

Paradigm of the Formulation of the Death Penalty against Corruption Perpetrators in View from the Human Rights

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Abstract

Legislation of criminal acts of corruption is a repressive effort from the government to overcome the expansion of corruption in Indonesia, especially in the Covid-19 pandemic situation. The crime of corruption that cannot be separated from the deep-rooted hierarchy of power, in its application is a crime that is difficult to eradicate. The application of the death penalty as a tool to provide a deterrent effect for perpetrators of criminal acts of corruption, in its implementation is one of the methods of punishment that has many polemics. The legal issues discussed in this article are the complexity of corruption that occurred during the Covid-19 pandemic, as well as the polemic of imposing the death penalty on perpetrators of corruption in the Covid-19 pandemic situation. The research method used in this research is normative juridical or an approach that refers to applicable laws and regulations. The results of writing this article: The high rate of corruption that occurred during the Covid-19 pandemic in its implementation has increased sharply, as well as the complexity of corruption that occurs, in its implementation evenly distributed to all lines, starting from the social assistance corruption, the Asabri case, Jiwasraya, the Pinangki prosecutor bribery case, the bribery case for the mayor of Cimahi, to the land dispute case in Labuan Bajo NTT. In addition, the imposition of the death penalty on perpetrators of criminal acts of corruption in the current COVID-19 pandemic situation also raises many pros and cons.

Keywords: Paradigm, Death Penalty, Corruption, Human Rights, Covid-19.

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INTRODUCTIONS

The spread of the corona virus infection became hot news that spread widely in early 2020 [1]. The virus is known as Covid-19 (because in 2019 the novel coronavirus 2019-nCoV was first discovered in Wuhan, China). The origin of the transmission of the corona virus is still unclear, but what is certain is that the virus first occurred at a fish market in Wuhan [2]. From December 31, 2019 to January 3, 2020, the number of cases increased rapidly and in less than a week, 44 cases were reported [3]. In a relatively short

period of time, this disease spread to other countries in China, Thailand, Japan, and South Korea very rapidly [4].

Officially on March 12, 2020, WHO declared Covid-19 a pandemic. As of March 29, 2020, there were 634,835 cases and 33,106 deaths worldwide, while in Indonesia there have been 1,528 confirmed cases of Covid-19 and 136 deaths. economy. As time goes by, the Covid-19 outbreak continues to increase from day to day, until now the total number of positive cases is 1,718,575 cases, of which 1,574,615 recovered and

¹ Byrareddy SN, Rothan HA, "The Epidemiology and Pathogenesis of Coronavirus Disease (COVID-19) Outbreak.," J Autoimmun. published o (nd).

² WHO, "World Health Organization. Naming the Coronavirus Disease (COVID-19) and the Virus That Causes It. Geneva," World Health Organization; (2020).

³ and K. Khan II Bogoch, A. Watts, A. Thomas-Bachli, C. Huber, MUG Kraemer, "Pneumonia of Unknown Aetiology in Wuhan, China: Potential for International

Spread via Commercial Air Travel," Journal of Travel Medicine . 27, no. 2 (2020).

⁴ and R. Siddique MA Shereen, S. Khan, A. Kazmi, N. Bashir, "COVID-19 Infection: Origin, Transmission, and Characteristics of Human Coronaviruses," World Health Organization, Laboratory Testing for Coronavirus Disease 2019 (COVID- 19) in Suspected Human Cases, World Health Organization.,," Journal of Advanced Research 24 (2020): 91–98.

47,218 died [⁵]. As a result of this Covid-19, many companies went bankrupt, stock prices fell, many employees were laid off, and mass layoffs resulted in the addition of new poverty numbers.

The increase in data on Covid-19 cases that occurred in various regions in Indonesia made the Government move quickly to provide assistance and recovery to the Indonesian population, one of which was through social assistance (Bansos) distributed directly by the Ministry of Social Affairs. The impact of the PSBB policy which until now has become the Enforcement of Restrictions on Community Activities or PPKM launched by the government, causes economic activity to weaken and it is difficult to earn income. Situations like this in the midst of the covid-19 pandemic are vulnerable to corruption, the complexity of the increasing number of cases of corruption in the current situation, in its implementation, has many polemics.

The current condition of the Covid-19 Pandemic which has an impact on all circles of society, especially those who really put their hope in selling or small businesses, of course, really find it very difficult to survive in the midst of conditions like this, with the enactment of PSBB or PPKM, the government should be able to meet the logistics of people whose activities are forced. stopped. However, the need that should have been given immediately turned into an opportunity by certain elements to commit treason (high treason). The discourse on corrupt practices is very common in Indonesia, since the New Order era until the current reform era, corrupt practices are increasingly prevalent and very lasting accompanying the journey of the Indonesian nation.

Corruption that occurs does not only occur at the center but also spreads to the regions. The various forms and types of punishments given by the government basically have not provided a deterrent effect for corruptors. The criminal act of corruption during the covid-19 pandemic which is an extraordinary crime, the imposition of sanctions is on the death penalty as an alternative punishment during the covid-19 pandemic as it is now. However, in its implementation it is still a problem in itself. The imposition of the death penalty is considered contrary to human rights, because its implementation takes the life of others and there is no hope for the convict to fix the crime he has committed. Whereas everyone has the right to live and has the right to defend his life and life (Article 28A of the 1945 Constitution).

The polemic of the death penalty for corruptors who commit acts of corruption during the pandemic has re-ignited the public to voice it. However, on the other hand, the death penalty for corruptors needs to be reconsidered because it does not guarantee a deterrent effect. In this study, we try to explore the complexity of corruption that occurred during the Covid-19 pandemic, as well as the polemic of imposing the death penalty on perpetrators of criminal acts of corruption in the Covid-19 pandemic situation, with the research title Paradigm of Death Penalty Policy Against Corruption Crimes in View From In terms of Human Rights.

RESEARCH METHODS

Legal/empirical sociology research which includes research on legal identification (unwritten) and research on the effectiveness of law in the community/field [⁶]. The research method used in this study is based on normative law (law) [⁷], but not studying the norm system in the rule of law, but observing how the reactions and interactions that occur when the norm system works in society.

DISCUSSION

A. The Complexity of Corruption Crimes That Occurred During the Covid-19 Pandemic

Crime is a complex phenomenon that can be understood from many different perspectives. Power is the power to administer, the power to govern, the ability, the ability of a person or group to control other people or groups, the function of creating and utilizing justice and preventing violations of justice. However, in this power many are misused to seek wealth, so that many rulers seek this wealth in various ways, including using the power that has been entrusted to them by the people. Many rulers abuse their power for their personal interests so that people's human rights are willing to be sacrificed.

The rise of cases of abuse of power such as corruption, legal mafia, embezzlement, thus requiring criminal law to regulate the problem of abuse of power and avoid falling victims due to abuse of power. The abuse of power committed by the authorities or people who have power can also increase the statistics of crimes experienced by victims. Criminal law whose domain as public law makes the development of criminal law always in the spotlight in the community, a small example that we can see is how the public response is very enthusiastic about the discourse of affirming the death penalty against corruptors.

⁵ Sean M. Mitchell et al., "Considering the Impact of COVID-19 on Suicide Risk among Individuals in Prison and during Reentry," *Journal of Criminal Psychology* 11, no. 3 (2020).

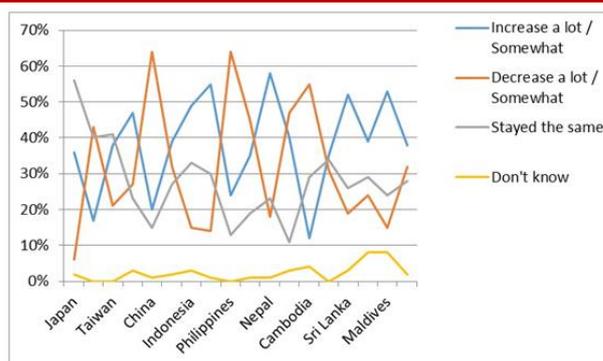
⁶ Soerjono Soekanto, *Normative Legal Research: A Brief Overview.*, Edition 1 Ce. (Jakarta: PT Raja Grafindo Persada, 2001).

⁷ Soerjono Soekanto and Sry Mamuji, "Normative Legal Research, Cet 4, PT," Raja Grafindo Persada, Jakarta (1994).

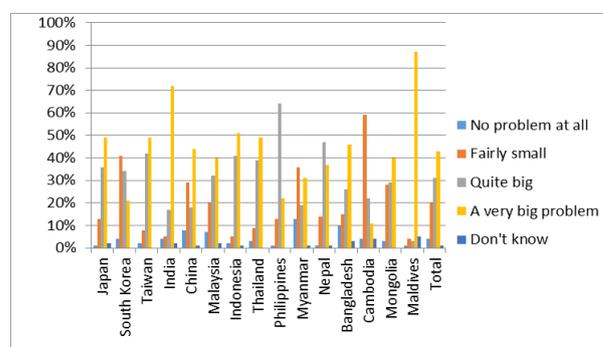
The existence of opportunities for corruption is often associated with elites who dominate the hierarchy or have interests in the government, thereby reducing the efficacy of the social order from the level of corruption which results in the emergence of perceptions of injustice in society [8]. The term justice is not a new thing that has been the subject of discussion until now [9]. Since the first justice has become a discourse that gets its own part in the minds of ancient Greek figures with justice which is always opposed to injustice [10]. Both are juxtaposed in a legal context where each position is a matter of debate in people's lives.

Law is the center of study which is certain and fixed, justice in law is always synonymous with orders and authority. The injustice that existed in society at that time was a situation that arose as a result of feelings of dissatisfaction and a sense of lost security against the aristocratic government and the many abuses of power [11]. Based on data from Indonesia Corruption Watch (ICW) quoted from (CNN, 2021) reports that the losses experienced by Indonesia during the first semester of 2020 amounted to 39.2 trillion, this nominal when compared with the fines given by the panel of judges at the time of the decision, then The amount of state losses is certainly much greater because the nominal amount given is approximately Rp.102,985,000,000 plus the corrupt actors are required to pay compensation in the amount of Rp.625,080,425,649, US\$128,200,000, and SGD2,364,315 or approximately Rp. 2.3 trillion.

The high level of corruption that occurs in Indonesia, which is even considered to be in a vicious circle, would require a legal formulation to provide a significant reduction in corruption. The death penalty is a form of legal formulation in dealing with corruption [12]. The following is the data that we managed to collect from Transparency International in the form of an assessment / public assessment of corruption in Indonesia, from the data below it shows that in 2020 the Indonesian people consider that there has been a significant increase in corruption.



There is an assessment of the global community on the issue of corruption that attracts public officials or government employees in each country in Asia. The data below shows a major problem with corruption by public officials.



Graph 1.2: Community Survey in Asia on Corruption

Based on the data that has been presented, it shows that corruption is so detrimental to the state because in a fairly short period of time, the state losses incurred by the perpetrators are very large [13]. The impact of state losses as a result of this action makes it very clear that corruption is a crime in the context of development, which can hinder the rate of economic growth of a country, plus in reality corruption is not only a problem that occurs in one or several countries, but has become a problem that is eating away at the world. International [14], So it is something that is not excessive if corruption is currently often declared as an extraordinary crime (extra ordinary crime).

This is not without reason, because the crime was carried out by the perpetrators of corruption not only in ancient or conventional ways, but incarnated in a way that is so extraordinary, the perpetrators carry out these actions in a systematic and well-planned manner, and ways are always found. which is always new (new dimensions of crime) [15]. This includes the actions of

⁸ Andrew Heywood, Key C, *Angewandte Chemie International Edition*, 6(11), 951–952., 1967.

⁹ Andika Setiawan, "Cephalus Justice as a Solution for Handling Corruption in Indonesia," *Indonesian Philosophy Journal* 3, no. 3 (2020): 115–121.

¹⁰ Ibid.

¹¹ David Chaikin, "Controlling Corruption by Heads of Government and Political Elites," *Corruption and Anti-Corruption* (2001): 97.

¹² Eddy OS Hiarij, "Regarding the Court's Decision on Corruption Crimes," *Legal Issues* 42, no. 1 (2013): 55–62.

¹³ Siswanto, *Legal Politics in the Narcotics Law*. (Jakarta: PT Rineka Cipta, 2012).

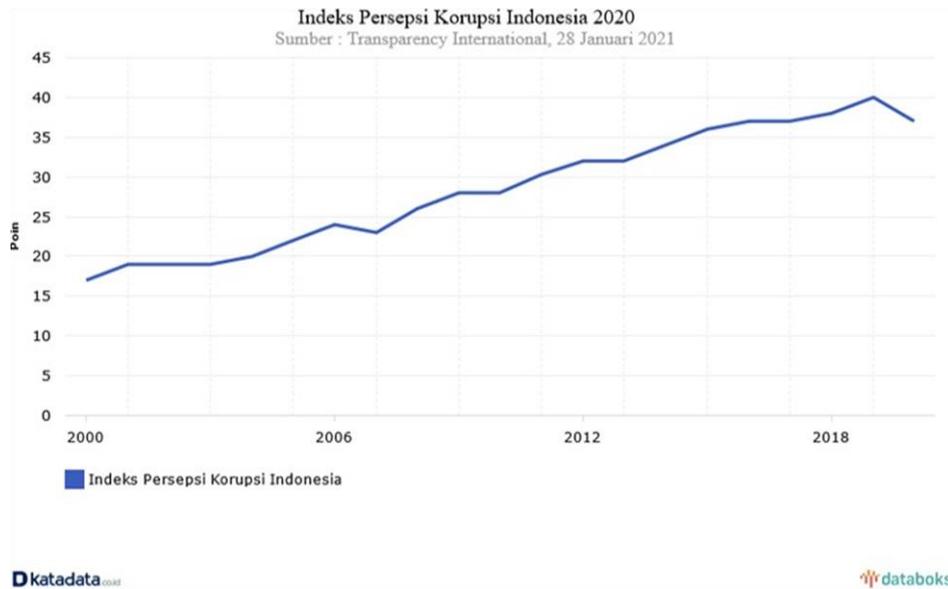
¹⁴ Myroslava Antonovych, *Judicial Activism: An Interdisciplinary Approach to the American and European Experiences*, 2018.

¹⁵ Theodore M Smith, "Corruption, Tradition and Change in Indonesia," In: Lubis, M. & Scott, JC eds. *Political corruption*. Jakarta: Indonesia Torch Foundation (1993).

perpetrators who carry out money laundering or money laundering of assets resulting from corruption abroad, resulting in this crime also crossing national borders (transnational). Corruption in 2020 (Pandemic) is a special crime where the results do not bring a too positive trend to the activities of the Indonesian government, because the crime rate is not the same as other corruption cases that have occurred before, in this

case corruption occurred in line with the outbreak of the Covid-19 pandemic which has significantly crippled the economy and pushed Indonesia into a recession.

The occurrence of corruption is not without strong reasons, several factors that cause corruption are incentives, pressures and opportunities to carry out a corrupt practice. In general.



Graph 1.3: Indonesia Corruption Perception Index 2020

Based on data from the Corruption Perceptions Index (CPI) Indonesia 2020, Indonesia fell from 40 to 37 in 2019, ranking 102 out of 180 countries surveyed. Furthermore, Indonesia's corruption perception index (CPI) in 2020 was recorded at 37 from a scale of 0-100. Indonesia's GPA score in 2020 decreased by 3 points compared to the previous year which was 40. With the decline in the GPA score, Indonesia's position decreased from 85th place to 102nd out of 180 countries.

This makes Indonesia's GPA score and ranking in 2020 on par with Gambia. The 2019 corruption perception index survey involved 180 countries. A score of 0 means the country is highly corrupt, otherwise a score of 100 indicates the country is free of corruption [¹⁶]. The Covid-19 pandemic, which was accompanied by a recession and an economic downturn, is still implemented by public officials who practice bribery.

¹⁶ Alwino Alfensius, "INDONESIA IN A VOLTAGE OF CORRUPTION," *Journal of Perennial Pedagogy* 1, no. 1 (2019).

Table 1.1: Corruption Perpetrators in the Advanced Indonesia Cabinet

Origin	Perpetrator	Corruption Case
Advanced Indonesian Cabinet	Eddy Prabowo	Seed export permit corruption case
Minister of Social Affairs	Juliari Peter Coal	Cases of suspects in the procurement of social assistance (bansos) COVID-19

Since March 2020, the corona virus appeared in Indonesia, there were two cases of corruption in the Indonesian Advanced Cabinet that stole the public's attention. One of them is Eddy Prabowo as the Minister of Maritime Affairs and Fisheries who was caught in a corruption case of seed export permits. Eddy was investigated for receiving Rp3.4 billion and US\$100,000 from the lobster seed export permit. A few weeks later the KPK named Social Minister Juliari Peter Batubara as a suspect in the procurement of Covid-19 social assistance (bansos), who received bribes worth Rp. 17 billion in two implementations of the Covid-19 social assistance in the form of basic necessities. In addition, corruption during the pandemic also occurred in several sectors such as the Asabri case, Jiwasraya, the Pinangki prosecutor's bribery case, the Cimahi mayor bribery case, the land dispute case in Labuan Bajo NTT, and others [17]. The practice of greed and greed will certainly have an impact on the injury to the economic sector and disrupt the stability of economic growth and development. The complexity of corruption cases that occur in the Covid-19 pandemic situation as it is now, has greatly increased in development, due to corruption cases in the Covid-19 pandemic situation occurring in all sectors, this is very detrimental to the country's economy because it occurs during a recession.

The formulation of the death penalty is an effective punishment in its implementation because it provides a deterrent effect as well as a fearful effect for criminals and the community not to commit the same crime. Based on the picture above, it can be seen that the investigation performance of the anti-corruption agency has declined. The weakness of this institution is a vulnerability to national integrity and public trust in the government in terms of corruption. It was recorded that only 91 cases in 2020 were investigated by the KPK, or down 37% compared to the previous year of 145 cases [18]. Meanwhile, when compared to 2018, it was recorded to decrease by 54.27%. In 2018 the

number of investigations carried out by the KPK was 199 cases [19].

In a trend, from 2004 to 2017 the KPK's investigative performance continued to increase. Meanwhile, the total number of investigations reached 1,145 cases [20]. During a pandemic like now, we need an improvement and renewal of the bureaucracy from the KPK itself. The role of the KPK is very important in dealing with corruption cases during the recess as it is now, considering that the opportunities for corruption that will occur are very large in misappropriating funds if there is no good transparency from the government. When taking pictures of the Indonesian government in general, we can conclude that the government's efforts to fight corruption have not yet reached their maximum point.

This is evidenced by the continued prevalence of corrupt practices in Indonesia from the central to the regional levels, as well as the complexity of corruption that occurs in all sectors. Even the repressive punishment has not provided a deterrent effect. The threat of imprisonment as well as fines or compensation, which is clearly stated in Law No. 20 of 2001 is no longer a frightening threat to corruptors. Based on the year-end records of Indonesia Corruption Watch (ICW), efforts to eradicate corruption during 2020 have stagnated and even set back, this is due to many government policies that deviate from efforts to combat corruption. The legal products that are made continue to be a polemic, as well as the handling of Covid-19 in the current situation which is full of irregularities.

B. The polemic of imposing the death penalty on perpetrators of corruption in the Covid-19 pandemic situation

The crime of corruption is known as an extraordinary crime, where as a policy step to overcome corruption it is resolved through legislation that can be used as a trap to create a sense of deterrence for the perpetrators of corruption, one of which is the existence of severe sanctions and the principle of reverse proof, where the alternative choice is is a death penalty [21].

¹⁷ Mohammad Khairul Muqorobin and Barda Nawawi Arief, "The Death Penalty Formulation Policy in the Law on the Eradication of Corruption Crimes During the Corona Virus Disease 2019 (COVID-19) Pandemic Based on the Perspective of Criminal Law Reform," Indonesian Legal Development Journal 2, no. 3 (2020): 387–398.

¹⁸ Dimas Dharma Setiawan, "Observing Prisoners' Assimilation Policy During the COVID-19 Pandemic," Ditjenpas.Go.Id.

¹⁹ Desca Lidya Natalia, "Mass Media and Reporting on Corruption Eradication in Indonesia," Journal of Anti-Corruption Integrity 05, no. 2 (2019).

²⁰ Eddy OS Hiariej, "Corruption in the Private Sector and Corporate Criminal Liability," Legal Issues 49, no. 4 (2020): 333–344.

²¹ Tiyas Kurnia Sari, Fitra Roman Cahaya, and Corina Joseph, "Coercive Pressures and Anti-Corruption

The desire to eradicate corruption has become a separate paradigm, the existence of a policy formulation related to the death penalty, in its application it can be inconsistent with the formulation policy where judges are reluctant to apply the death penalty to perpetrators of corruption, even though the state has suffered state financial losses in large amounts big.

The debate about the pros and cons of the death penalty for corruption perpetrators will continue to be debated between the parties who support or reject it. From the pros and cons, both have a strong theoretical basis, the abolitionist groups have a theoretical basis which states that the reasons they oppose the death penalty for corruptors are, first [22], Furthermore, this group also considers that until now it has not been scientifically proven that the purpose of giving the death penalty is something that can cause a deterrent effect in the community, so there is no linear thing that makes the level of corruption crimes with the idea of imposing the death penalty for the perpetrators [23].

Both of these arguments can also be refuted by retentionists with several arguments that say that the death penalty if it has been carried out on corrupt perpetrators can be a strong reason for the low crime rate, it is proven that Saudi Arabia which implements the death penalty has a low crime rate compared to countries that do not apply the death penalty. death penalty [24], and the next argument that also rejects the opinion of the abolitionists is that the death penalty is contrary to human rights, in fact corruption is an ordinary crime that humiliates other human beings in the absence of humanity, especially in the midst of the covid-19 pandemic [25].

This case is not in line with Jeremy Bentham who said that such an approach to justice does not have any justification value if the punishment is imposed solely to add more suffering or harm to society [26].

Reporting: The Case of ASEAN Countries,” *Journal of Business Ethics* 171, no. 3 (July 2021): 495–511.

²² Surahmad, "Controversy on the Death Penalty Policy for Corruptors in Indonesia," *Pusdiknas: Scientific Journal of National and International Policies*, 2016.

²³ Margie G. Sopacua et al., "The Effectiveness of Parole for Prisoners during the Covid-19 Pandemic," *Journal of Advances in Education and Philosophy* 4, no. 11 (2020).

²⁴ Daniel Treisman, "The Causes of Corruption: A Cross-National Study," *Journal of public economics* 76, no. 3 (2000): 399–457.

²⁵ Daniel Treisman, "Decentralization and Corruption: Why Are Federal States Perceived to Be More Corrupt," in *Presentation at the Annual Meeting of the American Political Science Association, Atlanta, 1999.*

²⁶ Mouna Wasef and Firdaus Ilyas, "Robbing Forests and State Money," *Indonesia Corruption Watch* (2011).

Furthermore, Hulsman said that "the criminal justice system as a social problem" which means that the justice system through a retributive justice approach will only leave suffering, economic problems, family and stigma against the perpetrators [27]. The implementation of the death penalty itself is actually not a new thing in the constitutional system in Indonesia. If the clemency has been rejected by the court, then serious crimes that can be continued in the death penalty process are in cases of terrorists, murder with modus operandi, and traffickers of narcotics and other illegal drugs.

If examined based on the applicable law, the government has made efforts to overcome massive crimes including corruption in the legal realm. It is written in Article 2 paragraph 2 of Law Number 20 of 2001 that corruption crimes committed during natural disasters, economic crises, and so on can be punished with the death penalty [28]. The regulation is a progressive step from Law No. 31/1999 on the Eradication of Corruption Crimes, which is still considered blunt in terms of pragmatics. Even so, most of the recorded death row convicts consist of "blue collar" groups or can be referred to as non-government workers. Meanwhile, white-collar crimes within the state bureaucracy often escape the grip of the applicable law. Transparency of the law seems to be bought by those who are at the top of the hierarchy in the economic strata. It can be concluded that the incident has deviated from the "de facto" and "de jure" ideology which should be the fixed price of the Unitary Republic of Indonesia [29].

The result of "white collar" crimes such as corruption is as dangerous as other high-profile crimes, because the act of corruption itself has undermined a country internally and on a large holistic scale. The Corruption Perception Index (CPI) issued by the Corruption Eradication Commission (KPK) states that Indonesia in its 2011-2020 accumulation is at a score of 37 in the context of the swiftness of corruptors from a legal perspective. The lower the score obtained by a country, the more severe the pattern of spreading corruption. This score is still below Timor-Leste (40) which incidentally is categorized as a more developed

²⁷ Sofie Arjon Schutte and Laode M Syarif, "Eradication of Corruption in the Forestry Sector Lessons from the KPK Case," *U4 Issue* (2020): 17.

²⁸ Abd Ghofur, "The Death Penalty Controversy Analysis of Critical Literary Discourse the Life of David Gale Film Perspective of Sociocultural Practice Norman Fairclough," *OKARA: Journal of Language and Literature* 11, no. 1 (2017): 193.

²⁹ Matthew Lippman, "Contemporary Criminal Law: Concepts, Cases, and Controversies" (2010): 1–23, https://www.sagepub.com/sites/default/files/upm-binaries/30388_1.pdf.

country than Indonesia [³⁰]. Therefore, during this Pandemic, many parties are demanding the government to immediately implement the death penalty for perpetrators of corruption [³¹].

Based on the explanation previously explained, that under certain circumstances, perpetrators of acts of corruption can be sentenced to death under the Corruption Law because they have deliberately taken personal advantage by enriching themselves in conditions of a country that is experiencing a crisis or disaster. The act of corruption is also seen as a disgrace to the fifth principle of Pancasila because the corruptors are considered to have robbed the Indonesian people of what is rightfully theirs. Regulations on corruption that have long been issued as a repressive effort for the government in their implementation have yet to produce results, the implementation of the death penalty which is now being intensively implemented, there are still many conflicts.

Even so, the death penalty for corruptors is legally enforceable. In addition, the existence of the death penalty as an alternative deterrent effect is not considered a wise solution to break the chain of acts of corruption in the country. The application of this punishment is considered to be causing new problems. If understood at a glance, the main purpose of implementing the death penalty for corruptors is to create a deterrent effect and fear for the community. However, the implementation of the death penalty only focuses on actions that have already occurred and does not look at how to prevent them. We also need to reflect on the implementation of policies regarding the death penalty as already realized against drug dealers. Although the death penalty has been applied to narcotics criminals, drug trafficking cases in the country still occur.

CONCLUSION

Corruption is an extraordinary human rights crime that is very detrimental to the general public. Therefore, all his actions must be punished to the fullest extent, but at the same time, the government also needs to consider other aspects in passing sentences to suspected corruptors in the fairest way possible. The application of the death penalty as a tool to provide a deterrent effect for perpetrators of criminal acts of corruption, in its implementation is one of the methods of punishment that has many polemics. The complexity of the criminal acts of corruption that occur, in its implementation evenly spreads across all lines, starting from the social assistance corruption, the Asabri case, Jiwasraya, the Pinangki prosecutor's bribery case, the Cimahi mayor bribery case, to the land dispute case in

Labuan Bajo NTT. Other than that, The imposition of the death penalty on perpetrators of criminal acts of corruption in the current Covid-19 pandemic situation also raises many pros and cons. The paradigm of the death penalty that has reaped many polemics on the one hand is a retaliation that is considered commensurate with the actions committed, but on the other hand the application of the death penalty to perpetrators of criminal acts of corruption is an inhumane thing and is contrary to human rights, because it takes away the rights one to live and live life.

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³⁰ Smith, "Corruption, Tradition and Change in Indonesia."

³¹ Sopacua *et al.*, "The Effectiveness of Parole for Prisoners during the Covid-19 Pandemic."

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