



## Urgency of the threat of death penalty for criminal act of corruption in human rights principles and values

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### Abstract

Indonesia has a variety of strong cultures with family and cooperation. Human rights and human dignity are upheld in social life, seeing that Indonesia has diverse ethnicities and cultures based on Pancasila as the basis of the state. Human Rights are the most fundamental rights in human life in the world. The existing values are freedom or independence, humanity or peace, and justice or equality, which encourage every human to have rights, especially the right to life. However, President Joko Widodo's discourse on the death penalty for corruptors has reaped pros and cons in society. This is considered to violate the values and principles of human rights itself for people who are against this discourse, and it is believed that this is not effective in providing a deterrent effect.

**Keywords:** Human rights, death penalty law, human rights values and principles

### Introduction

The term corruption comes from the Latin word *corruption*. In English, it is *corruption*; in French, it is called *corruption*; and in Dutch, it is called *corruption*. From the Dutch, the word *corruption* was born in Indonesian (Hamzah, 1991) [1]. In the Big Indonesian Dictionary, *corruption* means misappropriation or misuse of state money (companies, organizations, foundations, etc.) for personal or other people's gain (Kamus Besar Bahasa Indonesia (KBBI, 2016) [2]. *Corruption* in Indonesia occurs systematically in various sectors of social life. It seems that this matter is no longer taboo to discuss. Some perpetrators of corruption or criminals feel they are not deterred. Even though in the world view, corruption is an unusual crime or is often called an extraordinary crime. *Corruption* has become such a serious thing even very difficult to overcome.

According to the Corruption Perception Index, Indonesia is ranked 96<sup>th</sup>, with a score of 38 in 2021 obtained from Transparency International. In 2020, Indonesia was ranked 102<sup>nd</sup> with a score of 27. However, judging from the data, Indonesia experienced an increase in its score, which means that in the past two years, Indonesia has been quite successful in its efforts to fight corruption. However, this also means that Indonesia is still very riddled with corrupt practices in the country, and this country still has a lot of things to reduce the number of corruption.

The discourse on the death penalty for corruptors is regulated in Law Number 31 of 1999 Article 2, paragraph 2 concerning the Criminal Act of Corruption, but not all corruptors receive the death penalty. When using the death penalty on corruptors, one must be more thorough and not careless. This should be given to corruptors if corruption is carried out repeatedly when the country is in a state of unusual danger, namely when the country is experiencing a national natural disaster crisis and in a state currently experiencing an economic and monetary crisis. When carrying out the death penalty against corruptors, you must be more careful because this violates the values contained in Human Rights. These values include the right to freedom, the right to independence, and the right to life, which means

that every human being has the right to determine how to live his life, the right to feel safe and protected, and the right to live in peace. Meanwhile, the principle of human rights is inseparable from human obligations themselves, as a basic obligation that every human being has to respect the existence and rights of other people.

The death penalty for corruptors is the last resort because many things become obstacles apart from human rights factors and juridical factors; namely, the law does not formulate limits on the repetition of criminal acts of corruption. The Indonesian Supreme Court has issued Supreme Court Regulation (Perma) Number 1 of 2020, where life imprisonment and even the death penalty can be imposed in the most severe category. It is hoped that this will have a deterrent effect on corruptors who have harmed the country. Both material losses and other losses, because acts of corruption can damage the younger generation.

### Discussion

#### Threat of Death Penalty for Corruption Perpetrators

The Supreme Court has decided on life imprisonment and even the death penalty for perpetrators of corruption in the most serious category through (Perma) or Supreme Court Regulation Number 1 of 2020. This Perma is divided into five, namely the most serious, medium, mild, and lightest. The conditions for imposing the death penalty for corruptors are:

1. The judge found no mitigating circumstances regarding the defendant's personality.
2. If the criminal act is committed against funds intended for overcoming dangerous situations, national natural disasters, overcoming the consequences of widespread social unrest, overcoming economic and monetary crises, and repetition of criminal acts of corruption.
3. Defendant of corruption amounting to IDR 100 billion or more.
4. The defendant has the most significant role in the commission of the crime, whether committed individually or jointly.

5. The defendant had a role as an advocate or ordered or committed a criminal act of corruption.
6. The defendant acted using a modus operandi or sophisticated means/technology.
7. Defendant of corruption in a disaster or economic crisis on a national scale.
8. Corruption has a national impact.
9. Corruption results in the work not being utilized at all.
10. The corruption committed by the defendant resulted in suffering for vulnerable groups, including the elderly, children, the poor, pregnant women, and people with disabilities.
11. The value of the defendant's wealth was obtained from 50 percent or more of the proceeds of corruption.
12. Less than 10 percent of the corrupted money was returned.

In the history of Indonesian law, during the Mojopahit era (13-16 century), for example, the existence of the death penalty was already known. It is even categorized as a basic crime in addition to the punishment of cutting off limbs, fines, and compensation for losses (Sudarto, 1981) <sup>[3]</sup>. This has made a mark in Indonesian history, and the death penalty has been known for a long time, but over time, this has long been abandoned because it is contrary to the values and principles of human rights.

The death penalty is regulated in Article 2, paragraph 2 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. The death penalty for perpetrators of Corruption Crimes has both pros and cons. To date, no perpetrator of corruption has received the death penalty; instead, this regulation is just a threat, and the hope is that it will deter perpetrators of corruption. Choosing the death penalty policy to reduce corruption crimes is a policy choice. However, is this policy effective enough to reduce corruption crimes in Indonesia. Human Rights Views Regarding the Death Penalty.

The development of human rights in Indonesia has experienced quite a long journey, from the colonial era to government reform. Human rights are something dynamic, where every human being has the same interests, concerns, and values to achieve human life and dignity.

Law Number 39 of 1999, human rights are defined as a set of rights inherent in the essence of human existence as creatures of God Almighty. The application of the death penalty against perpetrators of corruption is considered to uphold justice, which is true, but apart from that, the death penalty violates humanity. The death penalty for corruptors, as stated by President Joko Widodo, can be applied if it is the will of the community. This is still a matter of pros and cons among the community because it contradicts the values and principles of human rights.

This issue has always been an ongoing debate because the death penalty aims to provide a deterrent effect for corruptors so that there will be no more corruption, considering that corruption has become widespread in Indonesia. The death penalty is considered to have violated the most basic rights of humans besides that the death penalty is the most severe punishment compared to others, which is also a loss of the right to live and the opportunity to improve their lives.

Law Number 39 of 1999 concerning Human Rights Article 4 which reads, "The right to life, the right not to be tortured,

the right to personal freedom, thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person and equality before law, and the right not to be prosecuted based on retroactive law is a human right that cannot be reduced under any circumstances and by anyone". This is not in line with the death penalty applied in Indonesia. The application of the death penalty is still a matter of controversy in society. This matter is still being studied, and research is being carried out on how to implement the death penalty policy when viewed from the human rights aspect itself.

The death penalty for corruptors is considered to violate human rights principles themselves. The following are the basic principles of human rights (Kusumawati, 2018) <sup>[5]</sup>:

1. Universal  
Human rights must be given to everyone without exception and discrimination. The reason why everyone has the right to fulfill human rights is because they are human.
2. Equality  
The concept of equality emphasizes respect for the dignity of all human beings. Humans are born equal. This is recognized in the 1948 Universal Declaration of Human Rights.
3. Non-discriminatory  
Non-discrimination is an inseparable part of the concept of equality. This concept encourages that no one can be denied their human rights due to external factors, such as race, skin color, sex, language, religion, political and other views, national or social origin, ownership, birth, or other status. Human rights must be guaranteed to be free from all forms of discrimination, whether deliberately aimed at certain groups (purposed discrimination) or discrimination resulting from certain policies.
4. Human dignity  
Human rights principles are based on the view that every individual deserves to be respected and respected, regardless of age, culture, belief, ethnicity, race, gender, sexual orientation, language, disability, or social class.
5. Inalienability  
Individual rights cannot be revoked, surrendered, or transferred. However, this does not mean human rights cannot be limited or reduced. The government can do this for certain reasons, for example, national security.
6. Obligations and responsibilities  
The government is the main responsibility holder (duty bearer) in promoting, protecting, and fulfilling the human rights of citizens. The government must be able to guarantee that human rights are fulfilled in a non-discriminatory manner. The government must also regulate so that private sector activities do not interfere with individuals enjoying their rights. This obligation is known as promoting, protecting, and fulfilling.
7. Indivisibility (cannot be separated) and Interdependence (dependence on each other)  
Human rights must be considered an inseparable unit, including civil, political, social, economic, cultural, and collective rights. Likewise, fulfilling one right can affect the fulfillment of other human rights; conversely, violating one human right will also violate other human rights.

Until now, the death penalty law to stop corruption crimes has not been proven. China is a country that applies the death penalty to corruptors, but up to now, it is still characterized by corrupt crimes in its country. Then, with the case of corruption in social assistance funds in 2020 by Juliari Batubara, with the world conditions currently experiencing the coronavirus pandemic, including Indonesia, the death penalty could be imposed for committing corruption at a certain time (during a global pandemic). However, in reality, the death penalty decision was not used, as if the level of urgency of the death penalty was only an excuse but has never been implemented to date. This is different from death penalty cases involving drug abuse and illegal drugs.

### Alternative to the death penalty

Considering that the death penalty is a law of last resort, it would be better to see and study if there were other alternatives to the death penalty or mitigation for the death penalty law. So, not only must all corruptors be sentenced to death, but they are given a sentence equivalent to the death penalty but does not violate the values and principles of human rights. Because it is feared that this death penalty policy, if it is not reviewed and studied properly, will result in human rights injustice.

Prof. Satjipto Rahardjo said that there is death not from physical death, but rather death from social life, which in the term given by him is called social death penalty, which he explained is that from sociological optics, a person can be said to be still alive physically, but at the same time experience social death. This happens when someone is in such a social condition that their freedom to carry out social activities is taken away. Because people who are sentenced to such a crime are still physically alive, but perhaps the suffering they experience is heavier and longer, especially regarding social suffering. The convict is isolated from his routine social life (Rahardjo, 2007) <sup>[6]</sup>. It is possible that this is why up to now not a single corruptor has been sentenced to the death penalty, or there has always been a commutation of the death penalty.

Surveys in America showed that several types of alternatives to the death penalty have been proposed, namely life imprisonment without conditional release within 25 years combined with a restitution program that requires the convict to work to earn wages given to the victim, life imprisonment without the opportunity to obtain conditional release within 25 years, then life imprisonment without the possibility of obtaining conditional release at all (Arief, 2020) <sup>[4]</sup>.

### Conclusions

Human Rights are rights inherent in every human being. The relationship between human rights and the state is to live together and synergize to achieve a harmonious life. This simultaneous life requires order, power and policy, and human rights that coexist as an ethical standard of power so that the holders of power and policies do not arbitrarily treat the areas they control. Policies that emerge along with the dynamics of life must also align with the values and principles of Human Rights.

The existence of the death penalty raises pros and cons, that in every debate, there is no final point. Various kinds of reactions and responses from human rights experts and human rights activists to the community continue to

resonate with policies that are considered controversial because the death penalty is considered to have violated the most basic human rights of humans, namely the right to continue life (right to life) and the right to try to improve one's life.

Considering that the death penalty is a serious law and is classified as a legal option of last resort, serious study is needed before deciding on the death penalty. Some things need to be taken into account, such as when the corruption was carried out and the circumstances, because one of the conditions for applying for the death penalty is if the corruption was committed when the country was still experiencing an unusual situation. As explained in the discussion section regarding alternatives to the death penalty or commutation of the death penalty, up to now, there is no evidence that the death penalty can reduce corruption crimes, and to date, no perpetrators of corruption have been charged with the death penalty.

The biggest problem for Indonesia is that there is a policy system in Indonesia that is considered to be less firm, enforcement of justice in Indonesia, and the threat of punishment is not in accordance with the situation that occurs in court. So far, it seems that the public has only been shocked by the discourse of observing criminal sentences because, in reality, no corruptor has ever been sentenced to death, many times the perpetrators of criminal acts of corruption escape the bondage of such heavy sentences, if indeed the punishment is only a threat, it would be better if the policy it was never made. Because it has not been proven that the threat of criminals has prevented the state from corrupt practices.

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