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Death Criminal Threat Order in Criminal Action Law Corruption

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Abstract— *As an effort to combat corruption as an extraordinary crime, the makers of Law Number 31 of 1999 as amended by Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption formulated several important things, which are considered to be used as tools to ensnare and have a deterrent effect on corruption. perpetrators, namely the principle of reverse proof and severe sanctions, including the death penalty. The policy of formulating articles relating to these two matters is of course based on thoughts and motivated by the desire to eradicate corruption. However, this formulation policy is not followed by an application policy. As the principle of reverse proof is reluctant to be applied in trials of corruption crimes, judges of corruption crimes are also reluctant to apply the death penalty to criminals, even though the state has actually lost billions, even trillions of rupiah, and many members of the public have lost the opportunity to enjoy the welfare as a result of the crime.*

Keywords— *Corruption, the death penalty.*

I. INTRODUCTION

In the National Long-Term Development Plan for 2005-2025, it is formulated that the nation's ability to be highly competitive is the key to achieving the nation's progress and prosperity. High competitiveness will make Indonesia ready to face the challenges of globalization and able to take advantage of existing opportunities.

To strengthen the nation's competitiveness, national development in the long term is directed, among others, to reforms in the field of law and the state apparatus. Legal development is also directed at eliminating the possibility of corruption as well as being able to handle and completely resolve the related problems. collusion, corruption, nepotism (KKN). Legal development is carried out through the renewal of legal materials while still paying attention to the plurality of the applicable legal order and the influence of globalization as an effort to increase legal certainty and protection, law enforcement and human rights (HAM), legal awareness, and legal services with the core of justice and truth. , order and welfare in the context of an increasingly orderly, orderly, smooth, and globally competitive state administration.

Such a formulation indicates that corruption is a national problem which the process of tackling continues to be pursued, and one of the efforts made is through the renewal of legal materials, in this case, statutory regulations. This is important considering the impact of the criminal act of corruption that damages the foundations of the nation's life in various aspects, and the process of overcoming it has been carried out based on several laws and regulations concerning Corruption Crimes, including Law 31 of 1999 concerning the Eradication of Corruption Crimes. as amended by Number 20 of 2001. In the General Elucidation of this law it is stated that to achieve a more effective goal of preventing and eradicating criminal acts of corruption, this law contains criminal provisions that different from the previous law, including the threat of the death penalty which is a criminal offense.

The formulation of the death penalty in Indonesian laws and regulations has always been a polemic that has drawn pros and cons from various circles of society. Apart from this, the threat of the death penalty in the Corruption Law does not seem to mean anything because its implementation is ignored by the apparatus law enforcer.

II. METHOD OF RESEARCH

2.1. Development of Corruption Crimes in Indonesia

Corruption has been very widespread systemically, permeating all sectors at various central and regional levels, in all state institutions, both executive, legislative and judicial. Therefore, corruption is classified as an extraordinary crime. In Indonesia, by the naked eye, corruption cases are public consumption that can be obtained through various mass media, both print and electronic. Hardly a day goes by without news about corruption cases.

This is explicitly acknowledged in the General Elucidation of Law Number 20 of 2001, that corruption in Indonesia occurs systematically and widely so that it not only harms state finances but also violates the rights of the state, the social and economic community at large. This condition is the basis for the government to seek various efforts to eradicate corruption.

Transparency International revealed that the Corruption Perception Index (CPI) in 2010 was 2.8 and ranked 110 out of 178 countries, In 2011 it reached 3.0 and occupied ranking 100 out of 183 countries. Meanwhile, in 2012, Indonesia's CPI reached 3.2 but dropped to 118 out of 182 countries. 3 Corruption is carried out in various sectors, namely in tax revenues, non-tax revenues, expenditure on goods and services, social assistance, APBN/APBD, DAU/ DAK/Deconcentration. Several prominent cases (celebrity cases) that have received great attention from the public, and require the efforts and hard work of law enforcement officials to reveal them are among others cases of tax corruption, the Hambalang project, driving license simulators, and beef imports, involving tax officials, members of the DPR, Police officials, political party officials, even ministers. The Corruption Eradication Commission

revealed that the crime of corruption has had extraordinary consequences in various aspects of people's lives, such as high poverty rates, unemployment, increased foreign debt, and natural damage.

It is estimated that the Poverty Rate in Indonesia according to BPS, in March 2012 was 29.13 million people or 11.96%; the number of unemployed is 7.6 million people; Foreign debt based on data from the Ministry of Finance in 2012 was 1.937 trillion. Loans amount to 615 trillion, and debt securities amount to 1,322 trillion. While forest damage is an area of 3.8 million hectares, which are cleared and exploited illegally.

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2.2. The Existence of the Death Penalty in the Corruption Eradication Law

As an effort to overcome corruption as an extraordinary crime, lawmakers formulate several important things, which are considered to be used as tools to ensnare and have a deterrent effect on perpetrators, namely the principle of reverse proof and severe sanctions, including the death penalty. . The policy of formulating articles relating to these two matters is of course based on thoughts and motivated by the desire to eradicate corruption.

However, this formulation policy is not followed by an application policy. As the principle of reverse proof is reluctant to be applied in trials of corruption crimes, judges of corruption crimes are also reluctant to apply the death penalty to criminals, even though the state has lost billions, even trillions of rupiah, and many members of the public have lost the opportunity to enjoy the welfare as a result of the crime.

According to the Head of the Judicial Commission, Busyro Muqodas, 3 main criteria make a person who commits a criminal act of corruption deserves the death penalty;

1. The value of the corrupted state money is more than Rp. 100 billion and has massively harmed the people;
2. The perpetrators of the corruption crime are state officials;
3. The perpetrators of corruption have repeatedly committed corruption.

One of the causes for not applying the death penalty 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 circumstances" in this provision is intended as a burden for perpetrators of criminal acts of corruption if the crime is committed at a time when the country is in a state of danger by applicable laws, during a national natural disaster, as a repetition of a criminal act of corruption, or when the country is in a state of economic and monetary crisis.

The above provisions received a response from Artidjo Alkostar, who stated that the provisions on corruption carried out when the country was in a state of danger, a national natural disaster occurred, the repetition of a criminal act of corruption, or the country was in a state of economic and monetary crisis, even contradicted the eradication of corruption because it was not clear. the parameters. Such a statement will of course be refuted if faced with the necessity of a judge to act creatively by the meaning of the provisions of Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, in which judges are obliged to explore, follow and understand legal values and feelings. justice in society.

Thus, the ambiguity of the parameters as stated above is not the reason why until now there has been no death penalty for corruptors in Indonesia. The heaviest sentence ever imposed on corruptors in Indonesia is the life sentence that was imposed on Dicky Iskandar Dinata, who was proven to have repeatedly committed corruption crimes, against Bank Duta and Bank BNI.

III. Analyze and Result

3.1. Death Penalty for Corruptors in Ius Constituendum

Article 2 paragraph (2) of the Law on the Eradication of Criminal Acts of Corruption, which regulates the death penalty for a corruptor, has never been applied because certain conditions have not been fulfilled by the corruptor. This indicates that, regardless of the repetition of criminal acts, the imposition of the death penalty on corruptors is only carried out if the country is in an "extraordinary" condition, namely in a state of danger based on applicable laws, a national natural disaster is occurring, or in the event of a national disaster. when the country is in a state of economic and monetary crisis.

Based on this reality, the question that then arises is, is it still relevant to formulate the death penalty for corruption in the future. In addition, the death penalty is still the same. This

question will not be answered only by clearly determining the conditions under which a corruptor can be sentenced to death, but rather an assessment of the importance of imposing the death penalty on a corruptor from the point of view of the purpose of punishment.

From the aspect of human rights, the Constitutional Court through the decision of the Constitutional Court Number 3/PUU-V/2007 essentially stated that the death penalty for serious crimes is a form of limitation of human rights.

The two statements above clearly indicate that the imposition of the death penalty is not something that dichotomy must be contrasted with the right to life as a non-derogable right from the point of view of human rights. Nevertheless, the debate about the death penalty will still be carried out, because constitutionally, the 1945 Constitution of the Republic of Indonesia expressly provides protection for human rights, and therefore, taking a person's right to life, regardless of its form, is a violation of that right.

The debate about the death penalty also remains groundless, because of the reality, internationally and regionally, countries in the world are being led to come to common thought and agreement to abolish the death penalty. Based on Resolution 2857 of 1971 and Resolution 32/61 of 1977, the United Nations has taken steps to declare the abolition of the death penalty as a universal goal to be achieved, although it is limited to certain crimes. Several regional conventions have also been agreed as an effort to encourage the abolition of the death penalty, including the European Convention on the Protection of Human Rights and Fundamental Freedoms, and the American Convention on Human Rights. In other words, the legal system in the world is moving away from the death penalty.

The debate about the death penalty has existed since the time of Cesare Beccaria around 1780, who once stated opposed the death penalty because it is considered inhumane and ineffective.6 The debate about the effectiveness of the death penalty, especially for corruption crimes, persists. This debate is based on the assumption of whether the imposition of the death penalty is effective in tackling crime (corruption)? Two groups comprehensively put forward their arguments, both those against (abolitionists) and those who support (receptionists) the death penalty.

The abolitionists base their argument on several reasons. First, the death penalty is a form of punishment that degrades human dignity and is contrary to human rights. It is based on this argument that many countries abolish the death penalty in their criminal justice systems. So far, 97 countries have abolished the death penalty. EU member states are prohibited from applying the death penalty under Article 2 of the 2000 Charter of Fundamental Rights of the European Union. The UN General Assembly in 2007, 2008, and 2010 adopted non-binding resolutions calling for a global moratorium on the punishment. dead. Optional Protocol II of the International Covenant on Civil and Political Rights (ICCPR) finally obliges each country to take steps to abolish the death penalty.

The abolitionist groups also rejected the receptionist's argument that they believed the death penalty would have a deterrent effect, and therefore reduce crime rates, especially corruption. There is no conclusive scientific evidence proving a negative correlation between the death penalty and the level of corruption. On the other hand, based on the 2011 Transparency International Corruption Perceptions Index, countries that do not implement the death penalty have the highest ranking as countries that are relatively clean from corruption, namely New Zealand (rank 1), Denmark (2), and Sweden (4).

Meanwhile, the receptionist group put forward arguments in favor of the death penalty. The main reason is that the death penalty has a deterrent effect on public officials who will commit corruption. If they realize that they will be sentenced to death, such officials will at least think a thousand times about committing corruption. The facts prove when compared to developed countries that do not apply the death penalty, Saudi Arabia which enforces Islamic law and the death penalty has a low crime rate. Based on data from the United Nations Office on Drugs and Crime in 2012, for example, the homicide rate was only 1.0 per 100,000 people, compared to Finland 2.2, Belgium 1.7 and Russia 10.2.7

The receptionist group also rejects the opinion of the abolitionist groups who say the death penalty (against corruptors) is against humanity. According to the receptionist group, corruption is an extraordinary crime that insults humanity. Corruption is a crime against humanity that violates the right to life and human rights of not only one person, but millions of people. Indonesia is one of the receptionist countries that both de jure and de facto recognize the death penalty. Retentionist groups in Indonesia argue that the death penalty for corruptors does not violate the constitution as stated by the Constitutional Court. Modderman, a scholar who is pro-death penalty, argues that for the sake of public order the death penalty can and should be applied, but this application is only a last resort and should be seen as an emergency authority which is exceptional circumstances can be applied.

The basic arguments of these two groups can be used as reference material for determining policies on the use of the death penalty in corruption in the future. By looking at the reality that Indonesia is now in an emergency period of corruption, because it has caused poverty and therefore damaged the right to life of millions of Indonesian people, then based on the consideration of the sense of justice that lives in society, the death penalty still needs to be formulated in the law on eradicating corruption in the future. The death penalty can provide a strong warning to public officials not to engage in corruption. However, the death penalty should only be imposed on the most vicious and widespread forms of corruption, and its formulation should be clear and firm so as not to cause multiple interpretations and doubts in its application. In addition, the death penalty must be very careful to be handed down.

In the Indonesian criminal justice system, where law enforcement officers are often involved in corruption, as it is today, a person is very likely to become a victim of a miscarriage of justice. Therefore, to prevent miscarriage of justice accused of corruption must be given the right to take legal and fair remedies. And if they are ultimately sentenced to death, the corrupt convict still has the opportunity to apply for clemency or get the special nature of the death penalty imposed, as formulated in the concept of the national Criminal Code.

IV. CONCLUSION

Combating corruption requires the will and seriousness of all parties, both executive, legislative and judicial. Good statutory regulation on the handling of Corruption Crimes will only become dead words if law enforcement officials do not have the good moral integrity to tackle corruption. (RAS - SIL)

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