



The Death Penalty for Corruptors in Indonesia: Perspectives of Islamic Law and Positive Law: Opportunities and Challenges

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Abstract

This study examines the discourse on the death penalty for perpetrators of corruption in Indonesia from the perspective of Islamic law and positive law. In Islamic law, serious corruption can be categorized as a *fasād fī al-ardq* which allows for the imposition of the death penalty. Meanwhile, in Indonesian positive law, Article 2 paragraph (2) of the Corruption Eradication Law opens up normative space for the application of the death penalty in certain circumstances. This study also examines the opportunities and challenges of implementing this policy amidst pressure from human rights, political, and judicial systems. The results of the study indicate that normatively and sociologically, the death penalty is worthy of consideration in cases of serious corruption, although its implementation requires caution and legal reform.

I. INTRODUCTION

Corruption is an extraordinary crime that not only causes financial losses to the state but also damages the very foundations of society as a whole. Its impact extends beyond the loss of state wealth to the social, political, and cultural spheres, creating injustice, widening economic disparities, and degrading the nation's moral standards. In Indonesia, corruption has become a serious threat to the sustainability of national development, weakening governance, and eroding public trust in state institutions. This phenomenon makes corruption a common enemy that requires extraordinary action through firm and effective legal policies. (SHI Sumarwoto et al., 2014).

Efforts to eradicate corruption have long been a national priority. The establishment of the Corruption Eradication Commission (KPK) as an independent institution, strengthening regulations through Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, and increasing criminal sanctions and international cooperation are concrete steps that have been taken. Nevertheless, Indonesia's corruption perception index shows that corrupt practices remain rampant, even involving high-ranking state officials and political elites. Megacorruption cases uncovered over the past

two decades, such as corruption in the procurement of goods and services, social assistance funds, and misuse of pandemic funds, demonstrate that this threat continues to evolve with increasingly complex methods. (Jaya et al., 2024).

It is in this context that the discourse on imposing the death penalty on perpetrators of corruption emerged. This idea grew stronger as public disappointment with the weak deterrent effect of the sanctions currently in place. The death penalty is seen as the harshest alternative to create a deterrent effect and as a symbol of the state's seriousness in protecting the interests of the people. Normatively, the possibility of imposing the death penalty on corruptors has actually been accommodated in Article 2 paragraph (2) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, which states that the death penalty can be imposed if the crime of corruption is committed under certain circumstances, such as a national natural disaster or economic crisis. However, the implementation of this provision continues to generate heated debate, both among academics, legal practitioners, and civil society. Human rights issues, the principle of proportionality, and technical challenges of implementation are

obstacles that cannot be ignored.(S. Sumarwoto, 2014).

On the other hand, the Islamic legal perspective provides an interesting and compelling perspective. In Islamic law, corruption can be viewed as a form of *ghulul* (embezzlement of state assets) and falls into the category of *fasād fī al-ardd* (corruption on earth). The Qur'an, particularly in Surah Al-Māidah verse 33, emphasizes that perpetrators of corruption who pose a grave danger to society can be subject to very severe punishments, ranging from imprisonment, exile, to the death penalty, depending on the severity of the crime and its impact. The principles of justice ('*adl*) and benefit (*maslahah*) in Islamic law place the protection of the public interest above individual interests. Therefore, if corruption is proven to cause widespread suffering, famine, or economic collapse that harms the livelihoods of many, the imposition of the death penalty can be seen as in line with the *maqāṣid al-syarī'ah*, namely, safeguarding property (*hifz al-māl*), lives (*hifz al-nafs*), and social order.(Aulia et al., 2023).

This research is based on the urgency of comprehensively examining the death penalty for corruption perpetrators, both from the perspective of Indonesian positive law and Islamic law. On the one hand, this research will examine the extent to which the provisions of Article 2 paragraph (2) of the Corruption Eradication Law can be implemented, including the accompanying legal, political, and sociological challenges. On the other hand, this study will explore the concept of the death penalty in Islamic law, considering the criteria and conditions for its application, as well as its relevance to the pluralistic Indonesian context based on Pancasila. Through this interdisciplinary approach, it is hoped that this research can provide a significant academic contribution in strengthening the discourse on criminal law policy, balancing the values of justice and humanity, and serving as a reference in efforts to reform national criminal law to be more effective and just.

II. RESEARCH METHODS

This research uses a normative juridical method, an approach based on the analysis of written legal norms, both in statutory regulations and in Islamic legal sources such as the Qur'an and Hadith. The data used comes from primary and secondary legal materials, including academic literature, statutory regulations, court decisions,

and studies by Islamic scholars and academics.(Mahmud Marzuki, 2005).

III. RESULTS AND DISCUSSION

This article aims to provide thoughts related to the status of the death penalty for corruptors from an Islamic legal perspective, so that it can at least be a material for reflection and a reminder that corruption is a bad act and is strictly forbidden by Islam, because the negative impact it has on a society and nation is very large.

A. The Death Penalty for Corruptors from an Islamic Legal Perspective

1. The Concept of Corruption in Islamic Law

In Islamic legal terminology, the term "corruption" is not explicitly found. However, corrupt practices can be categorized into a number of criminal acts (*jarimah*) described in the Qur'an and Hadith, such as(Jumali, 2014):

- Ghulul: embezzlement of war booty or public property (QS. Ali-Imran: 161),
- Risywah: bribery (HR. Abu Dawud, Tirmidzi, and Ahmad),
- Sariqah: theft (QS. Al-Ma'idah: 38),
- Fasād fī al-ardd: destruction on earth (QS. Al-Ma'idah: 33).

Corruption in the modern sense, which includes the abuse of power for personal gain and causes widespread economic and social damage, can be included in the category of *fasād fī al-ardd*, especially when its impact is systemic and significantly detrimental to the public interest.(Fadilla & Santoso, 2021).

2. Legal Basis for the Death Penalty in Islam

In the Qur'an, there are verses that provide the basis for applying the death penalty to perpetrators of serious crimes, including:

QS Al-Ma'idah : 33

"Indeed, the recompense of those who wage war against Allah and His Messenger and spread corruption on earth is that they be killed, or crucified, or their hands and feet be cut off on opposite sides, or they be exiled from the land."

This verse is one of the main arguments used by Islamic scholars to determine the death penalty for perpetrators of major crimes that threaten social stability and public order, including large-scale corruption.

In *jinayah fiqh*, this form of punishment is part of *hudud* (limitation of sanctions determined by the Shari'a) or *ta'zir* (punishment submitted to the *ijtihad* of the ruler or judge).(Alfitra, 2015).

3. Category of Corruption as Fasād fī al-Ard

Many contemporary scholars classify serious corruption as part of fasād fī al-ard because (Arifin, 2015):

- Causing suffering to the wider community,
- Eroding public trust in the government,
- Destroying the country's economy,
- Endangering social justice and the survival of the people.

Several fatwas and opinions of scholars state that if corruption is carried out on a large scale, in a structured and systemic manner, then the perpetrator can be sentenced to death.

For example, Yusuf al-Qaradawi in his book *Fiqh al-Jinayah* states that major corruption can be equated with the crime of hirabah (armed robbery), because both create chaos and public insecurity. (Zainuddin, 2012).

4. Maqashid al-Shariah Approach to the Death Penalty

Within the framework of the maqashid al-syariah (objectives of Islamic law), law enforcement aims to safeguard five fundamental principles: religion (deen), life (nafs), reason (aql), posterity (nasl), and wealth (mal). Corruption directly undermines at least two important maqashid: wealth and social life.

The death penalty for corruptors in this context can be justified as (Jumali, 2014):

- Ibrah (warning/deterrent effect) for society,
- Zajr (prevention) so that no one dares to imitate,
- Ta'dib (learning) for the perpetrators and the wider community.

5. Terms and Conditions for the Implementation of the Death Penalty

In Islam, the application of the death penalty cannot be carried out carelessly. There are strict conditions, including:

- Very strong evidence (not just guesses or assumptions),
- Intentions and actions are deliberate, not due to negligence,
- A very big impact on society or the country,
- Fair and transparent trials,
- There was no element of regret and repentance before the case went to court.

If all these conditions are met, then in the view of certain clerics, corruptors who commit crimes in a structured, systematic and massive (TSM)

manner can be given the death penalty in order to protect the welfare of the people.

6. Contemporary Scholars' Views

Some views of contemporary scholars on the death penalty for corruptors (S. Sumarwoto, 2014):

- Shaikh Wahbah Zuhaili: considers serious corruption to be a modern form of hirabah which allows the death penalty.
- Muhammad Syahrur: stated that the punishment for major social crimes such as corruption must be adjusted to the level of social damage caused.
- Majma' al-Fiqh al-Islami: in several of its recommendations strongly supports the eradication of corruption with harsh punishments, including the death penalty in certain situations.

B. Corruption as an Extraordinary Crime

Corruption is a highly destructive crime, structurally, functionally, and morally. It is categorized as an extraordinary crime due to its widespread impact, difficulty in proving it, and its connection to power. Corruption not only results in financial losses to the state but also contributes to social inequality, weakens democracy, and destroys public trust in government and the law.

According to Transparency International, corruption is the abuse of entrusted power for personal gain. In Indonesia, corruption has permeated various sectors, from the bureaucracy and the legislature to law enforcement. Therefore, eradicating it requires an extraordinary approach, including considering the death penalty in certain serious cases. (Perdana et al., 2024).

C. The Death Penalty for Corruptors from the Perspective of Indonesian Positive Law

1. The Concept of Criminal Law in Indonesia regarding the Crime of Corruption

Indonesian positive law categorizes corruption as an extraordinary crime that requires special handling. The primary legal basis for eradicating corruption in Indonesia is (No. 24 CE):

- Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption,
- as amended by Law Number 20 of 2001.

The law defines corruption as the abuse of power for personal or other enrichment, which harms state finances or the national economy. Corruption not only causes financial losses but

also undermines public trust in state institutions and creates social injustice.

2. Death Penalty Provisions in the Corruption Crime Law

Article 2 paragraph (2) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 states:

"In the event that the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed."

The phrase "certain circumstances" is not explicitly defined in the law, but the general explanation states that certain circumstances may include:

- a. Corruption committed when the country is in a state of economic crisis or emergency,
- b. Corruption of disaster relief funds,
- c. Corruption results in major losses and systemic impacts on people's lives.

Thus, even though it has never been used in practice, the death penalty provision for corruptors has been normatively accommodated in the Indonesian legal system.

3. Law Enforcement Practices: No Death Penalty Implemented

Until now, no perpetrator of corruption in Indonesia has been sentenced to death, even though many cases have met certain conditions, such as:

- a. Corruption in the distribution of aid during disasters,
- b. Massive budget embezzlement in the health and education sectors,
- c. A networked and recurring corruption case involving legislative, executive and judicial powers.

This indicates a gap between legal norms and the reality of law enforcement. Some contributing factors are:

- a. Unclear interpretation of the phrase "certain circumstances",
- b. The judge's caution in imposing the death penalty because it is related to the right to life,
- c. Political pressure and elite interests,
- d. There is a lack of precedent or concrete examples of the application of this provision.

4. Constitutional and Human Rights Perspectives

The death penalty is one of the most controversial issues in the context of human rights (HAM). The 1945 Constitution, through Article 28I paragraph (1), states that the right to life is a human right that cannot be reduced under any circumstances.

However, the Constitutional Court in decision Number 2-3/PUU-V/2007 stated that the death penalty does not conflict with the constitution as long as it is imposed selectively and proportionally through a fair legal process (fair trial).

Thus, constitutionally:

- a. The death penalty is still legal under Indonesian law,
- b. However, it must be applied as an ultimum remedium, namely the last option if there are no other equivalent sanctions and if the crime committed is truly serious.

D. Political and Social Aspects

Public support for the death penalty for corruption is relatively high, especially in major cases that have widespread impact and harm the common people. However, in political and legislative practice, the implementation of the death penalty is often hampered by:

1. Political calculations: Many perpetrators of corruption come from the political and bureaucratic elite.
2. Global influence: Indonesia, as a country bound by various international human rights conventions, including the International Covenant on Civil and Political Rights (ICCPR), faces pressure to abolish the death penalty.
3. Dependence of the judicial system on external forces: Political intervention and weak independence of legal institutions.
4. Jurisprudence Review and Case Examples: To date, no court has imposed the death penalty on corruptors, even though the law allows it. Some serious cases include:
 - a. BLBI (Bank Indonesia Liquidity Assistance) case,
 - b. The E-KTP case involved many high-ranking state officials,
 - c. Corruption of COVID-19 social assistance funds by the Minister of Social Affairs (2020),

This is an example of a case where the public advocates for the death penalty due to its far-reaching impact. However, court decisions tend to impose prison sentences without considering the

application of the death penalty, demonstrating the inconsistency of the legal system.

E. Opportunities and Challenges of Implementing the Death Penalty for Corruptors

1. Opportunities for Implementing the Death Penalty for Corruptors in Indonesia

a. Normative Support

Normatively, Indonesia has a legitimate legal basis for implementing the death penalty for perpetrators of serious corruption. Article 2 paragraph (2) of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 explicitly states the death penalty as an alternative form of punishment in certain circumstances. This means that there are no legal obstacles in positive law prohibiting the death penalty for corruptors, as long as they meet the specified criteria.

b. Compliance with Islamic Legal Perspective

Under Islamic law, serious corruption can be categorized as *fasād fī al-ardh*, or destruction on earth. Therefore, the imposition of the death penalty on serious corruption is also in line with Islamic principles of justice, as long as it is carried out fairly and through a legitimate legal process. This opens up opportunities to build moral and spiritual justification within Indonesia's predominantly Muslim community.

c. Deterrent Effect

The death penalty is believed to have a strong deterrent effect on potential corruption offenders. Firmness in imposing sanctions is a crucial part of preventative measures in criminal law. The death penalty can symbolize the state's commitment to eradicating corruption seriously and comprehensively.

d. Public Opinion Support

Based on various public opinion surveys, the majority of Indonesians support the death penalty for high-profile corruptors, especially those involved in the misappropriation of disaster funds, education, or health care. This strong support reflects the public's demand for justice and a desire to see concrete action in eradicating corruption.

e. International Precedent

Several countries, such as China, Iran, and Vietnam, have implemented the death penalty for corruption, and in some cases, it has been shown to significantly reduce corruption rates. While the legal systems differ, these precedents demonstrate that the death penalty can be an

effective legal policy alternative in certain contexts.

2. Challenges of Implementing the Death Penalty for Corruptors

a. Conflict with Human Rights

The main challenge of implementing the death penalty is its conflict with the principle of human rights, especially the right to life. Some people argue that the death penalty is contrary to Article 28I paragraph (1) of the 1945 Constitution and various international agreements such as the ICCPR (International Covenant on Civil and Political Rights), which has been ratified by Indonesia through Law No. 12 of 2005. Therefore, the implementation of the death penalty, especially in the context of corruption, will always be a debate from a human rights perspective.

b. The Ambiguity of Interpretation of "Certain Circumstances"

To date, there has been no clear and firm legal definition of what is meant by "certain circumstances" in Article 2 paragraph (2) of the Corruption Eradication Law. This ambiguity opens up wide room for interpretation and has the potential to give rise to legal uncertainty and arbitrariness in the application of punishment.

c. Risk of Wrongful Conviction and Abuse of Power

The death penalty is final and cannot be reversed once it has been carried out. In a legal system that is not yet completely free from corruption and political pressure, the risk of wrongful conviction is very high. This poses a serious challenge, given that Indonesia's criminal justice system is not yet completely free from intervention and unethical practices.

d. International Pressure and Global Reputation

As a UN member state and signatory to various international human rights conventions, the implementation of the death penalty could generate diplomatic pressure from the international community. Indonesia also risks facing criticism and sanctions from international organizations, which could impact its reputation and foreign relations.

e. Unpreparedness of the Justice System

Implementing the death penalty requires a highly credible, transparent, and accountable justice system. However, the facts on the ground show that numerous obstacles remain in the areas of legal technicalities, the capacity of law enforcement agencies, the integrity of law

enforcement agencies, and inconsistencies in handling corruption cases.

3. Strategies to Minimize Challenges

To minimize these challenges, the following strategies can be implemented:

- a. **Legislative Strengthening:** Establishing clear limits and definitions of "certain circumstances" in the implementing regulations of the Corruption Eradication Law.
- b. **Justice System Reform:** Improving the integrity and transparency of judicial institutions to avoid the misuse of the death penalty.
- c. **Legal Education and Human Rights Socialization:** Increasing public awareness that the death penalty is not just revenge, but part of the justice system if implemented responsibly.
- d. **Further Constitutional Review:** Involving the Constitutional Court and academic institutions in reviewing the relevance and limitations of the death penalty for corruptors in the context of human rights and national law.

F. Death Penalty from a Criminal Law Perspective

The death penalty is the most severe form of punishment in the modern penal system. In some countries, this punishment has been abolished because it is considered to violate the right to life, a fundamental human right. However, in other countries, including Indonesia, the death penalty is still recognized as legal as long as it does not violate constitutional provisions or international treaties.

In the Criminal Code (KUHP) and special regulations such as Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, the death penalty is regulated as a last resort for very serious crimes. Article 2 paragraph (2) of the Corruption Law states that perpetrators of corruption can be sentenced to death if they are committed under certain circumstances, such as during a natural disaster or economic crisis.

Despite existing regulations, the death penalty has never been implemented in Indonesia for corruptors. This raises questions about the effectiveness and seriousness of the legal system in effectively addressing corruption crimes.

G. Islamic Legal Perspective on the Death Penalty

Islamic law recognizes the death penalty for several types of crimes, including qishash (retribution in kind), hudud (punishment determined by the Koran and Hadith), and ta'zir (punishment at the judge's discretion). In the context of corruption, it is not explicitly mentioned in the Al-Qur'an as a hudud crime, but some scholars categorize it as a form of ghulul (embezzlement of state assets) or part of fasād fī al-arḍ (damage on earth).

God's Word in QS. Al-Ma'idah verse 33:

"Indeed, the recompense of those who wage war against Allah and His Messenger and spread corruption on earth is that they be killed, or crucified, or their hands and feet be cut off on opposite sides, or they be exiled from the land..."

This verse is often used as a basis by scholars to give severe punishments, including the death penalty, to perpetrators of crimes that damage the social order, including in cases of serious corruption.

The Islamic jurisprudence approach also considers the public interest and the deterrent effect when imposing punishment. Therefore, the application of the death penalty in Islamic law is contextual, considering the level of harm and social impact of a crime.

H. Regulation of the Death Penalty in Indonesian Positive Law

Indonesian positive law does not rule out the possibility of imposing the death penalty on corruption offenders. Article 2 paragraph (2) of the Corruption Eradication Law states that under certain circumstances, the death penalty may be imposed on corruption offenders. However, the phrase "under certain circumstances" remains controversial because it is not specifically defined in the law.

The Constitutional Court (MK) has stated in several decisions that the death penalty remains valid as long as it is imposed through a fair trial. However, there is a tension between this provision and the commitment to human rights enshrined in the 1945 Constitution and international human rights instruments ratified by Indonesia.

Furthermore, as a member of the UN Human Rights Council, Indonesia faces global pressure to abolish the death penalty altogether. Therefore, implementing the death penalty for corruption

faces significant challenges in the context of international legal policy and diplomacy.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Based on the discussion in the previous chapters, the following conclusions can be drawn:

1. From an Islamic legal perspective, the death penalty for corruption is justified if the corruption is categorized as a *fasād fī al-ardh* (corruption on earth) that has a significant impact on society and the state. The imposition of this penalty must meet certain requirements, such as strong evidence, clear malicious intent, and a fair legal process. The principles of justice, public interest, and deterrence are essential foundations in Islamic law for imposing the death penalty.
2. In the Indonesian Positive Law Perspective, the death penalty for corruptors is regulated in Article 2 paragraph (2) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. The phrase "under certain circumstances" opens up space for law enforcement officers to impose the death penalty, although to date there has been no jurisprudence that actually applies it.
3. The potential for the death penalty to be implemented against corruptors is significant, given its normative support, compliance with Islamic legal principles, broad public support, and precedents from other countries. Furthermore, the death penalty's effectiveness in deterring extraordinary crimes is a strong reason for its implementation.
4. The challenges of implementing the death penalty are significant, particularly those stemming from conflicts with human rights principles, unclear legal norms, the risk of wrongful convictions, international pressure, and the weakness of Indonesia's judicial system. Therefore, a careful, fair, and responsible approach is necessary when implementing this punishment.

B. Suggestion

1. Based on the discussion in the previous chapters, the following conclusions can be drawn:

2. From an Islamic legal perspective, the death penalty for corruption is justified if the corruption is categorized as a *fasād fī al-ardh* (corruption on earth) that has a significant impact on society and the state. The imposition of this penalty must meet certain requirements, such as strong evidence, clear malicious intent, and a fair legal process. The principles of justice, public interest, and deterrence are essential foundations in Islamic law for imposing the death penalty.
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