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Design of the Death Penalty as a Legal Instrument for Combating Corruption Crimes

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Abstract

There are two opinions, especially the death penalty, causing controversy over the regulation of the death penalty as a legal instrument to combat corruption. There are those who agree with the imposition of the death penalty and some people in fact question the basis for the justification of the sentence which does not provide opportunities for criminals to improve to become good human beings. In fact, the death penalty for cases of corruption has never been imposed, so the threat of capital punishment cannot be used as an ultimum remedium against perpetrators of corruption. The form of crime and the punishment system in corruption crimes deviates from the general criminal system, namely regarding the form and system of imposing the punishment, regarding the severity of the main crime to be imposed, the maximum limit for each crime has been determined, while the specific minimum limit is not determined, but the general minimum limit. , for example imprisonment and imprisonment for a minimum of one day. In the criminal law of corruption, two main types of criminal sanctions are imposed simultaneously, which are imperative, between imprisonment and fines. - additional types of crime. Imperative-facultative system. It is suggested the need for amendments to the Law on the Eradication of Criminal Acts of Corruption by formulating capital punishment for all acts of corruption without any special criteria such as a disaster situation because of its large impact on society, nation and state, so that it becomes the ultimum remedium. The need for judges to impose severe criminal sanctions, so that it can create a deterrent effect for corruptors and other people who have the opportunity to commit corruption are reluctant or afraid to commit acts that violate the law because the criminal sanctions are heavy.

Keywords: Death Penalty, Countermeasures, Corruption

A. Introduction

Based on the Preamble to the Constitution of the Republic of Indonesia, one of the serious problems faced in the enforcement of criminal law in Indonesia is the application of the death penalty which is considered inhumane. The death penalty still raises the pros and cons of understanding the meaning and nature of punishment, especially legal experts and human rights (HAM) fighters. Various sharp criticisms were directed, there was even an abolitionist movement (anti-death penalty) which opposed the death penalty.

The concept of the death penalty is often described as cruel, inhuman and sadistic. This is simply to see the reason, intent, purpose, and effectiveness. Although in principle, the law is the whole rule of behavior that applies in a common life, which can be enforced with a sanction. The implementation of the law can take place normally

and peacefully, but it can also occur because of a violation of the law, the law must be enforced.

At least there are several implications that have caused many legal and human rights experts, including in Indonesia, to reject the death penalty for the following reasons:

1. Considered cruel and terrible, reminiscent of the past, namely the law of the jungle;
2. Unable to eradicate crime or will not prevent someone from committing a crime;
3. The execution of the death penalty is eternal, cannot be changed if later it turns out that it does not have a strong basis:
4. Contrary to the freedom of people (personal), because human life is an essential private property and cannot be contested by other people, including the rulers of the State.

The purpose of punishment, like the tendency of positive legal thinking, is more oriented to educate and improve the convicted person. However, for people who kill other people's lives without rights, it shows that he is no longer considering the legal consequences. Moreover, the person who was killed also has the right to live as the person who killed him. In other words, everyone also has an obligation not to cause other people to die. Or, everyone has the right not to be sacrificed to death. Therefore, it is natural that people who kill intentionally must be removed from society's life.
The history of criminal law in the past revealed attitudes and opinions as if the death penalty was the most effective medicine against serious crimes or against other crimes. But not only in the past, even today there are those who think that the death penalty is the most effective medicine for crime. The purpose of the death penalty is to prevent crimes and serious offences.

Serious crimes and capital punishment in the history of criminal law are two components of closely related problems. This can be seen in the Indonesian Criminal Code which threatens serious crimes with the death penalty. In the last decade, several new legal provisions actually state the death penalty as a maximum penalty, such as Article 36 and 37 of Law Number 26 of 2000 concerning the Human Rights Court, or the provisions of Article 6 of Law Number 15 of 2000. 2003 concerning Eradication of Criminal Acts of Terrorism, Article 2 paragraph 2 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption.

In the laws and regulations governing corruption, namely Law Number 15 of 2003 concerning the Eradication of Criminal Acts of corruption, the death penalty has been regulated in Article 2 paragraph 2 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. Paragraph (2) states 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." This article mentions "certain circumstances", the conditions in question are when natural disasters, economic crises, and so on can be sentenced to death. It is hoped that with the inclusion of this severe sanction, there will be a preventive effect (general prevention) for a person not to commit a criminal act of corruption. In addition, it is also intended that people because of their position and position can commit corruption to be afraid and will not misuse it because it will bring

harm to the people, nation and state of Indonesia and the maximum criminal sanction is the death penalty.

Supporters of the implementation of the death penalty, assume that the existence of a law that contains capital punishment sanctions is a form or effort of the Government in upholding public justice that must be protected from the consequences arising from the existence of criminal acts of corruption. Achmad Ali stated that it is not right that the death penalty should be abolished, because it is considered a violation of human rights. Because, not only the death penalty, but all types of punishment are essentially human rights violations. But then it becomes legal, because it is permitted by applicable law.

The discourse of the death penalty for corruptors promoted by the Attorney General ST Burhanudin seems to have led to various polemics from various parties. Djoko Sukisno, emphasized that, although the death penalty is permitted according to Article 2 paragraph (2) of the Anti-Corruption Law, the explanation must also be observed, that what is meant by "certain circumstances" in this provision is intended as a burden for perpetrators of criminal acts of corruption if the crime is committed on when the country is in a state of danger in accordance with applicable laws, when a national natural disaster occurs, as a repetition of a criminal act of corruption, or when the country is in a state of economic and monetary crisis. The death penalty is also one of the hopes that arose in the community to overcome the problem of corruption. The emergence of the discourse of the death penalty for corruptors is inseparable from the high level of corruption committed by state officials. So to give a deterrent effect to the corruptors, the death penalty is considered as a suitable solution to provide a deterrent effect for the corruptors.

In connection with the existence of two opinions, especially the death penalty, the controversy over the regulation of the death penalty as a legal instrument to combat corruption. There are those who agree with the imposition of the death penalty, but some people actually question the basis for the justification of the sentence which does not provide opportunities for criminals to improve to become good human beings. This raises the question whether the death penalty can be a means of overcoming corruption in Indonesia.

B. Method

This type of research is carried out with a normative approach, namely by analyzing the problem through an approach to legal principles and referring to legal norms contained in the legislation. Research that describes the regulation of capital punishment in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption. The legal material in this study is secondary data which includes, primary legal material, Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption and Law Number 8 of 1981 concerning the Book of Laws. Criminal Procedure Code. Secondary legal materials, namely materials that provide an explanation of primary legal materials, such as the results of seminars or other scientific meetings, or opinions from legal experts relevant to the object of this research study, as well as tertiary legal materials, namely supporting legal materials that

provide guidance and explanations of primary legal materials and secondary legal materials, such as general dictionaries, magazines and scientific journals relevant to this research.

C. Result and Discussion

1. Threat of Death Penalty as the Ultimate Remedium Effort

A criminal sentence is carried out if a person has been proven to have committed a crime. Those who are directly affected by the imposition of a crime are the person who is subject to the crime. This punishment has not been felt by the convicts when the new verdict is handed down; it will only be felt really if it has been implemented effectively. The severity of the sentence imposed not only affects the convict but also has an impact on society, where people will be afraid to commit a crime.

The criminal sanctions imposed are intended as an effort to maintain peace and better regulation of the community. In this case, repressive and preventive functions as well as educative will be achieved. The sentencing of a crime by a judge will have no effect if the general public does not know about it. So communication or mass media in this case plays an important role in disseminating it, so that it is expected to be in the public spotlight.

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The concept of the purpose of a law is closely related in assessing the influence or not of the law itself on the level of crime it regulates. In connection with the above, it is also necessary to know the purpose of this law, so that the assessment of whether or not the death penalty is effective is based on the objectives to be achieved.

Law Number 20 of 2001 was ratified on November 21, 2001, this law amended several provisions in Law Number 31 of 1999, in the consideration of letter b it is stated that changes to the law are made to ensure legal certainty, avoid diversity interpretation of the law and provide protection for the social and economic rights of the community, as well as fair treatment in eradicating corruption.

Several fundamental changes in eradicating corruption are carried out in this law. The first change is the qualification of corruption as an extraordinary crime because corruption is seen as not only detrimental to state finances, but also as a systematic violation of social and economic rights of the community. Qualification of corruption as an extraordinary crime implies that the prevention of corruption must be carried out in an extraordinary way.

In terms of public interest, the deterrent effect is important because it can answer public dissatisfaction with legal justice. In the case of corruption, the enforcement of a deterrent effect cannot be carried out by only one type of punishment, such as imprisonment. More than that, other punishments must be imposed that are equivalent to prison sentences in order to enforce the deterrent effect and the authority of the law. In this context, there are new developments from the KPK. As reported, the Chairman

of the Corruption Eradication Commission (KPK) Firli Bahuri also briefly expressed the possibility of imposing the death penalty on corruptors, especially regarding the handling of Covid-19. As is known, the prosecutor filed a death sentence for the defendant Asabri, Heru Hidayat. Now it's up to the court, the judge how to carry out the investigation and prosecution as well as the death penalty charges for the corruptors.

In the General Elucidation of the Seventh Paragraph of Law Number 20 of 2001 it is explained that reverse proof needs to be formulated as a provision that is premium remedium and special prevention. Premium remidium is the opposite of ultimum remidium, where if ultimum remedium views crime as a new drug to be used when drugs outside of criminal law are no longer effective, so in other words it can be concluded that premium remidium views crime as the first drug in dealing with criminal acts. Meanwhile, special prevention implies that the purpose of the punishment is to make the convict change into a better person and be useful to society.

The fourth amendment in this law is a change in the explanation of certain circumstances that result in the defendant being sentenced to death. The changes are listed in the Elucidation of Article 2 paragraph (2). What is meant by "certain circumstances" in this provision is a situation that can be used as a reason for the criminal offense of corruption, namely if the crime is committed against funds designated for the management of dangerous conditions, national natural disasters, remediation due to widespread social unrest. , overcoming the economic and monetary crisis, and the repetition of corruption.

The juridical instrument does not apply to all corruption cases, the threat of the death penalty cannot be imposed on all corruptors, the death penalty can only be imposed on certain corruptors or special corruption actors. If a corruptor is proven to have committed corruption but is not in a special category of corruption, then he cannot be threatened with the death penalty. As regulated in Law Number 31 of 1999, which has been amended to become Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, it is stated that under certain conditions the perpetrators of criminal acts of corruption can be threatened with the death penalty.

To reduce cases of corruption, juridical devices alone are not enough. In addition to firmness and full support from the government, "consistency" and "juridical firmness and courage" are needed for law enforcement in interpreting progressively the law on corruption. Thus, the call for enthusiasm and a sense of public justice for the law can be realized. There is nothing wrong with imitating China's experience in fighting corruption. If law enforcement officers are serious about eradicating corruption that is already so acute. The death sentence for corruption convicts is necessary for the safety of the nation and state.

In the Law on corruption, the death penalty is also included in Article 2 paragraph (2) of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption which has been amended and listed in Article 1 paragraph (1) of Law Number 20 of 2001 , which is formulated as follows: Article 2 paragraph (2) of Law no. 31 of 1999 states 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".

In the explanation, what is meant by certain conditions in this provision are conditions that can be used as a reason for criminal offenses for perpetrators of

criminal acts of corruption, namely if the crime is committed against funds designated for handling dangerous conditions, national natural disasters, overcoming the consequences of widespread social unrest. , overcoming the economic and monetary crisis and the repetition of corruption.

According to Judicial Busyro Muqodas, there are 3 (three) main criteria that make a perpetrator of a criminal act of corruption worthy of being sentenced to death;

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

Thus, it can be interpreted that the death penalty for perpetrators of corruption can occur if the act that is charged / sued against the defendant has been proven legally and convincingly according to law guilty of committing the crime charged as formulated above.

The imposition of a crime as a sorrow to the perpetrator of a crime is the last remedy (ultimum remedium), which is only carried out if other efforts such as prevention have not worked. One of the most severe forms of sanctions is the death penalty, whose existence and urgency have been debated for hundreds of years by criminal law and criminology scholars.

Of the various sanctions that have been imposed on corruptors, they have not deterred the perpetrators of corruption, whether committed individually or by corporations. So it is necessary to think about imposing an ultimum remedial sanction in the form of a death penalty so that a deterrent effect will appear on the perpetrators of corruption. Cumulative sanctions need to be imposed, namely capital punishment, fines, refund of state losses so that it will have a deterrent effect or will become an ultimum remedium.

The imposition of the death penalty on perpetrators of corruption is an effort to prevent corruption in Indonesia which aims to provide a deterrent effect for perpetrators of corruption. The government applies the death penalty for corruption in order to minimize the occurrence of corruption. The relationship between the importance of the death penalty in corruption crimes and human rights is very close, this is based on the fact that the death penalty concerns the most basic rights, namely the right to life which is the most basic right for humans. The imposition of the death penalty for perpetrators of criminal acts of corruption must be studied in depth considering that the death penalty is the heaviest crime that cannot be withdrawn once it has been implemented.

2. Death Penalty as Retaliation.

This theory first appeared at the end of the 18th century, adherents of this tori were Immanuel Kant, Hegel, Herbart, Stahl, Leo Polak. Retaliation theory argues that: Punishment is not intended for practical purposes, namely to correct criminals because the crime itself contains elements to be imposed on the criminal, and there is no need to think about the benefits of imposing a crime because the crime resulted in the imposition of a sentence on the perpetrator.

So the most important of the punishment is retaliation. Against this theory of retaliation, Vos divides, among others:

a. Subjective Revenge

a) Namely: Revenge for the wrongdoer

b. Objective Revenge

Namely: Retaliation for what has been created by the perpetrator in the outside world.

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

1) Retaliatory Retribution

Means: intentionally inflicting a suffering that an official deserves to suffer and who is able to realize what a criminal deserves to suffer and who is able to realize that the burden of suffering is the result of the crime he has committed;

2) Distributive Retribution

Means: restrictions on criminal forms that are intentionally imposed on those who have committed crimes, they have fulfilled other requirements deemed necessary in order to hold them accountable for other forms of crime;

3) Quantitative Retribution

Means: restrictions on criminal forms that have a purpose other than retaliation so that these forms of crime do not exceed a level of cruelty that is considered appropriate for the crime that has been committed.

From the description above, it is absolute retaliation to be imposed on criminals who have committed crimes and this is considered commensurate with the actions they have committed, by giving retaliation it is considered that it can fulfill the requirements of justice.

If traced from this theory of retaliation, that in every human being will have a feeling of revenge to retaliate, but revenge is not always associated with revenge. The theory of retaliation differs between the ancient absolute theory and the modern one. In the sense that this notion of vengeance is no longer seen in absolute terms as a tooth is replaced by a tooth.

This can be seen from Kant's opinion on the ancient theory of vengeance which argues that:

Whoever commits a crime must be punished, the punishment must be based on the principle of retaliation. Revenge here, according to Kant, if tomorrow the world will end, the last criminal must still be sentenced to death today.

Meanwhile, according to Hegel who is famous for his dialectical theory that: absolute punishment must exist as a reaction to every crime, law or justice is a reality if someone commits a crime or attacks justice, it means that he denies the fact that there is law, therefore it must be recognized as a crime. in the form of injustice or the return of the rule of law.

Herbart's opinion on this theory of retaliation is based on the idea that if the crime is not retaliated it will cause a sense of dissatisfaction in the community, so that community satisfaction can be achieved or restored, from an aesthetic point of view, it must be repaid by imposing a commensurate punishment on the criminal.

What is appropriate here is: There is a division of conditions for obtaining profits and losses, then against the law each member of the community has an equal and equal position when someone commits a crime which means he makes a special suffering for people, makes a special suffering for others, then it is in balance that the criminal is given the same amount of suffering as the suffering he has done to the other person.

From the theory of retaliation described above, even though they are both adherents of the theory of retaliation but have different views, the most important thing here is that the theory of retaliation is in the form of punishment that must be given to the perpetrators of crimes. The existence of the death penalty needs to be implemented, among others, to fulfill two purposes of punishment, namely as a deterrence (deterrence) as well as retaliation (retribution).

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

According to Kant's teachings, punishment has its legal basis in the crime itself, supported by an unconditional command from practical reason (categorischen imperative) which requires that the unlawful act that has occurred be retaliated.

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

In this regard, according to Stahl, the principle of retaliation is an eternal law of justice, namely that it is important for a crime to be followed by a punishment. The state is God's creation on earth, whose foundations have been damaged by a criminal. The state must maintain its power by destroying or inflicting suffering on criminals. Thus, revenge is a condition of justice based on the One Godhead.

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

3. Forms of Crime and the Criminal System in Corruption Crimes

The characteristic of a special criminal law is that there is always a certain deviation from the general criminal law. Thus the criminal system for criminal acts of corruption has deviated from the general principles in the criminal system according to the Criminal Code (KUHP). As for things that deviate from the general criminal system, it is regarding the form and system of imposing the punishment. In general criminal law regulated in the Criminal Code, which distinguishes between the main crime and the additional punishment in Article 10, the main punishment consists of (1) capital punishment, (2) imprisonment, (3) imprisonment, (4) fines; while the additional penalties consist of; (1) revocation of certain rights, (2) confiscation of certain goods, and (3) announcement of judge's decision.

Regarding the severity of the main punishment that will be imposed on the maker in the judge's verdict, the maximum limit has been determined, especially for each crime. The panel of judges may not exceed the special maximum limit. While the specific minimum limit is not determined, but the general minimum limit, for example imprisonment and imprisonment for a minimum of one day.

The forms of crime contained in the articles of Law Number 31 of 1999 amended by Law Number 20 of 2001. And have deviated from the general principles in the

criminal system according to the Criminal Code which are threatened if a crime occurs as stated in the Criminal Code. are as follows:

a. Corruption crime by enriching oneself, other people, or a corporation as referred to in Article 2 paragraph (1), shall be sentenced to life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a minimum fine of Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1.000.000.000,00 (one billion rupiah). Even in paragraph (2) of this Article the punishment can be increased, namely the death penalty.
b. Corruption by abusing the authority, opportunity, office facilities, or position as referred to in Article 3, shall be punished with life imprisonment or with a minimum imprisonment of 1 (one) year and a maximum of 20 (twenty) years and or a minimum fine of Rp. 50,000,000.00 (Fifty million rupiah) and a maximum of Rp. 1.000.000.000,00 (two hundred and fifty million rupiah). This formulation was adopted from the former Article 210 of the Criminal Code.
c. The Corruption Crime of bribery by giving or promising something as referred to in Article 5, shall be punished with a minimum imprisonment of 1 (one) year and a maximum of 5 (five) years and or a minimum fine of Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 250,000,000.00 (two hundred and fifty million rupiah). This formulation was adopted from the former article 209 of the Criminal Code.
d. Corruption crime of bribery to judges and advocates as referred to in article 6, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a minimum fine of Rp. 150,000,000.00 (one hundred and fifty million rupiah) and a maximum of Rp. 750,000,000.00 (seven hundred and fifty million rupiah). This formulation was adopted from the former Article 210 of the Criminal Code.
e. Corruption in terms of constructing buildings and selling building materials and corruption in terms of handing over equipment needed by the TNI and KNRI as referred to in article 7, shall be punished with imprisonment for a minimum of 2 (two) years and a maximum of 7 (seven) years and or a minimum fine of Rp. 100,000,000.00 (one hundred million rupiah) and a maximum of Rp. 350,000.00 (three hundred and fifty million rupiah). This formulation was adopted from the former Articles 387 and 388 of the Criminal Code.
f. Corruption Crime of Civil Servants embezzling money and securities. As referred to in Article 8, the punishment is a minimum imprisonment of 3 (three) years and a maximum of 15 (fifteen) years and a minimum fine of Rp. 150,000,000.00 (one hundred and fifty million rupiah) and a maximum of Rp. 750,000,000.00 (seven hundred and fifty million rupiah) The formulation of this crime was adopted from the former Article 415 of the Criminal Code.
g. Corruption Crimes Civil Servants falsify books and lists. As referred to in Article 9, the punishment is a minimum imprisonment of 1 (one) year and a maximum of 5 (five) years and a minimum fine of Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 250,000,000.00 (two hundred and fifty million rupiah). This formulation was adopted from the former Article 416 of the Criminal Code.

h. Corruption Crime of Civil Servants destroying goods, deeds, letters or registers. As referred to in Article 10, the punishment is a minimum imprisonment of 2 (two) years and a maximum of 7 (seven) years and a minimum fine of Rp. 100,000,000.00 (one hundred million rupiah) and a maximum of Rp. 350,000,000.00 (three hundred and fifty million rupiah). This formulation was adopted from the former Article 417 of the Criminal Code.
i. Corruption Crimes Civil servants receive gifts or promises related to the authority of the position. As referred to in Article 11, the punishment is a minimum imprisonment of 1 (one) year and a maximum of 5 (five) years and or a minimum fine of Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 250,000,000.00 (two hundred and fifty million rupiah). This formulation was adopted from the former Article 418 of the Criminal Code.
j. Corruption Crimes Civil servants or state administrators or judges and advocates accept gifts or promises: Civil servants force to pay, cut payments, ask for work, use state land, and participate in chartering. As referred to in Article 12, the punishment is life imprisonment or a minimum imprisonment of 4 (four) years and a maximum of 20 (twenty) years and a minimum fine of Rp. 1.000.000.000,00 (one billion rupiah). This formulation was adopted from articles 419, 420, 423, 425 and 435 of the Criminal Code.
k. Corruption Crime of bribery Civil servants receive gratuities. As referred to in Article 12 B, the punishment is life imprisonment or a minimum of 4 (four) years and a maximum of 20 (twenty) years, and a minimum fine of Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1.000.000.000,00 (one billion rupiah).
l. Corruption crime of bribery to civil servants by reminding the power of office. As referred to in Article 13, the punishment is a maximum imprisonment of 3 (three) years and or a maximum fine of Rp. 150,000,000.00 (one hundred and fifty million rupiah).
m. Crimes related to the procedural law of eradicating corruption, which are basically impediments, hinder efforts to overcome and eradicate corruption. The intended crime is contained in 3 (three) articles, namely Article 21, 22, and Article 24. Violation of this article shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 12 (twelve) years and or a minimum fine of Rp. 150,000,000.00 (one hundred and fifty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah), however, in violation of Article 24 Jo 31, the punishment is a maximum imprisonment of 3 (three) years and or a maximum fine of Rp. 150,000,000.00 (one hundred and fifty million rupiah) and a maximum of Rp. 150,000,000.00 (one hundred and fifty million rupiah).
n. Criminal offenses against articles 220, 231, 421, 422, 429, and 430 of the Criminal Code. As referred to in Article 23, the punishment is a minimum imprisonment of 1 (one) year and a maximum of 6 (six) years and or a minimum fine of Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 300,000,000.00 (three hundred million rupiah).

In addition to the basic punishment as described above, the convict can also be given additional punishment as an effort to recover state finances due to the corruption crime that he has committed, which can be seen in Article 18 paragraph (1), namely:

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

Regarding the main crime, although the types of crimes in the criminal law of corruption are the same as the general criminal law, the system for imposing criminal charges is specific when compared to general criminal law, namely as follows:

a. In the criminal law of corruption, 2 (two) main types of criminal penalties imposed simultaneously are divided into 2 (two) types:
    1) The imposition of 2 (two) types of imperative crimes, between imprisonment and a fine. Two main types of punishment, namely imprisonment and mandatory fines are both imposed simultaneously. The imperative-cumulative system is threatened with the most serious corruption crimes.
    2) The imposition of 2 (two) main types of punishment simultaneously which are imperative and facultative, namely between imprisonment and a fine. Among these 2 (two) main types of punishment, what must be imposed is imprisonment (imperative), but can also be imposed cumulatively with fines (facultative) together (cumulatively) with imprisonment. So, specifically for facultative criminal penalties, when compared to the Criminal Code, the nature of this Facultative punishment only exists in additional types of punishment. The imperative-facultative system (imperative imprisonment, facultative fine) is concluded from 2 (two) words, namely "and or" in the sentence regarding the criminal threat from the formulation of the crime in question. Here the judge can choose between imposing a fine along with a fine (facultative nature). This imperative-facultative sentencing system is found in criminal acts formulated in articles 3, 5, 7, 10, 11, 13, 21, 22, 23, and 24.
b. The criminal system for criminal acts of corruption stipulates a special minimum threat and a special maximum, both in terms of imprisonment and fines and does not use the system by setting a general maximum and general minimum penalty as in the Criminal Code.
c. The special maximum imprisonment that is threatened is far more than the general maximum in the Criminal Code of 15 (fifteen) years, which is up to 20 (twenty) years at most. In the Criminal Code, it is permissible to impose a prison sentence that exceeds the general maximum limit of 15 (fifteen) years, namely 20 (twenty years), in the case of repetition or concurrent (because it can be added one third) or certain criminal acts as an alternative to the death penalty (eg. article 104, 340, 365 paragraph 4).

d. In the criminal law of corruption, it is not about the death penalty as a principal crime which is threatened with an independent crime. However, recognizing the death penalty in the event that if the crime referred to in Article 2 there is a reason for aggravation of the crime. So, the death penalty is a crime that can be imposed if there is a reason for aggravation of the crime, namely when committing a criminal act of corruption Article 2 under certain circumstances. This particular situation is explained in the explanation of article 2 paragraph (2), namely "if it is carried out at a time when the country is in a state of danger in accordance with the applicable law; at the time of the occurrence of a national natural disaster; as repetition; or when the State is in a state of economic and monetary crisis."

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

Unlike the description above, it is a criminal act of corruption committed by or on behalf of a corporation. It seems that the legislators of the Criminal Act of corruption are fully aware that corruption is not only committed by individuals but also by corporations, through their management, which has recently been increasing in intensity with various modus operandi. Even the corporation in question is not only a legal entity but also one that is not a legal entity. Which regulations, are not found in the regulations that have been in force before. As stated in the general explanation that "The new development regulated in this law is that corporations are the subject of no crime of corruption that can be subject to sanctions". This was previously regulated in law no. 3 of 1971 concerning the Eradication of Corruption.

The types of corruption that can be carried out by corporate subjects are as referred to in Article 2 paragraphs (1) and 3, Law Number 31 of 1991 concerning the Eradication of Criminal Acts of Corruption, namely: Anyone who unlawfully commits an act of enriching himself or others or a corporation that can harm state finances, ……" and any person who with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunities or facilities available to him because of his position or position that can harm state finances or the state economy. ....."

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

D. Conclusion

The death penalty for cases of corruption has never been imposed, so the threat of capital punishment cannot be used as an ultimum remedium against perpetrators of

criminal acts of corruption. The severity of the main punishment to be imposed has been determined by the maximum limit for each criminal act, while the specific minimum limit is not determined, but the general minimum limit, for example imprisonment and imprisonment for a minimum of one day. In the criminal law of corruption, 2 (two) main types of criminal penalties are imposed simultaneously, which are imperative, between imprisonment and a fine, the imposition of 2 (two) types of principal crimes simultaneously which are imperative and facultative, namely between imprisonment and fines for the nature of criminal imposition. This facultative only exists in additional types of crimes. Imperative-facultative system (imprisonment is imperative, fine is facultative).

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