds poor countries that corruption is a major impediment to economic growth, as it drives investors away. Growing evidence suggests that corruption in poor and developing countries is a major impediment to investment.<sup>25</sup>

In line with that, according to Fred Bergsten, Director of the Institute for International Economics from the United States, corruption can not only disrupt the growth of the country concerned, but it can also become an obstacle in realizing world free trade. Bergsten also emphasized that from the results of research on 78 developed and developing countries, it is known that there is a direct correlation between the level of corruption and the rate of economic growth.<sup>26</sup> The cleaner a country is from corruption, the higher the chance for that country to enjoy better economic growth. Some of the corrupt practices that Bergsten highlighted that were quite prominent were the non-transparent tender process for government procurement and bribery in government contracts.

## 3.2 Punishment and Severity of Sentences in Indonesia

### 3.2.1 Theory and Types of Punishment

In the aspect of Indonesian criminal law, the concept of punishment in criminal law is based on the theory of punishment in retaliation, deterrence and prevention.<sup>27</sup> However, there are also those who think that the formulation of punishment in criminal offenses is based on three basic aspects, namely: prevention (preventive), retribution (retribution) and deterrence (deterrence).<sup>28</sup> Satochid Kartanegara and some experts suggest that there are three theories of punishment in criminal law. First theory is called Theory of Retaliation (absolute, *vergeldings* theory).<sup>29</sup> According to this theory, if an offender commits a criminal act that causes damage and harm to another person, he or she deserves retribution in the form of suffering as severe as the consequences caused by his actions, so that every crime must be followed by a punishment.

The second theory is the Relative Theory or Theory of Goals (*doeltheorien*). This theory is based on the principle of imposing criminal penalties in order to organize public order

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<sup>23</sup> Mugirahardjo, *Korupsi Dalam Menyongsong Era Liberalisasi*, accessed January 13, 2021, <http://www.suarapembaruan.com/News/1997/02/250297/OpEd/opdO1/opd01.html1>.

<sup>24</sup> V. Alvionita, *Pengaruh tersangka operasi tangkap tangan Komisi Pemberantasan Korupsi terhadap elektabilitas Mustafa*, Universitas Islam Negeri (UIN) Raden Intan (Lampung: Cendikia, 2019), p. 45.

<sup>25</sup> Media Indonesia Online, *Korupsi Membuat Investor Menyingkir, Pertemuan Bank Dunia-IMF Ditutup*, accessed January 13, 2021, <http://www.rad.net.id/online/mediaind/publik/9709/26/MIOI-04.26.html>.

<sup>26</sup> Kompas, *Tingkat Korupsi Indonesia Nomor Tiga*, accessed January 13, 2019, <http://www.kompas.com/9604/10/LN/ting.html> dan lihat dalam talian Kompas (1996) "WTO Bahas Isu Korupsi," <http://www.kompas.com/9604/25/UTAMA/wtob.html>.

<sup>27</sup> Mark Warr, Robert F. Meier and Maynard L. Erickson, Norms, Theories of Punishment, and Publicly Preferred Penalties for Crimes, *The Sociological Quarterly*, 24, no. 1, (1983): 75-91.

<sup>28</sup> Dave McRae, "Indonesian Capital Punishment in Comparative Perspective," *Bijdragen tot de Taal-, Land- en Volkenkunde*, 173, no. 1 (2017): 1-22.

<sup>29</sup> Topo Santoso, "Parties to Crime: Development and Comparison," *Indonesian Comparative Law Review*, 2, no. 2 (2019): 67-73.

which aims to form crime prevention.<sup>30</sup> The form of this crime is different: frightening, repairing, or destroying. Then distinguish between general and special prevention. General prevention requires that people in general do not commit offenses. Third is the combined theory (*verenigingstheorien*).<sup>31</sup> The combined theory is a combination of absolute theory and relative theory that combines the retaliation and defense of the legal order of society. In this theory, the retaliation element and the defense of orderly society cannot be ignored. According to Wirjono Prodjodikoro, the lawmakers, prosecutors, and judges do not need to choose one of these three types of criminal law theories in carrying out their duties.<sup>32</sup>

The aforementioned theories generate different types of punishments. Article 10 of the Criminal Code, for example, stipulates various types of punishment, such as:

- 1) Principal crime:
  - a) Death Penalty;
  - b) Imprisonment;
  - c) Criminal Cage;
  - d) Criminal fines;
  - e) Coverage.
- 2) Additional Crime
  - a) Revocation of Certain Rights;
  - b) Confiscation of certain goods;
  - c) Announcement of Judge's Decision.

Based on the above provisions, special laws outside the Criminal Code also apply the same punishment in different forms and qualities. For example, Law no. 31 of 1999 Jo. Law No. 20 of 2001 concerning the Eradication of Corruption applies various punishments such as imprisonment, the death penalty and additional penalties. However, the concept of punishment continues to change with the times. Currently, the most punishment for perpetrators of criminal acts of corruption are still prison sentence, but prison sentences do not seem to be very effective because perpetrators of corruption crimes can get luxurious facilities at the Correctional Institution. Therefore, currently impoverishment penalties are being developed in addition to the death penalty, imprisonment and other additional penalties.

### 3.2.2 Weighting Punishment for Corruption Crime

The proliferation of corruption crimes in our country certainly has negative effects, not only on the state, but also on the wider community. In addition to damaging the performance of the government bureaucracy, the crime of corruption has also caused tremendous destruction to the nation, especially to the character and morality of the next generation of this nation. This means that corruption that has been happening so far is not only detrimental to the state's finances, but has also been a violation of the social and economic rights of the community at large, so that corruption is classified as a crime whose eradication must be carried out in an extraordinary manner.

The attempts of corruption eradication nowadays can no longer be done using ordinary (conventional) legal instruments, but in an extraordinary way such as categorizing

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<sup>30</sup>Dali Mutiara, *KUHP Indonesian Criminal Code (Wetboek van Strafrecht voor Indonesia, which has been amended)*, Seventh Edition (Jakarta: Suar, 1951), p. 40.

<sup>31</sup> Ibid.

<sup>32</sup> Ahmad Marzuki, *Hukum Pidana Indonesia*, Third Edition, (Bandung: Refika Aditama, 2003), p. 117.

corruption as a crime against humanity, which is also handled using instruments, technical, and procedural regulations on human rights violations. That way, corruption is no longer a domestic problem of a country but is everyone's business without being limited by state and nation barriers. Therefore, nations in the world have the right to participate in fighting against it and consider it as a crime that must be fought together.

Corruption has been a latent danger that is difficult to eradicate. The existence of laws and the culture of shame that once became the character of the people of Indonesia, are still not able to provide shock therapy for people who commit crimes of corruption in this country. It can be said that corruption has become a source of disaster or crime (the roots of all evils) which are actually relatively more dangerous than terrorism.

Based on the above explanation on the danger of corruption, it is necessary to change the nomenclature of punishment for perpetrators of corruption especially regarding the types of the sanctions for corruption crime. Almost all theories regarding punishment have been reflected in Law no. 31 of 1999 Jo. Law No. 20 of 2001 concerning the Eradication of Corruption Crimes. This paper will discuss further several types of sanctions for Corruption Crimes where in quantity the punishment for corruption perpetrators is heavier than the punishment for other criminal acts, including the following:<sup>33</sup>

#### a. Death Penalty

The death penalty is one of the types of heavy penalties for perpetrators of corruption in Indonesia. Indonesia is one of the countries that still maintain the death penalty in its positive legal system. The death penalty is even included in laws of different kinds.<sup>34</sup> However, as a country that upholds human rights values, the state applies the death penalty specifically, carefully, and selectively.<sup>35</sup> The application of the death penalty is philosophically recognized and accommodated by the concept of a state based on *Pancasila*, although later it is possible that the death penalty may be special or a conditional sentence.

In juridical terms, the application of the death penalty in Indonesia is indeed justified. This can be traced from several articles in the Criminal Code (KUHP) which contain the threat of the death penalty. Outside the Criminal Code, there are at least six laws and regulations that carry the death penalty, such as the Narcotics Law, Anti-Corruption Law, Anti-Terrorism Law, and the Law on Human Rights Courts, the Intelligence Law and the Law on Human Rights. State Secrets Act. In addition, philosophically, the application of the death penalty is also recognized and accommodated by the concept of the state law of *Pancasila*. This shows that the death penalty in Indonesia still exists in the laws and regulations in Indonesia. Moreover, executions of the death penalty in Indonesia have shown an increasing trend since the reform era.<sup>36</sup>

Considering the negative impact caused by the crime of corruption, a death penalty does not seem an exaggeration. The consideration is that this crime has caused tremendous

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<sup>33</sup> Siti Jahroh, Reaktualisasi Teori Hukuman Dalam Hukum Pidana Islam, *Jurnal Hukum Islam (JHI)*, Volume 9, Nomor 2, Desember 2011, hlm. 189-203; M. Ali Zaidan, Norma, Sanksi dan Teori Pemidanaan, *Jurnal Yuridis*, Vol. 1, No.1, Juni 2014, hlm. 107-115.

<sup>34</sup> Muhammad Hatta, Perdebatan Hukuman Mati di Indonesia: Suatu Kajian Perbandingan Hukum Islam dengan Hukum Pidana Indonesia, *Jurnal Miqot*, Vol. 36, No. 2, 2012, hlm. 320-341.

<sup>35</sup> Todung Mulya Lubis dan Alexander Lay, *Kontroversi Hukuman Mati; Perbedaan Pendapat Hakim Konstitusi*, Gramedia Kompas, Jakarta, 2007, hlm. 335.

<sup>36</sup> Todung Mulya Lubis dan Alexander Lay, *Kontroversi Hukuman Mati; Perbedaan Pendapat Hakim Konstitusi*, Gramedia Kompas, Jakarta, 2007, hlm. 335.



destruction for the survival of the nation. The future generation will suffer and bear the consequences. Indonesia has become cornered and humiliated in the eye of the international world due to the rampant culture of uncontrolled corruption that undermines all aspects of life such as economy, law, culture, government and so on.

In the attempt of eradicating corruption, the provision for the death penalty has been stipulated in Article 2 paragraph (1) of Law no. 31 of 1999 Jo. Law No. 20 of 2001 concerning the Eradication of Corruption Crimes. In that provision it is stated that a death penalty may be imposed on anyone who unlawfully commits an act of enriching himself or another person or a corporation that can harm state finances or the state economy. The provision for the death penalty is precisely regulated in Article 2 paragraph (2) of Law no. 31 of 1999 Jo. Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, which stipulates that 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. This provision has multiple interpretations because it does not clearly explain the meaning of "certain circumstances."

The amendment of the explanation of Article 2 paragraph (2) of Law Number 20 of 2001 against Law Number 31 of 1999 describes what is meant by "certain circumstances" in Article 2 paragraph (2) is a condition that can be used as a reason for aggravation of punishment for the perpetrator. It is a condition where a criminal act of corruption is committed on funds that should be designated for the management of emergency situations, national natural disasters, overcoming the effects of widespread social unrest, handling monetary crises, and handling criminal acts of corruption.

The sentence "certain circumstances" with the details as mentioned in the explanation of article 2 paragraph (2) above, is a punishment weighting that can only be imposed specifically on perpetrators who commit criminal acts of corruption as referred to in Article 2 paragraph (1). Because it is a punishment that can be imposed, it is not necessary to prove the perpetrators of corruption crimes that the perpetrators knew of certain circumstances with the details as mentioned above at the time of committing a corruption crime.

Based on the provisions contained in Article 2 paragraph (2) above, the death penalty can be applied, if corruption is committed in certain circumstances. Since what is used is the word "can" in Article 2 paragraph (2), the imposition of the death penalty on perpetrators of corruption is facultative. This means that even though the criminal act of corruption is carried out under certain circumstances as referred to in Article 2 paragraph (2), the perpetrator of corruption as referred to in Article 2 paragraph (2) may not be sentenced to death.<sup>37</sup> The editor in the formulation of the article that uses the word "can" is subjective in nature and opens up opportunities for misinterpretation in order to alleviate the perpetrators of corruption. The state of the law on eradicating corruption in such a way has made the fire of the corruption movement even more intense, while the fire of the anti-corruption movement has dimmed.

Either viewed from the humanity perspective or legal perspective, the application of the death penalty for perpetrators of corruption both legally and humanly can be justified eventhough its application has very strict limitations. However, when viewed from the consequences, the perpetrators of corruption crimes deserve the death penalty because it is

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<sup>37</sup>Ridwan Islamil, *Substansi Undang-Undang Pemberantasan Tindak Pidana Korupsi* (Jakarta: Sinar Grafika, 2018), p. 12.

related to the deprivation of the welfare rights of the wider community. If the death penalty has no implications or is of no value to the perpetrator, then its value lies in its effect on others as a general deterrent.<sup>38</sup>

## b. Imprisonment

Imprisonment is one of the types of crimes contained in the criminal law system in Indonesia, as stated in Article 10 of the Criminal Code which states that the punishment consists of: The main crime, which includes the death penalty, imprisonment, confinement and fines; and additional penalties, which include: revocation of certain rights, confiscation of certain goods and announcement of judges' decisions. In practice, imprisonment according to Article 12 paragraphs (1) and (2) of the Criminal Code consists of: life imprisonment, and imprisonment for a certain time.

Imprisonment is one of the types of criminal sanctions that are most often used as a means to tackle the problem of crime. According to Lamintang, imprisonment is a crime in the form of restriction of the freedom of movement of a convict, which is carried out by closing the person in a correctional institution. This type of punishment also requires the person to obey all regulations that apply in the correctional institution.<sup>39</sup> Meanwhile, Roeslan Saleh stated that imprisonment is the main crime among the crimes of independence loss, and imprisonment can be imposed for life or temporarily.<sup>40</sup>

There are interesting things in determining the types of punishment in Law no. 31 of 1999 Jo. Law No. 20 of 2001 concerning the Eradication of Corruption Crimes. For example in the form of language editorial. Each type of punishment in these provisions no longer uses the word "maximum", but what is used in every decision on the provision of punishment for perpetrators of criminal acts of corruption is "minimum or the shortest".

The word "minimum or the shortest" is important in defining the punishment for the corruption perpetrators because the word "maximum" used before allow for that change in which a 5 year sentence in prison can become 1 year or 2 years in prison. With the use of word "a minimum 5 year sentence" the judge cannot impose a sentence below 5 years in prison, because it means 5 years the shortest.

In the aspect of eradicating corruption in Indonesia, there are many formulations of imprisonment in Law no. 31 of 1999 Jo. Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, such as:

- 1) Life imprisonment or imprisonment for a minimum of four years and a maximum of 20 years and a fine of at least Rp. 200,000,000.00 and a maximum of Rp. 1,000,000,000.00 for any person who are against the law, committing an act of enriching himself or another person or a corporation that could be detrimental to the state finances or the state economy (Article 2 paragraph (1));
- 2) Life imprisonment or imprisonment for a minimum of one year or a fine of at least Rp. 50,000,000.00 and a maximum of Rp. 1,000,000,000.00 for every person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity, or advice available to him because of his position or

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<sup>38</sup> Khaeron Sirin, "Penerapan Hukuman Mati Bagi Pelaku Kejahatan Korupsi Di Indonesia: Analisis Pendekatan Teori Maqāshid Al-Syari'ah," *Jurnal Hukum Islam*, 12, no. 1, (2013): 71-92.

<sup>39</sup> P.A.F. Lamintang and Franciscus Theojunior Lamintang, *Fundamentals of Criminal Law in Indonesia*, Second Edition, (Jakarta: Sinar Grafika, 2019): 605.

<sup>40</sup> Ibid.

- position which could be detrimental to the state finances or the state economy (Article 3);
- 3) Imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 250,000,000.00 (two hundred and fifty million rupiah) for every person who commits a criminal act as referred to in Article 209 of the Criminal Code (Article 5);
  - 4) Imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and/or a fine of at least Rp. 750,000,000.00 (seven hundred and fifty million rupiah) for every person who commits a criminal act as referred to in Article 210 of the Criminal Code (Article 6);
  - 5) Imprisonment for a minimum of 2 (two) years and a maximum of 7 (seven) years and/or a fine of at least Rp. 100,000,000.00 (one hundred million rupiah) and a maximum of Rp. 350,000,000.00 (three hundred and fifty million rupiah) for every person who commits a criminal act as referred to in Article 387 of the Criminal Code (Article 7);
  - 6) Imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and/or a fine of at least Rp. 150,000,000.00 (one hundred and fifty million rupiah) and a maximum of Rp. 750,000,000.00 (seven hundred and fifty million rupiah) for every person who commits a criminal act as referred to in Article 415 of the Criminal Code (Article 8);
  - 7) Imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and/or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 250,000,000.00 (two hundred and fifty million rupiah) for every person who commits a criminal act as referred to in Article 416 of the Criminal Code (Article 9);
  - 8) Imprisonment for a minimum of 2 (two) years and a maximum of 7 (seven) years and/or a fine of at least Rp. 100,000,000.00 (one hundred million rupiah) and a maximum of Rp. 350,000,000.00 (three hundred and fifty million rupiah) for every person who commits a criminal act as referred to in Article 417 of the Criminal Code (Article 10);
  - 9) Imprisonment for a minimum of 1 (one) year and a maximum of 15 (fifteen) years and/or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 250,000,000.00 (two hundred and fifty million rupiah) for every person who commits a crime as referred to in Article 418 of the Criminal Code (Article 11);
  - 10) Life imprisonment and/or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and/or a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of 1,000,000,000.00 (one billion rupiah) for every person who commits a criminal act as referred to in Article 419 of the Criminal Code (Article 12);
  - 11) Imprisonment for a minimum of 3 (three) years and a maximum of 12 (twelve) years and/or a fine of at least Rp. 150,000,000.00 (one hundred and fifty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah) for every person who intentionally prevents, hinders or thwarts directly or indirectly the prosecution and examination of a suspect or defendant or witness in a corruption case (Article 21);
  - 12) Imprisonment for a minimum of 3 (three) years and a maximum of 12 (twelve) years and/or a fine of at least Rp. 150,000,000.00 (one hundred and fifty million

rupiah) and a maximum of Rp. 250,000,000.00 (two hundred and fifty million rupiah) for every person who commits a criminal act as referred to in Article 28, Article 29, Article 35, and Article 36 of Law no. 31 of 1999 which intentionally did not provide false information (Article 22);

- 13) Imprisonment for a minimum of 1 (one) year and a maximum of 6 (six) years and/or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 300,000,000.00 (three hundred million rupiah) for violation of the provisions as referred to in Article 220, Article 231, Article 421, Article 422, Article 429, Article 430 of the Criminal Code (Article 23);
- 14) Imprisonment for a minimum of 3 (three) years and/or a fine of at least Rp. 150,000,000.00 (one hundred and fifty million rupiah) for witnesses who do not meet the provisions as referred to in Article 31 of Law no. 31 of 1999 (Article 24).

### c. Additional Crimes

Additional criminal sanctions in corruption cases have been textually stipulated in Law no. 31/1999 concerning the eradication of criminal acts of corruption, articles 17 and 18. For example, Article 18 of the Republic of Indonesia Law Number 20 of 2001 concerning the Eradication of Corruption Crimes reads as follows:

In addition to additional penalties as referred to in the Criminal Code, as additional penalties:

- 1) Seizure of tangible or intangible movable property or immovable property used for or obtained from a criminal act of corruption, including the company owned by the convict where the criminal act of corruption was committed, as well as the price of the goods that replace the goods;
- 2) Payment of replacement money in the maximum amount equal to the assets obtained from the criminal act of corruption;
- 3) Complete or partial closure of the company for a maximum period of 1 (one) year;
- 4) Revocation of all or part of certain rights or elimination of all or part of certain benefits, which have been or may be granted by the government to the convict.
- 5) If the convict does not pay the replacement money as referred to in paragraph (1) letter b no later than 1 (one) month after the court's decision that has obtained permanent legal force, then his assets can be confiscated by the prosecutor and auctioned off to cover the replacement money. .
- 6) In the case where the convict does not have sufficient assets to pay the replacement money as referred to in paragraph (1) letter b, he shall be sentenced to imprisonment for a term that does not exceed the maximum penalty of the principal sentence in accordance with the provisions of this law and the length of the sentence has been determined in the court's decision.

The revocation of certain rights is a breakthrough to provide a deterrent and fearful effect by using additional punishment articles. The certain rights referred to are the right to hold office in general or certain positions as regulated in Article 35 paragraph (1) number 1 or active and passive voting rights in elections held based on general rules as stated in Article 35 paragraph (1) number 3 of the Criminal Code. Additional penalties in corruption cases must be understood as part of efforts to punish those who violate the law. In this case the law that has been violated is a criminal act of corruption.

Additional penalties have several differences from the main criminal. The differences include:<sup>41</sup>

- 1) The imposition of one of the main types of crime is a must or imperative. Meanwhile, additional penalties are facultative. If in a trial it is proven that the defendant is guilty legally and convincingly, the judge must impose one of the main penalties according to the type and the maximum limit of the formulation of the crime that was violated. The imperative nature of one criminal act is mentioned in the formulation of the crime. There are two possibilities; (1) being threatened with one of the main crimes so that the judge inevitably has to impose a crime according to the formulation or, (2) a crime that is threatened by two or more types of principal crimes so that the judge can choose one. For example, in Article 2 paragraph (2) of the PTPK Law, it is explained about choosing the type of imprisonment, for life or for a certain period of time between four years to 20 years. In the additional punishment, the judge is allowed to impose the additional punishment or not to the violator. For example, a judge may impose an additional penalty under Article 18 paragraph (1) of the PTPK Law in case it is proven that the convict have violated Article 3 of the PTPK Law. Although the principle of imposing additional penalties is facultative, there are some exceptions, such as Article 250 of the Criminal Code;
- 2) The imposition of the main type of punishment must coincide with the additional punishment (stand-alone), while the additional punishment must coincide with the main punishment;
- 3) The execution of main type of punishment imposed is still carried out if it already has legal force, while the additional punishment is not. For the main punishment, it is necessary to carry out the execution of the sentence of the crime, except for the main sentence with conditions (article 14a) and the specified conditions are not violated. In additional penalties, for example, the wait for the announcement of the judge's decision;
- 4) The main punishment cannot be imposed cumulatively, while additional penalties can. However, it can be deviated by several laws, including the PTPK Law.

One of additional sentences that is very contradictory is that the judge imposes an additional sentence in the form of revocation of political rights. There are different opinions regarding the decision to revoke political rights. According to Member of Commission III of the DPR, Bambang Soesatyo, the revocation of political rights cannot be revoked, because it violates the human rights. The right in participating in politics is the most basic right unless corporal punishment is increased. Aligned with what Bambang Soesatyo said, Mahfud MD also argues that revocation of political rights is wrong and a bit exaggerated, because based on the Criminal Code (KUHP), people who are sentenced to more than five years in prison cannot hold office. All laws governing public office has been set like that, therefore, there is no point to include it in the verdict.<sup>42</sup>

Those who strongly agrees with the revocation of political rights believe that it will provide a deterrent effect on corruption convicts to commit corruption and also the fear of

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<sup>41</sup> Inggrid Pili, "Hukuman Tambahan Dalam Putusan Pengadilan Tindak Pidana Korupsi," *Lex Crimen*, 6. no. 6 (2015): 169-79.

<sup>42</sup> Haliva Muharosa, "Tinjauan Yuridis Terhadap Pencabutan Hak Politik Bagi Terpidana Korupsi Di Indonesia," *JOM Fakultas Hukum*, III, no. I (2016): 1-15.

corruption for every person or state official. As in the case of corruption which involves Inspector General of Police Djoko Susilo which is the SIM simulator corruption case<sup>43</sup> and the case of the Prosperous Justice Party (PKS) politician, Lutfi Hasan Ishaq, in the bribery case regarding the beef import case within the Ministry of Agriculture.<sup>44</sup>

One of the interesting things about the decision is the additional penalty in the form of revocation of the right to vote and be elected as public officer. Djoko Susilo is the first corruption convict to receive an additional criminal verdict of revocation of the right to vote and to be elected to public office. Lutfi Hasan Ishaq received an additional criminal verdict in the form of revocation of the right to be elected. Even though the additional crime has been contained for a long time in the Corruption Crime Act and the Criminal Code (KUHP), the judges have never applied it in corruption cases before.

The revocation of certain rights is only for crimes that are expressly determined by law that the offense is punishable by additional penalties. The length of time for the revocation of certain rights is life imprisonment, life imprisonment. As for the imprisonment for a minimum of two years and a maximum of five years, it can be longer than the main punishment.

According to the above understanding, the status of a public official who commits corruption is not immediately revoked of his rights before a judge's decision is made. The judge's decision in his decision must clearly state that in addition to the main punishment; additional penalties are also given in the form of revocation of certain rights. Here, an active role of judges is needed, to immediately provide additional penalties in each of their decisions, especially to the perpetrators of corruption, considering that corruption is very dangerous and can threaten the life of the nation and state.

The problem of implementing additional penalties, confiscation of movable property and refunding state financial losses is greatly influenced by the value of the calculation of state financial losses. This help measuring the cost and losses the state must recover. Moreover, to obtain an accurate and valid value, an appropriate and legal procedure should be applied. This is one of the problems of implementing "additional penalties" aspects of the confiscation of property and wealth and the return of state financial losses. On the other hand, because its position is tentative or optional, it can be an opportunity for abusive of power within the formulation, determination and court decision process regarding the qualification of additional penalties.

#### 4. CONCLUSION

Corruption is considered as an extraordinary crime that can lead the damage of the life of a nation. The negative impact of corruption can hinder the development of democracy and reduce government accountability, lower the quality of public services, create a bad law enforcement atmosphere, degrade the legitimacy of government, and hinder economic development due to the distortions and high inefficient that it caused. Therefore it is deemed as a threat to public welfare, and even gives a bad image of the country. This then create the distrust amongst the foreign investors that decrease their willingness to invest in Indonesia.

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<sup>43</sup>R. Nazriyah, Kewenangan Komisi Pemberantasan Korupsi dalam Penyidikan Kasus Simulator SIM (Kapolri VS KPK), *Jurnal Hukum Ius Quia Iustum*, 19, no. 4 (2012): 586-606.

<sup>44</sup>Hani Faurizka, Sunarto Sunarto & Adi Nugroho, Framing Analysis of Beef Import Quota Bribery Case in Partai Keadilan Sejahtera (PKS) within The Koran Tempo, *Jurnal Interaksi Online*, 2, no. 1, (2014): 1-5.

This situation is exacerbated by the low sense of shame and morale of state administrators in carrying out development so that all aspects create a corrupt system that tend to only benefits certain groups. To give a deterrent effect to perpetrators of corruption, the government has made significant changes on the punishments both quantitatively and qualitatively. In Law no. 31 of 1999 Jo. Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, quantitative punishments for perpetrators of criminal acts of corruption are very severe such as imprisonment for a certain period of time, life imprisonment and death penalty. Meanwhile, qualitative punishments are more focused on limiting the space for movement and confiscation of the assets of perpetrators of corruption crimes so that the punishments applied are punishments for revocation of political rights, dismissal, and impoverishment. It is hoped that the heavier penalties for perpetrators of corruption crimes can have a deterrent effect; therefore, the number of corruption case in Indonesia can be reduced.

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