

## DEATH CRIMINAL CONCEPTS BASED ON POSITIVE LAW IN INDONESIA

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### Abstract

The existence of two opinions, especially capital punishment, has given rise to controversy over regulating the death penalty as a legal instrument for dealing with corruption. Some agree with the imposition of capital punishment, and some question the justification for this sentence, which does not give the perpetrators of criminal acts the opportunity to improve to become good human beings. The death penalty for corruption cases has never been imposed, so the death penalty cannot be used as an *ultimum remedium* against perpetrators of corruption. Regarding the severity of the main sentence to be charged, a maximum limit for each crime has been determined. In contrast, a specific minimum limit is not specified, but a general minimum limit, for example, imprisonment and a minimum of one day's confinement. This type of research is carried out using a normative approach, namely by analyzing problems through legal principles and referring to legal norms contained in statutory regulations. The results of the study show the need for amendments to the Law on the Eradication of Corruption Crimes by formulating the death penalty for all acts of corruption without particular criteria, such as disaster situations, due to their significant impact on society, the nation, and the State, so that it becomes the *ultimum remedium*. The need for judges to impose severe criminal sanctions to create a deterrent effect for corruptors and other people who have the opportunity to commit corruption to become reluctant or afraid to commit acts that violate the Law because the criminal sanctions are severe.

**Keywords:** Death Penalty; Countermeasures; Corruption.

### INTRODUCTION

In the late eighteenth and early nineteenth centuries, "England witnessed a strict penal system that resulted in the sentencing of tens of thousands of people, all of whom were sentenced to death."<sup>1</sup>

Based on the Preamble to the Constitution of the Republic of Indonesia, one of the serious problems faced in enforcing criminal law in Indonesia is the application of the death penalty, which is

considered inhumane. The death penalty still raises the pros and cons of understanding the meaning and essence of punishment, especially among jurists and human rights defenders (HAM). Various sharp criticisms were directed. There was even an abolitionist (anti-death penalty) movement against capital punishment.

The concept of the death penalty is often described as cruel, inhuman, and sadistic. This is simply looking at the

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<sup>1</sup> Melissa Schrift, "Life after Death: An Introduction to the Criminal Body in the West," *Mortality* 21, no. 3 (2016): 191.

reasons, intentions, goals, and effectiveness. Although in principle, the law is the general rules of behavior that apply in ordinary life, which a sanction can enforce. "The implementation of the law can take place normally and peacefully, but it can also occur due to violations of the law, so the law must be upheld."<sup>2</sup>

In its development, the issue of the death penalty has become pros and cons among legal scientists. For example, in contra of the death penalty, it can be seen from Ellsworth's opinion that "The reasons given for opposing the death penalty include immorality, that responding to violence with violence is wrong, it is applied unfairly, and that innocent people may have been executed."<sup>3</sup>

For the pro/supporters of the death penalty, as explained by Whitehead namely, "Under the concept of "just deserts" lies the idea that the punishment for the perpetrator must be proportional to the loss caused by the crime. As such, those who support the death penalty under the concept of "just deserts" retaliation believe that it is an appropriate punishment for those convicted of murder for crimes involved intentionally ending the life of another."<sup>4</sup>

In addition, there is the concept of

revenge initiated by Bader and Christopher, who states, "revenge is often an emotional response related to the pain and anger experienced by those affected by murder. Those who support the death penalty under this concept of execution would help alleviate the suffering of those affected by the killings."<sup>5</sup>

Another reason people often support the death penalty is based on the idea that executing a murderer deters others from committing similar crimes in the future. At least several implications have caused many legal and human rights experts, including in Indonesia, to reject the death penalty for the following reasons:

1. "Considered cruel and terrible, reminiscent of the past, namely the law of the jungle;
2. Not being able to eradicate criminal acts or not preventing someone from committing a crime;
3. The execution of capital punishment is eternal and cannot be changed if later it turns out that it does not have a solid foundation;
4. Contrary to people's (personal) freedom, human life is an essential personal property and cannot be contested by other people,

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<sup>2</sup> Meir Dan-Cohen, "Decision Rules and Conduct Rules: On Acoustic Separation in Criminal Law," *Harvard Law Review* 625, no. 677 (1984): 626.

<sup>3</sup> Raj Sethuraju, Jason Sole, and Brian E. Oliver, "Understanding Death Penalty Support and Opposition Among Criminal Justice and Law Enforcement Students," *SAGE Open* January-March 6, no. 1 (2016): 3.

<sup>4</sup> John T Whitehead and Michael B. Blankenship, "The Gender Gap in Capital Punishment Attitudes: An Analysis of Support and Opposition," *American Journal of Criminal Justice* 25, no. 1 (2000): 2.

<sup>5</sup> Bader and Christopher, "Divine Justice: The Relationship Between Images of God and Attitudes Toward Criminal Punishment," *Criminal Justice Review* 35, no. 1 (2010): 93.

including state authorities.”<sup>6</sup>

The purpose of punishment, like the tendency of positive legal thinking, is more oriented towards educating and improving the convict. However, a person who kills another person's life without rights shows that he no longer considers the legal consequences. Moreover, the person who was killed also has the right to live as the person who killed him. In other words, everyone is also obligated not to cause other people to die. Alternatively, everyone has the right not to be sacrificed to death. Therefore, it is only natural that people who kill on purpose must also be removed from society.

The history of criminal law reveals attitudes and opinions as if the death penalty was the most effective medicine for serious or other crimes. However, not only in the past but even now, some still think the death penalty is the most effective medicine for a crime. The purpose of the death penalty is to prevent crimes and severe offenses from occurring.

Serious crimes and capital punishment in the history of criminal law are two closely related components of the problem. This can be seen in the Indonesian Criminal Code, which threatens serious crimes with the death penalty. In the last decade, several new legal provisions have instead included the death penalty as the maximum penalty, such as Articles 36 and 37 of Law Number 26 of 2000 concerning Human Rights

Courts (HAM) or provisions of Article 6 of Law Number 15 of 2000. 2003 concerning the Eradication of Criminal Acts of Terrorism, Article 2 paragraph 2 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes.

In the laws and regulations that regulate criminal acts of corruption, namely Law Number 15 of 2003 concerning Eradication of Corruption Crimes, the death penalty is regulated in Article 2 paragraph 2 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 2001. 1999 concerning the Eradication of Criminal Acts of Corruption. Paragraph (2) states that "If the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, capital punishment can be imposed." This article mentions "certain circumstances" The circumstances referred to are when natural disasters, economic crises, and so on can be punished with the death penalty. It is hoped that by including these severe sanctions, there will be a preventive effect (general prevention) for a person not to commit a criminal act of corruption. In addition, it is also intended that people, because of their position and position, can commit corruption to become afraid and will not misuse it because it will harm the people, nation, and state of Indonesia as well as the maximum criminal sanction, namely the death penalty.

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<sup>6</sup> Djoko Prakoso and Nurwachid, *Studi Tentang Pendapat-Pendapat Mengenai Efektivitas*

*Pidana Mati Di Indonesia Dewasa Ini*. Jakarta: Ghalia Indonesia, 2000: 14.

Supporters of the imposition of capital punishment think that the existence of a law containing death penalty sanctions is a form or effort of the Government to uphold social justice that must be protected from the consequences of criminal acts of corruption. Achmad Ali stated that it was inappropriate for the death penalty to be abolished because it was considered a violation of human rights. Because not only the death penalty but all types of punishment are essentially human rights violations. However, it becomes legal because it is permitted by applicable law.

Attorney General ST Burhanuddin's discourse on the death penalty for corruptors seems to have raised various polemics from various parties. Djoko Sukisno emphasized that, although the death penalty is permitted according to Article 2 paragraph (2) of the Corruption Law, the explanation must also be examined. What is meant by certain circumstances in this provision is intended as a burden for the perpetrators of criminal acts of corruption if

“the crime is committed when the country is in a state of danger by the applicable law, when a national natural disaster occurs, as a repetition of a criminal act of corruption, or when the country is in a state of economic and monetary crisis.”<sup>7</sup>

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<sup>7</sup> Muhammad Guruh Nuary, “Pakar Hukum UGM Tegaskan UU Membolehkan Koruptor Dihukum Mati! Tapi...,” *Gatra.Com* (Jakarta, 2021), <https://www.gatra.com/news-530464->

## PROBLEM RESEARCH

In connection with the existence of two opinions, especially capital punishment, the controversy over the regulation of the death penalty as a legal instrument for dealing with criminal acts of corruption. Some agree with the opinion above regarding the imposition of capital punishment. However, some people question the justification for this sentence which does not allow the perpetrators of criminal acts to improve to become good human beings. So the formulation of the research problem is: can capital punishment be a means of overcoming corruption in Indonesia?

## RESEARCH METHOD

This type of research is carried out using a normative approach, namely by analyzing problems through an approach to legal principles and referring to legal norms contained in statutory regulations. This study describes the regulation of capital punishment in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. This study's legal material is secondary data, including primary legal material, Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, and Law Number 8 of 1981 concerning the Book of Laws Criminal Procedure Code. Secondary legal

[hukum-pakar-hukum-ugm-tegaskan-uu-membolehkan-koruptor-dihukum-mati-tapi.html#:~:text=%22Sebagaimana telah diketahui bahwa hukuman,yang dapat merugikan keuangan negara.](https://www.gatra.com/news-530464-hukum-pakar-hukum-ugm-tegaskan-uu-membolehkan-koruptor-dihukum-mati-tapi.html#:~:text=%22Sebagaimana%20telah%20diketahui%20bahwa%20hukuman,yang%20dapat%20merugikan%20keuangan%20negara.) Access 5 Februari 2022

materials, namely materials that provide explanations regarding primary legal materials, such as the results of seminars or other scientific meetings, or opinions from legal experts that are relevant to the object of this research study, as well as tertiary legal materials, namely supporting legal materials that provide guidance and explanation of primary legal materials and secondary legal materials, such as general dictionaries, magazines and scientific journals that are relevant to this research.

## ANALYSIS AND DISCUSSION

### A. The threat of Death Penalty as an *Ultimum Remedium*

Criminal imposition is carried out if someone has been proven to have committed a crime. Those directly affected by the imposition of a sentence are the person subject to the sentence. "This punishment has not been felt by the convict when the new decision is handed down; it only felt true if it has been implemented effectively."<sup>8</sup> The sentence's severity affects not only the convict but also society, where people will be afraid to commit a crime.

The criminal sanctions imposed are intended to maintain peace and better regulation of society. "In this case, the repressive, preventive, and educative functions will be achieved."<sup>9</sup>

The criminal conviction carried out by the judge will have no effect if the

general public does not know about it. So communication, or the mass media, in this case, plays an essential role in disseminating it so that it is expected to be in the public spotlight.

The concept of the purpose of a law is "closely related to the assessment of whether or not the law itself influences the level of crime it regulates."<sup>10</sup>

In connection with the above, it is also necessary to know the purpose of this law so that the evaluation of whether or not capital punishment is effective is based on the goal to be achieved.

Law Number 20 of 2001 was passed on November 21, 2001. This law changed several provisions in Law Number 31 of 1999, in considerations considering letter b it is stated that changes to laws were made to guarantee legal certainty better, avoid diversity in interpreting the law, and provide protection for the social and economic rights of the community, as well as fair treatment in eradicating criminal acts of corruption.

Several fundamental changes in eradicating criminal acts of corruption were made in this law. The first change is the qualification of the criminal act of corruption as an extraordinary crime because the criminal act of corruption is "seen as not only detrimental to state finances and a violation of the social and economic rights of the community at large, which is carried out

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<sup>8</sup> Sudarto, *Kapita Selektta Hukum Pidana*. Bandung: Penerbit Alumni, 1986: 83.

<sup>9</sup> Jeremy Sarkin, "The Tension between Justice and Reconciliation in Rwanda: Politics, Human Rights, Due Process and the Role of the

Gacaca Courts in Dealing with the Genocide 150," *Journal of African Law* 45, no. 2 (2001): 143-172.

<sup>10</sup> Soerjono Soekanto, *Efektivitas Hukum Dan Penerapan Sanksi*. Bandung: Penerbit Remadja Karya, 1985 : 7.



systematically.”<sup>11</sup> The qualification of corruption as an extraordinary crime has implications that tackling corruption must be carried out extraordinarily.

Concerning public interest, the deterrent effect is significant because it can answer public dissatisfaction with legal justice. In corruption cases, enforcement of a deterrent effect cannot be carried out by only one type of punishment, for example, imprisonment. More than that, other punishments that stand parallel to prison sentences must be imposed to uphold the deterrent effect and the authority of the law. In this context, there are new developments from the KPK. As reported, the Chairperson of the Corruption Eradication Commission (KPK), Firli Bahuri, also mentioned “the possibility of imposing the death penalty on corruptors, especially regarding the handling of Covid-19. As is well known, the prosecutor has demanded the death penalty against Asabri's defendant, Heru Hidayat.”<sup>12</sup> Now it is up to the court, the judge, how to conduct the investigation and prosecution and the indictment of the death penalty for corruptors.

In the General Explanation of the Seventh Paragraph of Law Number 20 of 2001, it is explained that reverse proof needs to be formulated as a provision that is premium remedium and unique

prevention. Premium remedium is the opposite of *ultimum remedium*, where if *ultimum remedium* views “crime as a new drug, it will be used when drugs outside criminal law are no longer effective.”<sup>13</sup> So that in other words, it can be concluded that premium remedium views crime as the first remedy in dealing with criminal acts. Meanwhile, unique prevention implies that “punishment is for the convict to change into a better person and useful for society.”<sup>14</sup>

The fourth amendment in this law is a change in the description of certain circumstances which result in the defendant being sentenced to death. These changes are listed in the Explanation of Article 2 paragraph (2). What is meant by “certain circumstances” in this provision are circumstances that can be used as grounds for criminal prosecution of perpetrators of corruption, namely if the crime is committed against funds earmarked for overcoming emergencies, national natural disasters, overcoming the consequences of widespread social unrest, overcoming the economic and monetary crises, and repetition of criminal acts of corruption.

These juridical instruments do not apply to all corruption cases, and the death penalty cannot be imposed on all corruptors. The death penalty can only be

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<sup>11</sup> Marwan Effendy, *Sistem Peradilan Pidana (Tinjauan Terhadap Beberapa Perkembangan Hukum Pidana)*, Jakarta: Referensi, 2012: 87.

<sup>12</sup> Muhammad Guruh Nuary, *Ibid.*

<sup>13</sup> Servas Pandur. *Testimoni Antasari Azhar Untuk Hukum Dan Keadilan*. Jakarta: Laras Indra Semesta, 2011: 365

<sup>14</sup> Barda Nawawi Arief. *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*. Jakarta: Kencana, 2008: 149.

imposed on certain corruptors or specific corruptors. If a corruptor is proven to have committed corruption but is not in the category of special corruption, then he cannot be threatened with the death penalty. As stipulated in Law Number 31 of 1999, which has been amended to become Law Number 20 of 2001 concerning the Eradication of Corruption, it is stated that under certain conditions, perpetrators of criminal acts of corruption can be threatened with the death penalty.

To reduce corruption cases, more than juridical tools are needed. In addition to the firmness and full support from the government, it requires "consistency" and "juridical firmness and courage" for law enforcers in progressively interpreting corruption laws. Thus, the calls for enthusiasm and a sense of public justice for the law can be realized. There is nothing wrong with emulating China's experience in combating corruption. If law enforcement officers are serious about eradicating corruption, that is already so acute. "Death sentences for corruption convicts are necessary for the safety of the nation and state."<sup>15</sup>

In the Corruption Crime Act, the death penalty is also included in Article 2 paragraph (2) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes which has been amended and listed in Article 1 paragraph (1) of Law Number 20 of 2001, which is formulated

as follows: Article 2 paragraph (2) of Law No. 31 of 1999 confirms that: "If the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, capital punishment can be imposed".

In his explanation, what is meant by certain conditions in this provision are conditions that can be used as a reason for criminal punishment for perpetrators of corruption, namely if the crime is committed against funds earmarked for overcoming emergencies, national natural disasters, overcoming the consequences of widespread social unrest, overcoming the economic and monetary crises and the repetition of criminal acts of corruption.

According to Busyro Muqodas, there are 3 (three) main criteria that make a perpetrator of corruption deserve a death sentence;

- 1) "The value of corrupted state money is more than IDR 100 billion, and it has massively harmed the people;
- 2) The perpetrators of the corruption crime are state officials;
- 3) The perpetrators of corruption have repeatedly committed corruption."<sup>16</sup>

Thus it can be interpreted that the death penalty for perpetrators of corruption can occur if "the actions charged/claimed against the defendant have been proven legally and convincingly according to law guilty of

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<sup>15</sup> Alexandre Kukhianidze, Corruption and organized crime in Georgia before and after the 'Rose Revolution'. *Central Asian Survey*, 28.2 (2009): 215-234.

<sup>16</sup> Rahmad Yuliadi Nasir, *Penantian Hukuman Mati Untuk Koruptor*, kompasiana.com., 7 April 2010, Hal.1-2

committing the crime charged as formulated above." <sup>17</sup>

The imposition of punishment as a form of sorrow for the perpetrators of criminal acts is the last remedy (*ultimum remedium*), which is only carried out when other efforts, such as prevention, are not working. One of the most severe forms of sanctions is the death penalty, whose existence and urgency have been debated for hundreds of years by criminal law and criminology scholars.

The various sanctions imposed on corruptors have not deterred the perpetrators of corruption, whether committed individually or by corporations. So it is necessary to consider imposing the *ultimum remedium* sanction in the form of the death penalty so that a deterrent effect will appear on the perpetrators of corruption. Cumulative sanctions need to be imposed, namely the death penalty, fines, and restitution of state losses, so that it will create a deterrent effect or will serve as an *ultimum remedium*

The imposition of the death penalty on perpetrators of corruption is an effort to prevent corruption in Indonesia which aims to provide a deterrent effect for perpetrators of corruption. The government implements the death penalty in acts of corruption aimed at minimizing the occurrence of criminal acts. The link between the importance of capital punishment in corruption crimes and human rights is very close, and this is based on the fact that capital punishment involves the most basic right, namely the right to life which is the most basic human right. The imposition of capital punishment for

perpetrators of corruption must be studied in depth, bearing in mind that the death penalty is the most severe punishment that cannot be withdrawn once it has been carried out.

## B. Death Penalty as Retaliation.

This theory first appeared at the end of the 18th century. The adherents of this theory are Immanuel Kant, Hegel, Herbart, Stahl, and Leo Polak. Retaliation theory argues that

"Punishment does not have a practical aim, namely to improve criminals, because the crime itself contains elements to be sentenced to a sentence, and there is no need to think about the benefits of imposing a sentence because it is a crime that results in the imposition of a sentence on the offender." <sup>18</sup>

So an essential punishment is a retaliation. Against this theory of retaliation, Vos divides among others :

- a) "Subjective Revenge  
Namely: Revenge for the wrongdoer;
- b) Objective Revenge  
Namely: Revenge for what actors have created in the outside world."<sup>19</sup>

Furthermore, Nickel Walker gives an understanding of retaliation, namely:

- a) "Retaliatory Retribution  
Means: intentionally giving official suffering that deserves to be suffered and who can realize what a criminal deserves to suffer and who can realize that the burden of suffering is the result of the crime he has committed;

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

<sup>18</sup> Andi Hamzah, *Sistem Pidana dan Pemidanaan di Indonesia Dari Retribusi ke*

*Reformasi.* Jakarta : PT. Pradnya Paramitha, 1995: 19

<sup>19</sup> *Ibid*, Hal. 18



- b) Distributive Retribution  
Means: limitations on forms of punishment that are deliberately imposed on those who have committed a crime. They have fulfilled other conditions deemed necessary in the context of holding them accountable for forms of crime;
- c) Quantitative Retribution  
Means: limitation of criminal forms that have other purposes than retaliation so that the criminal forms do not exceed a level of cruelty deemed appropriate for the crime that has been committed.”<sup>20</sup>

From the description above, retaliation is imposed on criminals who have committed crimes, which is considered commensurate with their actions. By giving retribution, it is considered that they can fulfill the requirements of justice.

When traced from this theory of revenge, every human being will have a feeling of revenge to take revenge, but revenge is not always associated with revenge. The theory of retaliation differs between “the ancient and modern absolute theories. In the sense that the notion of retaliation is no longer seen in absolute terms as teeth are replaced with teeth.”<sup>21</sup>

This can be seen from Kant's opinion about the ancient theory of revenge, which argues that:

Whoever commits a crime must be punished, and the punishment must be based on the principle of retaliation. Vengeance here, according to Kant, if the world were to end tomorrow, the last criminal should still be on death row today.

Meanwhile, according to Hegel, famous for his dialectical theory, “absolute punishment must exist as a reaction to every crime, law, or justice is a reality. In the form of injustice or a return to the rule of law.”<sup>22</sup>

Herbart's opinion on this theory of retaliation is based on the idea that if a crime is not repaid, it will create a feeling of dissatisfaction in the community so that community satisfaction can be achieved or restored. “From an aesthetic point of view, it must be rewarded with the imposition of punishment proportionate to the criminal.”<sup>23</sup>

What is worth here is: There is a division of conditions for obtaining gains and losses, so according to the law, every member of society has an equal and equal position if someone commits a crime which means he causes extraordinary suffering for other people, causing particular suffering for others. Then it is balanced that the criminal is given the same amount of suffering as the suffering he has done to the other person.

From the theory of retaliation explained above, even though both adherents of the theory of retaliation

<sup>20</sup> Adami Chazawi, *Pelajaran Hukum Pidana Bagian I, Stelsel Pidana, Tindak Pidana, Teori-teori Pemidanaan dan Batas-batas Berlakunya Hukum Pidana*. Jakarta: PT.Raja Grafindo Persada, 2001: 20.

<sup>21</sup> J.E. Sahetapy, *Suatu Studi Kasus Mengenai Ancaman Pidana Mati Terhadap Pembunuhan Berencana*, Jakarta: CV.Raja Wali, 1982: 2000

<sup>22</sup> *Ibid*, Hal. 201

<sup>23</sup> *Ibid*, Hal. 116

have different views, the most important here is the theory of retaliation in the form of punishment that must be given to the perpetrators of crimes. The existence of capital punishment needs to be carried out, among other things, to fulfill the two objectives of punishment, namely deterrence and retribution.

Punishment comes from revenge, which, as long as there is no punishment, is a tool to maintain public security, even if it is not perfect and causes losses. In a society that is still simple in civilization, revenge is a moral obligation.

According to Kant's teachings,

"punishment has its legal basis in the crime itself, supported by an unconditional command from practical reason (categorized imperative) which requires that the unlawful act that has occurred be recompensed."<sup>24</sup>

The problem, then, is what crimes are equivalent or deserving of the death penalty? To answer this question, we must be based on the assumption that capital punishment is the maximum punishment which, because of its severity, cannot be threatened with any crime, can only be threatened with sadistic crimes, crimes that have a broad impact on the security and order of the people of the state, such as murder, rebellion, and terrorism. Etc.

According to Stahl, "the principle of retaliation is a law of justice that is

eternal, namely that a punishment must follow a crime."<sup>25</sup>

The state is God's creation on earth, whose foundations have been damaged by a criminal. The state must maintain its power by destroying or causing suffering to criminals. Thus, retaliation is a condition of justice based on Belief in the One and Only God.

Although this retaliation is no longer relevant and has a negative connotation, it provides a significant benefit, namely, protection for the community. With the death penalty, at least the public will not be disturbed and feel uneasy because of the presence of a criminal.

### **C. Criminal Forms and Criminal System in Corruption Crimes**

The characteristic of a particular criminal law is that there are always certain deviations from the general criminal law. This is the case regarding the criminal justice system for corruption which has deviated from general principles in the criminal system according to the Criminal Code (KUHP).

The things that deviate from the general criminal system are the form and system of criminal imposition. In the general criminal law regulated in the Criminal Code, what distinguishes between the main punishment and the additional punishment in Article 10, namely "the main punishment consists of

- a) death penalty,

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<sup>24</sup> P.A.F. Lamintang, D. Simins, *Kitab Pelajaran Hukum Pidana*. Bandung: CV. Pionir Jaya, 1992: 9.

<sup>25</sup> *Ibid.* Hal. 11

- b) imprisonment,
- c) confinement
- d) fine; while additional punishment consists of;
  - revocation of certain rights,
  - confiscation of certain items, and
  - announcement of the judge's decision."<sup>26</sup>

Regarding the severity of the main sentence that will be imposed on the maker, the judge's verdict has determined a maximum limit, especially for each crime. The panel of judges may be at most the particular maximum limit. While the specific minimum limit is not specified, the general minimum limit, for example, imprisonment and minimum confinement, is generally one day.

As for the forms of crime contained in the Articles of Law Number 31 of 1999, which were amended by Law Number 20 of 2001. Moreover, they have deviated from the general principles in the criminal system according to the Criminal Code, which is threatened if a crime occurs as stipulated in referred to are as follows:

- 1) "The crime of corruption by enriching oneself, another person, or a corporation, as referred to in Article 2 paragraph (1), is punishable by 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 rupiahs) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah). In paragraph (2)
- 2) Corruption by abusing authority, opportunity, means of office, or position, as referred to in Article 3, is punishable by life imprisonment or by imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a minimum fine of Rp. 50,000,000.00 (fifty million rupiahs) and a maximum of Rp. 1,000,000,000.00 (two hundred fifty million rupiahs). This formulation was adopted from the former Article 210 of the Criminal Code;
- 3) Corruption crime of bribery by giving or promising something, as referred to in Article 5, is punishable by 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 rupiahs) and a maximum of Rp. 250,000,000.00 (two hundred and fifty million rupiah). This formulation was adopted from the former article 209 of the Criminal Code;
- 4) The crime of corruption and bribery of judges and advocates, as referred to in Article 6, is punishable by imprisonment for a minimum of 3 (three) years, a maximum of 15 (fifteen) years, and a minimum fine of Rp. 150,000,000.00 (one hundred and fifty million rupiahs) and a maximum of Rp. 750,000,000.00 (seven hundred fifty million rupiahs). This formulation was adopted from the former Article 210 of the Criminal Code;
- 5) Corruption in terms of constructing buildings and selling building

<sup>26</sup> Adami Chazawi *Pelajaran Hukum Pidana, Teori-teori Pemidanaan*. Jakarta: PT. RajaGrafindo Persada, 2002: 350.

materials and corruption in terms of handing over equipment needed by the TNI and KNRI, as referred to in Article 7, shall be punished with imprisonment for a minimum of 2 (two) years and a maximum of 7 (seven) years and or fine of at least Rp. 100,000,000.00 (one hundred million rupiahs) and a maximum of Rp. 350,000.00 (three hundred and fifty million rupiah). This formulation was adopted from former Articles 387 and 388 of the Criminal Code;

- 6) Corruption Crimes Civil Servants embezzle money and securities. As referred to in Article 8, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 150,000,000.00 (one hundred and fifty million rupiahs) and a maximum of Rp. 750,000,000.00 (seven hundred and fifty million rupiahs). This crime was formulated from the former Article 415 of the Criminal Code;
- 7) Corruption Crimes Civil servants falsify books and lists. As referred to in Article 9, one shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and a fine of at least Rp. 50,000,000.00 (fifty million rupiahs) and a maximum of Rp. 250,000,000.00 (two hundred and fifty million rupiah). This formulation was adopted from the former Article 416 of the Criminal Code;
- 8) Civil Servant Corruption Crime damages goods, deeds, letters, or lists. As referred to in Article 10, shall be punished with imprisonment for a minimum of 2 (two) years, a maximum of 7 (seven) years, and a fine of at least Rp. 100,000,000.00 (one hundred million rupiahs) and a maximum of Rp. 350,000,000.00 (three hundred fifty million rupiahs). This formulation was adopted from the former Article 417 of the Criminal Code;
- 9) Corruption Crimes Civil Servants accept gifts or promises related to positional authority. As referred to in Article 11, shall be punished with 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 rupiahs) and a maximum of Rp. 250,000,000.00 (two hundred and fifty million rupiah). This formulation was adopted from the former Article 418 of the Criminal Code;
- 10) Corruption Crimes Civil Servants or state administrators, judges, and advocates accepting gifts or promises: Civil Servants force pay, withhold payments, ask for work, use state land, and participate in contracts. As referred to in Article 12, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years, a maximum of 20 (twenty) years, and a fine of at least Rp. 1,000,000,000.00 (one billion rupiah). This formulation was adopted from articles 419, 420, 423, 425, and 435 of the Criminal Code;
- 11) Corruption crime of bribery for civil servants receiving gratuities. As referred to in Article 12 B, shall be punished with life imprisonment or 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 rupiahs) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah);
- 12) The Corruption Crime of Bribery to Civil Servants by reminding them of their position of power. As referred to in Article 13, they shall be punished

with imprisonment for a maximum of 3 (three) years and a fine of up to Rp. 150,000,000.00 (one hundred fifty million rupiahs);

- 13) Criminal acts related to the procedural law for eradicating corruption obstructing efforts to overcome and eradicate corruption; The intended crime is contained in 3 (three) articles, namely Articles 21, 22, and 24. Violations of this article are punishable by imprisonment for a minimum of 3 (three) years, a maximum of 12 (twelve) years, and a minimum fine of Rp. 150,000,000.00 (one hundred and fifty million rupiahs) and a maximum of Rp. 600,000,000.00 (six hundred million rupiahs), but in violation of Article 24 Jo 31, the penalty shall be imprisonment for a maximum of 3 (three) years and/or a fine of up to Rp. 150,000,000.00 (one hundred and fifty million rupiahs) and a maximum of Rp. 150,000,000.00 (one hundred fifty million rupiahs);
- 14) Crime of violation of articles 220, 231, 421, 422, 429, and 430 of the Criminal Code. As referred to in Article 23, one shall be punished with 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 rupiahs) and a maximum of Rp. 300,000,000.00 (three hundred million rupiahs).”<sup>27</sup>

In addition to the main punishment as explained above, the convict may also be given additional punishment to recover state finances due to the corruption crime he committed. This can be seen in Article 18, paragraph (1), namely: :

- Confiscation of tangible or intangible movable property or immovable goods used for or obtained from criminal acts of corruption, including companies owned by the convict where the criminal act of corruption was committed as well as prices and goods that replace these goods;
- Payment of replacement money in the maximum amount equal to the assets obtained from criminal acts of corruption;
- Closure of all or part of the company for a maximum period of 1 (one) year;
- Revocation of all or part of certain rights or elimination of all or part of specific benefits which have been or may be given by the government to convicts.

Regarding the main punishment, even though the types of punishment in the criminal law on corruption are the same as the general criminal law, the system of criminal imposition has specificities when compared to the general criminal law, namely as follows:

- 1) In the criminal law on corruption, there are 2 (two) main types of punishment that are imposed simultaneously and are divided into 2 (two) types:
- Imposition of 2 (two) main types of punishment that are imperative, between imprisonment and fines. The two main punishment types, imprisonment and mandatory fines were imposed

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<sup>27</sup> *Ibid*, Hal. 33



simultaneously. The most brutal acts of corruption threaten the imperative-cumulative system.

- Impeachment of 2 (two) types of principal sentences simultaneously which are imperative and optional, namely imprisonment and fines. Among these 2 (two) main types of punishment, what must be imposed is imprisonment (imperative), but it can also be imposed cumulatively with fines (facultative) together (cumulative) with imprisonment. So specifically for the imposition of a facultative sentence, compared to the Criminal Code, the nature of this facultative sentence only exists in additional types of punishment. The imperative-facultative system (imprisonment is imperative, fines are optional) is deduced from 2 (two) words, namely “and or” in sentences regarding criminal threats from the formulation of the crime in question. Here the judge can choose between imposing concurrent punishment with a refined (optional nature). This imperative-facultative sentencing system is found in criminal acts formulated in Articles 3, 5, 7, 10, 11, 13, 21, 22, 23, and 24.
- 2) The criminal system for criminal acts of corruption stipulates particular minimum and specific greatest threats, both regarding imprisonment and fines. It does not use a system that stipulates general maximum and general minimum threats as in the Criminal Code.
  - 3) The specific maximum imprisonment that is threatened far exceeds the general maximum in the Criminal Code of 15 (fifteen) years, up to 20 (twenty) years. In the Criminal Code, it is permissible to impose prison sentences of up to the general maximum limit of 15 (fifteen) years, namely 20 (twenty years), if there is repetition or concurrent (because it can be added by one-third) or certain criminal acts as an alternative to capital punishment [for example articles 104, 340, 365 paragraph 4].
  - 4) The criminal law on corruption does not deal with the death penalty as a principal punishment punishable by an independent crime. However, recognizing the death penalty if the crime is referred to in Article 2, there is a reason for aggravating the sentence. So, the death penalty is a sentence that can be imposed if there is a reason for aggravating the sentence, namely if you commit a criminal act of corruption under Article 2 under certain circumstances. This particular situation is explained in the explanation regarding Article 2 paragraph (2), namely “if it is carried out when the country is in a state of danger by the applicable law; at the time of the occurrence of a national natural disaster; as repetition; or when the State is in a state of economic and monetary crisis.”

The formal corruption criminal justice system that threatens cumulative imprisonment with fines or cumulative-facultative imprisonment with fines, both at a unique maximum and a certain minimum, does not apply if the value of the object of corruption is Article 5, 6, 7, 8, 9, 10, 11 and 12 less than IDR 5,000,000.00 (Five Million Rupiah). For the object value of the corruption crime of fewer than five million rupiahs, the penalty is a maximum imprisonment of 3 (three) years and a maximum fine of Rp. 50,000,000.00 (fifty million rupiahs). So adopting a system of imposing general criminal law in the Criminal Code (KUHP).

Unlike the description above, it is a criminal act of corruption committed by or on behalf of a corporation. The legislators of the Corruption Crime Act are fully aware that individuals and corporations commit corruption through their management, which has recently increased in intensity with various modus operandi. The corporation in question is not only a legal entity but also a non-legal entity. Which regulations are not found in regulations that have been in force before. The general explanation states, "The new developments regulated in this law are corporations as subjects of non-corruption crimes that can be subject to sanctions." This was previously regulated in law no. 3 of 1971 concerning the Eradication of Corruption Crimes.

The types of corruption that corporate subjects can carry out are as referred to in Article 2, paragraph (1) and 3, Law Number 31 of 1991 concerning the Eradication of Corruption, namely: Everyone who unlawfully commits an act

of enriching himself or others or a corporation that can harm the state's finances, ....." and Everyone who, intending to benefit himself or another person or a corporation, abuses his authority, opportunities or facilities because of his position or position which can harm the state's finances or the country's economy. ...."

In contrast to the subject of corruption committed by people, criminal sanctions can be imposed in the form of the death penalty, life imprisonment, imprisonment, and fines. While the subject of corruption is a corporation, the main punishment that can be imposed is only a fine. In addition to the main punishment imposed on corporations, there are also additional penalties, just as the perpetrators of corruption are people.

## CONCLUSION

Capital punishment for corruption cases has never been imposed, so the death penalty cannot be used as an ultimum remedium against perpetrators of corruption. The maximum severity of the principal sentence to be imposed has been determined by the maximum limit for each crime. In contrast, the specific minimum limit is not specified, but the general minimum limit, for example, imprisonment and minimum confinement, is generally one day. In the criminal law on corruption, 2 (two) types of main crimes are imposed simultaneously, which are imperative, between imprisonment and fines. Imposition of 2 (two) types of significant crimes simultaneously, which are

imperative and facultative, namely between imprisonment and fines, the nature of the criminal conviction. This facultative only exists in additional types of punishment—Imperative-facultative system (imprisonment is imperative, fines are optional).

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