Criminal Law Policies In Overcoming Corruption In Indonesia Through Death Penalty In Relation To The Principle Of Justice

Herman Suherman
Fakultas Hukum Universitas Islam Bandung
Mail: hs8349992@gmail.com
DOI : https://doi.org/ 10.29313/shjih.v20i2.9994

Submitted : June 2022	*Accepted : May 2023*	*Published : May 2023*

ABSTRACT

Law of the Republic of Indonesia Number 31 of 1999 Juntco Law of the Republic of Indonesia Number 20 of 2001 concerning Eradication of Corruption Crimes still contains weaknesses in regulating death penalty. This research is a normative juridical research with the starting point of Article 2 paragraph (2) of the Corruption Crime Act. The approach in this writing uses a statutory approach (statute appoach). This study uses secondary legal materials with data collection methods used in literature studies. The results of the research found various reasons that make the implementation of death penalty stiff against perpetrators of corruption in Indonesia, therefore through criminal law policies it is necessary to reform the law. This legal renewal through a collaborative approach is based on the fact that law enforcement is a system that complements one another. These three are the legal substance aspect, the legal structure aspect, and the legal culture aspect.There are four reform models that can be carried out to deal with criminal acts of corruption, namely first, reforming legal institutions. Here, it is necessary to strengthen the authority and strengthen the professionalism of the apparatus that fills the legal institution, the police, prosecutors and the KPK must be able to work together and haveunified legal opinionregarding corruption cases, the most overt nature and sectoral ego in eradicating corruption must be eliminated. The main thing is the realization of a framework and a unified view of corruption cases. Second, reforming the legislation in the sense of re-evaluating, reorienting and reformulating the applicability of the Corruption Crime Law, both the formulation of the act and the system of sanctions, especially related to death penalty. Third, improvement in the community legal culture sector. It is no longer a legal secret that the Indonesian people are people who like to circumvent the law. With these three models of legal renewal, it is hoped that it is hoped that the handling of criminal acts of corruption through death penalty that fulfills a sense of justice can be realized.

Keywords: Death penalty, corruption, justice.

A. BACKGROUND

The discourse on law enforcement in Indonesia as one of the dominant discourses finds its meaning when it comes to the alternative context of law development against corruption crimes that have distorted the foundations of national and state life. Globalization and liberalization as well as the development of science and technology have also encouraged the growth of various new crimes in the economic, business and financial fields where the impact resulting from these crimes is far more dangerous than conventional crimes or crimes such as robbery, fraud and ordinary theft.[1]. Research results also show that corruption has increased from time to time, both in quantity and quality, indeed the perpetrators of crime have now experienced an increase and shift from what was originally only conventional crime (warungan).[2], corruption has shifted into extraordinary crimes, along with Indonesia's predicate as the most corrupt country. This is recognized by the international community as formulated by the 2003 United Nations Convention Against Corruption (UNCAC.2003).[3]

Corruption has become a complex phenomenon in Indonesia which often involves government officials, the legislature and the judiciary. Members, bankers, conglomerates, and also corporations that misuse state finances. As a result, Indonesia had to suffer huge losses which had a direct impact on the people's economy.

---

[1]Kristian, Corporate Criminal Responsibility System in View of Various International Conventions, PT Refika Aditama, 2017.Pg 3

[2]Edi Setiadi, Kristian, Integrated Criminal Justice System and Law Enforcement System in Indonesia, Fajar Interpratama, Jakarta, 2017, Pg 147

[3]Romli Atasasmita, Strategy and Policy for Eradicating Corruption After the 2003 UN Convention Against Corruption: Fighting Corporate Crime, (Jakarta: Paper, 2006), p. 1.

"Reality shows that the value of state losses is far greater than the money that was successfully returned to the state".[4]

However, this crime must be handled seriously because it has become a national problem. Various efforts have been made to eradicate corruption in Indonesia. The methods used, as explained in the Law on Corruption Eradication, are no longer commonplace, given the widespread and massive nature of corruption in Indonesia. However, corruption has not completely disappeared. It was conditions like these that prompted Mahfud MD, former chairman of the Constitutional Court, to say that corruptors could be sentenced to death[5], because one of the efforts to overcome and eradicate corruption is to use the means of criminal law. Corruption crimes in Indonesia have reached an alarming level and are systemic, endemic with very broad impacts (systemic and widespread). Criminal law policies with severe sanctions are expected to reduce the level of corruption[6].

There are many cases where the death penalty has the potential to be applied in Indonesia, for example BLBI is a scheme of assistance (loans) provided by Bank Indonesia to banks experiencing liquidity problems during the 1998 monetary crisis in Indonesia. This scheme is carried out based on Indonesia's agreement with the IMF (International Monetary Fund) in dealing with crisis issues. The BPK's audit of the use of BLBI funds by the 48 troubled banks concluded that there had been indications of irregularities of IDR 138 trillion. Then the corruption in the post-earthquake rehabilitation fund in Lombok is state funds in the context of rehabilitation after the earthquake. This was issued by the government to restore

[4]https://ejournal.undip.ac.id/indek.php/mmh/article/view/29590

[5] Mahfud's statement was made in response to one of the fatwas resulting from the National Alim Ulama Conference and the Nahdlatul Ulama (NU) Major Conference at the Kempek Islamic Boarding School, Cirebon, West Java. http /www. republica.Co. Id/ news/ national/ law/12/ 09/ 17/ mah6x0-mahfud-supports death-penalty for-corruptors, downloaded on October 1, 2012.

[6]Dissertation Lalu Parman. pdf,

conditions in Lombok to make it even better, but it turns out that there are still people who tyrannize this nation, commit corruption during disasters or disaster.

The last case that was discussed was the bribery crime that was allegedly committed by JPB as the active Minister of Social Affairs at that time. The debate that has arisen is whether the crime allegedly committed by JPB can be subject to death penalty, considering that the crime was committed in the midst of the Covid-19 outbreak. The Corruption Crime Eradication Law does recognize the death penalty, but after it was identified that the crime allegedly committed by JPB could not be subject to death penalty,even though the Corruption Crime Eradication Law is one part of the special criminal law besides having certain specifications that are different from the general criminal law, when viewed from its material, it is directly or indirectly intended to suppress to a minimum the occurrence of leakages and irregularities in the country's finances and economy[7].

As a comparison, we can see the tension of corruption crimes in China. The Chinese government's commitment to eradicating corruption is not in doubt, mere rhetoric, as in Indonesia, but proven by executing corrupt officials. China has always been known to be the toughest in dealing with corruption. Even though times are modern, public executions are still carried out for corruptors[8]. Then Saudi Arabia is one of the countries that implements the death penalty for corruptors by beheading. In this country corruptors are treated the same as thieves, they are greedy criminals who eat large amounts of money that is not theirs. There is something unique and

[7]Maidim Gulton, An Analysis of Corruption Crime in Indonesia. PT Refika Aditama, Bandung. 2018. Pg 33

[8]Pradya Wardhani, "Corruption Penalties in Various Countries Diverse, This is an extreme example that deters corruptors" Hipwee.com/feature/deportation-until-death-sentence..., January 30, 2017, access time 16:37 WIB

interesting about the implementation of death penalty between China and Saudi Arabia, China as a communist country recognizes the existence of death penalty while Saudi Arabia as an Islamic country also recognizes the existence of death penalty. This is of course motivated by the government's seriousness in maintaining the existence of death penalty and seriousness in tackling corruption. However, in Indonesia until now the death penalty as a means of dealing with corruption crimes has never been applied.

. This study aims to determine the policy of formulating capital punishment for eradicating corruption and to find out the obstacles and solutions in implementing capital punishment for eradicating corruption based on the laws and regulations in force in Indonesia which truly fulfill a sense of justice. The main purpose of law enforcement is to realize justice, legal certainty and benefits in society. Law enforcement that fulfills a sense of justice is the hope, happiness of all people. Justice is a social consensus, in fact justice is the driving force of human relations and must be realized in all interactions of life, we often even find statements that justice is the essence of human life. Our current challenge is to seek harmony in law,

This study aims to look at the provisions of the penal system for perpetrators of crime prevention; and applicative policies on criminal penalties for perpetrators of corruption. The research method used is Normative Juridical. The results of the study show that the provisions of the criminal justice system for perpetrators of corruption are formulated not only in the Criminal Code but also in laws outside the Criminal Code.

In overcoming this problem, the author specifically focuses on three important parts that are arranged. From regulation of capital punishment based on law, the development of thinking about the existence of capital punishment, as well as the factors that influence the implementation of capital punishment in corruption. In conclusion, the authors argue that the prevention of corruption which refers to extraordinary crimes has been regulated in the Law of the Republic of Indonesia Number 31 of 1999 juncto Law Number 20 of 2001 as. Corruption eradication efforts. The death

penalty which is the most severe punishment is determined as a type of principal punishment based on substantive article 10 of the law. In addition, the discussion on capital punishment in law number 31 of 1999 juncto law number 20 of 2001 concerning eradicating corruption, also stated in article 2 paragraph (2), but its implementation depends on the requirements specified in the law. Finally, there is a substantial factor that impedes the implementation of capital punishment which shows the lack of seriousness by members of the legislature in formulating death penalty sanctions as stated in law number 31 of 1999 juncto law number 20 of 2001, which indeed prevents law enforcement from being successfully implemented in Indonesia. The issues outlined in this paper are (1) why has the death penalty for perpetrators of corruption never been implemented in Indonesia? (2) how is the policy of formulating death penalty in overcoming criminal acts of corruption in realizing a sense of justice? Finally, there is a substantial factor that impedes the implementation of capital punishment which shows the lack of seriousness by members of the legislature in formulating death penalty sanctions as stated in law number 31 of 1999 juncto law number 20 of 2001, which indeed prevents law enforcement from being successfully implemented in Indonesia. The issues outlined in this paper are (1) why has the death penalty for perpetrators of corruption never been implemented in Indonesia? (2) how is the policy of formulating death penalty in overcoming criminal acts of corruption in realizing a sense of justice? Finally, there is a substantial factor that impedes the implementation of capital punishment which shows the lack of seriousness by members of the legislature in formulating death penalty sanctions as stated in law number 31 of 1999 juncto law number 20 of 2001, which indeed prevents law enforcement from being successfully implemented in Indonesia. The issues outlined in this paper are (1) why has the death penalty for perpetrators of corruption never been implemented in Indonesia? (2) how is the policy of formulating death penalty in overcoming criminal acts of corruption in realizing a sense of justice? The issues outlined in this paper are (1) why has the death penalty

for perpetrators of corruption never been implemented in Indonesia? (2) how is the policy of formulating death penalty in overcoming criminal acts of corruption in realizing a sense of justice? The issues outlined in this paper are (1) why has the death penalty for perpetrators of corruption never been implemented in Indonesia? (2) how is the policy of formulating death penalty in overcoming criminal acts of corruption in realizing a sense of justice? which did prevent law enforcement from being successfully implemented in Indonesia. The issues outlined in this paper are (1) why has the death penalty for perpetrators of corruption never been implemented in Indonesia? (2) how is the policy of formulating death penalty in overcoming criminal acts of corruption in realizing a sense of justice? which did prevent law enforcement from being successfully implemented in Indonesia. The issues outlined in this paper are (1) why has the death penalty for perpetrators of corruption never been implemented in Indonesia? (2) how is the policy of formulating death penalty in overcoming criminal acts of corruption in realizing a sense of justice?

B. RESEARCH METHODS

This research is a normative juridical research with the starting point of Article 2 paragraph (2) of the Law of the Republic of Indonesia Number 31 of 1999 Juntco Law of the Republic of Indonesia Number 20 of 2001 concerning Eradication of Corruption Crimes. The approach in this study is through a statutory approach (statute appoach), a case approach and a

conceptual approach. This study uses secondary legal materials with the data collection method used is library research.

C. DISCUSSION

Corruption poses a significant legal challenge due to its complex nature, involving multiple aspects related to politics, the economy, and socio-culture. Various eradication efforts have been made, but they have not been able to eradicate corruption, in fact it has been increasing both in quantity and in terms of the quality of the perpetrators. Corruption is an extraordinary crime (extra ordinary crime) and betrayal of trust. The logical consequence is that corruption is an extraordinary crime, it requires handling from extraordinary juridical aspects, and extraordinary legal instruments as well.[9] Conventional methods have been proven to date to have not been able to eradicate criminal acts of corruption, in fact the tendency is to become increasingly sophisticated both in terms of the modus operandi and the perpetrators.

In an effort to tackle corruption as an extraordinary crime, the makers of Law Number 31 of 1999 as amended by Number 20 of 2001 concerning the Eradication of Corruption Crimes formulated severe sanctions. Article 2 paragraph (2) Law of the Republic of Indonesia Number 31 of 1999 Juntco Law of the Republic of Indonesia Number 20 of 2001 concerning Eradication of Criminal Acts of Corruption. This article provides for the death penalty for perpetrators of corruption in certain circumstances. It is hoped that the death penalty for perpetrators of corruption will have a deterrent effect on the perpetrators and make others afraid of committing these acts. This is in line with the nature of punishment

[9]Lilik Mulyadi, Corruption Crime in Indonesia, Normative, Theoretical, and Problems. (Bandung: Alumni, 2017). P, 252.

which is integrative orientated towards retaliation, prevention so that other people do not commit these actions and Education so that the perpetrator does not repeat his actions again. In Indonesian criminal law, the use of the death penalty is felt to be very effective in preventing serious crimes. This can be seen from the National Criminal Code which still places the death penalty as the main punishment. In addition to criminal laws outside the Criminal Code, there are also some who place the death penalty as a sanction for violating the act. Even in the Draft Criminal Code, the death penalty is still included as the main punishment but is specifically threatened alternatively. In Indonesian criminal law, the use of the death penalty is felt to be very effective in preventing serious crimes. This can be seen from the National Criminal Code which still places the death penalty as the main punishment. In addition to criminal laws outside the Criminal Code, there are also some who place the death penalty as a sanction for violating the act. Even in the Draft Criminal Code, the death penalty is still included as the main punishment but is specifically threatened alternatively. In Indonesian criminal law, the use of the death penalty is felt to be very effective in preventing serious crimes. This can be seen from the National Criminal Code which still places the death penalty as the main punishment. In addition to criminal laws outside the Criminal Code, there are also some who place the death penalty as a sanction for violating the act. Even in the Draft Criminal Code, the death penalty is still included as the main punishment but is specifically threatened alternatively. This can be seen from the National Criminal Code which still places the death penalty as the main punishment. In addition to criminal laws outside the Criminal Code, there are also some who place the death penalty as a sanction for violating the act. Even in the Draft Criminal Code, the death penalty is still included as the main punishment but is specifically threatened alternatively. This can be seen from the National Criminal Code which still places the death penalty as the main punishment. In addition to criminal laws outside the Criminal Code, there are also some who place the death penalty as a sanction for

violating the act. Even in the Draft Criminal Code, the death penalty is still included as the main punishment but is specifically threatened alternatively.

This renewal of the death penalty in the RKUHP is a specific punishment, this is contained in article 67 of the RKUHP which contains a general explanation of the RKUHP stating: "Death penalty is not included in the order of principal crimes. Death penalty is determined in a separate article to show that the type of punishment This is truly of a special nature. This type of death penalty is the most serious and must always be threatened alternatively with life imprisonment or imprisonment for a maximum of 20 (twenty) years. Death penalty can also be imposed conditionally, by providing a probationary period. , so that within the grace period of the probation period the convict is expected to be able to improve himself so that the death penalty does not need to be carried out.The inclusion of the death penalty in a separate article shows that this type of punishment is truly special.

The motive behind the use of the death penalty as a political tool in Indonesia is: The death penalty has a higher level of effectiveness than other death penalty threats, has a frightening effect as well as being more economical. Death penalty is used to avoid eigenrichting in society. From a theoretical point of view, the death penalty will also create a very high deterrent effect so that it will cause people to discourage from committing crimes, so that it can be used as a good tool for general prevention and special prevention.

The application of death penalty to perpetrators of corruption is based on the objective of the sentence the author considers to be appropriate, this is based on the extraordinary consequences of corruption. From the perspective of the actors, it is clear that the current development of corruption has involved people who have very extraordinary positions, so that the consequences are very detrimental to society.

The article formulation policy relating to death penalty is based on the idea and motivated by the desire to eradicate criminal acts of corruption.

However, this formulation policy was not followed by an application policy, so that corruption judges were also reluctant to apply death penalty to perpetrators of corruption, even though it was clear that the state had lost billions, even trillions of rupiah, and many members of the public had lost the opportunity to enjoy well-being as a result of the crime. The emergence of several opinions about the weakness of the formulation of death penalty sanctions in the Corruption Eradication Law is the main thing that is often used as the reason why capital punishment against corruptors in Indonesia has never been implemented, apart from non-juridical reasons.

The concept of punishment and its relationship to justice must be analyzed in an integrated and holistic manner. The principle of justice at hand is legal justice (Gerechtigkeit). This principle is examined from a philosophical standpoint, wherein justice entails equal rights for all individuals in the eyes of the court[10]. Then to arrive at a just punishment must be analyzed systematically, because the cases that occur are a system. Related to the term "system" it turns out that many experts have formulated it, so that the sound, definition and boundaries are different from one another.

1. Thinking in a systemic way means thinking as a whole, the things that are approached no longer start from the parts, but come from the whole, thinking in a systemic way is thinking in parts to get an overall understanding and thinking as a whole to get an understanding part by part[11]. In parsing the title above the author analyzes integrally, and systematically. Death penalty as a type of punishment in the Indonesian criminal law environment, cannot be separated from the concept of punishment or punishment itself and is closely related to the purpose of punishment itself. It is for this reason that in the discussion of capital punishment in a review of criminal law reform, it cannot be separated from the discussion of the

[10] https://www.kejari-bone.go.id/artikel/detai/1/analisa-dinding-keJadian-dan-kemanpaatan-dalam-*enforcement-law-crime-mining*.html

[11] Dey Ravena, Kristian, Criminal Policy (criminal policy), Kencana, Pg 175

definition of crime or punishment and the purpose of punishment. In determining the formulation of criminal sanctions, it starts from paying attention to aspects of criminal law policy (theory of sentencing, the purpose of sentencing, criminal policy in terms of sanctions that are relevant to the existing legal system). In terms of the formulation of criminal sanctions as a very substantive feature of criminal law, not as a whole can be applied, especially in the imposition of criminal sanctions for perpetrators of corruption, for example in the application of the death penalty, this is because the articles on Death Penalty are exceptional. In fact, various theories that discuss the justifications for imposing criminal sanctions if applied to corruption offenses (TIPIKOR) perpetrators will have a significant impact as explained in the theories and objectives of sentencing, for example in absolute theory, relative and combined theories. According to the Absolut theory (Vergeldingstheorie), the punishment was imposed as retaliation against the perpetrator for having committed a crime which had caused misery to other people or members of society. this is because the articles on Death Penalty are exceptional in nature. In fact, various theories that discuss the justifications for imposing criminal sanctions if applied to TIPIKOR perpetrators will have a significant impact as explained in the theories and objectives of sentencing, for example in absolute theory, relative and combined theories. According to the Absolut theory (Vergeldingstheorie), the punishment was imposed as retaliation against the perpetrator for having committed a crime which had caused misery to other people or members of society. this is because the articles on Death Penalty are exceptional in nature. In fact, various theories that discuss the justifications for imposing criminal sanctions if applied to TIPIKOR perpetrators will have a significant impact as explained in the theories and objectives of sentencing, for example in absolute theory, relative and combined theories. According to the Absolut theory (Vergeldingstheorie), the punishment was imposed as retaliation against the perpetrator for having committed a crime which had caused misery to other people or members of

society. In fact, various theories that discuss the justifications for imposing criminal sanctions if applied to TIPIKOR perpetrators will have a significant impact as explained in the theories and objectives of sentencing, for example in absolute theory, relative and combined theories. According to the Absolut theory (Vergeldingstheorie), the punishment was imposed as retaliation against the perpetrator for having committed a crime which had caused misery to other people or members of society. In fact, various theories that discuss the justifications for imposing criminal sanctions if applied to TIPIKOR perpetrators will have a significant impact as explained in the theories and objectives of sentencing, for example in absolute theory, relative and combined theories. According to the Absolut theory (Vergeldingstheorie), the punishment was imposed as retaliation against the perpetrator for having committed a crime which had caused misery to other people or members of society.

Talking about capital punishment in the context of legal reform cannot be separated from legal politics. Article 2 paragraph (2) Law Number 31/1999 in conjunction with Law Number 20/2001 is the implementation or establishment of a law regarding punishment for perpetrators of corruption in Indonesia. Legal politics is a concept about the formation of laws that are enforced in society, nation and state and are directed to realize common goals. This concept, according to Bernard L. Tanya, legal politics, is more like an ethic, which demands that a goal chosen must be justified by common sense that can be tested, and the means determined to achieve it must be testable by moral criteria. Meanwhile, Soedarto (the chief drafter of the Criminal Code),[12]Moh. Mahfud MD interprets legal politics as a legal policy or official line (policy) regarding law that will be enforced either by making new laws or by replacing old laws, in order to achieve state goals. Thus, legal politics is a choice about the laws that will be enforced as well

[12]Soedarto, 1983, Criminal Law and Community Development Studies on Criminal Law, Sinar Baru, Bandung. p.20

as a choice about the laws that will be repealed or enforced, all of which are intended to achieve the goals of the state as stated in the preamble of the 1945 Constitution.[13]

Meanwhile, in Padmo Wahyono's view, legal politics is the basic policy that determines the direction, form, and content of the law to be formed. In his other writings, Padmo Wahyono said that legal politics is the policy of administering the state regarding what is used as a criterion for punishing something which includes the establishment, application and enforcement of law. (ius constituendum). Meanwhile, Teuku Mohammad Radhi defines legal politics as a statement of the will of the state authorities regarding the laws that apply in their territory and regarding the direction of development of the laws that are built. Legal politics, according to Radhie, seems to have two interrelated and sustainable faces. namely the law that applies today (ius constitutum) and the law that applies in the future (ius constituendum). Furthermore, Satjipto Rahardjo defines legal politics as the activity of choosing and the means to be used to achieve a social goal with certain laws in society whose scope includes answers to several basic questions, namely 1) what goals are to be achieved through the existing system; 2) what methods and which ones are considered the best to be used in achieving these goals; 3) when and in what way the law needs to be changed; 4) can a standard and well-established pattern be formulated to assist in formulating the process of selecting goals and ways to achieve these goals properly. Meanwhile, Soedarto (the chief drafter of the Criminal Code), Legal politics is the policy of the state through state agencies authorized to establish the desired regulations, which are expected to be used to express what is contained in society and to achieve what is aspired to. In his other writings, Soedarton explained that legal politics is an attempt to create good regulations in accordance with the circumstances and situation at a time.

[13]Endrik Safudin. Basic Legal Studies, East Java Press Equivalent. 2017

The various definitions put forward above lead to our understanding that the study of legal politics includes legal policy (as an official state policy) regarding the law that will be enforced and other matters related to it. There is a difference in scope between legal politics and the study of legal politics, the former is more formal in terms of official policies while the latter includes official policies and other matters related to them. Thus, the study of legal politics includes, at least three things, namely: first, state policy (official line) regarding the law that will be enforced in the context of achieving state goals; second, the political, economic, social, cultural background (poleksosbud) for the birth of legal products; third, law enforcement in reality on the ground. In the view of Bernard L. Tanya, The scope of legal politics includes three things, namely: 1) the goal (ideal) to be achieved through law, 2) the right way/method to achieve that goal, and 3) the legal configuration that effectively realizes that goal. In this context, legal politics must be based on the goals of the state and the legal system in force in the country concerned, which in the Indonesian context, these goals and systems are contained in the preamble of the 1945 Constitution, especially Pancasila, which gave birth to the guiding principles of law. The National legislation program (prolegnas) and judicial review can be cited as examples of legal politics. From the various definitions above, it can be seen that legal politics includes the process of making, renewing and exercising rights which can indicate the nature and direction in which law will be built and enforced. It means, Legal politics includes the legal process that has been made and how the law should be made in order to achieve common goals. Thus, it can be seen whether the legal politics that will be built and enforced are appropriate or have departed from this common goal. Therefore, it can be drawn that legal politics is a matter of achieving common goals. There are goals (ideals) that are developed and attached to the law to be realized. The ideal goal factor is the axis of legal politics. Thus when in terms of the application of death penalty for perpetrators of corruption in Indonesia it feels rigid, it needs a thorough analysis for the

sake of being upright, straightforward, strictly speaking the law in Indonesia. In the context of legal renewal concerning Article 2 paragraph (2) of Law No. 31/1999 in conjunction with Law No.

Criminal law policy in essence is how to seek or create and formulate a good (rational) criminal law, in addition to making a new criminal law, one way is to improve or revise (update) the applicable law (positive criminal law or constitutional criminal law).) to achieve the desired criminal law (constituendum criminal law). Thus the criminal law policy is to make updates to the provisions of the applicable criminal law which are adapted to the situation at a certain time and for times to come. Thus the focus of the criminal policy is through penal reform, which essentially contains the meaning, an effort to reorient and reformulate criminal law according to the central values of socio-politics, socio-philosophy, socio-culture, or from various aspects of policy, especially social policy, criminal policy and law enforcement policy. Thus the renewal of criminal law is part of criminal law policy, where the essence of criminal law policy is to create effective and better positive criminal law regulations. Jeremy bentham In utilitarian theory, legal reform is carried out with the aim of achieving as much happiness as possible for society. As explained above, the estuary of law is justice, meaning that criminal law policy, renewal and enforcement are efforts to fulfill people's sense of justice and happiness. sociophilosophical, sociocultural, or from various aspects of policy, especially social policy, criminal policy and law enforcement policy. Thus the renewal of criminal law is part of criminal law policy, where the essence of criminal law policy is to create effective and better positive criminal law regulations. Jeremy bentham In utilitarian theory, legal reform is carried out with the aim of achieving as much happiness as possible for society. As explained above, the estuary of law is justice, meaning that criminal law policy, renewal and enforcement are efforts to fulfill people's sense of justice and happiness. sociophilosophical, sociocultural, or from various aspects of policy, especially social policy, criminal policy and law enforcement policy. Thus

the renewal of criminal law is part of criminal law policy, where the essence of criminal law policy is to create effective and better positive criminal law regulations. Jeremy bentham In utilitarian theory, legal reform is carried out with the aim of achieving as much happiness as possible for society. As explained above, the estuary of law is justice, meaning that criminal law policy, renewal and enforcement are efforts to fulfill people's sense of justice and happiness. Thus the renewal of criminal law is part of criminal law policy, where the essence of criminal law policy is to create effective and better positive criminal law regulations. Jeremy bentham In utilitarian theory, legal reform is carried out with the aim of achieving as much happiness as possible for society. As explained above, the estuary of law is justice, meaning that criminal law policy, renewal and enforcement are efforts to fulfill people's sense of justice and happiness. Thus the renewal of criminal law is part of criminal law policy, where the essence of criminal law policy is to create effective and better positive criminal law regulations. Jeremy bentham In utilitarian theory, legal reform is carried out with the aim of achieving as much happiness as possible for society. As explained above, the estuary of law is justice, meaning that criminal law policy, renewal and enforcement are efforts to fulfill people's sense of justice and happiness. Law reform is carried out with the aim of achieving as much happiness as possible for the community. As explained above, the estuary of law is justice, meaning that criminal law policy, renewal and enforcement are efforts to fulfill people's sense of justice and happiness. Law reform is carried out with the aim of achieving as much happiness as possible for the community. As explained above, the estuary of law is justice, meaning that criminal law policy, renewal and enforcement are efforts to fulfill people's sense of justice and happiness.

Based on the results of the research, it is known that the death penalty policy can be interpreted as a special maximum sentence whose implementation level in Indonesia is difficult to implement because so far the death penalty still reaps pros and cons in its imposition in various

criminal cases. is no exception in corruption cases. There are several weaknesses and obstacles in the application of capital punishment in eradicating criminal acts of corruption, one of which is the death penalty as a burden that is only punished for certain criminal acts of corruption and is not intended for all forms of criminal acts of corruption. corruption. The elements contained in article 2 paragraph (2) of the Corruption Law will be very difficult to apply, because currently most corruption crimes are in the form or have elements that are outside the elucidation of Article 2 paragraph (2) of the Corruption Eradication Law. because it does not contain rules or definitions (recidive) even though repetition is a technical juridical term. This is also a consequence because in the criminal system the regulation of death penalty is not included in the general provisions. Even though it has been regulated in a separate law, in several laws outside the Criminal Code, the formulation of provisions is found to have multiple interpretations and has the potential to cause juridical problems. Meanwhile, the applicative policy of criminal sanctions for perpetrators of corruption eradication can be seen from the analysis of several judge's decisions relating to corruption. In order to conclude that the perpetrator is indeed committing corruption which is punishable by death, clear evidence is needed, not just relying on the perpetrator's statement. This relates to the addition of the maximum penalty in accordance with what is mandated by law. Therefore the death penalty in its application requires accuracy and precision from law enforcement officials. This relates to the addition of the maximum penalty in accordance with what is mandated by law. Therefore the death penalty in its application requires accuracy and precision from law enforcement officials. This relates to the addition of the maximum penalty in accordance with what is mandated by law. Therefore the death penalty in its application requires accuracy and precision from law enforcement officials.

There are many reasons, the death penalty for corruptors has never been implemented in Indonesia, including:

1. The substantive (juridical) reason is that there are many weaknesses in

the law related to the imposition of death penalty related to eradicating corruption. The existence of articles that are not flexible and comprehensive.

2. Philosophical reasons

   The application of death penalty must be careful because it involves a person's life. The pros and cons regarding the death penalty do not seem to reach the final point in the debate. Therefore, the consistency of the application of capital punishment in the world has always been controversial, both among the government, legal practitioners, and society itself, because capital punishment is considered to violate the most basic human rights, namely the right to live and improve life. Death penalty also violates the right to life regulated in the Declaration of Human Rights (DUHAM).

3. The reason for legal culture is that it is no longer a legal secret that the Indonesian people are people who like to circumvent the law. As long as there are legal loopholes, the community will continue to violate the law, whether the law is changed or law enforcement officials, the community will try to realize these desires.

The formulation of the death penalty sanction in Article 2 paragraph (2) contains the words that under certain circumstances (Death penalty to corruptor a certain condition), capital punishment can be imposed. It is in certain circumstances that the death penalty can be imposed as standard. What are these specific conditions? In this article, it is not stated what constitutes certain conditions, certain conditions are in the elucidation of the article. And what is meant in certain circumstances is a situation where funds for overcoming emergencies, national natural disasters, monetary crises are used to harm the state. And the death penalty can be applied to recedivists or people who repeat crimes. Thus the death penalty must be in accordance with certain circumstances and can be proven with at least two pieces of evidence so that if no one has been sentenced to death, perhaps no one has the courage to commit corruption in these particular circumstances.

Even though it has been stipulated in the law and there is also an explanation of the article, this law still has the weakness of not providing an explanation. The article cannot be used as a binding legal basis because it is only an explanation of the article which is considered to lack an explanation of the content or intent so that the explanation it cannot impose sanctions,

In renewal of criminal law (penal reform) is part of the political policy of criminal law (penal policy). Criminal law reform ultimately implies an attempt to reorient and reform criminal law in accordance with the central socio-political, socio-philosophical and sociocultural values of Indonesian society which underlies social policy, criminal policy, and law enforcement policies in Indonesia. Thus, in short, criminal law reform must essentially be pursued with a policy-oriented approach as well as a value-oriented approach.

There are three models of reform that can be carried out to deal with criminal acts of corruption, namely first, reforming legal institutions. Here, it is necessary to strengthen the authority and strengthen the professionalism of the apparatus that fills the legal institution, the police, prosecutors and the KPK must be able to work together and have*unified legal opinion*Regarding corruption cases, the most overriding nature and sectoral ego in eradicating corruption must be eliminated. The main thing is the realization of a framework and a unified view of corruption cases. Second, reforming the legislation in the sense of re-evaluating, reorienting and reformulating the applicability of the Corruption Crime Law, both the formulation of the act and the system of sanctions, especially related to death penalty. The aspect that is in the public spotlight is that criminal sanctions handed down by courts often do not fulfill the wishes of the community. Here the role of the judge is very important, the judge must be able to respond to the wishes of the people in eradicating corruption by not being shackled by the text of the law, but must be able to give meaning to the contents of the law. Improvements through justice will be carried out faster than waiting for reforms in parliament. The remedial funds in court will one day materialize

the Supreme Court's jurisprudence in corruption cases and will then be used as a guideline by other judges when adjudicating an existing case. Third, improvement in the community legal culture sector. It is no longer a legal secret that the Indonesian people are people who like to circumvent the law. As long as there are legal loopholes, the community will continue to violate the law, whether the law is changed or law enforcement officials, the community will try to realize these desires. The remedial funds in court will one day materialize the Supreme Court's jurisprudence in corruption cases and will then be used as a guideline by other judges when adjudicating an existing case. Third, improvement in the community legal culture sector. It is no longer a legal secret that the Indonesian people are people who like to circumvent the law. As long as there are legal loopholes, the community will continue to violate the law, whether the law is changed or law enforcement officials, the community will try to realize these desires. The remedial funds in court will one day materialize the Supreme Court's jurisprudence in corruption cases and will then be used as a guideline by other judges when adjudicating an existing case. Third, improvement in the community legal culture sector. It is no longer a legal secret that the Indonesian people are people who like to circumvent the law. As long as there are legal loopholes, the community will continue to violate the law, whether the law is changed or law enforcement officials, the community will try to realize these desires.

State and government institutional structures filled with leaders with integrity like this will create and increase systematic corruption and its reach will widen. Thus, if conditions like this are left without a comprehensive and sustainable policy, it will form a group of people who are very corruptive and the birth of a corrupt culture can even form a corrupt area. We are happy to hear the threat of suffering from the head of the KPK, Agus Raharjo, who will give painful suffering to the perpetrators of corruption crimes. We are waiting for concrete steps. However, it must be remembered that the perpetrators of corruption are very difficult to reach by law except

in caught in the act (OOT). The crime of corruption is often said to be*beyond the law*and forms of corruption*untouchable by the law*so it needs extraordinary handling extraordinary enforcement[14].

From the reasons mentioned above, the researcher is of the opinion that in order to activate Article 2 paragraph (2) of the TPIKOR Law, reformulation of the article in the article or the addition of paragraphs in article 2 must be carried out. able to accommodate, especially related to the death penalty for perpetrators of corruption. As for the philosophical matter, the authors argue that the death penalty against corruptors does not violate human rights. This is based on the impact that occurred as a consequence of the crime. Then in Islam it is strictly forbidden to acquire wealth in a false way, this is explained in the Al-Quran Surah An-Nisa verse 29,

Meaning: "O you who believe, do not eat each other's wealth in a false (unrighteous) way, except in trading that applies on the basis of mutual likes between you. And do not kill yourselves, verily Allah is Most Merciful to you." so that corruption in Islam can be included in the facade of Fil Ardhi, this is based on that corruption greatly damages the social life of society. Thus corruption, which is an extraordinary crime, has the same status as extraordinary crimes in Islam (such as treason). The application of capital punishment for corruptors is very relevant to Islamic law.

D. CONCLUSION

There are many reasons, the death penalty for corruptors has never been implemented in Indonesia, including: First, substantive reasons (juridical) namely seeing that the law related to the application of capital punishment for perpetrators of corruption still contains weaknesses. Due to its exceptional existence, the law is not flexible and holistic, so it is unable to fully accommodate the problem of

[14] Edi Setiadi, Paradoxes in Criminal Law and the Criminal Justice System, Publisher: Symbiosa Rekatama Media, First Edition. 2020, pp. 44-45

corruption. Second, the philosophical reasons, namely the application of the death penalty must be careful because it involves a person's life. The pros and cons regarding the death penalty do not seem to reach the final point in the debate. Therefore, the consistency of the application of capital punishment in the world has always been something controversial, both among the government, legal practitioners and the community itself. because the death penalty is considered to violate the most basic rights for humans, namely the right to live and improve life. Death penalty also violates the right to life regulated in the Declaration of Human Rights (UDHR). Third, the reason for legal culture, namely improvement in the legal culture sector of the community. It is no longer a legal secret that the Indonesian people are people who like to circumvent the law. There are three models of renewal to deal with criminal acts of corruption, first, reforming the legal institutions by strengthening the authority and strengthening the professionalism of the apparatus who make up the legal institutions, the police, prosecutors and the KPK. Second, reforms in legislation are re-evaluating, reorienting, and reformulating the applicability of the Corruption Crime Act. Third, improvement in the community legal culture sector. Therefore,

BIBLIOGRAPHY

Interpretation of the Qur'an, Maqasidusy-Syari'ah Understanding the Main Purpose of Sharia, Publisher: LajnahPentashihan Mushaf Al-Quran Research and Development Agency and Education and Training Ministry of Religion of the Republic of Indonesia, First printed, Shawwal 1434 H/August 2013.

Ali Mufiz. State Administration System, Jakarta: Karrunika, 1985. Pg 137

Edi Setiadi, Paradoxes in Criminal Law and the Criminal Justice System, Publisher: Symbiosa Rekatama Media, First Printing . 2020, p 44-45

Edi Setiadi, Kristian, Integrated Criminal Justice System and System *Law Enforcement inIndonesia, Fajar Interpratama,*Jakarta, 2017, p.147

Endrik Safudin. Basic Legal Studies, East Java Press Equivalent. 2017

Dey Ravena, Kristian, Criminal Policy (criminal policy), Kencana, p175

Dissertation Lalu Parman. pdf,

Kristian, Corporate Criminal Liability System In Viewed From *Various International Conventions*, PT Refika Aditama, 2017.Pg 3

Lilik Mulyadi, Corruption Crime in Indonesia, Normative, Theoretical, and *The problem.*(Bandung: Alumni, 2017). P, 252

Maidim Gulton, An Analysis of Corruption Crime in Indonesia. PTRefika Aditama, Bandung. 2018. Pg 33

Pradya Wardhani, "Corruption Penalties in Various Countries, Here *An Extreme Example that Makes Corruptors Deterrent" Hipwee.com/feature/deported-to-death-sentence..*, January 30 2017, access time 16:37 WIB

Romli Atasasmita, Post-Corruption Eradication Strategy and Policy *The 2003 United Nations Convention Against Corruption: Fighting Crime corporation*, (Jakarta: Paper, 2006), page 1.

Soedarto, 1983, Criminal Law and Community Development Studies *Against Criminal Law,* New Light, Bandung. p2

OTHER SOURCES

Ade Mahmud, THE URGENCY OF PROGRESSIVE LAW ENFORCEMENT TO RETURN STATE LOSSES IN CRIME OF CORRUPTION, Legal Issues, Vol 49, No 3 (2020)

https://ejournal.undip.ac.id/indek.php/mmh/article/view/29590

Mahfud's statement was made in response to one of the fatwas resulting from the National Alim Ulama Conference and the Nahdlatul Ulama (NU) Major Conference at the Kempek Islamic Boarding School, Cirebon, West Java. http /www. republica.Co. Id/ news/ national/ law/12/ 09/ 17/ mah6x0-mahfud-supports death-punishment for-corruptors, downloaded on October 1, 2012. Dissertation of Lalu Parman. pdf,

https://www.kejari-bone.go.id/artikel/detai/1/analisa-dinding-keJadian-dan-kemanpaatan-dalam-*law-enforcement-action- criminal-mining*.html