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Poco-poco implementation of the death penalty for corruptors in the time of force majeure

Amalia Syauket, Erwin Owan Hermansyah
Fakultas Hukum, Universitas Bhayangkara Jaya, Indonesia

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ABSTRACT

Under the legal basis, a pandemic is included in the time of force majeure, "extraordinary" time, or disaster time. In such a situation, the crimes committed will be threatened with heavier punishments than in normal situations. However, the reality that appears until 2021, the heaviest punishment ever imposed in a corruption case is a life sentence. This study aims to find out what causes the ambiguity of the judge's imposition of the death penalty for corruptors during force majeure. With a qualitative approach, the author concludes that in positive Indonesian law there is still the threat of the death penalty for perpetrators of crimes, such as crimes of corruption, especially in certain circumstances. The reason why the judges are ambiguous in imposing the death penalty for corruptors is because the loss to the state which is also the loss of the people has not yet become a feeling of justice. Thus, the death penalty in corruption cases is rarely even never applied so that the judge is giddy, not firm in enforcing the threat of punishment in this case. Novelty of this research, it is necessary to develop efforts to impose the Social Costs of Corruption.



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Corresponding Author:

Amalia Syauket,
Universitas Bhayangkara Jaya
Email: amalia.syauket@dsn.ubharajaya.ac.id

Introduction

The crime of corruption in Indonesia has caused enormous destruction for the survival of the nation and state. Not only is it detrimental to state finances, but the crime of corruption has also robbed the social and economic rights of the community at large (Waluyo, 2022). Based on research conducted by Alam (2017), corruption will have an impact on the wider community and will harm the general public and the state. The application of the law is also another cause of widespread corruption. This crime is very difficult to eradicate, because it is often carried out systematically and involves people in power. We too can feel how great and extraordinary the danger posed by this crime. It is natural that the crime of corruption is classified as an extraordinary crime that must be eradicated in an extraordinary way, namely—one of them—by punishing the perpetrators of corruption in this country to death. Conditions like this that encourage Prof. Mahfud MD, while serving as Chairman of the Constitutional Court, threw a 'hot ball', namely that corruptors could be sentenced to death (Sirin, 2015). Not only for corruptors who bankrupt the state, but also for all perpetrators of corruption in Indonesia.

Referring to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, the death penalty is listed at the beginning of the law (Nomor, 31 C.E.). In Article 2 concerning the Crime of Corruption, it is stated in paragraph 2 that: "In the event that the criminal act of corruption as referred to in

paragraph (1) is committed under "certain circumstances", the death penalty may be imposed. The Supreme Court of the Republic of Indonesia has issued Supreme Court Regulation (Perma) Number 1 Year 2020 regarding Guidelines for the Criminalization of Articles 2 and 3 of the Corruption Eradication Law Judging from the threat of punishment in this Perma, the Supreme Court does not seem to be playing games in imposing the death penalty. In his explanation, the phrase "certain circumstances" is a punishment if corruption is carried out, including in a state of national natural disaster, the country in a state of economic and monetary crisis. Therefore, the misuse of the Covid-19 fund allocation can be categorized in certain circumstances and the perpetrator can be sentenced to death. However, the reality that appears until 2021, the heaviest punishment ever imposed in a corruption case is a life sentence. The obstacle is whether prosecutors and judges dare to make decisions related to this corruption crime.



Figure1. Conditions for the imposition of the death penalty for corruptors

Source : <https://indonesiabaik.id/infografis/hukuman-mati-bagi-pelaku-korupsi>, (Nurhanisah, 2021)

Method

This writing is a normative legal research. The approach to legislation or written legal materials is used by the author to analyze the application of the death penalty in corruption. The type of data used by the author in this writing is secondary data that is not obtained directly from the field, but is obtained from a literature study of various books, archives, documents, legislation. Discussion using cases as a phenomenon that describes the occurrence of corruption during force majeure with , as explained by (Polit & Beck, 2004) based on human understanding and behavior based on the opinion of researchers with subjects in research can be individuals. The nature of this research is analytical description, according to Singarimbun (Masri & Effendi, 1989), descriptive analytical research is research that tries to describe a more complex social reality with theoretical concepts that have been put forward by scientists. This research method is appropriate to be used to answer the formulation of the problem in the form of what causes the ambiguity of the judge's imposition of the death penalty for corruptors during force majeure, which is likened to a poco-poco dance, going back and forth in place.

Results and Discussions

Definition of Force Majeure Time

The definition of force majeure according to Black's Law Dictionary (BLD) which means superior force or higher power. Force majeure is defined as an event that cannot be anticipated or controlled, including natural and human-caused events. Meanwhile, according to the Big Indonesian Dictionary, force majeure is defined as an event that cannot be rationally anticipated or controlled by humans. From this understanding, basically, force majeure has the same meaning even though it is not identical. Because force majeure or force majeure is defined as a situation that cannot be anticipated and controlled.

According to Petrus Richard Sianturi (Sianturi, 2021), within the legal framework, a pandemic is included in a time of force majeure, an "extraordinary" time, or a time of disaster. In such a situation, the crimes committed will be threatened with heavier punishments than in normal situations.

Table 1. Examples of corruption cases that take advantage of the moment of disaster as a time of force majeure

No	Year	Corruption Case	Penalty
1.	2005	procurement of medical devices (alkes) to anticipate extraordinary events (KLB)	2017, the Jakarta Corruption Court Judge sentenced Siti Fadilah to 4 years in prison. He is also required to pay a fine of Rp. 200 million, subsidiary of 2 months in prison, plus a replacement of Rp. 550 million, subsidiary of 6 months.
2	2007	Procurement of reagents and consumables for handling the bird flu virus	Sentence for 16 months in prison plus a fine of IDR 50 million subsidiary 2 months in prison for Freddy and five years in prison and a fine of IDR 500 million subsidiary 3 months in prison for Ratna Dewi Umar
3	2011	Binahati Benedict Baeha, former Regent of Nias, in the corruption case of the Nias tsunami aid fund, SUMUT.	Supreme Court decision, Binahati prison sentence: 5 years in prison a fine of IDR 200 million subsidiary 4 months in prison.
4	2018	Repair of mosques damaged by the Lombok earthquake	The Mataram Corruption Court sentenced him to 4 years in prison and a fine of Rp. 100 million, a subsidiary of two months in prison.
5	2018	Project for the construction of a drinking water supply system (SPAM) in the earthquake and tsunami disaster areas of Donggala and Palu, Central Sulawesi	The sentence is 8 years in prison, a fine of Rp. 500 million, subsidiary of 4 months in prison for Nazar. while Donny received a sentence of 5.5 years and a fine of Rp. 300 million, subsidiary of 3 months in prison.
6	2020	Minister of Social Affairs Juliari Peter Batubara. Juliari and several other Ministry of Social Affairs officials are involved in a corruption case related to the Corona Social Aid fund.	The sentence of 12 years in prison for former Minister of Social Affairs (Mensos) Juliari P. Batubara was handed down by the panel of judges at the Central Jakarta Corruption Court (Tipikor).

Source: processed from various sources by researchers, 2021.

The legal phrase "certain circumstances" that lead to the threat of a heavier sentence such as the death penalty is not used by law enforcement elements, especially public prosecutors. As a result, judges cannot do much when making decisions, even though judges actually have the right to make interpretations and legal findings (rechtsvinding). Certain circumstances that have been legally formulated only become the

formulation of great ideas that lose their empirical meaning because they are stripped naked by law enforcement elites who do not have the guts to sentence corruptors to death.

Firli emphasized *salus populi suprema lex esto*. Public safety is the highest law, so for those who commit corruption in a disaster situation there is no other choice in enforcing the law, namely the demand for the death penalty. Firli's statement was refuted by (Kurniawan, 2021), judged to be only lip service because it was not in accordance with his actions. Efforts by the anti-corruption agency that did not show any action or commitment to intend to impose the harshest sentence on Juliani.

The Urgency of the Death Penalty for Corruptors

The death penalty is one of the oldest types of crime, as old as mankind. The death penalty is also the most interesting form of crime studied by experts because it has a high contractual value or conflict between those who agree and those who disagree (Ali, 2022). Indonesia is one of the countries that still maintains and recognizes the legality of the death penalty as a way to punish perpetrators of crimes. The death penalty, apart from being the most severe punishment, is also a punishment that is generally very scary, especially for convicts who are awaiting execution. One of the crimes that can be sentenced to death is corruption (Nugroho, 2014). Indonesia still maintains the death penalty in its national criminal system on the grounds that Indonesia still needs the death penalty as a form of punishment that deters and creates a fearful effect on society which will automatically reduce the occurrence of crimes in the future.

In formal juridical terms, the application of the death penalty in Indonesia is justified. This can be traced from several articles in the Criminal Code (KUHP) which contain the threat of the death penalty. Outside the Criminal Code, there are at least six laws and regulations that carry the death penalty, such as the Narcotics Law, Anti-Corruption Law, Anti-Terrorism Law, and Law on Human Rights Courts, Intelligence Law and State Secrets Law.

In addition, philosophically, the application of the death penalty is also recognized and accommodated by the concept of the state law of Pancasila. This shows that the death penalty in Indonesia still exists in the laws and regulations in Indonesia. In the context of democracy, the stipulation of the death penalty in several laws in Indonesia has basically gone through discussions in the legislative body, which incidentally are people's representatives, as representatives of all Indonesian people. According to van Bemmelen, citing the opinion of J.J. Rousseau (Bemmelen, 1987), basically the law as a whole rests on a community agreement in which a common will is expressed. If there is behavior which according to the common will must be punished, then it must be described or written in law from the start. The detailed description is intended to avoid violating individual freedoms, because in a community agreement, each person is only willing to release a small part of his freedom into the shared container (Bemmelen, 1987). Likewise with the death penalty. If the death penalty is still feasible to be enforced and accepted by the common will, then the sentence must be stated in the form of a written law (law).

So, the application of the death penalty for perpetrators of corruption can be justified, both legally (law) and humanely (public interest). This is because the crime of corruption is related to the deprivation of the welfare rights of the wider community, so that its handling must also be oriented to the protection of these public rights (Sirin, 2006). If the death penalty has no implications or has no value for the perpetrator, its value lies in its impression on others as a general deterrence (Sirin, 2006) (Sirin, 2013). Anyone who is proven to be involved in corruption in social assistance must be severely punished for doing so in a society that is currently struggling with the pandemic. In addition, the corrupted funds are aid for the poor. It is carried out by high-ranking officials who do not know themselves, abuse their position during a disaster and corrupt the people's share, this is the most heinous corruption

As one of the pillars in the formation of the legal system in Indonesia, in addition to Western law and customary law, Islamic law has a great importance in fighting for the existence of the death penalty (Jimly, 1996). as a form of maximum punishment and has a strong legal basis . (Surat al-Baqarah: 179). This shows that Islamic law still maintains the death penalty for certain crimes, where the essence of its application is to protect the interests of individuals and society from crimes that endanger the basic joints of humanity (Jimly, 1996).

In Islamic law, the death penalty can be found in three forms of punishment, namely *qishàsh*, *had* (*hudûd*) and *ta'zir*. In the case of *qishàsh*, the threat of the death penalty is intended for the perpetrator of an intentional or premeditated murder, where the perpetrator of the intentional murder must also bear the commensurate legal retribution for what he did. Meanwhile, in the case of *ta'zir*, the threat of the death penalty is intended for perpetrators of crimes outside of *qishàsh* and *hudd* which the state (ruler) considers very dangerous for survival and the benefit of society, (Sirin, 2013)

In the context above, the death penalty which is applied to certain cases, such as drugs, terrorism and corruption, belongs to the category of *ta'zir* punishment which is called '*al-qatl al-siyasi*', which is a death penalty that is not regulated by the Koran. and Sunnah, but it is left to the authorities or the state, both in its implementation and the procedure for its execution (Sirin, 2006). The maximum penalty (death) may be imposed by a state if it is seen as an effective effort to maintain order and the benefit of society (Audah, 1992) (Sirin, 2006), (Sirin, 2013)

Islamic law is actually very concerned with basic human values in the world which are covered in five things, namely religion (*al-din*), soul (*al-nafs*), property (*al-mal*), reason (*al-aql*), and offspring (*al-nasl*). The protection of these rights is not at all a gift from the rulers or a gift from the community, but is a gift from Allah SWT. In order to maintain these five basic human rights, Islamic law consequently includes the death penalty as one of the main punishments, as well as a maximum sentence of (Siddiqi, n.d.).

Therefore, the implementation of the death penalty should not be compared or confronted (*vis a vis*) with the human rights values of the perpetrators of the crime, but must be seen from the interests of the community at large (Siddiqi, n.d.). The existence of the death penalty in Indonesia must mean that we, as a community of nations, have agreed to give the punishment. This means that for perpetrators of corruption crimes, the death penalty is still needed because of the actions of the perpetrators themselves who no longer pay attention to the human aspect of life (the 2nd principle of Pancasila) and a life full of social justice (the 5th principle of Pancasila) (Siddiqi, n.d.).

So, as a nation and state that has a Pancasila philosophy, the implementation of the death penalty in our country should be addressed in a democratic manner, namely that the Indonesian people currently still want the death penalty to apply in Indonesia as a consequence of the culture and legal paradigm of the nation and state today. Moreover, the death penalty is only applied to certain crimes, such as narcotics, terrorism and corruption (Sirin, 2006) (Sirin, 2013)

Thus, despite the pro and contra opinions on the existence of the death penalty in Indonesia, basically Indonesia is still one of the countries that adheres to and maintains the death penalty as a form of punishment in its national criminal law system. Each country continues to apply the death penalty, in accordance with its national legal system which is influenced by the legal culture and politics of the country. This does not violate any legal regulations, because every State is obliged and has the right to maintain and enforce State sovereignty in the field of law in accordance with the situation and needs of the State concerned. The application of the death penalty does not violate any legal regulations, because there is no single UN convention that prohibits the death penalty.

Throughout the history of eradicating corruption in Indonesia, only two corruptors were threatened with the death penalty, namely Jusuf Mada Dalam, who was the Minister of Central Bank Affairs of the Republic of Indonesia from 1963-1966, was sentenced to death on April 8, 1967 but he died in Cimahi prison, on August 26, 1976, due to tetanus. and Heru Hidayat demanded the death penalty by the Prosecutor in the ASABRI case.

Judge's Indecision

In cases of corruption, the perpetrators can be sentenced to the maximum amount of punishment because the perpetrators must be held accountable for their actions. In every action that contains elements of an error or a criminal act, the crime or error is what causes a person to be punished. against the crime committed. This unwritten law principle is embraced by Indonesian criminal law today. This principle of no crime without fault is violated by strict liability and vicarious liability (Widowaty, n.d.)

"Moeljatno said that a criminal act is an act that is prohibited by legal provisions, where the prohibition is accompanied by sanctions or threats in the form of certain crimes against anyone who violates the prohibition¹⁰. which must be accounted for, has made Indonesia the most beautiful place for corruptors to commit crimes of illegally taking people's money. In many court decisions, judges only sentence defendants to corruption cases with low sentences. (Moeljatno, 2008)

Meanwhile, the threat of the death penalty as regulated in the Corruption Crime Law Article 2 paragraph 2 of the Corruption Crime Law Number 31 of 1999 as amended by Law Number 20 of 2001 clearly states that if a criminal act of corruption is committed against funds that are intended for overcoming dangerous conditions, national natural disasters, overcoming the effects of widespread social unrest, overcoming economic and monetary crises, and repeating criminal acts of corruption, as in the example in Table 1 above, the perpetrators can be sentenced to death. Its existence has been ignored (Yanto, 2017). Until now, corruptors have never been charged with the death penalty, which later became the basis for judges to issue a death sentence.

From Table 1 above, it also appears that the absence of prosecutors' demands in the form of a death penalty against corruption perpetrators causes judges to go further in imposing the death penalty on corruptors. This situation further shows that justice is getting further away from society. The public should be able to enjoy the money corrupted by the corruptors because indeed the money is from the people and will return to the people for poverty alleviation, education and health (Yanto, 2017). Injustices that arise in society such as poverty, one of the main causes is due to the injustice of the rulers towards their people, because of the lack of siding with the rulers and the rich towards them (Widowaty, n.d.). If the rulers of this country do not side with the people, of course there will never be threats, let alone death sentences for the corruptors. Whereas the death penalty can be a powerful way to stop corruption in Indonesia. And the death penalty is not a violation of human rights in the context when the crime is a crime of corruption (Dasuki, 2015)

According to Abdul Fickar Hadjar, the judges must be reluctant to impose the death penalty. Apart from the nature of the crime is still tolerated by the community because it does not directly cause death. Thus, there is a sense of imbalance if the corruptor is sentenced to death. This uncertainty, continued Fickar is influenced by the assumption that corruption has not caused people to starve to death. Thus, law enforcers do not feel the appreciation of the losses incurred.

Abdul Fickar Hadjar explained that the application of the death penalty for corruptors has never been used because the loss to the State which is the loss of the people has not become a feeling of justice, so that the death penalty for corruptors is rarely even never applied.

Furthermore, Abdul Fickar Hadjar explained that the belief that Article 2 of the Anti-Corruption Law will be applied is also getting thinner considering the attitude of the Supreme Court which often reduces the verdicts of corruption convicts who file for cassation or judicial review. Because, it is not impossible that the death sentence handed down was canceled when it was alleged to be at the Supreme Court. A similar view is also from Kurnia Ramadana who stated that giving a deterrent effect is more appropriate if a combination of punishment is imposed in the form of a maximum imprisonment and followed by impoverishment of corruptors. This step will remain effective because people are generally afraid of being impoverished corruption Eradication.

Conclusions

Like an energetic poco-poco dance with back-and-forth movements but walking in place. This description is appropriate to describe the scarcity of death sentences for corruptors during force majeure. The forward movement is likened to a positive legal framework, both general and specific provisions, there is still the threat of the death penalty for perpetrators of crimes, such as crimes of corruption, especially in certain circumstances. Force majeure or certain circumstances here are a burden for perpetrators of criminal acts of corruption if the crime is committed, for example during a national natural disaster, repetition of a criminal act of corruption, or when the country is in a state of economic and monetary crisis. The cause of ambiguous judges in imposing the death penalty for corruptors is because state losses which are also the loss of the people have not yet become a feeling of justice. Thus, the death penalty in corruption cases is rarely even never applied, which is likened to the backward movement in the poco-poco dance. The judge was giddy, not firm in enforcing the threat of punishment, in this case a description of the movement of the road in place. Uncertainty which is likened to walking in place illustrates the lack of strong commitment of the Judge in eradicating corruption.

Corruption at the time of force majeure is very detrimental to the community, for example during the Covid-19 pandemic it has injured and made it more difficult for the community. Light sentences for corruptors have not fulfilled the sense of justice in society. Because of the corruption that was carried out, in the midst of difficult and difficult conditions. Social assistance which is expected to be a lifeline for the community has actually become a *bancakan*, so the novelty of this research needs to be developed for the imposition of punishments or sanctions that consider the consequences of social damage, have hurt and made it more difficult for the community when Force Majeure is caused by corruptors as an imposition of the Social Costs of Corruption.

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