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

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

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Abstract

Death penalty in Indonesian Criminal Code has been imposed only in grave circumstances like premeditated murder, corruption of extreme kind and drug trafficking. However, in recent times, the Criminal Code has shifted more towards human values, with views on rehabilitation and social integration of convicts. This study aimed to examine and analyze the philosophical issues that led to the decision to eliminate death penalty in the Indonesian National Criminal Code, January 2023. It also aimed at making a comparison of the Islamic criminal law with the criminal codes of other countries that still apply death penalty for perpetrators of corruption. For this purpose, China, Thailand, Vietnam, and Iran were chosen where death penalty for perpetrators of corruption is still being imposed. This research used normative legal research with a historical approach and collected data form primary, secondary and tertiary legal sources. The findings of this study were analyzed with a statute approach utilizing the comparative methods. It was found that the laws in the sampled countries focus on three values namely individualization values, human values (rehabilitation) and social integration values, which prioritize human rights values. As a result, death penalty is eliminated in many countries. However, in Islamic law it still remains imposed considering the impact of state financial losses. The study concludes that regulating death penalty against perpetrators of corruption in the National Criminal Code is rather difficult due to its temporal nature and still in the transition stage.

Keywords: Death Penalty, Corruption, Comparative Law, Indonesia, Islamic Law

Introduction

Capital punishment in Indonesia historically was imposed only in grave circumstances like premeditated murder, corruption of extreme nature and drug trafficking. In other words, capital punishment was not a much-implemented action as it is revealed from the fact that death penalty existed since the creation of the

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Republic of Indonesia, however no judicial execution had taken place until 1973 (Hood, 2003). In 1999, under the Indonesian Criminal Law, Article 2 paragraph (2) of the Law Number 31 of 1999 concerning Eradication of Corruption Crimes, stated that according to the normative formulation, death penalty is not mandatory, unless the judges find the offense of rare nature. However, in Article 2 paragraph (1) of the Law, there are certain circumstances of criminal acts of corruption that can be sentenced to death under this law such as: (1) when the state is in a state of danger in accordance with the law, (2) when the crime might cause a national disaster, (3) when it is a repetition of a criminal act of corruption, or (4) when the country is in a state of economic and monetary crisis. However, despite their being a part of the Law, the judges have never imposed death penalty on convicts. In 2019, for instance, during the COVID -19, death penalty was not imposed in several corruption cases of bribery or those resulted in state financial losses.

Hence, although the death penalty in corruption cases is politically legal, but legislators do not want the death penalty, because the living conditions in which a crime is committed are very strict and in practice such conditions need to be checked instead. In 2007, to reiterate this argument, one can cite the example of the Indonesian Constitutional Court that upheld the death penalty for drug cases by a vote of six to three. This is reiterated in the recent 2023 Indonesian Criminal Code, which transformed death sentence to imprisonment in many circumstances. Article 100 of the 2023 Code mandates judges to provide a 10-year probationary period to every criminal awarded capital punishment, hoping that the criminal would be remorseful in this period. The Article 100 of the 2023 Code also provides that the capital punishment can be commuted to imprisonment for life after 10 years (Saptohutomo, 2022).

However, in spite of such constitutional remedies and existence of a benevolent approach, corruption in Indonesia has occurred in a systematic and widespread manner. In its occurrence, corruption has not only harmed state finances but has also violated the social and economic rights of the community at large. However, 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. Owing to these philosophical implications, it was imperative to conduct a study of eradication of corruption in an extraordinary manner. The primary objective of this research was first to analyze the consequences of the elimination of the death penalty in Law Number 1 of 2023 concerning the Book of Laws. Second, this study aimed to compare the death penalty for corruptors in Islamic criminal law and other countries, which would have useful implications for reforming the Indonesian criminal law.

The rationale of the current study is to study the research gaps in the regulations of the Indonesian Criminal Code. By making use of the normative legal research method with a historical approach, this study examined the renewal of the Indonesian criminal law which eliminated the death penalty for perpetrators of corruption. The study also discussed the death penalty in Islamic criminal law which, according to the author, corruption is included in the discussion of *Ta'zir,* and not *Hudud.* In this respect, this study also compared this aspect of the Islamic criminal law with the laws of other countries namely China, Thailand, Vietnam, and Iran, where death penalty for perpetrators of corruption is still prevalent.

Based on the aforesaid, the problem statement formulated in this research included two research questions: (1) What is the philosophical basis for abolishing death penalty in corruption offenses in the National Criminal Code in Indonesia? (2) How can the provision of death penalty in the Islamic criminal law can be compared with the laws in other countries that still apply death penalty to perpetrators of corruption?

Theoretical framework

Capital punishment is included in the absolute theory or the theory of retaliation. Under this theory, also known as sentencing theory, punishment is defined as a retaliation to those people who have committed a crime (*because it is sin*) (Muladi, 2002). According to this absolute theory, every crime must be followed by punishment, without bargaining. When someone gets punished for committing a crime, there is no need to look at any consequences that arise with the imposition of a sentence, regardless of whether the community might be harmed (Muladi, 2002). In another theory, stated a theory of prevention of crime, seeks to find the justification for the crime. Also known as a goal theory, it aimed to identify the purpose or motive of a crime and the goal to prevent other people from committing crimes (Priyanto, 2006).

Theories that try to find the basis for justifying a crime solely for a specific purpose can further be divided into two types: a) general preventive theories which aim to achieve the goal of preventing crime through punishment, a deterring mechanism for everyone so that they do not commit crimes; and b) special prevention 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. Hence, the basis for criminal justification according to this theory lies in its purpose, which is not of *quia peccatum est* (because people commit crimes) but *ne peccatum* (so that people should not commit crimes) (Susanto & Ramdan, 2017).

There is another theory of special improvement/prevention which also has a special preventive character. This theory was previously widely adopted; however, it turned out that it was too 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 (Susanto & Ramdan, 2017). Lastly, there exists the combined theory or also known as integrative theory (Priyanto, 2006), proposed by Pellegrino Rossi (1787-1848). Even though Rossi considered retaliation as the principle of punishment and that the severity of punishment should not exceed a just retribution, he believed that punishment made various influences, including repairing something that is damaged in society and general prevention (Priyanto, 2006).

Literature review

Corruption is referred to as a systemic crime; having originated from power or influence, therefore its handling must improve the system that holds that power. This is emphasized as "*Systemic Approach*" (Adji, 2006), which has made corruption to be called an extraordinary crime, because it has a systemic impact. It was further added that "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" (Adji, 2001). Corruption has already been recognized as a transnational crime, since various countries have established institutions such as the Thailand National Counter Corruption Commission (NCCC); Independent Commission Against Corruption (ICAC) in Australia and in Hong Kong; Anti-Corruption Act and Anti-Corruption Agency (BPR) in Malaysia; Prevention of Corruption Act (CPIB) in Singapore with provisions to form a Corrupt Practices Investigation Bureau; and Corruption Eradication Committee (KPK) in Indonesia. All these agencies were formed to investigate independently any individual including the Head of state, the Prime Minister and the President, as was done by the NCCC against Prime Minister Thaksin in Thailand (Hamzah, 2005).

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: "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 handling of corruption should be carried out in an extraordinary manner *(Extra Ordinary Crime*) 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). This was published 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.

In the application of a reverse proof system, namely the burden of proof on the accused (Mispansyah, 2016), this affirmation of the 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."

Mispansyah (2018) reiterates that corruption cases in Indonesia are structured and systematic, and sees there is an increasingly systematic corruption in the law enforcement system in Indonesia which makes the perpetrators not deterrent. 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 Figure 1 (KPK, 2021).

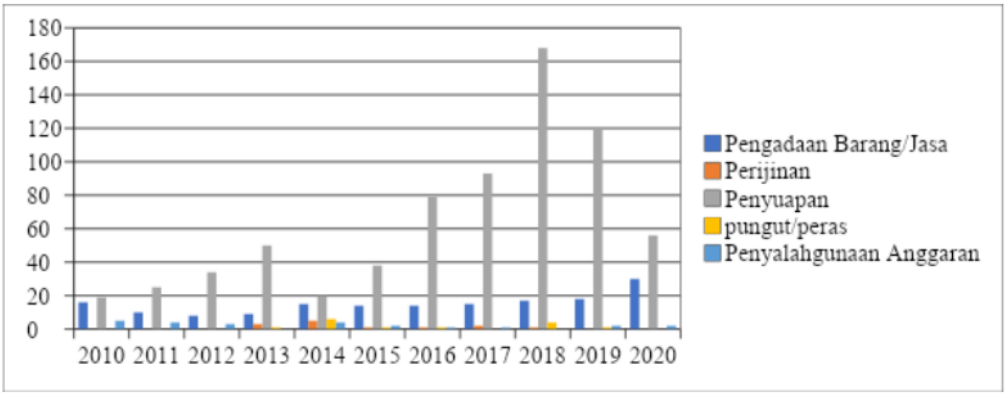

Figure 1 Graph of Corruption Crime Statistics by Case Type

There are several studies that have talked about the imposition as well as elimination of death penalty against corruption crimes in the Indonesian context. For instance, Wiyono (2022) states that the 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. In another study, Fadillah (2020) discusses the subject of death penalty mentioned in several regulations of the Indonesian Criminal Code including Article 340 of the Criminal Code, Article 104 of the Criminal Code; Law no. 5 of 1997 Concerning Psychotropics in Article 59 paragraph (1); Law No. 5 of 2018 (The last amendment to the Law on the Eradication of Criminal Acts of Terrorism); Law No. 31 of 1999, which has been amended in Law No. 20 of 2001, Concerning the Eradication of Corruption Crimes, as regulated in Article 2 paragraph; and like (Fadillah, 2020).

Likewise, another study by Wardani and Wahyuningsih (2017) relates to the formulation of death penalty law against corruption crimes in Indonesia. This study examines the formulation of capital punishment in the PTPK Law and policies for future formulations, but does not discuss the National Criminal Code. This study contrasts with a parallel study by Anjari (2020) on the application of death penalty against convicted corruption cases, which discusses the practice of applying death penalty for corruption according to the New Criminal Code and the Islamic criminal law. A similar study can be sited (Nugraha, 2020) which examines the imposition of death penalty against corruption crimes based on Article 2 Paragraph 2 of Law Number 31 of 1999 concerning Corruption Crimes. Likewise Yuhermansyah and Fariza (2017) discuss the aspects of the PTPK Law and the theories of zawajir and responsibility, which are the goals of punishment in Islamic criminal law.

Hence, there is no dearth of studies on death penalty in the context of the Indonesian Criminal Code; however, the current study examines the 2023 renewal of the special criminal law formulated under the National Criminal Code, and ratified by the House of Representatives of the Republic of Indonesia on January 2, 2023. The Chapter XXXV Special Crimes, in part three Corruption Crimes Article 603, clearly states that corruption unlawfully harms state finances and the perpetrators must be punished with imprisonment for a minimum of 2 (two) years and a maximum of 20 (twenty) years. Article 604 highlights forms of corruption detrimental to state

finances, and abuse of authority, punishable by life imprisonment or imprisonment for a minimum of 2 (two) years and maximum of 20 (twenty) years and a fine of at least IDR 10 million and a maximum of IDR 2 billion. Interestingly, the National Criminal Code no longer can sentence any perpetrator to death in such circumstances. Hence, with the renewal of Indonesian criminal law in 2023, the threat of death penalty has been removed in all types of corruption offences.

Methodology

This research used the normative legal research design based on the historical approach. The method is suitable for the studies that experience a legal vacuum, which can be filled up with approaches, namely the Statute Approach, Conceptual Approach and Comparative law. This study used a statutory and comparative approach with a historical perspective. The legal materials were collected and an inventory was then compiled and a conclusion was found in the form of research findings.

The data was collected from primary, secondary and tertiary sources. The major primary sources included 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), and Law Number 1 of 2023. The secondary data included legal material found in textbooks written by legal experts, legal journals, legal cases, jurisprudence and symposium results, which are related to the topic of this research. Tertiary legal material included legal materials that provide instructions, or meaningful explanations of primary and secondary legal materials such as legal dictionaries and encyclopedias and others.

Results

- *Philosophical Basis for Abolition of Death Penalty in the Formulation of Corruption Crimes in the National Criminal Code of 2023.*

In January 2023, the House of Representatives of the Republic of Indonesia ratified Law Number 1 of 2023/National Criminal Code. The Article 64 of the Code contains the following provisions, namely: (a) principal crimes (b) additional punishment (c) criminal offenses that are specific to certain criminal acts specified in the law. 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.

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 which has so far been more oriented towards the offender and 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 balls that fell on the ground, theft of a bunch of kapok bananas, all of these cases the Panel of Judges have imposed imprisonment sentences. This because there is no other choice for judges in the Criminal Code; besides imposing prison sentences or fines, and therefore, the Panel of Judges prefers imprisonment to be the "prima donna".

By the time National Criminal Code of 2023 was postulated, Corruption had slowly emerged as a disease that can bring destruction to the country's economy; or corrupt practices that occur in Indonesia could cause a lot of losses (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, and extraordinarily outside the provisions of general criminal law. Sukmareni (2018) stated "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. These extraordinary ways are then manifested in the legislative policy into exceptional provisions which are deviant from the general rules of criminal law…" Likewise, Friedman (1975) believed that the work of law in society is inseparable from three interrelated components namely structure, substance and culture. (1) Structure comprises the legal system including the number and size of courts and their jurisdiction; structure also means how the legislature is organized, what procedures the police department follows, and so on; (2) Substance means 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 or legal culture refers to people's attitudes toward law and legal system their belief …in other words, it 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. This means that under certain circumstances, the death penalty can be imposed, for forms of corruption that are detrimental to state finances as per the Article 2 paragraph (1) Law No. 31 of 1999 (Mispansyah Mispansyah, 2016). However, the formulation of this article has a few 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 or judgements 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.

Based on the aforesaid, therefore, the prerequisite conditions 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.

—*Drafting of the National Criminal Code of 2023*

The National Criminal Code of 2023 drafting team, when it was still in draft version, had explained in 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. The reason given was that because their position remains as Special Crimes and 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, 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 (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 (Arief, 2019).

—*Human values and philosophical principles*

The philosophical principle contained in the purpose of sentencing included the principle of balancing the protection of the community/victim and the development/improvement of individuals. It also included the principle of humanity (humanistic), and the principle of forgiveness. It also included the principle of sentencing elasticity, modification/ change/ adjustment/review of sentencing and the principle of prioritizing justice over legal certainty. In the General Guidelines, such as 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 (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, and like. These philosophical 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. When there are no guidelines for implementing a single system, there is also no imposition of imprisonment, no more varied alternatives to imprisonment, conditional punishment cannot be used as an independent/independent sentence, and a rigid system of mitigating/aggravating exists (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 culpability principle (humanity principle) which did 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 (Arief, 2015).

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.

Paragraph (2) of the National Criminal Code states the lightness of the act, the personal circumstances of the perpetrator, or the circumstances at the time the crime was committed. 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 of Islamic Criminal Law with Laws of other Countries that apply Death Penalty to Corruption Actors*

A need has arisen to compare the National Criminal Code with Islamic Criminal Law because there is a very little reference of the Islamic law in the making of the National Criminal Code. For example, in the regulation of adultery acts, Article 411 of the National Criminal Code and Article 412 of cohabitation, with respect to the values of social life in Indonesia, do not adopt the law of adultery. These legal instruments only regulate the prohibition of adultery and the crime of living together outside of marriage as a Complaint Offense, which 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 provisions of Article 411 of the National Criminal Code regulate adultery: Every Person who has sexual intercourse with a person who is not husband or wife, can be convicted of adultery, with imprisonment a maximum of 1 (one) year or a maximum fine of category II. There cannot be any prosecution prosecuted except for complaints against the Crime referred to in paragraph (1 by) the husband or wife who are bound by marriage; or parents or children for people who are not bound by marriage. Likewise, Article 412 of the National Criminal Code which regulates cohabitation, says: 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. There cannot be any prosecution prosecuted except for complaints against the Crime referred to in paragraph (1 by) the husband or wife who are bound by marriage; or parents or children for people who are not bound by marriage.

In the Islamic criminal law sanction system of 'Uqubat', there are four types: namely *hudud, jinayat, ta'zir* and *mukhalafat* (Al-Maliki & Ad-Da'ur, 2011). *Hudūd* is a sanction for disobedience that have been determined by (and become) the right of Allah. It is 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, and *Had* Apostasy (Al-Maliki & 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* (Al-Maliki & 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 seven 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 is a 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 are mature, have reasons and are bound by Islamic laws, both Muslims and ahlul dzimmy; and (7) crime determined based on the thief's confession (Al-Maliki & 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) (Umam, 2014).

Corruption in Islamic Sharia is called an act of treason, including embezzlement of money entrusted or entrusted to someone. The corruptor is called *traitor;* while 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 (Al-Maliki & Ad-Da'ur, 2011). Corruption is therefore 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).

Table 1 presents a comparison between the Indonesian Criminal Law and Islamic Criminal Law in the regulation of capital punishment for corruption offenders:

Table 1: Death Penalty Arrangements in 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 of death penalty*	Corruption in Chapter XXXV Special Crimes Part three.
Islamic Criminal Law	Corruption that causes the collapse of criminal state finances *Death sentence can be dropped.*	In some cases when the amount of corruption is **unclear** or its not mentioned, the death penalty may not be imposed.

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).

While there are sanctions for corruptors, there is also the fear of punishment. The purpose of crime in Islam indeed functions as a penance *(zawabir)*. 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 the prophet: "Usurers, corruptors and traitors are not subject to the punishment of cutting off hands" and their 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).

The punishment for corruption offenses, therefore, ranges from verbal or written warnings or reprimands, returning the proceeds of corruption, embarrassment by announcement, confinement, and even 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 presented in Table 2:

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

Country	Death Penalty Arrangements
China	Two articles under the 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, has 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 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 states "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 one's function or not, shall be imprisoned from five years to twenty years or life imprisonment and fined as from two thousand Baht to forty thousand Baht, or death." • Section 202 states, "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 death."

Vietnam	An offence committed in any of the following cases shall carry a penalty of 20 years' imprisonment, life imprisonment, or death: • The property embezzled is assessed at ≥ VND 1,000,000,000; • The offence results in property damage of ≥ VND 5,000,000,000. An offence committed in any of the following cases shall carry a penalty of 20 years' imprisonment, life imprisonment, or death: • The bribe is money, property, or other tangible benefits assessed at ≥ VND 1,000,000,000; • The offence results in property damage of ≥ VND 5,000,000,000.
Iran	Article 284 of Iran Islamic Penal Code states that those subject to execution include whosoever engaged 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 of Iran Islamic Penal Code states Hadd punishment for *moharebeh* and corruption on earth is one of the following four [punishments]: 1. The death penalty. 2. Hanging on gallows. 3. Amputation of right hand and then left foot. 4. (d) Banishment".

Table 2 shows that death penalty for perpetrators of corruption is still evident in criminal laws or Criminal Codes of countries like China, Thailand, Vietnam and Iran. 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.

The following are officials in China on whom was carried out the death penalty (Zhu, 2012) (Table 3):

Table 3 Senior Chinese officials who have been executed for corruption since 2000

Name	Former Title	Execution Year	Major Crimes
Cheng Kejie	Vice-chair of the National People's Congress Standing Committee	2000	Accepting bribes over Y5 million
Li Zhen	Party secretary of Hebei Provincial National Taxation Bureau	2003	Accepting bribes over Y10 million
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 subordinates
Jiang Renjie	Vice-mayor of Suzhou	2008	Accepting bribes over Y0.1 billion
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.

Thailand is another country that also regulates the death penalty for perpetrators of corruption under the 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. 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.

In Vietnam, the setting the death penalty for corruption is regulated by Vietnam's Criminal Law. Part I entitled Corruption-Related Crimes in Article 353. Embezzlement. Number 4, states: This offence committed in any of the following cases shall carry a penalty of 20 years' imprisonment, life imprisonment, or death, if the property embezzled is assessed at ≥ VND 1,000,000,000; or the offence results in property damage of ≥ VND 5,000,000,000. The Article also provides for a sentence of 20-year imprisonment, life imprisonment, and even death penalty, imposed in 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).

The death penalty is also regulated in Article 354. Titled "Accepting Bribes"(Taking Bribes), 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). Article 354, further says: This offence committed in any of the following cases shall carry a penalty of 20 years' imprisonment, life imprisonment, or death if: the bribe is money, property, or other tangible benefits assessed at ≥ VND 1,000,000,000; the offence results in property damage of ≥ VND 5,000,000,000.

In Iran, too, there is imposition of death penalty for corruption. Iran is 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). Several Articles in the Iran's Islamic Criminal Law regulate acts of corruption under statutory regulations: for instance

"Rasha" (giving bribes) and other forms of bribery is added to the list of crimes. 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 property is 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 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."

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."

Article 3 and Article 5 of Law on Severity of Punishment concern crimes related to bribery, embezzlement and forgery of government funds. For bribes, the Law states: "Every government employee and official, whether in judiciary or administrative or council or city or revolutionary institution and, in general the three powers, as well as in 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 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 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 case of embezzlements, Article 5 of Law on Severity of Punishment states:

—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 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.

—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.

In both the articles mentioned above, there is not a single article that contains the death penalty in it, but corruption is treated as a "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 commits widespread crimes against the masses; crimes against the homeland or external security; spread rumors and/or defamation; commits financial irregularities in State affairs; spreads dangerous and poisonous substances; builds brothels or engages in their operations, causing widespread disturbance of public order; causes a security risk or cause substantial physical harm to individuals or damage to public or private property; and involves in widespread corruption and moral breach." (Mostafaei, 2012). The type of sanction imposed on the acts included in the Mofsed-fil-arz is the *ta,zir* punishment taken from the *Hadd*, which is stated in the Islamic Book of Criminal Law of Iran Part 3 with the title "Hadd Punishment for Muharabbah and Mofsed-fil-arz.

Article 190 concerns 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. Additionally, there are laws that regulate the types of crimes that are punishable by *ta'zir* in the Iranian criminal law system (Project on Extra-Legal Executions in Iran, 2011), namely

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, are 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.

There are a few instances of death penalty given to major corruption scandal. For instance, in 1994, two people Khodadad and Rafighdost were found guilty of 1230 billion rials crime ($702.85 million), and Khodadad was sentenced to death, 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. Amir Khosravi and his team had used fake documents to obtain large loans, some of which were used to buy state-owned companies under the government's privatization plan. Khosravi 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 24, 2014. This case is comparable to the 1995 execution of Fazel Khodadad over a $400 million corruption case in Bank Saderaat (Farzanegan & Zamani, 2022).

Conclusion

The study reveals that in spite of humanitarian attitude adopted by most law makers and various amendments made in the laws, there are still countries that practice death penalty for perpetrators of corruption, depending upon the type of corruption and the amount of money involved. These countries include China, Thailand, Vietnam, and Iran, sampled for this study where death penalty for perpetrators of corruption is still being imposed. The Islamic Criminal Law in Indonesia stands in contrast with Criminal Codes of these four countries. 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 towards humanism values, or human values, with rehabilitation and social integration of convicts. However, the philosophy of abolishing capital punishment in corruption offenses focuses more on three 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.

In order to be able to return the types of death penalty sanctions into Indonesian Criminal Law, it is required to make changes to the provisions of Article 603 and Article 604 of the National Criminal Code, 2023 for example by inserting paragraphs about such circumstances that require imposition of a death penalty. Such circumstances may be based on the value of state financial losses. In short, 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 certain limitations for further research because the National Criminal Code which has been ratified by the DPR RI, in January, 2023 would come in effect only after three years, i.e. in January, 2026. Likewise, it is difficult to implement any recommendation to this effect because the National Criminal Code is still in the realm of criminal law politics and any changes or suggestions will be applicable in future.

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