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Reconstruction of death penalty sanctions in corruption acts based on the value of humanity and justice

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Abstract
In Indonesia, almost no day is left without news about corruption cases. The Corruption Eradication Commission (KPK) revealed that criminal acts of corruption have extraordinary consequences in various aspects of people's lives, such as high poverty rates, unemployment, increased foreign debt, and natural damage based on these matters, the authors conducted research on the subject of What Are Weaknesses in in the Implementation of the Death Penalty in the Corruption Case in Indonesia and How is the reconstruction of the death penalty in the criminal act of corruption based on humanitarian values and justice in Indonesia. The research methods used are: (1) using a constructive theory paradigm, (2) the type of research is qualitative research. (3) the method of approach uses the socio-legal research approach method.
The results of the study showed that the implementation of Article 2 paragraph (2) of Law Number 31 of 1999 jo. Law Number 20 of 2001 related to capital punishment in corruption has never been carried out in any termination of corruption case so far, this is because capital punishment is not in accordance with the concept of human rights protection in Indonesia so that the implementation of Article 2 paragraph (2) of the Act Number 31 of 1999 jo. Law Number 20 Year 2001 regarding capital punishment in corruption can be said to be ineffective, this is because capital punishment in capital punishment cases has never been carried out in Indonesia, it is because capital punishment in corruption cases is contrary to the concept of human rights respect as intended Pancasila; The causes for the implementation of Article 2 paragraph (2) of Law Number 31 of 1999 jo. Law Number 20 of 2001 related to capital punishment in corruption has never been carried out because: (a) It is not in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia, (b) The system of law enforcement in corruption cases that still has many weaknesses, and (c) Death penalty which also has many weaknesses; so as to be able to realize reconstruction related to the death penalty that is just in the case of corruption, the provisions as regulated in Article 2 paragraph (2) of Law Number 31 of 1999 jo. Law Number 20 of 2001 related to capital punishment in criminal acts of corruption needs to be abolished.

Keywords: reconstruction, death penalty, corruption, justice and humanity

Introduction

In Indonesia, corruption cases are public consumption that can be obtained through various mass media, both print and electronic. Hardly a day is left without news of a corruption case. The Corruption Eradication Commission (KPK) revealed that corruption has extraordinary consequences in various aspects of people's lives, such as high poverty rates, unemployment, increased foreign debt, and natural damage.

As an effort to tackle corruption that is classified as an extraordinary crime group, lawmakers formulate several important matters, which are considered to be used as a tool to ensnare and bring a deterrent effect to the perpetrators, namely the principle of reverse proof and severe sanctions, including criminal die. The policy formulation of articles relating to these two matters is certainly based on thought and is motivated by the desire to eradicate corruption. However, this formulation policy is not followed by application policy. As the principle of inverted evidence is reluctant to be applied in trials of corruption, corruption judges are also reluctant to apply the threat of capital punishment against perpetrators of crimes, even though the country has clearly suffered billions of losses, even trillions of rupiahs and many members of the community have lost the opportunity to enjoy welfare due to these crimes.

Indonesia's Capital punishment in corruption cases is regulated in Article 2 paragraph (2) of Law Number 31 of 1999 concerning Eradication of Corruption. The article states that: "*In the event that a criminal act of corruption as referred to in paragraph (1) is carried out in certain circumstances the death penalty may be imposed*".

Regarding Article 2 paragraph (2) in the explanation in Law Number 31 of 1999 concerning Eradication of Corruption, it is explained that what is meant by "*certain circumstances* "in this provision is intended as a weighting for perpetrators of a criminal act of corruption if the criminal act was committed at the time the state is in a state of danger in accordance with applicable law, when national natural disasters occur, as repetition of criminal acts of corruption, or when the country is in a state of economic and monetary crisis.

However, after the changes to the law were replaced by Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption, the explanation of Article 2 paragraph (2) changes even though the substance of the article remains the same. Elucidation of Article 2 paragraph (2) in Law Number 20

Year 2001 explains that "*what is meant by certain circumstances*" in this provision is a condition that can be used as a reason for criminal burdening for the perpetrators of a criminal act of corruption that is if the criminal act was committed against funds intended for overcoming danger situations, national natural disasters, countermeasures due to widespread social unrest, overcoming economic and monetary crises and repetition of criminal acts of corruption. One of the reasons why the death penalty is not applied to corruptors is because the formulation of the death penalty is followed by conditions under "*certain circumstances*" (Article 2 paragraph (2)). In the explanation of this article, it is formulated that what is meant by "certain conditions" in this provision is intended as a burden for perpetrators of corruption if the crime is committed when the country is in danger in accordance with applicable law, at the time of the disaster national nature, as repetition of corruption, or when the country is in a state of economic and monetary crisis. Such statement will certainly be disputed if faced with the necessity of a judge to act creatively in accordance with the meaning of the provisions of Article 5 paragraph (1) of Law Number 48 Year 2009 concerning Judicial Power, in which the judge is obliged to explore, follow and understand legal values and taste justice that lives in society.

Thus, the obscurity of the meters as stated above is not a reason that causes until now there has been no death sentence for corruptors in Indonesia. However, when viewed from the aspect of Human Rights, the Constitutional Court through the decision of the Constitutional Court No. 3 / PUU-V / 2007 basically states that the death penalty for serious crimes is a form of limitation of human rights or can be called a violation of human rights.

Based on the problem presented above, the authors had then examine and analyze further the problem of the death penalty against perpetrators of corruption in a reseacrch with the main issues as follows :

1. What are the Weaknesses in the Implementation of the Death Penalty in Corruption Cases in Indonesia?
2. How is the reconstruction of the death penalty in a criminal act of corruption based on the value of humanity and Justice in Indonesia?

Method of Research

The paradigm that is used in the research this is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or science knowledge [1]. Paradigm also looked at the science of social as an analysis of systematic against *Socially Meaningful Action* through observation directly and in detail to the problem analyzed.

The research in writing this dissertation is a qualitative research. Writing aims to provide a description of a society or a certain group of people or a description of a symptom or between two or more symptoms.

Approach (*approach*) the research is to use the approach *of Socio-Legal* [2], which is based on the norms of law and the theory of the existing legal enforceability of a sociological viewpoint as interpretation or interpretation.

As for the source of research used in this study are:

1. Primary Data, is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data, is an indirect source that is able to provide additional and reinforcement of research data. Sources of secondary data in the form of: Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study, researchers used data collection techniques, namely literature study, interviews and documentation. In this study, the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data [3]. Qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes and documentation by organizing data into categories, describing it into units, synthesizing, compiling into patterns, selecting important names and what will be studied and make conclusions.

Research Result and Discussion

1. Weaknesses in the implementation of the death penalty in corruption cases in Indonesia

Basically, the problem of the state is stems from the problem of law enforcement, so its relation to the rule of law is the biggest and most urgent problem of the Indonesian state, so that it is appropriate that our criticism of the legal problem must also be accompanied by alternative solutions. When discussing the rule of law which positions the law upright with its three pillars of law placed in a frame of humanitarian social justice, it turns out that to this day it is nothing more than a utopian act that is always directed in the ideological rhetoric of every apparatus and legal figures and experts especially in Indonesia. In addition, the legal concept of upholding the rule of law that has been processed by the state has not yet turned out to be as perfect as it is in its implications although it is acknowledged that in general it has fulfilled the ideal framework according to the creator's framework.

A separate problem in improving legal services in Indonesia, including quality human resources, is not enough if only highly educated, but must also be accompanied by a high level of quality personality. This is important because law enforcers are the spearhead as well as role models in the implementation of the law itself, but it is ironic that the existence of law enforcers in Indonesia still needs to be questioned, how many judges and or other law enforcers are suspected and / or have been exposed to bribery and / or other disgraceful cases.

Reflecting on this fact, it can be drawn into the spotlight that the culture of Indonesian society is indeed not a law conscious society. So that it is increasingly proven, when we easily witness not only law enforcement officers who abuse power, but how many and often there are shades of violence that are directly with mass mobility and / or communal violence have tried and judged the perpetrators of crimes themselves, especially those who direct contact with the community so that arson, beatings, looting, and killings committed by the masses are the other side of the way people implement the meaning of justice or the right way in their law, because state institutions are no longer considered as a place in processing and finding justice (our country like a machine factory making laws and regulations, not gush to the interests of the community are mostly very ordinary).

Basically, law enforcement in Indonesia must cover three very basic aspects, namely the culture of the community where the legal values will be upheld, the structure of the law enforcement itself, and then the legal substance to be upheld.

Based on the explanation above, we can find social

phenomena related to the problem of law enforcement in Indonesia are The downturn (depravity) of the rule of law which is marked by the increasing number of irregularities committed by law enforcement officers accompanied by the increasingly widespread mass judgments of acts criminal in the community, correlate with positivistic law.

The implementation of capital punishment in Indonesia also has various kinds of problems which then become a weakness in the implementation of the capital punishment system in Indonesia. Roeslan Saleh stated that [4]:" *Capital punishment is the most serious criminal offense according to our positive law. For most countries, the matter of capital punishment only has a cultural meaning. It is said so, because most countries no longer include the death penalty in the Criminal Code*".

This movement to abolish death penalty has actually spreads to various countries since some times ago. In 1847 in the state of Michigan the death penalty was abolished. Then in Venezuela in 1849 and in ederland in 1870 " [5]. Based on the explanation above, the author, by comparing him with the capital punishment system in Indonesia in general in his relationship with the capital punishment against perpetrators of corruption found weaknesses of the capital punishment system that is still adhered to in Indonesia's criminal justice system as follows:

a. It is absolute in nature, irrevocable, meaning that someone who has been executed even though in the future the findings of legal facts stated otherwise the death convict cannot be revived, or when the judge is wrong in deciding then the death sentence of the convicted person who has experienced the application of the law cannot be returned;
b. Judge's error, it means that capital punishment can become a new problem, remembering that human rights also have mistakes in making decisions, when a death sentence is in fact wrong then there is no other way to save the perpetrators who have been executed, so that the perpetrators become victims of legal issues the new one;
c. It is in contrary to humanity, morals and ethics;
d. Associated with the goal of punishment: The aim of improvement is not achieved and the implementation is not in public, means that fear (generale preventie) is not achieved;
e. There is compassion for the convicted person.

2. Reconstruction of the death penalty in a criminal act of corruption based on the value of humanity and justice in Indonesia

Debate about the effectiveness of the death penalty, especially for criminal acts of corruption continues. This debate is based on the assumption whether the death penalty is effective in overcoming crime (corruption). There are 2 (two) groups that comprehensively submit their arguments, both those who oppose (abolitionists) and those who support (retentionist) capital punishment.

Abolitionists base their arguments on several reasons. First, the death penalty is a form of punishment that demeans human dignity and is contrary to human rights. Based on this argument, many countries abolished the death penalty in their criminal justice system. Until now 97 countries have abolished the death penalty. Member states of the European Union are prohibited from applying the death penalty under Article 2 of the Charter of Fundamental Rights of the European Union in 2000. The UN General Assembly in 2007, 2008 and 2010 adopted non-binding resolutions which call for a global moratorium on the death penalty. Optional Protocol II of the International Covenant on Civil and Political Rights / ICCPR finally obliges every country to take steps to eliminate capital punishment [6].

Abolitionists also reject the reasons for retentionists who believe that the death penalty will have a deterrent effect, and therefore will reduce the crime rate especially corruption. There is no conclusive scientific evidence that proves the negative correlation between the death penalty and the level of corruption. On the other hand, based on the 2011 International Transparency Corruption Index, countries that do not apply the death penalty rank highest as countries that are relatively clean of corruption, namely New Zealand (rank 1), Denmark (2) and Sweden (4) [7].

Meanwhile, retention groups put forward arguments in favor of the death penalty. The main reason is the death penalty provides a deterrent effect on public officials who will commit corruption [8]. If they realize that they will be sentenced to death, such officials will at least think a thousand times to commit corruption. Facts prove, when compared with developed countries that do not apply the death penalty, Saudi Arabia which imposes Islamic law and capital punishment has a low crime rate. Based on data from the United Nations Office on Drugs and Crime in 2012, for example, the crime rate for murder is only 1.0 per 100,000 people compared to Finland 2.2, Belgium 1.7 and Russia 10.2 [9].

In its development regarding capital punishment in the law of corruption eradication law regulated in Article 2 paragraph (2) of Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning Eradication of Corruption. Article 2 paragraph (2) of Law Number 31 Year 1999 jo. Law Number 20 of 2001 concerning Eradication of Corruption Crime states that::

(1) Any person who unlawfully commits acts of enriching himself or another person or a corporation that can harm the state finances or the economy of the country, shall be sentenced to life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a minimum fine of 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 a criminal act of corruption as referred to in paragraph (1) is carried out in certain circumstances, the death penalty may be imposed.

It has been explained above that the Pancasila requires a balance between the dimensions of *das sein* and *das sollen*, between the ideals of the law and the implementation of the law, between the values of life and the real life of the law. It is also desirable in the world of criminal law not to be excluded in the case of the implementation of capital punishment in corruption cases. Therefore there is a need for a humanitarian approach in developing criminal law. With regard to this view Barda Nawawi states that [10]: "*The importance of a humanistic approach in the use of criminal sanctions does not only mean that sanctions imposed on violators must be in accordance with civilized human values, but must also be able to sensitize violators of the importance of human values and social values in society*"

therefore, to be able to realize mentioned above, Barda Nawawi stressed the importance of a humanistic approach in the use of criminal sanctions, not only means that

sanctions imposed on violators must be in accordance with civilized human values, but must also be able to sensitize violators of the importance of human values and social values in society so there is a need for criminal law thinking based on the idea of balance. The concept of the idea of balance in criminal law as intended by Barda Nawawi Arief includes:

a. Monodualistic balance between the interests of society or the public and the interests of individuals or individuals. On the idea of a balance of public or individual interests, it also includes protection of the interests of victims and the idea of criminal individualization;
b. The balance between elements or objective factors or outward and subjective actions or people or the inner or inner attitude;
c. Balance between formal and material criteria;
d. Balance between legal certainty, flexibility or elasticity or legal flexibility and legal justice.

In connection with the idea of the balance idea above, criminal law basically has the aim of protecting the community while protecting and fostering individuals. With regard to this matter, criminal penalties in criminal law are based on the principle of legality that is widely binding in society and the culpability that binds individuals individually.

So that criminal law must be sourced from the value of God Almighty or religious morality, the value of Humanity that is Fair and Civilized or humanist, the value of the Unity of Indonesia or the interests of the nation and state, the value of Society Led by Wisdom / Wisdom in Consultative Representation or democracy, and the value of Justice Social for all Indonesian people or justice. Besides Pancasila, criminal law must also be based on general legal principles that are recognized by all nations of the world or the general principles of law are recognized by the community of nations.

Furthermore, the idea of a balance in criminal law requires that the criminal law also comprehends the human rights of perpetrators who also need to be protected. So it is clear that the provisions as stipulated in Article 2 paragraph (2) of Law Number 31 of 1999 jo. Law Number 20 of 2001 must be abolished because it is not in accordance with Pancasila and the value of humanity which is upheld in the country of Indonesia. So it is clear the criminal individualization system as well as the thought of the goal of punishment according to the mono-dualistic conviction thought of the criminal law states that capital punishment in the criminal law provisions of corruption is not appropriate and has no humanity.In order to realize the various ideas above, it is necessary to carry out reconstruction related to the death penalty provisions in Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning Eradication of Corruption. The provisions as stipulated in Article 2 of Law Number 31 of 1999 jo. Law Number 20 Year 2001 is amended so that the provisions in Article 2 paragraph (2) are replaced with life imprisonment, and added related to the provisions on criminal work. Social work that is intended as a janitor in public spaces so that it will be able to make the perpetrators of criminal acts of corruption to shame.

Conclusion

1. Implementation of Article 2 paragraph (2) of Law Number 31 of 1999 jo. Law Number 20 of 2001 related to capital punishment in corruption has never been carried out in any termination of corruption case so far, this is because capital punishment is not in accordance with the concept of human rights protection in Indonesia so that the implementation of Article 2 paragraph (2) of the Act Number 31 of 1999 jo. Law Number 20 Year 2001 regarding capital punishment in corruption can be said to be ineffective, this is because capital punishment in capital punishment cases has never been carried out in Indonesia, it is because capital punishment in corruption cases is contrary to the concept of human rights respect as intended Pancasila; The causes for the implementation of Article 2 paragraph (2) of Law Number 31 of 1999 jo. Law Number 20 of 2001 related to capital punishment in criminal acts of corruption has never been carried out is due :
   a. Not in accordance with Pancasila and the 1945 Constitution,
   b. The law enforcement system in corruption cases that still has many weaknesses, and;
   c. The Death penalty law itself which still also has many weaknesses;
2. In order to be able to realize the reconstruction related to the death penalty that is just in the case of corruption, the provisions as regulated in Article 2 paragraph (2) of Law Number 31 Year 1999 jo. Law Number 20 of 2001 related to capital punishment in criminal acts of corruption needs to be abolished.

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