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Elimination of Death Penalty for Corruption Crimes: Renewal of Indonesian Criminal Law in Comparative Legal Perspective

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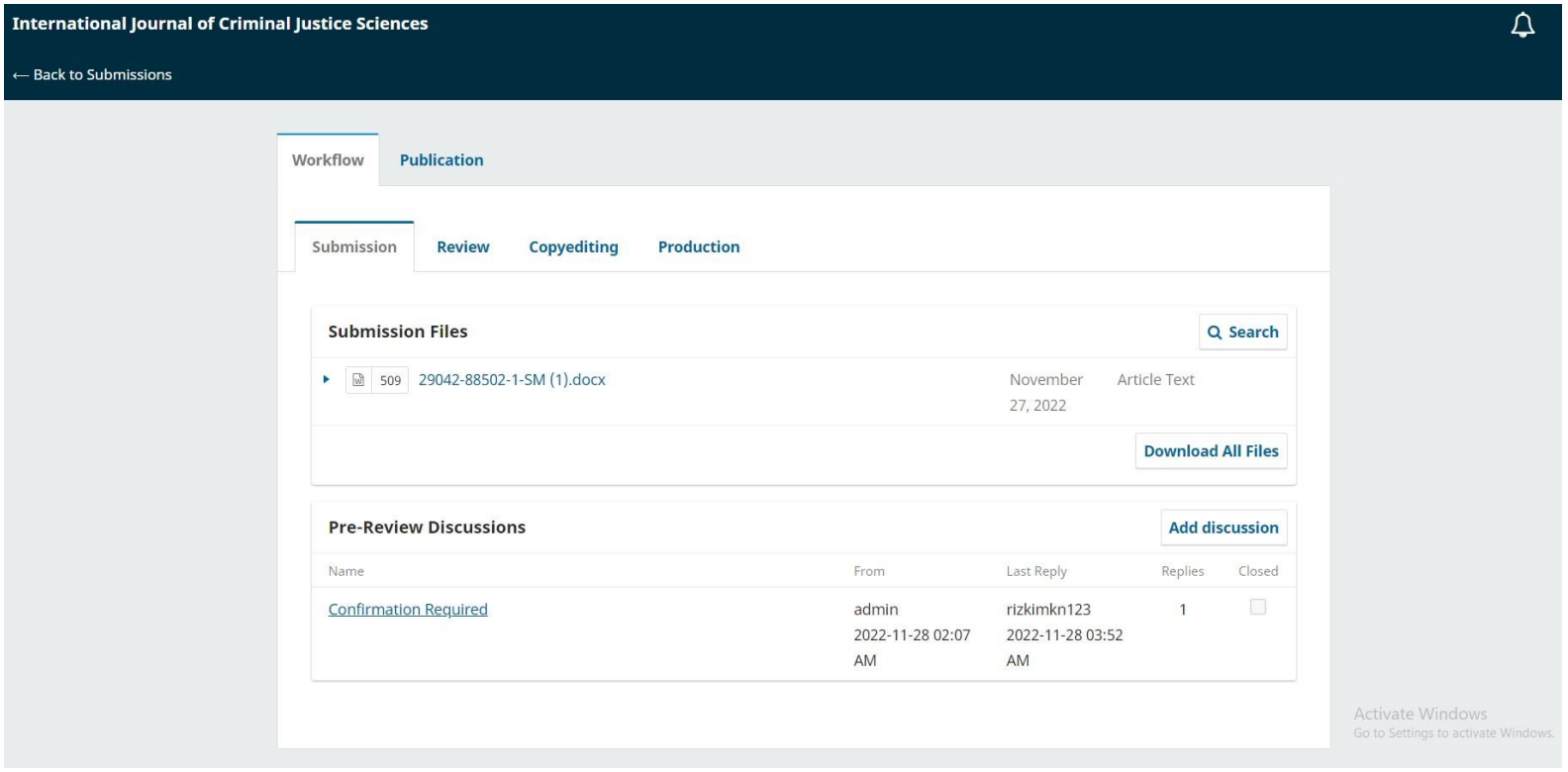
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Elimination Of Death Penalty Of Corruption Crime In The Draft Of Criminal Law Code (RKUHP) (Comparative Study With Islamic Criminal Law)

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Abstract

The aim of this study is to examine and analyze the latest regulations in the Criminal Code Bill regarding the elimination of the death penalty for perpetrators of corruption and to examine and analyze the elimination of the death penalty in relation to Islamic criminal law. This study uses a normative legal research type, using 2 types of approaches, namely the statutory approach, and the Conceptual Approach. The results of this study are the abolition of the death penalty for perpetrators of criminal acts of corruption for various reasons, such as legal reasons, respect for life, cause and effect, education and learning, fatalism and legal imperfections. and the abolition of the death penalty can be interpreted as an attack on Islamic law in which the criminal law contains the death penalty so of course it hinders the implementation of Islamic law itself, especially in Muslim countries such as Indonesia.

Keywords: Death penalty; Corruption; Islamic Criminal Law

Introduction

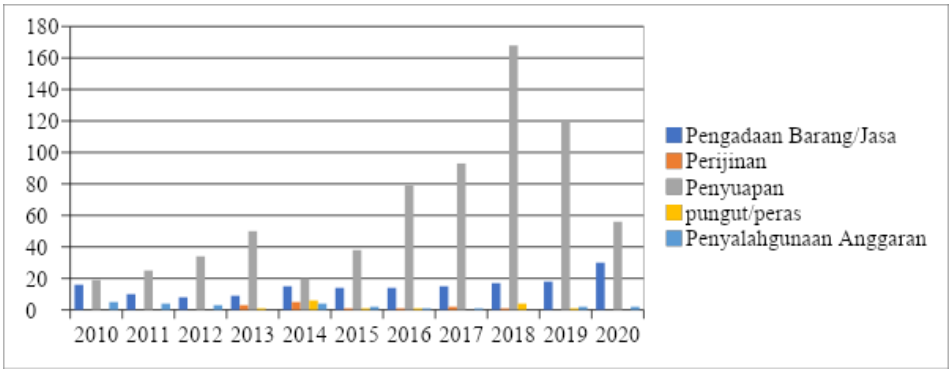
One of the reform agenda is the eradication of corruption, then to follow up on it, Law Number 31 of 1999 concerning the Eradication of Corruption Crimes was enacted. in the provisions of Article 2 paragraph (2) it is formulated that the crime of corruption in certain circumstances the death penalty can be imposed. Then the prevention of corruption is carried out in an extraordinary manner (Extra Ordinary Crime), which is stated in the General Elucidation of Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Corruption Crimes (hereinafter referred to as UU PTPK). In the State Gazette of the Republic of Indonesia of 2001 Number 134 Supplement to the State Gazette of the Republic of Indonesia Number 4150, corruption in Indonesia occurs systematically and widely so that it is not only detrimental to state finances, but has also violated the social and economic rights of the community widely and it has been done in an extraordinary way.

The assertion as an extraordinary crime (extraordinary crimes) contained in Law No. 30 of 2002 on the Corruption Eradication Commission (hereinafter referred to as Law Commission), contained in the State Gazette Number 137 Government Gazette No. 4250, confirms the corruption as an extraordinary crime (extraordinary crimes). The general explanation in paragraph 2 is as follows:

"This rampant growth of corruption will wreak havoc not just to Indonesia’s economic life but also to the viability of the nation in general. Corruption is a violation of the social and economic rights of society, and as such should no longer fall under the standard category of merely “crime”, corruption is an extraordinary crime. Therefore the effort to eradicate corruption must no longer be just acting against a criminal act, corruption must be prosecuted against by extraordinary means."

In the last 10 (ten) years, corruption in Indonesia is still dominated by the form of bribery corruption and corruption of state financial losses, based on data from the website of the Corruption Eradication Commission,

which can be seen in the following graph:



Graph of Corruption Crime Statistics by Type of Case

According to Mispansyah in an article in the Hasanuddin Law Journal states Referring to the development of corruption cases in Indonesia that is so structured and systematic, the authors see there is an increasing systematic corruption in the law enforcement system in Indonesia and make the perpetrators not deterrent. Referring to the development of corruption cases in Indonesia which are so structured and systematic, he sees that corruption is increasingly systematic in the law enforcement system in Indonesia and makes the perpetrators not deterrent.

Until now, the panel of judges has never given the death penalty in corruption cases. Indeed, the death penalty mentioned in the formulation of Article 2 paragraph (2) of Law no. 31 of 1999, only applies to the form of corruption in state financial losses Article 2 paragraph (1), and there are under four certain conditions which are : "if an act of corruption is carried out, (1) when the country is in a state of danger in accordance with the law applies, (2) when a national natural disaster occurs, (3) as a repetition of a criminal act of corruption, or (4) when the country is in a state of economic and monetary crisis. Even in the case of corruption of social assistance funds during the handling of Covid19, the death penalty cannot be imposed, because the article charged is corruption of bribery, not corruption of state financial losses as referred to in Article 2 paragraph (1), so actually the threat of capital punishment in corruption cases is politically legal, legislators do not want the death penalty, because the conditions are very strict, and in practice these conditions are never met.

Special criminal law reform in the future in the Draft of Criminal Code (RKUHP) version 15 September 2019 which is being discussed at the Legislative Council of the Republic of Indonesia until 2021, in Chapter XXIV of Special Crimes, In the third part of Corruption Crimes Article 603 and Article 604 for the form of corruption that harms state finances against the law and abuses authority, the punishment is life imprisonment (thick Pen) or imprisonment for a minimum of 2 (two) years and a maximum of 20 (twenty) years. (thick Pen) and a minimum fine of category II (10 million rupiah) and a maximum of category VI (2 billion rupiah), in the RKUHP no longer can be sentenced to the death penalty in certain circumstances. So in the criminal law reform in the future, the death penalty has been eliminated in a corruption offense.

During the regime of Law No.31/1999 in conjunction with Law No.20/2001, the normative formulation of the death penalty was not mandatory, because the sentence could, so the judge could impose or not, and only in the form of corruption offenses Article 2 paragraph (1), no for the form of corruption offenses Abuse of authority, bribery corruption offenses, extortion corruption offenses, corruption offenses, and other forms of corruption offenses. In practice, as long as the two provisions of the UUPTPK above are in effect, the judge has never imposed the death penalty for convicts in corruption cases.

The article is made from a normative legal study that discusses the Elimination of the Death Penalty of Corruption Crime in the RKUHP which is a future law (ius contituendum), and also discusses how the concept of the death penalty in Islamic Criminal Law which according to the author that the corruption is included in Ta'zir's discussion neither Hudud nor Qishash.

This article is different from other articles such as the one written by Syarif Fadillah with the title Questioning the Death Penalty for Corruptors A Positive Legal Study and Islamic Criminal Law, which discusses based on the Criminal Code regulated in 10 of the Criminal Code, Article 340 of the Criminal Code and Article

104 of the Criminal Code. (2) In Law No. 5 of 1997, concerning Psychotropics in Article 59 paragraph (1). (3) In Law No. 5 of 2018 (Last amendment to the Law on the Eradication of Criminal Acts of Terrorism), Article 6 (4). In Law No. 31 of 1999, which has been amended in Law No. 5 of 2018 20 of 2001, concerning the Eradication of Criminal Acts of Corruption, is regulated in Article 2 paragraph (2), so the focus is on discussing the death penalty in Indonesia's positive law. This is different from this article which specifically discusses the death penalty in corruption crime in the RKUHP. Likewise, the comparison in Islamic criminal matters, Syarif Fadillah's article looks at the provisions of Qisas, Hudud and Takzir laws, while this article focuses more on Ta'zir.

Likewise with Koko Arianto Wardani and Sri Endah Wahyuningsih's articles on the Policy on Formulation of the Death Penalty Law Against Corruption Perpetrators in Indonesia, this article explores the formulation of the death penalty in the PTPK Law and future formulation policies, but does not discuss it based on the RKUHP, so that it is different from this article . Then Warih Anjari's article with the title Application of the Death Penalty Against Convicts in Corruption Cases, discusses the practice of implementing the death penalty for corruption, does not discuss according to the RKUHP and comparisons of Islamic criminal law. It is also different from Roby Satya Nuhraga's article with the title: Imposing the Death Penalty on Perpetrators of Criminal Acts of Corruption Based on Article 2 Paragraph 2 of Law Number 31 of 1999 concerning the Crime of Corruption (Case Study of the Corruption Case of Covid-19 Social Assistance Minister Juliari Batubara), this article is more to the study of corruption cases in the provisions of the UUPTK, while the author's article emphasizes the RKUHP and the comparison of Islamic Criminal Law.

Likewise with the article with the title: Death Penalty in the Corruption Law (Zawajir and Answer Theory), discussing aspects of the PTPK Law and the zawajir and Answerer theory which is the purpose of punishment in Islamic criminal law, of course this is different from this article.

The formulation of the problem in this article is: What is the philosophical basis for the elimination of the death penalty in corruption offenses in the RKUHP? Can the concept of formulating the death penalty for corruption offenses in Islamic Criminal Law be introduced into the national criminal law system?

This research uses normative legal research, which is research that uses legal materials, primary legal materials in the form of Law No. 1 of 1999, Law No. 20 of 2001 concerning amendments to Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, Law Number 30 of 2002 as amended by Law Number 19 of 2019 concerning the Corruption Eradication Commission (KPK). As well as secondary legal materials in the form of textbooks written by legal experts, legal journals, legal cases, jurisprudence and symposium results, and the draft KUHP related to the topic of this research. Tertiary legal materials are legal materials that provide instructions, or meaningful explanations of primary and secondary legal materials such as legal dictionaries and encyclopedias and others. The type in this study is a legal vacuum, while there are 2 types of approaches, namely the statute approach, the Conceptual Approach and comparative law . The legal material was collected and an inventory was then compiled and systemic corruption was found in the legal system in Indonesia and a conclusion was drawn

Result and Discussion

Philosophical Basis for the Elimination of the Death Penalty in Corruption Crime in the Draft Criminal Code

Corruption is slowly emerging as a disease that can bring destruction to the economy of the Country. Whether or not, the practice of corruption that occurs in Indonesia causes a lot of losses.[1] Even corruption has been categorized as an extraordinary crime, so its eradication needs to be carried out in extraordinary ways and by using extraordinary laws, carried out in extraordinary ways outside the provisions of general criminal law. Sukmareni (et al) in Hasanuddin Law Review called it "*Corruption is no longer a local problem, but a transnational phenomenon that affects all societies and economies that encourage international cooperation to basically prevent and control it. These extraordinary ways are then manifested in the legislative policy into exceptional provisions which are deviant from the general rules of criminal law...*"[2]

[1] Yasmirah Mandasari Saragih and Berlian, "The Enforcement of the 2009 Law Number 46 on Corruption Court: The Role of Special Corruption Court," *Sriwijaya Law Review* 2, no. 2 (2018), https://doi.org/http://dx.doi.org/10.28946/slrev.Vol2.Iss2.69.pp193-202.

[2] Sukmareni et al., "Implikasi Kewenangan Pengaturan Terhadap Upaya Percepatan Pemberantasan Korupsi," *Hasanuddin Law Review* 4, no. 3 (2018), https://doi.org/http://dx.doi.org/10.20956/halrev.v4i3.1078.

Launrence M. Friedman in Theory of Legal Systems says, states that the work of law in society is inseparable from three interrelated components.[3] In building the legal system according to Friedman there are 3 (three) components:[4]

1) *Structure: "To begin with, the legal system has the structure of a legal system consist of elements of this kind: the number and size of courts; their jurisdiction. Structure also means how the legislature is organized what procedures the police department follow, and so on. Structure, in way, is a kind of cross section of the legal system…a kind of still photograph, with freezes the action.*

2) *Substance*: *"Another aspect of the legal system is its substance. By this is meant the actual rules, norms, and behavioral patterns of people inside the system…the stress here is on living law, not just rules in law books.*

3) *Culture: "The third component of legal system, of legal culture. By this we mean people's attitudes toward law and legal system their belief …in other word, is the climate of social thought and social force which determines how law is used, avoided, or abused.*

From the aspect of substance or material in the legislation in providing a deterrent effect is the threat of capital punishment contained in the formulation of Article 2 paragraph (2) of Law No. 31 of 1999, which means in certain circumstances the death penalty can be imposed, for forms of corruption that harm state finances. Article 2 paragraph (1) of Law No. 31 of 1999.[5] However, the formulation of this article has weaknesses, which are : **first,** the threat of capital punishment is only for forms of corruption against state financial losses against the law for the provisions of Article 2 paragraph (1), **second,** sentences can be formulated as the judge does not have to follow in a decision, the **three** conditions specified in the explanation of Article 2 paragraph (2) are very difficult to fulfill. The conditions are: corruption is carried out, (1) when the country is in a state of danger in accordance with applicable laws, (2) when a national natural disaster occurs, (3) as a repetition of a criminal act of corruption, or (4) when country in a state of economic and monetary crisis. In practice, as long as the UUPTPK is in effect, there is no judge's decision that convicts convicts of corruption cases with the death penalty.

Then at this time the House of Representatives of the Republic of Indonesia (DPR RI) is discussing the version of the RKUHP dated September 15th, 2015, in Article 64 of the RKUHP containing the types of crimes, namely: (a). basic punishment (b). additional punishment; and (c).specific punishment for specific crimes specified in the Act. Article 65 of the RKUHP for the Basic Criminal Code consists of: (a) imprisonment; (b) penalty closure; (c) supervision punishment; (d) fines; and (e) community service order. The death penalty is a certain alternative punishment according to the provisions of Article 67 of the RKUHP.

In connection with the criminal act of corruption as regulated in Article 603 and Article 604 of the RKUHP, for the form of corruption of state financial losses against the law and by abusing state finances, the threat of imprisonment is the same as **life imprisonment** or imprisonment for a minimum of 2 (two) years and a **maximum of 20 (twenty) years**.

According to the author, the elimination of the death penalty for corruption crime, cannot be separated from the philosophy by reforming the criminal law against the Criminal Code (KUHP). The consequences of corruption crime are included in the Criminal Code which is actually a General Crime. Although the offense of corruption is placed in a separate chapter as not a Special Crime, the philosophy of reforming the Criminal Code is because the punishment in the Criminal Code has so far been more oriented towards the perpetrator which is the goal of punishment in the theory of retributive punishment. As previously noted, minor cases such as the theft of 3 (three) cocoa beans, the theft of 5 corn stalks, the theft of a watermelon, picking up a cotton fruit that fell on the ground, theft of a bunch of kapok bananas, all of these cases the Panel of Judges then sentenced them to prison. This is because there is no other choice for judges in the Criminal Code other than imposing a prison sentence or a fine, but the Panel of Judges prefers a prison sentence that is "primadona".

Although the Drafting Team for the 2019 version of the RKUHP explained in many Webinar event organized by the Ministry of Law and Human Rights, that basically there is no need to worry about the inclusion of a special crime in the RKUHP, because its position remains as a special crime and it is still possible to be regulated outside the RKUHP based on the provisions of Article 187 which says : "The provisions in Chapter I to

[3] Aswanto, "Teori Hukum. Bahan Kuliah" (Makassar, 2012).
[4] Lawrence M. Friedman, *The Legal System, A Social Sciences Perspective* (New York: Russel Sage Foundation, 1975).
[5] Mispansyah and Amir Ilyas, *Tindak Pidana Korupsi Dalam Doktrin Dan Yurisprudensi* (Jakarta: Rajawali Pers PT.Raja Grafindo Persada, 2016).

Chapter V of the First Book also apply to Acts that can be punished according to other laws and regulations, unless otherwise stipulated by law". The principle of criminal law is dominated by the principle of legality even though the RKUHP recognizes the unwritten law contained in Article 2 paragraph (2), because it is necessary to know that the Criminal Code is one of the laws as positive law which essentially defines the nature of law as positive norms in the legal system. invitation of a country[6], but by placing a special crime in the RKUHP, it creates a contradiction (*contradictio in terminis*) [7]with the principle of law in general, ***Lex specialis*** *derogat legi generali* is the **principle** of legal interpretation which states that special laws *(lex specialis*) override general laws (*lex generalis*). Then in the development of crime, of course not only 5 (five) types of criminal acts are categorized into special crimes, but this theme will certainly be discussed in the next research.

As explained by one of the Drafting Team for the RKUHP Barda Nawawi Arief that it is necessary to reform the criminal law, in the context of the reconstruction and reconceptualization of the national criminal law system. Based on the evaluation and factual reflection of the current national criminal law system, especially the Criminal Code. Factually the Criminal Code is a Dutch Colonial legacy which was promulgated on January 1, 1915, the values contained in the Criminal Code are liberal values, philosophically retributive punishment, no criminal guidelines, no nationalism values that refer to the state philosophy of Pancasila which contains divine values (religious), humanity (humanist) and social justice (society). The emergence of small cases that were convicted was due to the basic idea that became the background of the birth of the Criminal Code, its substance norms, juridical formulations (rigid and incomplete).[8]

The enthusiasm for the birth of a new Criminal Code continues, because the current Criminal Code is a colonial heritage value that puts forward liberal, secular values, and does not reflect the basic values of the Republic of Indonesia. Based on that, the RKUHP was compiled to integrate the philosophical values of GRUNDNORM, Pancasila, which can be realized in law enforcement and manifested in written norms.[9]

The idea of correctional (humanist values/humanitarian values) contained in Law No. 12 of 1995 concerning Corrections is the final part of the criminal system which includes the idea of criminal individualization, the idea of humanity (rehabilitation), selective, limitative, temporary ideas (*principle of of parsimony/restraint*) the idea of social reintegration, these values have been hindered or absent in material criminal law (KUHP) and formal criminal law (KUHAP), because the Criminal Code has a single formulation, an indefinite system without guidelines, there is no single system implementation guideline. , there are no guidelines: the imposition of imprisonment, there are no alternative prison sentences that are more varied, conditional punishment cannot be an independent crime, a rigid system of mitigating and aggravating punishment (al recidive).[10] Positive criminal law is based on the classical legacy KUHP system, namely action orientation.

The purpose of sentencing is balanced between legality (community principle) and culvability principle (humanity principle) which is not contained in the Criminal Code. The existence of sentencing guidelines as an integral part of the criminal system; as a guideline (*guidance of sentencing*), as a philosophical basis & justification for sentencing.[11]

The principles contained in the purpose of punishment: the principle of a balance of community/victim protection and individual development/improvement. the principle of humanity (humanistic), the principle of forgiveness (judge/victim); the principle of *"culpa in causa"* , the principle of elasticity of punishment, modification / change / adjustment / review of punishment, the principle of prioritizing justice over legal certainty. In the General Guidelines, which are : Guidelines for System Implementation, Criminal Formulation, Guidelines for Implementing Prison Sentences, Guidelines for Implementing Specific Minimum Penalties, Guidelines for Modifying Sentences; there are changes/improvements to the convict, changes to the law (policy material legislation), guidelines for corporate punishment, guidelines for the punishment of children.[12]

In the 2019 version of the RKUHP, the sentencing guidelines are regulated in Article 53 which states: (1) In

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[6] Irwansyah and Ahsan Yunus, *Penelitian Hukum Pilihan Metode Dan Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2020).

[7] "Contradictio in Terminis," Wikipedia, n.d., https://en.wikipedia.org/wiki/Contradictio_in_terminis.

[8] Barda Nawawi Arief, "Beberapa Catatan Penyusunan Konsep RUU KUHP Kajian Politik Hukum Pidana" (Banjarmasin, 2019).

[9] Arief.

[10] Arief.

[11] Barda Nawawi Arief, *Tujuan Dan Pedoman Pemidanaan* (Semarang: Pustaka Magister, 2015).

[12] Arief.

adjudicating a criminal case, the judge is obliged to uphold law and justice. (2) If in upholding law and justice as referred to in paragraph (1) there is a conflict between legal certainty and justice, the judge is obliged to prioritize justice. Then in article 54 paragraph (1), the punishment must consider:

a. the guilt of the perpetrator of the crime;
b. the motive and purpose of committing the Crime;
c. the inner attitude of the perpetrator of the crime;
d. Crime is committed with a planned or unplanned;
e. how to commit a Crime;
f. the attitude and actions of the perpetrator after committing the crime;
g. curriculum vitae, social condition, and economic condition of the perpetrator of the crime;
h. criminal influence on the future of criminals;
i. the influence of the Crime on the Victim or the Victim's family;
j. forgiveness from the Victim and/or his family; and/or the
k. values of law and justice that live in society.

Then in Paragraph (2) the severity of the act, the personal condition of the perpetrator, or the circumstances at the time the crime was committed as well as What happens then can be used as a basis for consideration not to impose a crime or not to take action taking into account the aspects of justice and humanity. Next, there are guidelines for the application of imprisonment with a single formulation and an alternative formulation, this is regulated in Article 57 of the RKUHP, which says : "In the event that a crime is threatened with an alternative principal sentence, the imposition of a lighter principal sentence must be prioritized if it is considered appropriate and can support the achievement of sentencing objectives".

Based on the explanation from the drafting team regarding philosophically and the principles of the birth of the RKUHP, the author concludes that the value of the idea of criminal individualization, the idea of humanity (rehabilitation), selective, limitative ideas, while (*principle of parsimony/restraint*) the idea of social reintegration, so that the death penalty is a special punishment. which is alternative, because the philosophy of punishment in the RKUHP focuses more on 3 values, namely the value of individualization, the value of humanity (rehabilitation) and the value of social integration, which prioritizes the value of Human Rights which is the implementation of the value of humanism.

The Concept of Formulating the death Penalty in Corruption Crime in Islamic Criminal Law Introduced in National Criminal Law System

Penalty on corruption offenses in Islamicbe introduced into thesystem. There are four types of sanctions in Islam in the form of 'Uqubat: namely hudud, jinayat, ta'zir and mukhalafat.[13] Hudud are sanctions for disobedience which levels have been determined (and become) the right of Allah. It is called **hudud** because in general it prevents people who do immoral things to (not) return to the sins that have been determined by them. As for what is categorized in hudud, they are Had Zina, Had Liwath, Had Qadzaf, Had Drinker Khamar, Had Theft, Had for Thieves, For Bughat Perpetrators, Had Murtad.[14] As for **jinayat** for persecution or assault on the body, which requires qishas (retribution in kind) or diyat (fines). Ta'zir is a sanction whose form is not specifically stipulated by Shari'a, its form is not binding, it can be the same as hudud and jinayat, but it must not exceed the punishment in hudud and jinayat.[15] Theft is included in Had Hudud, the definition of theft is taking property from its owner or deputy by hiding and hiding. There are 7 conditions to be categorized as a theft punishable by cutting off the hand, those are: (1) the act is included in the definition of theft; (2) the stolen property reaches the nishab; (3) stolen property, protected property, which is permitted by Shari'(Allah) to be owned; (4) stealing by removing it from the storage area. (5) the stolen property is not an object of doubt that someone still has the right to the property; (6) the thief has reached adulthood, is reasonable and is bound by Islamic laws, both Muslim and ahlul dzimmy; (7) determined based on the thief's confession.[16]

In Islamic Criminal Law, corruption offenses are categorized into Ta'zir, not included in Qishash and

[13] Abdurrahman Al Maliki and Ahmad Ad-Da'ur, *The System of Sanctions and the Law of Evidence in Islam* (Jakarta: Tharikul Izzah Library, 2011).
[14] Maliki and Ad-Da'ur.
[15] Maliki and Ad-Da'ur.
[16] Maliki and Ad-Da'ur.

Hudud and Mukhalafah. The concepts of corruption in Islam include: *Ghulul* (abuse of office)[17], *treason* (not keeping the trust), *Risywah or rashu* (giving bribes).[18] Corruption in Islamic Sharia is called treason, the person is called *khaa'in*, including embezzlement of money entrusted or entrusted to someone. Theft is not categorized as corruption, because the definition of stealing is taking other people's property secretly. Meanwhile, treason is not an act of taking other people's property, but an act of treason committed by someone, embezzling property that has been entrusted to someone.[19] So Corruption is a type of confiscation of the wealth of the people and the state by taking advantage of position to enrich themselves and others.[20]

Based on the description of the definition of corruption according to Islamic Criminal Law, corruption is not included in the definition of theft, or robbery or fraud. In the conception of Islamic law it is very difficult to categorize criminal acts of corruption as jarimah sirqah (theft). This is due to the variety of corrupt practices themselves which are generally not included in the definition of sirqah.[21]

Sanctions for corruptors with appropriate sanctions (firm), by nature humans are afraid of punishment for themselves, the purpose of criminal in Islam is indeed to function as penance (zawabir) remember the story of Ghamidiyah who consciously admitted the crime of adultery, this is proof that the Islamic system is able to create awareness law. Another criminal objective is zawajir (prevention), meaning that with appropriate punishment for corruptors, it is hoped that people will think a thousand times about committing corruption. In Islam, the sanction for corruption is not having their hands cut off like a thief, as the Messenger of Allah (SAW) said, "Traitors, corruptors, and traitors are not punished with cutting their hands off" (HR. zir, which punishment can be in the form of Tasyhir in the form of announcements/proclamations to the general public being paraded around the city/now through the mass media, or imprisonment up to the death penalty.[22] So the punishment for corruption offenses starts from a verbal or written warning or reprimand, return of the proceeds of corruption, criminal shame by announcement, imprisonment, to death penalty by looking at the size of the corrupted funds, if it causes the country to collapse or is carried out during a famine or a pandemic. , the judge can impose the death penalty.

Based on the description above, regarding the prospect of capital punishment for corruption offenses in Islamic criminal law to Indonesian positive law, it is very difficult because the philosophy of the RKUHP and Indonesian positive law has shifted to being more oriented towards humanism values, or human values, with rehabilitation and social integration of prisoners. As for Islamic criminal law, it is based on obedience to Allah SWT, so that by touching faith and philosophy the responsibility is that the sanctions are for prevention and redemption, that if the punishment has been imposed in the world, then in the hereafter there will be no punishment, so the belief in accountability in the last days that is planted.

Conclusion

(1) The philosophical elimination of the death penalty in corruption offenses in the RKUHP is because it focuses more on 3 values, the value of individualization, the value of humanity (rehabilitation) and the value of social integration.That puts the value of human rights first which is the implementation of humanism value so that death penalty is not formulated in corruption crime.

(2) The prospect of capital punishment for corruption crime in Islamic criminal law to positive Indonesian law is very difficult because the philosophy of the RKUHP and Indonesian positive law has shifted to being more oriented towards humanism values, or human values, with rehabilitation and social integration of prisoners. As for Islamic criminal law, it is in obedience to Allah SWT, so that by touching the faith and philosophy, and the answer is that the sanctions are for prevention and redemption, that if the punishment has been imposed in the world, then in the hereafter there will be no punishment.

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[17] Fazzan, "Korupsi Di Indonesia Dalam Perspektif Hukum Pidana Islam," *Jurnal Ilmiah Islam Futura* 14, no. 2 (2015): 146–65, https://doi.org/http://dx.doi.org/10.22373/jiif.v14i2.327.

[18] Ahmad Khoirul Umam, "Islam, Korupsi Dan Good Governance Di Negara-Negara Islam," *Jurnal Al-Ahkam Jurnal Pemikiran Islam* 24, no. 2 (2014): 195–224, https://doi.org/https://doi.org/10.21580/ahkam.2014.24.2.146.

[19] Maliki and Ad-Da'ur, *The System of Sanctions and the Law of Evidence in Islam*.

[20] Mispansyah, "A Comparison Approach in Corruption Eradication: An Empirical Examination."

[21] Fazzan, "Korupsi Di Indonesia Dalam Perspektif Hukum Pidana Islam."

[22] Mispansyah, "A Comparison Approach in Corruption Eradication: An Empirical Examination."

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[IJCJS] Editor Decision

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Dear Dr. Mispansyah,

Thank you for submitting the following manuscript to the *International Journal of Criminal Justice Sciences*.

Track: Regular Track
Elimination Of Death Penalty Of Corruption Crime In The Draft Of Criminal Law Code (RKUHP) (Comparative Study With Islamic Criminal Law)
Author(s): Mispansyah
Corresponding Author: Mispansyah
Affiliation of Corresponding Author: Universitas Lambung Mangkurat, Indonesia
Date of Manuscript Submission: 30-Nov-2022 (UTC)
The manuscript ID: IJCJS-452-2022

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We have reached a decision regarding your submission to the *International Journal of Criminal Justice Sciences*, " Elimination Of Death Penalty Of Corruption Crime In The Draft Of Criminal Law Code (RKUHP) (Comparative Study With Islamic Criminal Law)".

Our decision is: Revisions Required

Please revise your manuscript based on reviewers' comments and suggestions accordingly and resubmit your revised manuscript no later than one month.
Let me know if you have any questions.

Best

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Reviewer- A

Important

Please do the following when you resubmit your revised version:

1. Do All corrections as per the reviewers' comments and prepare a table / response letter showing corrections done. Your corrections will not be accepted in the absence of this response letter / table.
2. All authors' names, emails and affiliations should be checked, modified and corrected
3. Add ORCID IDs of all authors

Please ensure the submission of the revision within 15 days of receiving this mail ONLY on the online system. An acceptance letter will be issued with pay invoice if your revision is acceptable, to start the publication process. Pay the APC (that you have agreed upon) within one week after receiving the acceptance letter.

You cannot withdraw the paper at this stage. In case you find it difficult to do the corrections, please write to the editor to take the assistance of the writing team at nominal cost.

Decision: revisions required

1. 1-2 paragraphs on latest amendments or changes or controversies attached to the Criminal code bill as seen in media (See the following links). Please make additions in the context of the Islamic Criminal law.
   - https://www.ssek.com/blog/rkuhp-what-it-means-for-criminal-justice-in-indonesia
   - https://www.ifj.org/media-centre/news/detail/category/press-freedom/article/jokowis-criminal-code-draft-legislation-threatens-press-freedom-in-indonesia.html
   - https://coconuts.co/bali/features/rkuhp-explainer-all-the-controversial-articles-in-indonesias-criminal-code-overhaul-2/
   - https://www.scmp.com/week-asia/politics/article/3185323/why-new-details-about-indonesias-criminal-code-revamp-are
   - https://www.hrw.org/news/2022/07/07/indonesia-make-draft-criminal-code-public
2. Secondly, you mentioned about a comparison with the Islamic Criminal law. Please prepare a table with 2 columns, one for RKUHP and Indonesian criminal code and the other for the Islamic criminal law so that this comparison can be summarized
3. Lastly, the journal does not accept any submission, in full or part, in any foreign language except English. Please change all the Indonesian language portions into English e.g.. The legend of graph in introduction
4. All end references must be changed into English; Remove the footnotes, as the journal follows the APA style.

- -

Reviewer -B

Decision: Major revisions required

It is a well-written paper. Here are some suggestions for authors.

I. Prepare your abstract to demonstrate the required components like purpose, research methods, framework, data sources, important findings, etc. Your introduction lacks rationale, purpose and research objectives along with the research questions / problem statement. It is important to add separately a sub section e.g. research questions/ problem statement, if possible. The method section is also missing. There are previous studies but these must be shown in brackets (APA style) in the whole paper. Please make the changes

II. In short, rearrange your paper into five sections: Introduction (historical/ background information, research objectives, rationale, research gap, etc.); Literature Review and theoretical framework (definitions, Laws, policies, theories etc.); Methodology (research design, data collection and data analysis) findings (legal perspective); and Discussion (Analysis and interpretation). Check and insert what is missing

III. In the end, there should be a section: Conclusion, Recommendations and Implications, to include a brief conclusion of the research completed, limitations, recommendations for future research and implications for research and practice

IV. The author(s) need to review the article in line with the style of the journal.

Decision: Revision required
Recommendation: Revisions Required

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Mispansyah<mispansyah@ulm.ac.id>

[IJCJS] Acknowledgment of a manuscript revision submission

1 message

IJCJS <no-reply@manuscriptlink.com> Thu, Jun 20, 2023, at 01:00 PM
To: Mispansyah <mispansyah@ulm.ac.id>

Dear Dr. Mispansyah,

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Track: Regular Track
Elimination Of Death Penalty Of Corruption Crime In The Draft Of Criminal Law Code (RKUHP) (Comparative Study With Islamic Criminal Law)
Author(s): Mispansyah
Corresponding Author: Mispansyah
Affiliation of Corresponding Author: Universitas Lambung Mangkurat, Indonesia
Date of Manuscript Submission: 20-Jun-2023 (UTC)
The manuscript ID: IJCJS-452-2023

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Reviewer Coments 1

Reviewer's Comment	Respons Authors
Your paper entitled *Elimination Of Death Penalty Of Corruption Crime In The Draft Of Criminal Law Code* is a much saturated topic in the Indonesian perspective, so it is yet to see how different you take up this topic. So two things will make the difference. First, the readers should get updated information on criminal code bill, secondly, they should also see how this bill is related to the Islamic criminal law.	1. The author has been corrected, namely with the latest discussion through Law No. 1 of 2023 concerning the Criminal Code (The author mentions the National Criminal Code) 2. The author explains the arguments in the first paragraph of the discussion regarding why the author discusses the National Criminal Code in relation to Islamic Criminal Law. The author even explains by showing a comparison of countries that still apply death penalty
1-2 paragraphs on latest amendments or changes or controversies attached to the Criminal code bill as seen in media (See the following links). Please make additions in the context of the Islamic Criminal law. 1. https://www.ssek.com/blog/rkuhp-what-it-means-for-criminal-justice-in-indonesia 2. https://www.ifj.org/media-centre/news/detail/category/press-freedom/article/jokowis-criminal-code-draft-legislation-threatens-press-freedom-in-indonesia.html 3. https://coconuts.co/bali/features/rkuhp-explainer-all-the-controversial-articles-in-indonesias-criminal-code-overhaul-2/ 4. https://www.scmp.com/week-asia/politics/article/3185323/why-new-details-about-indonesias-criminal-code-revamp-are 5. https://www.hrw.org/news/2022/07/07/indonesia-make-draft-criminal-code-public	The author has added changes until the ratification of the National Criminal Code is thoroughly discussed.
Secondly, you mentioned about a comparison with the Islamic Criminal law. Please prepare a table with 2 columns, one for RKUHP and Indonesian criminal code and the other for the Islamic criminal law so that this comparison can be summarized	The author has made a table in the discussion of these two articles, according to the UUPTPK, the National Criminal Code and Islamic Criminal Law
Lastly, the journal does not accept any submission, in full or part, in any foreign language except English. Please change all the Indonesian language portions into English e.g.. The legend of graph in introduction	Ok, I will make changes according to English
All end references must be changed into English; Remove the footnotes, as the journal follows the APA style.	Ok, I'll make it according to APA Style

Reviewers Coments 2

Reviewer's Comment	Respons Authors
Prepare your abstract to demonstrate the required components like purpose, research methods, framework, data sources, important findings, etc. Your introduction lacks rationale, purpose and research objectives along with the research questions / problem statement. It is important to add separately a sub section e.g. research questions/ problem statement, if possible. The method section is also missing. There are previous studies but these must be shown in brackets (APA style) in the whole paper. Please make the changes	This note has been corrected to reflect changes throughout this article
In short, rearrange your paper into five sections: Introduction (historical/ background information, research objectives, rationale, research gap, etc.); Literature Review and theoretical framework (definitions, Laws, policies, theories etc.); Methodology (research design, data collection and data analysis) findings (legal perspective); and Discussion (Analysis and interpretation). Check and insert what is missing	The author has made changes according to reviewer 2's suggestions
In the end, there should be a section: Conclusion, Recommendations and Implications, to include a brief conclusion of the research completed, limitations, recommendations for future research and implications for research and practice	Changes have been made according to the reviewer's suggestions
The author(s) need to review the article in line with the style of the journal	Author Has done

(Revisi Article)

Death Penalty Against Corruptor In Renewal of Indonesian Criminal Law Comparative Legal Perspective

Mispansyah
University of Lambung Mangkurat

Abstract
The purpose of this study is to examine and analyze related philosophical foundations. Elimination of death penalty in the National Criminal Code. The second is to find out about the comparison of Islamic criminal law and other countries that still apply the death penalty for perpetrators of corruption. This research uses normative legal research, using primary, secondary and tertiary legal materials. The types of research approaches are the statute approach, conceptual approach and comparative approach. The results of this study are: focuses on 3 values, namely individualization values, human values (rehabilitation) and social integration values, which prioritize human rights values. Second, death penalty in Islamic law is imposed considering the impact of state financial losses, death penalty is still regulated against perpetrators of corruption as in the state. Regulating death penalty against perpetrators of corruption in the National Criminal Code is very difficult because the National Criminal Code has only been enacted 3 (three) times.) Another year, so that the National Criminal Code only becomes the politics of Indonesian criminal law.
Keywords: Death Penalty, Corruption, Comparative Law

Introduction

One of the reform agendas is the eradication of criminal acts of corruption, then to follow up on this agenda, Law Number 31 of 1999 concerning Eradication of Corruption Crimes was born. in the provisions of Article 2 paragraph (2) it is formulated that the criminal act of corruption in certain circumstances can be sentenced to death. Then the handling of corruption is carried out in an extraordinary manner *(Extra Ordinary Crime*) (Mispansyah, 2016) as set forth in the General Explanation of Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Corruption (hereinafter referred to as the PTPK Law), contained in the State Gazette of the Republic of Indonesia of 2001 Number 134 Supplement to the State Gazette of the Republic of Indonesia Number 4150, corruption in Indonesia has occurred in a systematic and widespread manner so that it has not only harmed state finances, but has also violated the social and economic rights of the community at large, so the eradication of corruption needs to be carried out in an extraordinary manner.

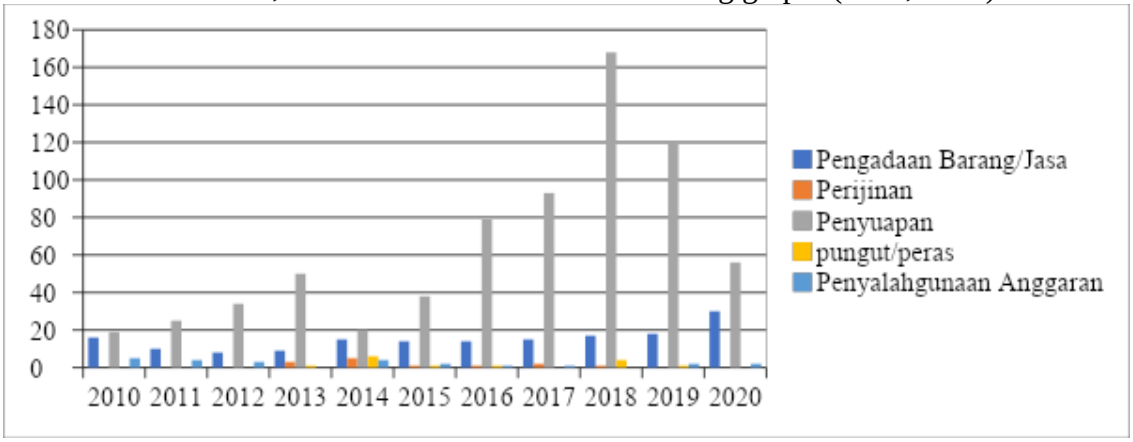
Affirmation as an extraordinary crime stipulated in Law Number 30 of 2002 concerning the Corruption Eradication Commission (hereinafter referred to as the KPK Law), stipulated in State Gazette Number 137 Supplement to State Gazette Number 4250, confirming corruption as an extraordinary crime. In the general explanation of the 2nd paragraph as follows:

”The uncontrolled increase in criminal acts of corruption will bring disaster not only to the life of the national economy but also to the life of the nation and state in general. No, widespread and systemic corruption is also a violation of the social rights and economic rights of the people, and because of all this, corruption is no longer classified as an ordinary crime but has become an extraordinary crime.

According to Mispansyah in an article in the Hasanuddin Law Journal stated *Referring to the development of corruption cases in Indonesia that so structured and systematic, the authors see there is an increasingly systematic corruption in the law enforcement system in Indonesia and make the perpetrators not deterrent* (Mispansyah, 2018). Referring to the development of corruption cases in Indonesia which are so structured and systematic, he sees corruption that is

increasingly systematic in the law enforcement system in Indonesia and makes the perpetrators not deterred.

In the last 10 (ten) years, corruption in Indonesia has been dominated by bribery and corruption that has caused losses to state finances, based on data from the Corruption Eradication Commission website, which can be seen in the following graph: (KPK, 2021)



Graph of Corruption Crime Statistics by Case Type

The imposition of death penalty in corruption cases has never been given by a panel of judges. Indeed, the death penalty mentioned in the formulation of Article 2 paragraph (2) of Law no. 31 of 1999, only applies to forms of corruption that cause losses to state finances Article 2 paragraph (1), and there are conditions in certain circumstances, which are : "if acts of corruption are committed, (1) when the state is in a state of danger in accordance with the law applies, (2) when a national natural disaster occurs, (3) as a repetition of a criminal act of corruption, or (4) when the country is in a state of economic and monetary crisis. Even in cases of corruption in social assistance funds during the handling of Covid-19, death penalty cannot be imposed, because the article being charged is corruption in bribery, not corruption in state financial losses referred to in Article 2 paragraph (1), so actually the death penalty in corruption cases is politically legal, legislators do not want the death penalty, because the conditions are very strict, and in practice these conditions have never been fulfilled.

The purpose of this research is first, to analyze the disappearance of the death penalty in the formulation of corruption crimes contained in Law Number 1 of 2023 concerning the Book of Laws. Second, to compare the death penalty for corruptors in Islamic criminal law and other countries, this is useful in reforming Indonesian criminal law.

The rationale in writing this is the renewal of the special criminal law which was formulated in the National Criminal Code, which was ratified by the House of Representatives of the Republic of Indonesia on January 2, 2023. In Chapter XXXV Special Crimes, in part three Corruption Crimes Article 603 **corruption unlawfully harms state finances** shall be punished with imprisonment for a minimum of 2 (two) years and a maximum of 20 (twenty) years. As for Article 604 for forms of corruption detrimental to state finances, abuse of authority is punishable by **life imprisonment** or imprisonment for a minimum of 2 (two) years and **at most 20 (twenty) years** and a fine of at least category II (10 million rupiah) and a maximum of category VI (2 billion rupiah), the National Criminal Code no longer can be sentenced to death in certain circumstances. So in the renewal of Indonesian criminal law the threat of death penalty has been removed in corruption offences.

During the regime of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on Eradication of The Criminal Act of Corruption, according to the normative formulation, the death penalty is not mandatory, because sentences can, so judges can impose or not, and only in the form of corruption offenses Article 2 paragraph (1), no for forms of corruption offenses Abuse of authority, bribery corruption offenses, blackmail corruption offenses, corruption offenses, and other forms of corruption offenses. in practice during the enactment of the two provisions of the UUPTPK above, judges have never imposed the death penalty on convicts of corruption cases.

The existence of gaps in the rules in the National Criminal Code, attracted the authors to conduct research. The article was made from a normative legal research that discusses the death penalty for perpetrators of corruption in the renewal of Indonesian criminal law, and also discusses the death penalty in Islamic criminal law which, according to the author, corruption is included in the discussion of *Ta'zir*, not *Hudud* or *Qishash*, as well as several countries as studies comparison.

This article is different from other articles such as those written by Syarif Fadillah with the title Questioning Death Penalty for Corruptors, a Study of Positive Law and Islamic Criminal Law, which discusses based on The Criminal Code originating from WvS is regulated in 10 of the Criminal Code, Article 340 of the Criminal Code and Article 104 of the Criminal Code. (2) In Law no. 5 of 1997, Concerning Psychotropics in Article 59 paragraph (1). (3) Deep Law No. 5 of 2018 (The last amendment to the Law on the Eradication of Criminal Acts of Terrorism), Article 6 (4). In Law No. 31 of 1999, which has been amended in Law No. 20 of 2001, Concerning the Eradication of Corruption Crimes, is regulated in Article 2 paragraph (2), so the focus is on discussing death penalty in Indonesian positive law (Syarif Fadillah, 2020). In contrast to this article which specifically discusses capital punishment in corruption offenses in Law Number 1 of 2023 concerning the National Criminal Code. Likewise the comparison in Islamic crime, Syarif Fadillah's article looks at the provisions in the law of Qisas, Hudud and Takzir, while this article is more about Ta'zir.

Likewise with the article by Koko Arianto Wardani, and Sri Endah Wahyuningsih regarding the Formulation of Death Penalty Law Against Corruption Crimes in Indonesia (Koko Arianto Wardani, Sri Endah Wahyuningsih, 2017), this article examines the formulation of capital punishment in the PTPK Law and policies future formulations, but do not discuss based on the National Criminal Code, so it has differences with this article. Then Warih Anjari's article with the title Application of Death Penalty Against Convicted Corruption Cases (Warih Anjari, 2020), discusses the practice of applying death penalty for corruption, does not discuss according to the New Criminal Code and comparative Islamic criminal law. It is also different from Roby Satya Nuhraga's article with the title:Imposition of Death Penalty Against Corruption Crimes Based on Article 2 Paragraph 2 of Law Number 31 of 1999 concerning Corruption Crimes (Corruption Case Study of Covid-19 Social Assistance Minister Juliari Batubara) (Roby Satya Nuhraga, 2021), This article is more about a study of corruption cases in the UUPTK provisions, while the author's article places more emphasis on the Draft of Criminal law code (hereinafter referred to as the RKUHP) and comparative Islamic criminal law.

Likewise with the article with the title:Death Penalty in the Corruption Crime Law. Study of the Theory of Zawajir and Responsibilities (Edi Yuhermansyah & Zaziratul Fariza, 2017), discussing the aspects of the PTPK Law and the theories of zawajir and Responsible, which are the goals of punishment in Islamic criminal law, are certainly different from this article.

The formulation of the problem in this article is: What is the philosophical basis for abolishing death penalty in corruption offenses in the National Criminal Code? How does the death penalty compare to Islamic criminal law and the law in other countries that still apply death penalty to perpetrators of corruption?

Literature Review

Death penalty is a sanction that is carried out with a choice of lethal acts (by the state) to the perpetrators of crimes who have been found guilty of a court decision that has permanent legal force (Puguh Wiyono, 2022). In sentencing theory, capital punishment is included in the absolute theory, namely the theory of retaliation.This theory, punishment is imposed solely because people have committed a crime or crime (*because it is sin*) (Muladi, 2002).

According to this absolute theory, every crime must be followed by punishment, it is not allowed, without bargaining. Someone gets punished for committing a crime. It doesn't look at any consequences that arise with the imposition of a sentence, regardless of whether the

community might be harmed. (Muladi, 2006). Second, the theory of goals or doeltheorieen. This theory seeks to find the justification for a crime solely for one particular purpose, where the purpose can be: a) the purpose of recovering losses caused by crime; b) the goal is to prevent other people from committing crimes (Priyanto, 2006). Theories that try to find the basis for justifying a crime solely for one specific purpose as referred to above, can further be divided into two types of theories, : a) general preventive theories or algemene preventive theories, which aim to achieve the goal from punishment, solely by deterring everyone so that they do not commit crimes; and b) special prevention theories or bijzondere preventive theories, which want to achieve the goal of the crime by deterring, improving and making the criminal himself incapable of committing any more crimes. In this theory, the purpose of punishment is not merely to take revenge or compensation to people who have committed a crime, but to have certain useful purposes. So the basis for criminal justification according to this theory lies in its purpose. The sentence imposed is not *quia peccatum est* (because people commit crimes) but *ne peccatum* (so that people don't commit crimes) (Mei Susanto and Ajie Ramdan, 2017).

Third, the theory of special improvement/prevention. Pure improvement theories which had a special preventive character which was previously widely embraced, it turns out that it is also narrow in setting goals and just as directionless in its usefulness. Criminal law is not necessary at all times and is undoubtedly aimed at efforts to correct (behavior or attitude) all delinquents, especially when it comes to those who are only guilty of minor crimes (Mei Susanto and Ajie Ramdan, 2017).

Fourth, combined theory or also known as integrative theory (Priyanto, 2006). According to Priyanto, the writer who first proposed this combined theory was Pellegrino Rossi (1787-1848). Even though Rossi still considers retaliation as the principle of punishment and that the severity of punishment should not exceed a just retribution, he believes that punishment has various influences, including repairing something that is damaged in society and general prevention (Rossi in Priyanto, 2006).

Corruption is referred to as a systemic crime, because it is part of power, therefore its handling must improve the system. This was emphasized by Indriyanto Seno Adji so that he called the term "*Systemic Approach*"(Indriyanto Seno Adji, 2006). This is why corruption is called an extraordinary crime, because it has a systemic impact, according to him: *"This form of structural corruption includes the format of corruption as part of organized crime. Corruption that has engulfed almost the entire world is a structural crime that includes good systems, organizations and structures, therefore gambling and corruption become very strong in the context of social political behavior"* (Indiyarto Seno Adji. 2001).

Recognizing corruption as a transnational crime, various countries have previously established institutions such as the Corruption Eradication Committee (KPK) as an example in Thailand National Counter Corruption Commission (NCCC), Australia with Independet Commission Against Corruption (ICAC), in Hong Kong also formed ICAC, Malaysia withAnti Corruption Act formed the Anti-Corruption Agency (BPR), in Singapore with provisions Prevention of Corruption Act CPIB was formed Corrupt Practices Investigation Bureau. All of these institutions were formed and were independent and even dared to investigate the Head of state, both the Prime Minister and the President, as was done by the NCCC against Prime Minister Thaksin (Andi Hamzah. 2005).

The general explanation of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (UU PTPK) emphasizes the eradication of corruption in an extraordinary way, namely as follows: "Given that Corruption in Indonesia occurs in a systemic and widespread manner, so that it is not only detrimental to state finances, but has also violated the social and economic rights of the people at large, then the eradication of corruption needs to be carried out in a special way, then the eradication of corruption needs to be done in an extraordinary way. Thus, the eradication of criminal acts of corruption must be carried out in a special way, including the application of a reverse proof system, namely the burden of proof on the accused.

Methodology

This research uses normative legal research, the research that uses legal materials, primary legal materials in the form of Law No. 1 of 1999, Law No. 20 of 2001 concerning amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crimes, Law Number 30 of 2002 as amended by Law Number 19 of 2019 concerning the Corruption Eradication Commission (KPK), Law Number 1 of 2023. As well as secondary legal materials in the form of textbooks written by legal experts, legal journals, legal cases, jurisprudence and symposium results, which are related to the topic of this research. Tertiary legal materials are legal materials that provide instructions, or meaningful explanations of primary and secondary legal materials such as legal dictionaries and encyclopedias and others. The type in this study is the legal vacuum, while there are 2 types of approaches, namely the Statute Approach, Conceptual Approach and comparative law . The legal materials were collected and an inventory was then compiled and a conclusion was found in the form of research findings.

Results

Philosophical Basis for Abolition of Death Penalty in the Formulation of Corruption Crimes in the National Criminal Code

Corruption slowly emerges as a disease that can bring destruction to the country's economy. Whether or not, corrupt practices that occur in Indonesia cause a lot of losses (Yasmirah Mandasari Saragih & Berlian, 2018). Even corruption has been categorized as an extraordinary crime, so that its eradication needs to be carried out in extraordinary ways and by using extraordinary laws, carried out in extraordinary ways outside the provisions of general criminal law. Sukmareni (et al) in the Hasanuddin Law Review referred to it as "*Corruption is no longer a local problem, but a transnational phenomenon that affects all societies and economies that encourage international cooperation to essentially prevent and control it. 2 These extraordinary ways are then manifested in the legislative policy into exceptional provisions which are deviant from the general rules of criminal law*…" (Sukmareni, Elwi Dani, Ismansyah, Zainul Daulay, 2018).

Launrence M.Friedman dalam Theory Sistem Hukum states that the work of law in society is inseparable from three interrelated components.(Aswanto,2012). In building the legal system according to Friedman there are 3 (three) components (Lawrence M. Friedman, 1975).

1) *Structure: "To begin with, the legal system has the structure of a legal system consist of elements of this kind: the number and size of courts; their jurisdiction. Structure also means how the legislature is organized what procedures the police department follow, and so on. Structure, in way, is a kind of cross section of the legal system…a kind of still photograph, with freezes the action.*

2) *Substance*: *"Another aspect of the legal system is its substance. By this is meant the actual rules, norm, and behavioural patterns of people inside the system…the stress here is on living law, not just rules in law books.*

3) *Culture: "The third component of legal system, of legal culture. By this we mean people's attitudes toward law and legal system their belief …in other word, is the climate of social thought and social force which determines how law is used, avoided, or abused.*

From the aspect of substance or material in laws and regulations in providing a deterrent effect, there is the threat of capital punishment contained in the formulation of Article 2 paragraph (2) of Law No. 31 of 1999, meaning that under certain circumstances the death penalty can be imposed, for forms of corruption that are detrimental to state finances Article 2 paragraph

(1) Law No. 31 of 1999 (Mispansyah and Amir Ilyas, 2016). However, the formulation of this article has weaknesses, **First,** the death penalty is only for forms of corruption which unlawfully harm state finances for the provisions of Article 2 paragraph (1), **second** sentences can in the formulation are not obliged to be followed by the judge in a decision,**third** the conditions specified in the elucidation of Article 2 paragraph (2) are very difficult to fulfill. The conditions mentioned above are: corruption is committed, (1) when the country is in a state of danger in accordance with the applicable law, (2) when a national natural disaster occurs, (3) as a repetition of a criminal act of corruption, or (4) when The country is in a state of economic and monetary crisis. In practice, during the enactment of the UUPTPK there was no judge's decision convicting corruption convicts with death penalty.

Then the House of Representatives of the Republic of Indonesia (DPR R.I.) has ratified Law Number 1 of 2023/National Criminal Code, in Article 64 of the Code contains the types of crimes, namely: (a). principal crimes; (b). additional punishment; and (c). criminal offenses that are specific to certain criminal acts specified in the law. Article 65 of the National Criminal Code The principal crimes consist of: (a) imprisonment; (b) cover-up punishment; (c) supervision punishment; (d) fines; and (e) social work punishment. Death penalty is a punishment that is specifically alternative in nature according to the provisions of Article 67 of the National Criminal Code.

In connection with the criminal act of corruption regulated in Article 603 and Article 604 of the National Criminal Code, for the form of corruption that violates the law, namely: the threat of being punished with imprisonment for a minimum of 2 (two) years and a maximum of 20 (twenty) years. Regarding corruption by misusing state finances, the punishment is the same, which is **life imprisonment,** and a minimum of 2 years.

According to the author, the abolition of the death penalty for corruption offenses cannot be separated from the philosophy of reforming the criminal law against the National Criminal Code. The consequences of corruption offenses are included in the National Criminal Code which are actually general crimes. Even though corruption offenses are placed in a separate chapter as Not Special Crimes, the philosophical reform of the Criminal Code is because the punishment in the Criminal Code has so far been more oriented towards the offender which is the goal of punishment in the theory of retributive punishment. As previously known, minor cases such as the theft of 3 (three) cocoa beans, theft of 5 stalks of corn, theft of a watermelon, harvesting bolls that fell on the ground, theft of a bunch of kapok bananas, all of these cases the Panel of Judges then imposed prison sentences, this is because there is no other choices for judges in the Criminal Code besides imposing prison sentences or fines, but the Panel of Judges prefers imprisonment to be the "prima donna".

Even though the National Criminal Code drafting team, when it was still the 2019 draft version, had explained in the Webinars organized by the Ministry of Law and Human Rights, that in essence, there was no need to worry about the inclusion of Special Crimes into the RKUHP, because their position remains as Special Crimes and remains it is possible to regulate outside the National Criminal Code based on the provisions of Article 187, which states : "The provisions in Chapter I to Chapter V of Book One also apply to acts that can be punished according to other laws and regulations, unless otherwise determined by law". The principle of criminal law is dominated by the principle of legality even though the National Criminal Code recognizes the unwritten law contained in Article 2 paragraph (2), because it is necessary to know that the National Criminal Code is one of the laws as positive law which in essence interprets the nature of law as positive norms in the legal system. the legislation of a country (Irwansyah and Ahsan Yunus, 2020), but by placing Special Crimes in the National Criminal Code, it creates a contract (*a contradiction in terms*) with general legal principles ***A special law*** *derogates from the general law* is **basic** legal interpretation which states that the law which is special *(a special law*) override general law. then in the development of crime, certainly not only 5 (five) types of crimes are categorized as special crimes, but this theme will certainly be discussed in subsequent research.

As explained by one of the National Criminal Code drafting teams, Barda Nawawi Arief, it

is necessary to reform the criminal law, in the framework of the reconstruction and re-conceptualization of the national criminal law system. Based on factual evaluation and reflection of the current national criminal law system, especially the Criminal Code. Factually the Criminal Code is a Dutch Colonial legacy which was promulgated on January 1, 1915, the values contained in the Criminal Code are liberal values, a retributive sentencing philosophy, there are no sentencing guidelines, there are no nationalism values which refer to the Pancasila state philosophy which contains divine values of religiousness, humanity and social justice (community). The emergence of minor criminal cases was due to the basic idea that became the background for the birth of the Criminal Code, its substance norms, its legal formulations were rigid and incomplete (Barda Nawawi Arief, 2019).

The enthusiasm to create a National Penal Code continues, because the Penal Code-WvS is currently a colonial legacy that prioritizes liberal, secular values and does not reflect the basic values of the Republic of Indonesia. Based on that, the National Criminal Code is structured to integrate the philosophical values of Basic standard, Pancasila, which can be realized in law enforcement and manifested in written norms (Barda Nawawi Arief, 2019).

The idea of correctional (humanist values/human values) contained in Law No. 12 of 1995 concerning Corrections is the final part of the criminal system in which there are ideas of individualization of criminals, ideas of humanity (rehabilitation), selective, limitative, temporary ideas (*principle of parsimony/restraint*) the idea of social reintegration, these values have so far been hindered or absent in the material criminal law (KUHP) and the Formal Criminal Law (KUHAP), because the KUHP-Dutch heritage has a single formulation, an indefinite system without guidelines, there are no guidelines for implementing a single system, there are no guidelines: imposition of imprisonment, no more varied alternatives to imprisonment available, conditional punishment cannot be used as an independent/independent sentence, a rigid system of mitigating/aggravating pid (a.l. recidive) (Barda Nawawi Arief, 2019). Positive criminal law is based on the classical legacy of the Criminal Code system, namely the orientation of actions.

The purpose of sentencing is balanced between legality (community principle) and culvability principle (humanity principle) which does not exist in the Dutch heritage Criminal Code. Existence of sentencing guidelines as an integral part of the penal system; as a guide (*guidance of sentencing*), as a philosophical basis & justification for sentencing. (Barda Nawawi Arief, 2015).

The principle contained in the purpose of sentencing: the principle of balancing the protection of the community/victim and the development/improvement of individuals. the principle of humanity (humanistic), the principle of forgiveness (judge/victim); principle *"guilt in the case"* The principle of sentencing elasticity, modification/change/adjustment/review of sentencing, the principle of prioritizing justice over legal certainty. In the General Guidelines, which are: Guidelines for the Implementation of the System, Formulation of Criminals, Guidelines for Imposing Prison Sentences, Guidelines for the Implementation of Special Minimum Punishment, Guidelines for Modifying Sentences; there are changes/improvements to Convicts, changes to laws (legislation of policy materials), Guidelines for Corporate Criminalization, Guidelines for Criminalizing Children (Barda Nawawi Arief, 2019).

In the National Criminal Code regarding sentencing guidelines regulated in Article 53 it is stated: (1) In trying a criminal case, the judge is obliged to uphold law and justice. (2) If in upholding law and justice as referred to in paragraph (1) there is a conflict between legal certainty and justice, the judge must prioritize justice. Then in Article 54 paragraph (1) sentencing must consider:

a. the guilt of the perpetrators of the Criminal Act;
b. motive and purpose of committing a Criminal Act;
c. the mental state, or a guilty mind of the perpetrator of the Criminal Act;
d. Criminal acts are committed with a plan or not planned;

e. how to commit a criminal act;

f. the attitude and actions of the perpetrator after committing the Criminal Act;

g. curriculum vitae, social circumstances, and economic conditions of the perpetrators of the crime;

h. criminal influence on the future perpetrators of criminal acts;

i. the influence of the Crime on the Victim or the Victim's family;

j. forgiveness from the Victim and/or his family; and/or

k. values of law and justice that live in society.

Then in Paragraph (2) The lightness of the act, the personal circumstances of the perpetrator, or the circumstances at the time the crime was committed as well as what happened later can be used as a basis for consideration not to impose a sentence or not to take action by considering the aspects of justice and humanity. Next, there are guidelines for the application of imprisonment with a single formulation and alternative formulation, this is regulated in Article 57 of the National Criminal Code, namely: "In the event that a criminal act is threatened with an alternative principal sentence, the imposition of a lighter basic sentence must be prioritized if it is considered appropriate. and can support the achievement of sentencing objectives".

Based on the explanation from the National Criminal Code drafting team regarding the philosophy and principles of the birth of the National Criminal Code, the author draws the conclusion that the value of the idea of criminal individualization, humanitarian ideas (rehabilitation), selective, limitative, temporary ideas (*principle of parsimony/restraint*) the idea of social reintegration, so capital punishment is a special punishment that is alternative in nature, because the philosophy of punishment in the RKUHP focuses more on 3 values, namely the value of individualization, the value of humanity (rehabilitation) and the value of social integration, which **promotes the value of human rights** which is implementation **humanism values**.

Comparison in Islamic Criminal Law and other Countries which still apply Death Penalty Against Corruption Actors

Why does the author compare the National Criminal Code with Islamic Criminal Law, this is because there is little value of Islamic law that is tried to be made in the National Criminal Code, for example in the regulation of adultery Article 411 of the National Criminal Code and Article 412 of cohabitation. respect for the values of social life in Indonesia which do not adopt the law of adultery in Islam totally. It only regulates the prohibition of adultery and the crime of living together outside of marriage is regulated as a Complaint Offense, so that it can only be processed legally if there is a complaint from the directly aggrieved party, such as the husband or wife for those who are bound by marriage, or parents or children for those who are not bound by marriage.

The following contains the provisions of Article 411 of the National Criminal Code which regulates adultery, which state:

(1) Every Person who has sexual intercourse with a person who is not husband or wife, convicted of adultery, with imprisonment a maximum of 1 (one) year or a maximum fine of category II.

(2) Against the Crime as referred to in paragraph (1) no prosecuted except for complaints:

a. husband or wife for people who are bound by marriage; or

b. parents or children for people who are not bound by marriage.

Then Article 412 of the National Criminal Code which regulates cohabitation, says:

(1) Everyone who lives together as husband and wife outside marriage shall be punished with imprisonment for a maximum of 6 (six) months or a maximum fine of category II.

(2) Against the Crime as referred to in paragraph (1) no prosecuted except for complaints:

a. husband or wife for people who are bound by marriage; or

b. parents or children for people who are not bound by marriage

in the Islamic criminal law sanction system in the form of 'Uqubat there are four types: namely hudud, jinayat, ta'zir and mukhalafat (Abudurrahman Al-Maliki and Ahmad Ad-Da'ur, 2011). Hudūd are sanctions for disobedience that have been determined by (and become) the right of Allah. named **hudud** because in general it prevents people who commit immorality from (not) returning to the immorality that has been determined. As for those categorized in hudūd are Had Zina, Had Liwath, Had Qadzaf, Had Khamar Drinking, Had Theft, Had against muggers, Had against Bughat perpetrators, Had Apostasy. (Abudurrahman Al-Maliki and Ahmad Ad-Da'ur, 2011). As for **jinayat** for abuse or assault on the body, which requires qishash (reward) or diyat (fine). Ta'zir is a sanction whose form is not specifically determined by Syari', the form is not binding, it can be the same as hudud and jinayat but may not exceed the punishment in hudud and jinayat (Abudurrahman Al-Maliki and Ahmad Ad-Da'ur, 2011). Theft is included in Had Hudud, the definition of theft is taking property from the owner or his representative by stealth. There are 7 conditions to be categorized as theft which is punishable by hand cutting, which are:

(1) his actions are included in the definition of theft;

(2) stolen property reaches the nishab;

(3) stolen property guarded property, which is permitted by Shari'(Allah) to be owned;

(4) steal by removing from storage.

(5) stolen property is not doubtful that someone still has rights over that property;

(6) thieves have matured, have reason and are bound by Islamic laws, both Muslims and ahlul dzimmy;

(7) determined based on the thief's confession (Abudurrahman Al-Maliki and Ahmad Ad-Da'ur, 2011).

In Islamic Criminal Law, the crime of corruption is categorized into Ta'zir, not included in Qishash and Hudud and Mukhalafah. The concept of corruption in Islam includes: *Ghulul* (abuse of position) (Fazzan, 2015), *Betrayal* (not fulfilling the trust),*Risywah or Rashu* (giving bribes) (Ahmad Chairul Umam, 2014). Corruption in Islamic Sharia is called an act of treason, the person is called *traitor*, including embezzlement of money entrusted or entrusted to someone. Theft is not categorized as corruption, because the definition of stealing is taking other people's property secretly. Meanwhile, treason is not an act of taking someone else's property, but an act of betrayal committed by someone, : such as embezzling property that was entrusted to someone (Abudurrahman Al-Maliki and Ahmad Ad-Da'ur, 2011). So Corruption is a type of appropriation of the wealth of the people and the State by taking advantage of positions to enrich themselves and others (Mispansyah, 2018).

In the following, the author makes a comparison table between Indonesian Criminal Law and Islamic Criminal Law in the regulation of capital punishment for corruption offenders:

Table 1: Death Penalty Arrangements Indonesian Criminal Law and Islamic Criminal Law

Arrangement	Provision	Explanation
Law No. 31 of 1999	Article 2 paragraph (2) In the event that the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances,**death penalty can be imposed**	The conditions for death penalty imposed on corruptors are: ● when the country is in a state of danger according to the applicable law, ● when natural disasters occur, ● as a repetition of a criminal act of corruption, or ● when the country was in a state of economic and monetary crisis
National Criminal Code / Law No. 1 of 2023	Article 603 and Article 604**There isn't any** legal threats**death penalty**	Corruption in Chapter XXXV Special Crimes Part three.
Islamic Criminal Law	Corruption that causes the collapse of criminal state finances**die can be dropped.**	In some of the Read Writer's literature, regarding the amount of corruption values imposed by death penalty,**unclear** standard mentioned**size**.

Based on the description of the definition of corruption according to Islamic Criminal Law, corruption is not included in the definition of theft, or robbery or fraud. In the conception of Islamic law it is very difficult to categorize criminal acts of corruption as *jarimah sirqah* (theft). This is caused by the variety of corrupt practices themselves which are generally not included in the definition of *sirqah* (Fazzan, 2015).

Sanctions for corruptors with appropriate (firm) sanctions, in nature humans fear punishment for themselves, the purpose of crime in Islam indeed functions as a penance *(zawabir)*. law. Another criminal objective is *zawajir* (deterrent), which means that with proper punishment for corruptors, it is hoped that people will think a thousand times about committing corruption. In Islam, the sanction for corruption is not cutting off hands like a thief as the words of Rasulullah saw "*Usurers*, corruptors and traitors are not subject to the punishment of cutting off hands" (HR. zir, whose punishment can be *Tasyhir* in the form of an announcement/preach to the public being paraded around the city/now through the mass media, or imprisonment until sentenced to death (Mispansyah, 2018). So the punishment for corruption offenses ranges from verbal or written warnings or reprimands, returning the proceeds of corruption, embarrassment by announcement, confinement, to the death penalty by looking at the size of the corrupted funds, if it causes the country to collapse or is carried out during a famine or a pandemic. , the judge can impose the death penalty.

The death penalty is still maintained in several countries as described in the following table:

Table 2: Countries still provide for the death penalty in their Criminal Codes

Nama Negara	Death Penalty Arrangements
China	*Criminal Law of The People Republic of China:* ● *Article 48 The death penalty shall only be applied to*

	criminals who have committed extremely serious crimes. If the immediate execution of a criminal punishable by death is not deemed necessary, a two-year suspension of execution may be pronounced simultaneously with the imposition of the death sentence. ● *Article 383 Persons who commit the crime of embezzlement shall be punished respectively in the light of the seriousness of the circumstances and in accordance with the following provisions:* *(1) An individual who embezzles not less than 100,000 yuan shall be sentenced to fixed- term imprisonment of not less than 10 years or life imprisonment and may also be sentenced to confiscation of property; if the circumstances are especially serious, he shall be sentenced to death and also to confiscation of property.*
Thailand	*Code Penal, Title II Offences Relating to Public Administration* ● *"Section 148 punishes the abuse of public power through coercion or inducing in order to procure a benefit. The members of the different Assemblies are not included in this section. (Penalty: imprisonment of 5 to 20 years or imprisonment for life and fine of THB 2,000 to THB 40,000, or death)"* ● *"Section 149 prohibits public officials and Assembly members from accepting a benefit as a compensation for their exercising or avoiding any of their functions. Again, the demanding or agreeing to accept a benefit is treated equally by the law. It is not of importance if such act or the avoidance of it is wrongful, nor is it necessary that an advantage or disadvantage shall result from the official's behavior. (Penalty: imprisonment of 5 to 20 years or imprisonment for life and fine of THB 2,000 to THB 40,000, or death)"* *Title III Offences relating to the Justice* ● *Section 201 Whoever, to be the official in the judicial post, Public Prosecutor, official conducting the cases or the inquiry official, wrongfully to demand, accept or agree to accept the property or any other benefit for oneself or the other person so as to exercise or non-exercise any act, whether such exercise or non-exercise wrongfully oneself's function or not, shall be imprisoned as from five years to twenty years or life imprisonment and fined as from two thousand Baht to forty thousand Baht, or death.* ● *Section 202 Whoever, being an official in a judicial post, a Public Prosecutor, an official conducting cases or an*

	inquiry official, exercises or does not exercise any of his functions in consideration of a property or any other benefit which he has demanded, accepted or agreed to accept before his appointment to such post, shall be punished with imprisonment of five to twenty years or imprisonment for life, and fined of two thousand to forty thousand Baht, or <u>death</u>
Vietnam	*4. This offence committed in any of the following cases shall carry a penalty of 20 years' imprisonment, life imprisonment, or death:.* *a) The property embezzled is assessed at ≥ VND 1,000,000,000;* *b) The offence results in property damage of ≥ VND 5,000,000,000.* *This offence committed in any of the following cases shall carry a penalty of 20 years' imprisonment, life imprisonment, or death:* *a) The bribe is money, property, or other tangible benefits assessed at ≥ VND 1,000,000,000;* *b) The offence results in property damage of ≥ VND 5,000,000,000.*
Iran	*Article 284 Iran Islamic Penal Code states that those subject to execution include, "Whosoever engages extensively in:* • *commission of widespread crime against masses;* • *crimes against homeland or external security;* • *spreading rumors and/or uttering slander;* • *financial malfeasance in the affairs of the State;* • *spreading hazardous and poisonous substances;* • *establishing brothels or involvement in their operation, causing extensive disturbance in public order;* • *causing security risks or inflicting substantial physical harm to individuals or damage to public*

	or private properties; • ***widespread moral corruption and offenses****".* *Article 190 Iran Islamic Penal Code states "Hadd punishment for moharebeh and* ***corruption on earth*** *is one of the following four [punishments]:* *(a)* ***The death penalty.*** *(b) Hanging on gallows.* *(c) Amputation of right hand and then left foot.* *(d) Banishment".*

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Based on table 2 above, the death penalty for perpetrators of corruption is still contained in criminal law, namely in their Criminal Code, such as **China,** Thailand, Vietnamese. The application of the death penalty in China itself is based on Chinese Criminal Law (*Criminal Law of The People Republic of China),* contained in article 48. The death penalty is only applied to criminals who commit very serious crimes. One of them is certain acts of corruption such as embezzlement with a minimum value of 100,000 yuan, but the death penalty is imposed in very serious circumstances according to what is regulated in article 383. Following are officials in China who carried out the death penalty on data Jiangnan Zhu on jurnal *The China Review*,(Ziangnan Zhu,2012) in the table below:

Table 3 Senior Chinese Officials Who Have Been Executed for Corruption since 2000

Name	Former Title	Execution Year	Major Crimes
Cheng Kejie Cheng Kejie	Vice-chair of the National People's Congress Standing Committee	2000	Accepting bribes over Y5 million
Li Zhen Li Zhen	Party secretary of Hebei Provincial National Taxation Bureau	2003	Accepting bribes over Y10 million
Wang Huaizhong Wang Huaizhong	Vice-provincial governor of Anhui	2004	Accepting bribes over Y5 million
Zheng Xiaoyu	Director of State Food and Drug Administration	2007	Accepting bribes, and ignoring wrongdoing by his

Zheng Xiaoyu			subordinates
Jiang Renjie Jiang Renjie	Vice-mayor of Suzhou	2008	Accepting bribes over Y0.1 billion
Wen Qiang Wen Qiang	Director of the Chongqing Municipal Judicial Bureau	2010	Accepting bribes over Y10 million, shielding organized crimes, rape

Source: *Nanfang Zhoumo* (South China Weekend), http://www.infzm.com/content/44162.

The next country is **Thailand** which also regulates the death penalty for perpetrators of corruption regulated in Thailand criminal law in part II. While in section 149 there is a prohibition for public officials and assembly members to receive benefits as compensation for carrying out or not carrying out one of their functions, the emphasis in this article is that the benefits are obtained due to the actions of these officials. Then on *Title III Offences relating to the Justice* Articles 201 and 202 criminal threats against public officials who work in the judiciary such as investigators, prosecutors, judges receive threats ranging from 5 (five) years to life imprisonment and even death penalty.

Meanwhile in **Vietnam**, Setting the death penalty for corruption is regulated in Vietnam's Criminal Law in part I entitled Corruption-Related Crimes in Article 353. Embezzlement. Number 4, says:

4. This offence committed in any of the following cases shall carry a penalty of 20 years' imprisonment, life imprisonment, or death:

a) The property embezzled is assessed at ≥ VND 1,000,000,000;

b) The offence results in property damage of ≥ VND 5,000,000,000.

In this Article, a sentence of 20 years imprisonment, life imprisonment, and even death penalty can be applied to cases of embezzlement of property worth more than or equal to VND 1,000,000,000; (one billion Vietnamese dong) or the violation results in property damage of or more than VND 5,000,000,000 (Five Billion Vietnamese Dong). Then the death penalty is also regulated in Article 354. Titled "Accepting Bribes"*(Taking Bribes).* Number 4 which is a type of bribery corruption in the form of money, property or other tangible benefits that are worth more than or equal to VND 1,000,000,000; (One Billion Vietnamese Dong) and the violation resulted in property damage of or more than VND 5,000,000,000 (Five Billion Vietnamese Dong). As for Article 354, says:

This offence committed in any of the following cases shall carry a penalty of 20 years' imprisonment, life imprisonment, or death:

a) The bribe is money, property, or other tangible benefits assessed at ≥ VND 1,000,000,000;

b) The offence results in property damage of ≥ VND 5,000,000,000.

Thus, several of these countries still carry the death penalty against perpetrators of corruption, where the minimum value of corruption is stated, so that the perpetrators are subject to death penalty.

The next country that implements the death penalty for corruption is: **Iran**, a country that

adopted an Islamic criminal law system which later gave birth to the Iran Islamic Penal Code which also regulates acts of corruption. Therefore the sanctions system in Iran's criminal law adopts the sanctions system in the concept of Islamic criminal law, namely *Qisas, Diyat, hudud, ta'zirat* and Criminal Detention (*detterent punishment).*

The following is an example of an article that regulates acts of corruption in statutory regulations:

Iran's Islamic Criminal Law has added *"Rasha"* (giving bribes) and other forms of bribery to the list of crimes. in Article 592 The definition of *Rasha* is what reads:

> *"Anyone knowingly and intentionally, in order to do or refuse to do something that is one of the duties of the person mentioned in article 3 of the law on intensifying bribery, embezzlement, and Fraud approved by the expediency council in 1376, directly or indirectly giving money or a document for payment of money or propertyis in the ruling of briber, and as a punishment, in addition to confiscation of the property resulting from bribery, he is sentenced to imprisonment from six months to three years or up to (74) lashes"*
>
> *"Whoever intentionally and deliberately, to do or refuse to do something which is one of the obligations of that person in article 3 of the law on the act of bribery, embezzlement and fraud approved by the benefit council of 1376, directly or indirectly gives money or a letter for payment of money or goods is included in the law on bribery, and as punishment, in addition to confiscating the goods resulting from the bribe, he is threatened with imprisonment for six months to three years or up to 74 lashes"*

Article 588 of the Iranian Criminal Code which reads:

> *"Any of the arbitrators and auditors and experts, whether appointed by the court or by the parties, if they make an opinion or make a decision in favor of one of the parties in exchange for receiving money or property, will be sentenced to imprisonment from six months to two years or a fine from three to twelve million Rials, and what they have received will be confiscated as a punishment for the benefit of the government."*
>
> *"Every arbitrator and auditee and expert, whether appointed by the court or by the parties, if they make an opinion or make a decision in favor of one of the parties in return for receiving money or goods, shall be punished with imprisonment from six months to two years or a fine of three to twelve million Rial, and what they have received will be confiscated as punishment for the benefit of the government."*

Embezzlement of government funds, Article 5 in the Law on Aggravation of Punishments for bribery, embezzlement and forgery states:

> "*Each of the employees of departments and organizations or councils or municipalities and institutions and governmental or government-affiliated companies or revolutionary institutions and the Court of Accounts and institutions that are managed with the continuous help of the government and the holders of the judicial base and the three powers in general and also the armed forces and public service agents, either official or unofficial taking and appropriating funds or remittances or shares or documents and face amount or other property belonging to any of the above-mentioned organizations and institutions or the persons entrusted to them according to their duties for the benefit of oneself or someone else is considered embezzlement.*"
>
> "*Every employee of government departments and organizations or councils or municipalities and government agencies and companies or government affiliates or revolutionary institutions and institutions and Account Court(audit) which is managed with the continuous assistance of government and judicial base holders and the three powers in general as well as the armed forces and public service agencies, either officials or unofficial pickup and adapt funds or transfers of money or shares or documents and nominal value or other property belonging to one of the organizations and institutions mentioned above or a person entrusted to him in accordance with his duties for the benefit*

of himself or others is considered embezzlement."

Based on the 6 points in article 5 Law on Severity of Punishment for bribery, embezzlement and forgery Accordingly, the punishment for the crime of embezzlement of government funds is:

- *If the amount of embezzlement reaches fifty thousand Rials, the punishment for the offender is six months to three years imprisonment and six months to three years temporary dismissal.*
- *If the amount of embezzlement is more than fifty thousand Rials, the penalty against the employee is from two to ten years in prison and permanent dismissal from government service.*
- *In any case, the offender will be sentenced to a fine equivalent to double the embezzled amount.*
- *If the perpetrator has a position as a general manager or a higher level or equivalent, the punishment shall be permanent dismissal from government service, and if the position is lower, as mentioned above; he will be sentenced to six months to three years of temporary dismissal from government service.*
- *If the crime committed by the embezzled employee is combined with forgery and the amount of embezzlement is up to fifty thousand Rials,**punishment for embezzlement** would be increased to two to five years in prison and one to five years suspension from government service.*
- *If the amount of embezzlement exceeds fifty thousand Rial, that is**punishment for embezzlement** combined with forgery is imprisonment of seven to ten years and permanent dismissal from government service. In each case, apart from returning the embezzled money or property, the embezzler was sentenced to a fine equivalent to double that amount.*

Then for the type of bribe, Receiving bribes in Article 3 of the Law on Aggravation of Punishments for bribery, embezzlement and forgery along with the 5 points below, says:

"Every government employee and official, whether judiciary or administrative or council or city or revolutionary institution and in general the three powers, as well as the armed forces or government companies or government-affiliated organizations or officials in the public service whether official or not authorized to carry out or not doing anything related to the organization, directly or indirectly receiving money or goods or cash payment documents or financial submissions, is in a decision to accept bribes Regardless of whether it is related to accepting bribes, regardless of whether it is related to their duties or not, and whether their performance is in accordance with truth and obligation or not, or whether it is in their performance or non-performance, whether effective or not, will be subject to sanctions in the following order:

If the price of goods or money is received:

- *not exceeding twenty thousand Rials, he will be sentenced to temporary dismissal from six months to three years. If the perpetrator is a general manager or equivalent to a general manager or higher, he will be subject to a permanent dismissal from a government position.*
- *In excess of twenty thousand Rials to two hundred thousand Rials he will be sentenced to one to three years in prison and a monetary penalty equal to the value of the property or money received and temporary dismissal from six months to three years will be imposed. For example, the perpetrator has the rank of general manager*

or equivalent to general manager or higher, not temporary dismissal. In that case, he will be sentenced to permanent dismissal from government work.

- *If the price of the goods or money received is more than two hundred thousand Rials to one million Rials, then the punishment for the perpetrator is two to five years imprisonment, plus a fine equivalent to the price of the goods or money received, and permanent dismissal from government service and up to 74 lashes. If the offender's position is lower than that of general manager or equivalent, he or she will be subject to a sentence of temporary dismissal from six months to three years instead of permanent dismissal.*

- *If the price of the goods or money received is more than two hundred thousand Rials to one million Rials, then the punishment for the perpetrator is two to five years imprisonment, plus a fine equivalent to the price of the goods or money received, and permanent dismissal from government service and up to 74 lashes. If the offender's position is lower than that of general manager or equivalent, he or she will be subject to a sentence of temporary dismissal from six months to three years instead of permanent dismissal.*

- *If the price of goods or money received is more than one million Rial, then the punishment for the offender is five to ten years in prison, plus a fine equal to the price of the goods or money received, and permanent dismissal from government service. and up to 74 lashes. If the offender's position is lower than general manager or equivalent, he will be punished with temporary dismissal from six months to three years, not permanent dismissal."*

In the articles mentioned above, indeed there is not a single article that contains the death penalty in it, but corruption is included *"major serious crime"*, it is if corruption is carried out in or results in unstable economic or political conditions, for example corruption with a very large amount of loss, it can cause someone who commits this corruption to receive the death penalty by hanging. This is possible because in the Iranian Criminal Code there is a type of crime called "*Mufsid-Ifil Arz"* or "The Corruption on earth" adopted by the Islamic Consultative Assembly in 1996 . *Mufsid-Ifil Arz* is defined as someone who withdraws weapons with the intent to threaten or create fear and risk to security in society. Later the term was revised so that it has a broader meaning and allows for the expansion of executable actions (Criminal Procedure Code for General and Revolutionary Courts :1991).

Article 284 states that those subject to execution include:

"Whoever extensively undertakes:

- *commit widespread crimes against the masses;*
- *crimes against the homeland or external security;*
- *spreading rumors and/or defamation;*
- *financial irregularities in State affairs;*
- *spread dangerous and poisonous substances;*
- *building brothels or engaging in their operations, causing widespread disturbance of public order;*
- *cause a security risk or cause substantial physical harm to individuals or damage to public or private property;*
- *widespread corruption and moral breach."*(Muhammad Mostafai:2012)

The type of sanction imposed on the acts included in the *Mofsed-fil-arz* is the ta,zir punishment taken from the Hadd, this is stated in the Islamic Book of Criminal Law of Iran Part 3 with the title "Hadd Punishment for Muharabbah and *Mofsed-fil-arz* which states:

Article 190"Hadd punishment for moharebeh and corruption on earth is one of the following four [punishments]:
(a) Death penalty.
(b) Hanged on the gallows.
(c) Amputation of the right hand and then the left leg.
(d) Disposal".

The following are laws that regulate the types of crimes that are punishable by *ta'zir* in the Iranian criminal law system (Extra-Legal Executions in Iran (ELEI): 2010):

a. *Iran Islamic Criminal Code (1991/96)*
b. *Anti-Narcotic Drug Law (1997)*
c. *The Press code (1985/2000)*
d. *Law Concerning Increase of penalties for Bill Counterfeiters and Persons who Import, distribute or Pass counterfeit Bills (1989)*
e. *Law Concerning Punishment of Disruptors of the National Economic System (1990)*
f. *Law Concerning Intensifying of Penalties for Receiving Bribes, Embezzlement and fraud (1998)*
g. *Law Concerning Increase for Penalties for Speculators and Profitters*
h. *Law Concerning Punishment of Persons Involved in Illict Audi-Visual Activities (2008)*
i. *Law Concerning Cyber Crimes (2009)*
j. *Law on Combatting Human Trafficking (2004)*
k. *Law Concerning Punishment for crimes Committed by Members of the Armed Force (2003)*

The laws governing acts of corruption that can be subject to ta'zir punishment, is *Law Concerning Intensifying of Penalties for Receiving Bribes, Embezzlement and fraud (1998)* or the Law on Increasing Penalties for Recipients of Bribery, Embezzlement and Forgery. Organizing or leading a network of people to commit bribery, embezzlement, or fraud, which the perpetrators are deemed to be the same as *mofsed-e-fil arz.*

The death penalty is given to major corruption scandal 1230 billion *real* ($702.85 million), by two people (Khodadad and Rafighdost) which occurred in 1994. Khodadad was sentenced to death (Mohammad Reza Farzanegan: 2022)

Then In another major corruption case in Iran's banking history, a businessman, Mahafarid Amir-Khosravi, and 39 others were convicted in 2011 for their involvement in money laundering, forgery and bribery in private and state banks from 2007 to 2010. Arrest and escape from Khavari connected to this case. Amir Khosravi and his team used fake documents to obtain large loans, some of which were used to buy state-owned companies under the government's privatization plan. He admitted to bribing Khavari and others in Iran's banking system to facilitate access to bank credit. He was executed by hanging at Evin Prison in Tehran on May 24th 2014. This case is comparable to the 1995 execution of Fazel Khodadad over a $400 million corruption case in *Bank Saderaat* (Mohammad Reza Farzanegan: 2022).

Conclusion

The philosophy of abolishing capital punishment in corruption offenses in the RKUHP is because it focuses more on 3 values, the value of individualization, the value of humanity (rehabilitation) and the value of social integration, which prioritizes the value of human rights which is the implementation of humanism values so that death penalty is not included in the

formulation of the offense corruption.

Based on Islamic Criminal Law and comparison with 4 (four) countries (China, Thailand, Vietnam, Iran) death penalty for perpetrators of corruption is still being imposed. The prospect of death penalty for corruption offenses in Indonesian Criminal Law is very difficult because the philosophy of the National Criminal Code has shifted more oriented towards humanism values, or human values, with rehabilitation and social integration of convicts.

In order to be able to return the types of death penalty sanctions into Indonesian Criminal Law, by making changes to the provisions of Article 603 of the National Criminal Code and Article 604 of the National Criminal Code, for example by inserting paragraphs due to certain circumstances as a weighting death penalty imposed or based on the value of state financial losses of 1 Trillion Rupiah threatened with death penalty.

Death penalty is still relevant and urgently contained in the Law on the Eradication of Corruption Crimes, because various countries in the world still apply the death penalty to perpetrators of corruption, in order to provide a deterrent effect.

The implications of this study have limitations for further research, because the National Criminal Code which has been ratified by the DPR RI, and has only been enforced 3 (three) years after being promulgated on January 2, 2023, means that it will only take effect on January 2, 2026. Likewise the difficulties in implementing this recommendation because it is not may make changes to the National Criminal Code which is still in the realm of criminal law politics which will only apply in the future.

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