Jurnal Tata Kelola Hukum

Vol 8 No 4, April 2024
EISSN : 24406130

IMPLEMENTATION OF DEATH PENALTY FOR CORRUPTION CASES IN INDONESIA

Hadi Supriyanto[1], Safrin Salam[2], Hasirudin Hasri[3]
hadijembat@gmail.com[1], safrinjuju@gmail.com[2], alifhasirudin@gmail.com[3]
Universitas Muhammadiyah Buton

Abstract: *The most important part of law enforcement that attracts a lot of attention is corruption crimes. Regulations related to corruption were first regulated in Military Ruler Regulation Number PRT/PM/06/1957 until the issuance of Law No. 31 of 1999. In its journey, corruption law enforcement still leaves many questions and concerns among the public, where corruption is increasingly rampant, massive and has entered the private sector. Of all the sentences handed down by judges in corruption trials throughout Indonesia, not a single defendant has been sentenced to death, even though the actions they committed have clearly harmed the State and the people. Starting from this anxiety, this research was conducted to answer the main issues related to the death penalty in corruption cases in Indonesia from a law and order perspective. A normative approach with a conceptual approach is used to produce solution answers so that judges do not need to hesitate in handing down death sentences in corruption trials.*
Keyword: *Legal Elements in Criminal Sanctions, Judge Compliance, Judge Freedom.*

INTRODUCTION

One of the most dangerous social diseases is corruption. Nowadays corruption infects much human behavior, both openly and secretly. In fact, it is not uncommon for corruption to be displayed in a happy face offering public services. Licensing mafia to case mafia, but sometimes corruption also comes with a violent face, wearing a uniform and carrying a weapon and even being equipped with a set of authorities in the name of laws and regulations. This phenomenon is very disturbing for society, especially for people who are marginalized by economic problems. Corruption is a frightening specter for development and people's welfare. Corruption is an act that is very detrimental to the country. Corruption results in slowing the country's economic growth, decreasing investment, increasing poverty and increasing income inequality. Corruption can also reduce the level of happiness of people in a country. The strong desire of all Indonesian people to eradicate corruption was expressed in the 90s, when the DPR together with the Government passed Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. Many expectations have developed after the publication of this Law, but in the course of its implementation, to this day corruption is still a scourge in the government's efforts to improve the welfare of its people. Based on Corruption Perception Index data (Corruption Perception Index/IPK) for 2022, Indonesia received a score of 34 with a ranking of 110 out of 180 countries. This indicates that the regulations governing the eradication of corruption have not been fully effective in eliminating corrupt behavior in Indonesia, on the other hand, until now not a single perpetrator of a criminal act of corruption has been legally and convincingly proven to have been sentenced to the death penalty. Even though there is no research that explains the death penalty and its relationship with reducing crime rates, at least the death penalty is a deterrent factor in overcoming the high problem of corruption. This is something that needs to be studied.

Formulation of the Corruption Offense

Effective efforts to eradicate corruption have been eagerly awaited by the public for a long time, and efforts in this direction have also been carried out from time to time. Recorded in 1957 and 1958 Efforts to eradicate corruption have begun, where these efforts are a step in supporting the emergency situation that is being implemented. The term corruption as a juridical term was only used in 1957, namely with the existence of a Military Ruling Regulation which applied in areas controlled by the Army (Military Regulation Number PRT/PM/06/1957). Siska Trisia explained The meaning contained in the Military Ruler Regulation Number PRT/PM/06/1957, the formulation of criminal acts of corruption in this regulation only mentions 'acts' without requiring the existence of 'unlawful nature' or 'crimes' or 'violations', even though it also contains elements 'state losses' as the determining element. Based on the analysis carried out by Siska Trisia, ideally the element of state loss as a legal element must be explained in detail regarding the way the loss was carried out, in terms of the limitative loss, the amount of loss that can be sentenced to death. Corruption always leads to a certain amount of money, this is what law designers should pay attention to as to how the death penalty can be imposed by a panel of judges. Meanwhile, non-legal factors should be avoided because they will be subjective. In Law No. 31 of 1999 as amended by Law No. 20 of 2001, the formulation of criminal offenses for corruption is regulated in 13 articles and formulated in 30 forms/types of corruption. It's just that the regulations as stipulated do not specifically determine the limitations on which the death penalty can be sentenced.

Obedience

Based on the fact that in the Anti-Corruption Law there are non-legal requirements when the death penalty is imposed, even though the judge has independence in deciding criminal cases. Judges are strictly bound by the laws that apply positively. This conflict often causes unrest among the public, who sometimes say that judges do not take into account the sense of justice that exists in society. Doctrinally, judges have independence in deciding a case. The judge who will decide a case cannot be intervened or pressured by any party. A judge who is very independent, impartial in carrying out his duties in deciding a case in court (within the exercise of the judicial function). The judge's freedom is an important authority inherent in the individual judge where the judge functions to apply the text of the law to concrete events, not just substantive, but also to provide the right interpretation of the law in order to straighten out concrete legal events so that the judge can freely provide judgments. legal assessment and interpretation. The existence of a judge's decision or commonly referred to by the terminology "court decision" is very necessary to resolve a case. When viewed from the vision of the judge who decides the case, the judge's decision is the "crown" as well as the "culmination" and "closed deed" reflecting the values of justice, truth, mastery of law and facts, ethics and morals of the judge concerned. According to Sudikno Mertokusumo, a judge's decision is a statement that the judge, as an authorized official, pronounces at the trial and aims to end or organize a case or dispute between the parties. When a judge makes a decision, he must pay attention to all aspects of it, starting from the need for caution, as little as possible to avoid inaccuracy and negligence, both formal and material, to technical skill in making it. Within the judge, the attitude/characteristic of moral "satisfaction" should be born, grown and developed if the decision made can become a benchmark for similar cases, as reference material for theoretical circles, academics and legal practitioners and to fulfill the feelings of There is a special "satisfaction of conscience" for the judge concerned if the decision he or she makes is "affirmed" and "not annulled" by the high court or Supreme Court if the case reaches the appeal or cassation level. Lilik Mulyadi believes that a decision can be tested using 4 (four) basic question criteria (the 4 way test) in the form of:

1. Is my verdict correct?
2. Am I honest in making decisions?
3. Is it fair to the parties concerned?
4. Is my decision useful?

A criticism that emerged was based on the fact that judges are also ordinary people who are not free from mistakes. In judicial practice, judges' decisions have many pros and cons, especially in cases of criminal acts of corruption. To avoid or eliminate the possibility of errors in making a decision, the way that can be done is to establish legal compliance, as Roscoe Pound stated in his theory, "Law as a tool of social engineering".

Dimensions of Legal Compliance

Legal compliance can be interpreted as awareness of the law which forms a sense of loyalty in society towards the legal values that are enforced. In short, legal compliance is obeying the law; implementation of legal rules by society. It is important to know that in the context of legal compliance, of course there are sanctions lurking, either in positive or negative form. Then, what is often asked, who is obliged to be involved in legal compliance? Ideally, implementation of legal compliance must be carried out fairly. In this context, it is not only the community, but also law enforcers as officers who carry out the law enforcement process.

Legal Compliance Indicators

According to Soerjono Soekanto , there are three indicators that make people obey the law or implement legal compliance. The three factors are compliance, identification, and internalization. Compliance is a form of legal compliance that is caused by sanctions for rule violators. In other words, the aim of legal compliance is solely to avoid existing legal sanctions. Identification is a form of legal compliance carried out to maintain pleasant relationships with other people or groups. Internalization is a form of legal compliance that is caused by knowledge of the purpose and function of these legal rules.

Judge's Confidence in Deciding Criminal Cases

Legally limitative, judges are bound to decide cases where judges can only decide criminal cases based on article 183 of Law Number 8 of 1981 (KUHAP). This belief is theoretically a conviction in time / bloot gemoedelijk over tuiging. In this condition, the judge is bound by positive norms that regulate the delict, so that the judge is actually not free to make a decision because it must be based on the applicable statutory regulations. This is what the judge takes into consideration when deciding on corruption cases because there are non-legal factors which are conditions for the accountability required of the perpetrator. The judge's freedom in deciding cases, in fact theoretically, is often referred to as conviction rainsonce / vrije bewijsleer is one of the judge's efforts to find the law. . It's just that the concrete application of this theory must be able to; (1) Adapting the law to concrete facts; (2) can also add to the law if necessary.

Criminal Sanctions in Law

In law, the term sanctions is sometimes used to group parts of punishment to enforce the law itself, namely in the form of administrative sanctions, civil sanctions and criminal sanctions in one chapter or section. The term "criminal sanction" is somewhat difficult to understand if the term sanction is interpreted as "punishment" because it will mean "criminal punishment", and it will be even more complicated if the term criminal is interpreted as punishment so that it becomes "penalty". Sanctions or sanctions in English legal language are defined as "the penalty or punishment provided as a means of enforcing obedience to law". Sanctie in Dutch means "agreement" and "a coercive tool as a punishment for disobeying the agreement". According to Herbert L Packer, criminal law, rationally, relies on three concepts, namely violation, error and crime. These three concepts are symbols of the three basic substances of criminal law, namely: (1) what actions must be determined as criminal acts (crimes); (2) what provisions must be determined by someone to be known (suspected) related to something

criminal act; (3) what should be done with someone who is known to be involved in a criminal act. In the philosophy of punishment, what is always questioned is the basis for criminal punishment (justification of criminal punishment). In a theoretical discussion related to punishment, Herbert L. Packer explains by involving two conceptual views, each of which has different moral implications. The first view is the retributive view which assumes punishment as a negative reward for every deviant behavior carried out by members of the community. The retributive view assumes that each person is responsible for their own moral choices. When his choice is correct, he gets positive rewards such as praise, praise, awards, etc. But if he is wrong, he must be held responsible by being punished (negative reward). So, the rational reason for carrying out punishment lies in the basic assumption that punishment is a negative reward for responsibility for wrongdoing. It can be said that this first view is said to be backward-looking, that is, it looks backwards at the mistakes that were made resulting in the imposition of a criminal sentence and because of its backward orientation, punishment in this view also tends to be corrective

and repressive. The second view (utilitarian), which is seen is the situation or circumstances that are intended to be produced by the imposition of a crime and the imposition of a crime must be seen in terms of its objectives, benefits, or usefulness for improvement and prevention. So, on the one hand, punishment is intended to improve the attitude or behavior of the convict so that in the future they will not repeat the same act again. On the other hand, punishment is intended to prevent other people from possibly committing similar acts. This second view is forward-looking and at the same time has a preventive nature.

Non-Legal Factors in Law Number 31 of 1999 concerning Eradication of Corruption Crimes

Regulations related to the death penalty in corruption cases in Indonesia are regulated in article 2:

1) Any person who unlawfully commits an act of enriching himself or another person or a corporation which may harm the state's finances or the state's economy, shall be sentenced to life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years. years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).
2) In the event that the criminal act of corruption as intended in paragraph (1) is committed in certain circumstances, the death penalty can be imposed.

The choice of the phrase "certain circumstances" in conjunction with the phrase "can be dropped" has the meaning of ultimum remedium. Because the death penalty may not be imposed by a judge, because of the conditions implied in the word can. Concretely, the makers of the Law explained in their explanatory regulations that the meaning of "the death penalty can be imposed" is when there is a non-legal condition in the form of a national natural disaster, as a repetition of criminal acts of corruption, or when the country is in a state of economic and monetary crisis. This is very different if we compare it with the provisions regarding the death penalty in the law on eradicating corruption in China. Basic concepts in punishing perpetrators of criminal acts of corruption in China Suggesting a curative effect to eradicate criminal corruption, initiated in 1997 in China. It is true that there is no recent research that explains the relationship between the death penalty and the decline in corruption rates, but the enactment of the Corruption Law in China has created obedient behavior and avoidance of corrupt acts. This is in line with changes in many legal theories adopted in the legal system in China. Indonesia can follow an example in terms of formulating the legal elements of criminal sanctions. Below we will present the similarities and differences in legal elements in criminal sanctions in Indonesia and China.

Table 1
Similarities in Setting the Threat of Criminal Sanctions in Corruption Crimes

No.	Indicator	China	Indonesia
1.	Types of Criminal Sanctions	Principal Crime 1. Prison sentence 2. Life imprisonment 3. Death penalty Additional Penalty 1. Fine 2. Foreclosure (Article 33 & 34 Criminal Law of The People's Republic of China)	Principal Crime 1. Death penalty 2. Prison sentence 3. Criminal fine Additional Penalty 1. Revocation of certain rights 2. Confiscation of certain items 3. Announcement of the judge's decision (Article 10 of the Criminal Code)

2.	Formulation of Criminal Sanctions	Regulated based on the qualifications of the criminal act of corruption committed as regulated in: Article 383, Article 387, Article 388A, Article 390, Article 390-1, Article 391, Article 392, Article 393, Article 395& Article 396	Arranged per article based on qualifications for criminal acts of corruption which are regulated in Article 2, Article 3, Article 5, Article 6, Article 7, Article 8, Article 9, Article 10, Article 11, Article 12, Article 12A, Article 12B, Article 12C & Article 13
3.	Setting minimum sanctions and maximum sanctions	Regulated based on the qualifications of the criminal act of corruption committed as regulated in Article 383, Article 387, Article 388A, Article 390, Article 390-1, Article 391, Article 392, Article 393, Article 395 & Article 396	Regulated per article based on the qualifications of criminal acts of corruption carried out as regulated in Article 2, Article 3, Article 5, Article 6, Article 7, Article 8, Article 9, Article 10, Article 11, Article 12, Article 12A, Article 12B, Article 12C & Article 13

Table 2
Differences in Setting the Threat of Criminal Sanctions in Corruption Crimes

No.	Indicator	China	Indonesia
1.	Accumulated Amount of Losses from Corruption Crimes	Regulated in Article 383	Unregulated
2.	Classification of Major Sanction Threats	All aspects of a criminal act corruption	Regulated in Article 12 A
3.	The threat of sanctions for giving and receiving bribes is great	Threat of sanctions between givers and the recipient of his large bribe different, for bribe recipients regulated in Article 383, Art 386, Article 388A, whereas for bribe givers is regulated in in Article 389, Article 390 & Article 390-1	Threat of sanctions between giver and recipient of bribes same magnitude, set at in Article 5, Article 6 & Article 7
4.	Sanctions for private companies	Set outside the chapter on corruption, but still in one law, namely in Articles 164, 183 & 271.	It's not stated in the law PTPK, but explicitly in Criminal Code Article 374

5.	Minimum Sanction Settings	The minimum sanction amount is based on on the magnitude of the loss caused	The same for each type criminal acts of corruption
6.	Threat of Death Penalty	Dropped due to loss level resulting from classification highest loss, set at in Article 383, Article 386 & Article 394	Caused by circumstances certain things are set out in it Article 2 paragraph (2)
7.	Postponement of the Imposition of Death Penalty Sanctions	Arranged for certain reasons in in Article 383	Unregulated
8.	Threat of Prison Sanctions Lifetime	Dropped due to level losses incurred, regulated in Article 383, Article 384, Article 386, Article 390, Article 393 & Article 394	Becomes the maximum sanction regulated in Article 2, Article 3, Article 12 and Art 12B
9.	Threat of criminal sanctions based on perpetrator classification	Just mentioning about State Officials and employees private sector regulated in Chapter at outside Chapter VIII on Embezzlement and Bribery	It is regulated in detail in Article 5, Article 6, Article 7, & Article 12.
10.	The situation if the suspect dies before there is a verdict	Filed a civil suit against the heirs, regulated in Article 33 & Article 34	Unregulated
11.	Eraser reason threat of criminal sanctions	Arranged differently inside Article 383, Article 389 & Art 392.	Regulated in cases of gratification which is regulated in Article 12 C
12.	Providing Relief Penalty	Arranged differently inside Article 383 & Article 392	Regulated in Article 4
13.	Arrangement Utilization of Position State Officials By Relatives	Regulated in Article 388 A & Article 390-1	Unregulated

Based on the Penal policy which regulates the death penalty in corruption cases, Indonesia has formulated an alternative death penalty, this is indicated by the conditions for imposing the death penalty with "certain conditions" , whereas in China the death penalty is formulated as a "common" thing, where if the "value" reaches (estimated) 100,000 Yuan then the death penalty must be imposed.

CONCLUSION

In corruption cases, limitative criminal liability will be based on the relevant law. This is based on justification reasons, so that a fair trial can be realized. Implementation of the death penalty as stated in Article 2 Paragraph (2) of Law No. 31 of 1999. There are non-legal factors which are prerequisites for imposing the death penalty. A judge's freedom in deciding a case is in fact tied to the law which regulates the judge's own freedom. This argument is based on Article 20 AB "Judges must judge based on the law" and Article 22 AB and Article 14 Law no. 14 of 1970 requires "Judges not to refuse to try cases submitted to them on the grounds that the laws governing them are incomplete or unclear but are obliged to try them". The death penalty policy in corruption cases in Indonesia is regulated in the Criminal Code and laws outside the Criminal Code, whereas in China the death penalty policy emphasizes the repressive nature of the law, impoverishing perpetrators of criminal acts of corruption where the State can force them to confiscate the wealth owned by the perpetrators.

Bibliography

Herbert L Packer, The Limits of The Criminal Sanction, California, Stanford University Press, 1968

https://aclc.kpk.go.id/aksi-information/Eksplorasi/20220524-ayo-kenali-dan-hindari-30-jen-kokerja-ini, accessed March 22, 2024

https://bphn.go.id/publikasi/berita/2023031603084646/index-persepsi-kourkan-indonesia-turun-lagi-penegakan- Hukum-tipikor-perlu-dikaji-. Accessed March 15, 2024

Ian Dobinson, The Criminal Law of the People's Republic of China (1997): Real The Criminal Law of the People's Republic of China (1997): Real Change or Rhetoric?

Jianfu Chen, A Moderate Step in the Right Direction-The Revision of the Criminal Procedure Law in the PRC, 3 J. CHINESE & COMP. L. 1, 157 (1997).

Oemar Seno Adji, "Judiciary Free from the Rule of Law", Jakarta: Erlangga. 1980.

Osborn's Concise Law Dictionary, Edited by Leslie Rutherford and Sheila Bone, Eighth Edition, Sweet & Maxwel, London, 1993.

Rizqi Nurul Awaliyah, Rehnalemken Ginting, Comparison of Criminal Sanction Arrangements in Criminal Offenses

Soerjono Soekanto, Legal Awareness and Legal Compliance (Jakarta: CV. Rajawali, 1982)

Sri Endah Wahyuningsih, Abdul Rahman, Anis Mashdurohatun, Corporations Criminal Accountability That Permits Criminal Acts Of Corruption In Indonesia, International Journal of Scientific and Research Publications, Volume 13, Issue 3, March 2023

Trisia, Siska. History of the Regulation of Corruption Crimes in Indonesia. MaPPI FHUI. 2020.

Lilik Mulyadi, The Face of Judges' Decisions in Indonesian Civil Procedure Law, Theoretical Perspectives, Practices, Making Techniques, and Problems, PT. Citra Aditya Bakti: Bandung, 2015.

https://redlineindonesia.org/ Hukum-menrut-roscoe-pound/accessed March 18, 2024

Randi Rahardian, Nyoman Union, Sularto, DIPONEGORO LAW JOURNAL, Volume 5, Number 3, Year 2016,

Law Number 48 of 2009 concerning Judicial Power

Law Number 31 of 1999 concerning the Eradication of Corruption Crimes

Criminal Law of the People's Republic of China