



ISSN Print: 2541-5298
ISSN Online: 2541-6464

SRIWIJAYA Law Review

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The Death Sentence for Covid-19 Financial Fraud Perpetrators

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Article	Abstract
<p>Keywords: Corruption; Covid-19 Aid Funds; Death Sentence; Pandemic.</p> <p>Article History Received: Jun 4, 2020; Reviewed: Jul 4, 2020; Accepted: Jul 28, 2020; Published: Jul 31, 2020.</p> <p>DOI: 10.28946/slrev.Vol4.Iss2.628.pp261-269</p>	<p>Coronavirus pandemic 2019-2020 or known as Covid-19, which spread throughout the world, including Indonesia, has caused casualties and disrupted the economy. Various attempts were made by the government to overcome the increasingly massive impact of the spread of Covid-19. One of them is by issuing the Government Regulations in Lieu of Laws No. 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling Covid-19 Pandemic. Regarding this assistance provided by the government, it is miserable to have allowed the occurrence of criminal acts of corruption committed by government officials and their instruments. The purpose of this paper is to pay attention to the handling and eradication of corruption of Covid-19 Pandemic aid funds. The method used in this paper is to analyze data qualitatively in relation to this research which is a normative juridical type. The data used are primary and secondary data obtained through the search of legislation and materials related to the issues raised. As a result, this article argues that when there have never been cases of corruption whose actors have been sentenced to death in a normal situation, it might be possible for the misuse of the Covid-19 pandemic aid funds can be sentenced to death.</p>

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INTRODUCTION

Crimes of corruption when viewed in terms of quantity and quality; at this time, it can be said that corruption in Indonesia is no longer an ordinary crime. However, it is already an extraordinary crime. The English proverb says "money is the root of all evil", meaning that money is the root of all evil. This saying is very much in line with the anatomy of corruption because it intersects or is identical with economic, occupational, power and political problems that ultimately lead to material that is synonymous with money.¹ Corruption is one form and dimension of the

¹ Edi Setiadi and Rena Yulia, *Hukum Pidana Ekonomi* (Yogyakarta: Graha Ilmu, 2010).

development of crime which is currently being the centre of attention as well as being a concern of the international community.²

After the Second World War, a new era emerged in which the turmoil of corruption increased in developing countries, and new countries gained independence. Corruption is hazardous because it can destroy social networks, which indirectly weakens national security and the existence of a nation. Reimon Aron (a sociologist) believes that corruption can invite revolutionary turmoil, a powerful tool to discredit a nation.³ Related to the death sentence against these corruptors, Indonesia does not yet have a good track record. Many corruptors were proven guilty, and the court's decision on them had permanent legal force, even in 2011 there were perpetrators of corruption in the Tsunami disaster relief fund, North Sumatra was only decided by a judge examining a case in the Supreme Court (vide Decision No. 356K/PID.SUS/2012) in the form of a sentence of imprisonment of 5 (five) years minus a term of detention, excellent subsidiary confinement within a specific time and money in lieu of subsidiary imprisonment.⁴

Corruption in Indonesia has become increasingly severe and acute, like cancer that has spread to the cells of public organs, spread to high state institutions such as the legislature, executive and judiciary to the State-Owned Enterprises (BUMN). Corruption also occurred during the Covid-19 pandemic today, for example, the alleged corruption that occurred in Medan, Pematang Siantar, Toba, Samosir, and Deli Serdang in North Sumatra. Then the corruption was carried out by a Head of Village and members of the Village Consultative Body in Banpres Village, Tuah Negeri District, Musirawas Regency, South Sumatra.⁵ So many descriptions of corrupt practices are exposed to the surface, both corruption in small amounts and extraordinary amounts. They are especially considering that at the end of the New Order era, corruption was found everywhere, from small officials to high officials.⁶

During the Covid-19 pandemic, the Indonesian government made various efforts to overcome the impact of the increasingly massive spread of Covid-19. One of them is by issuing Government Regulations in Lieu of Law No.1 of 2020 concerning State Financial Policies and Financial System Stability for Handling Covid-19 Pandemic and/or in the context of facing threats that harm National Economy and/or Financial System Stability signed by President Jokowi on March 31, 2020.⁷ The issuance of the Government Regulations is an effort by the government to save health and the national economy with a focus on spending on health, social security networks and economic recovery, including for businesses and communities affected by this coronavirus. The things the government has done to help the community include: for the affected business sectors in the form of postponement of the People's Business Credit (KUR) and Ultra Microloan repayment and postponement of loan payments, especially for small and medium enterprises (SMEs) and other small economic actors. The government has also reduced the corporate PPH tariff from 25 per cent to 22 per cent. The purpose of all this is nothing but to save the country from the crisis and cannot be considered a state loss.

² Setiadi and Yulia.

³ Setiadi and Yulia.

⁴ Setiadi and Yulia.

⁵ *Kompas.co*, 2020, *Mei 21 and June 2*

⁶ Rohim, *Modus Operandi Tindak Pidana Korupsi* (Jakarta: Pena Multi Media, 2008).

⁷ Rakhmat Nur Hakim, "Atasi Covid-19, Jokowi Terbitkan Perpu Soal Stabilitas Ekonomi," *Kompas.Com*, 2020.

Through the Government Regulations, the government disbursed additional funds for the 2020 state budget for handling Covid-19, totalling Rp 405.1 trillion. The details are Rp 75 trillion Health Sector Expenditures; Rp 110 trillion Social Protection; Rp 70.1 trillion Taxation Incentives and People's Business Credit Stimulus (KUR); Rp 150 trillion Financing of the National Economic Recovery Program.

Other government actions are credit restructuring and business guarantee and financing through reallocation and refocusing of the 2020 APBN and APBD in each local government. Of course, such a large sum of Covid-19 countermeasures must be right on target as intended. Government officials both at central and regional levels who are given the mandate to manage these funds must be careful and not abuse their authority so that their use is right on target so that there is no corruption related to funds intended by the government in overcoming the Covid-19 pandemic disaster.

The death sentence will be imposed on government officials who abuse the Covid-19 Mitigation Fund in a state of disaster as it is currently happening. The threat of a death sentence is regulated in Article 2 paragraph (2) UU No. 31 of 1999 concerning Eradication of Corruption (Tipikor) which threatens the death sentence for corruptors in certain circumstances. Thus, government officials who commit criminal acts of corruption in the Covid-19 Prevention aid funds during the pandemic will be sentenced to death.

Chairman of the Corruption Eradication Commission (KPK) Firlil Bahuri once warned that committing a criminal act of corruption during a disaster, such as a coronavirus pandemic that occurred at this time, could be threatened with a death sentence. "We are facing the Covid-19 outbreak. Really, some people are still corrupt, do not have empathy for the Republic of Indonesia." Firlil Bahuri on one occasion also gave direction to all regional heads in Indonesia related to the prevention of corruption in the procurement of goods or services in the acceleration of handling Covid-19. And he reminded that the procurement of goods or services related to disaster needs is the responsibility of the Budget User (PA), and the KPK requested that there be no excessive fear to hamper disaster management. Thus it can be stated that the procurement of goods and services in the handling of Covid-19 is carried out as well as possible, but still follows the applicable rules so that there is no misuse of the procurement of goods or services and there is no corruption.

Lord Acton once made a phrase that connects "corruption" with "power", that is "power tends to corrupt, and absolute power corrupts absolutely" that power tends to corruption and absolute power tends to absolute corruption.⁸ That is, power is a very vulnerable part of the disease of corruption. This implies that power can be used as a tool that can make it easier for the leader to transform into a corruptor.

Corruption has become a severe problem in Indonesia because it has spread in all sectors and sectors of community life in a widespread and systematic way. Corruption is a clear manifestation of violations of the social rights of the people who are beginning to be endemic and systemic.⁹ Corruption is also carried out by officials or former heads of government during his reign or leadership, even after not serving (high profile crime) and most of the proceeds of corruption

⁸ Ermansyah Djaja, *Memberantas Korupsi Bersama KPK* (Jakarta: Sinar Grafika, 2008).

⁹ Explanation of Law Number 31 of 1999 Jo. Law Number 20 of 2001, 2nd Paragraph.

are stored abroad.¹⁰ Corruption is also one of the root problems that exacerbate the economic crisis that occurred in this country and impedes the operation of the legal system mandated by law.

During the Dutch colonial period, the crime was still simple such as bribery or forcing someone to give something to a civil servant or official. However, this situation then changes along with the times. One of them is that which can subvert the new order regime, by the spread of corruption, collusion and nepotism in all levels of Indonesian society.

RESEARCH METHODS

This research is normative juridical research that is legal research using secondary data as a primary material by searching for regulations and literature relating to the regulation of the death sentence,¹¹ and the statute approach is legal research that provides an angle view of problem-solving analysis in legal research viewed from aspects of the legal concepts underlying or can be seen from the values contained in the rules that apply and regulate the death sentence against corruption perpetrators of Pandemic Covid-19, so that is a conceptual approach (conceptual approach), i.e. the statutory approach is used by researchers to analyze the application of the death sentence in criminal acts of corruption as stipulated in legislation. The concept approach is used by researchers to analyze the concepts of death sentence in combating corruption and its application.

The data used in this study consist of primary and secondary data. Primary data obtained from the legislation consisting of 1) The 1945 Constitution of the Republic of Indonesia Article 28A - Article 28 J concerning Human Rights; 2) Law Number 31 of 1999 concerning Eradication of Corruption; 3) Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption. 4) Law Number 39 of 1999 concerning Human Rights; 5) Law Number 6 of 2006 concerning Human Rights Courts; 5) the Penal Code. In addition, secondary data were obtained from general criminal law books and special criminal law, legal journals, jurisprudence (judges' decisions), legal dictionaries, legal encyclopedias, and articles related to the death sentence in criminal acts of corruption. Data collection techniques are carried out by studying documents or literature.¹² Documents are written materials or objects related to a particular event or activity.¹³ Document studies are carried out by searching to find data relevant to the legal issues at hand. The data that has been obtained is then recorded, edited, studied, then taken the essence of both the theory, ideas, concepts and related legal provisions. Then all data is recorded using a card system (card system), which is a research card containing notes regarding research results. Then the data is collected, compiled, and grouped according to the problem under study. Data processing is preceded by conducting a selection of data that has been collected, both primary and secondary data. The data is then selected and sorted according to the needs that will be used to analyze and explain the legal issues or issues raised in this study.

¹⁰ Frans H. Winarta, *Suara Rakyat Hukum Tertinggi* (Jakarta: Kompas, 2009).

¹¹ Soerjono Soekanto, *Penelitian Hukum Normatif* (Jakarta: PT. Raja Grafindo, 2004).

¹² Burhan Bungin, *Metodologi Penelitian Sosial, Format-Format Kuantitatif-Kualitatif* (Surabaya: Airlangga University Press, 2001).

¹³ Imam Suprayogo and Tobroni MS, *Metodologi Penelitian Sosial Agama* (Bandung: Remaja Rosda Karya, 2003).

ANALYSIS AND DISCUSSION

The Regulation on Death Sentence for Corruption

A death sentence is a classic form of punishment, which is assumed to be a form of punishment that is capable of deterring those who have not committed a crime. The form of death sentence among some scientists is still a heated debate. Some legal scientists agree that the death penalty has no implications for the deterrent effect,¹⁴ and some others argue that the death penalty is still a punishment that has the power to deter others. The ideal substance of punishment, when applied, is the extent to which the sentence is able to terrorize psychologically to others, not to commit similar acts. In many cases, it is not uncommon for criminals who are recidivists who continue to commit crimes because of the light sentences repeatedly. Often the rejection of the death sentence is only based on the human side of the perpetrators without looking at the human side of the victim him/herself, his/her family, relatives or the community that is dependent on the victim. It is different if the victims' families have forgiven the perpetrators; of course, the verdict can be changed with precise prerequisites.¹⁵ Corruption is an extraordinary crime so that to combat it requires an extraordinary countermeasure by carrying out acts that are extraordinary as well. It is said a crime, corruption as an extraordinary crime caused by the impact arising from acts of corruption is extensive, concerning the welfare of the people who are sacrificed. Therefore, it is natural to impose a death sentence, especially what is corrupted, is the national disaster relief fund.

Death sentence in Indonesia is regulated in the Corruption Act and only contained in one article, namely Article 2 of Law No. 31 of 1999 Jo. Law No.20 of 2001 concerning Eradication of Corruption, which reads as follows:

"1) Any person who unlawfully commits acts of enriching himself or another person or a corporation that can harm the state finances or the economy of the country, is sentenced to life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a minimum fine of Rp. 200,000,000.00 (two hundred million rupiahs) and a maximum of Rp. 1,000,000,000.00 (one billion rupiahs);
2) In the event that the criminal act of corruption as referred to in paragraph (1) is carried out in certain circumstances, the death sentence may be imposed."

What is meant by "against the law" in this article includes acts against the law in the formal sense as well as in the material sense, that is, even if the act is not regulated in statutory regulations, but if the act is considered despicable because it is not in accordance with a sense of justice or norms -normal social life in society, then the act can be convicted. In this provision, the word can be before the phrase "detrimental to the financial or economic condition of the State" indicates that the criminal act of corruption is a formal offence, namely the existence of a criminal act of corruption is sufficient by fulfilling the elements of the act that have been formulated not by the emergence of these consequences. The form of the state financial loss based on Law Number 17 of 2003 concerning State Finance and Law Number 31 of 2009 concerning Eradication of Corruption Crimes according to Eddy Mulyadi Soepardi are:¹⁶

¹⁴ Eddy Rifai, "An Analysis of the Death Penalty in Indonesia Criminal Law," *Sriwijaya Law Review* 1, no. 2 (2017): 190–99, <https://doi.org/10.28946/slrev.vol1.iss2.44.pp191-200>.

¹⁵ Bungin, *Metodelogi Penelitian Sosial, Format-Format Kuantitatif-Kualitatif*.

¹⁶ Maswandi, "Penerapan Hukum Mati Bagi Koruptor Dalam Perspektif Indonesia," *Jurnal Mercatoria* 9, no. 1 (2016).

1. All expenditures of a source of state or regional wealth (can be in the form of businesses, goods) that should not be issued.
2. All expenditures of a source or wealth of the country or region are more significant than they should according to applicable criteria.
3. Loss of resources or assets of the country or region that should have been received (including receipts with counterfeit money or fictitious goods).
4. Revenue from the source/wealth of the country or region is smaller or lower than it should be received (including the receipt of damaged goods or inappropriate quality).
5. The emergence of a state or regional obligation that should not exist.
6. The emergence of a state or regional obligation that is greater than it should be.
7. The loss of a state or regional right that should be owned or accepted according to the applicable rules.
8. The rights of the state or region received are smaller than they should be.

Based on the points stated above, it is clear that the act of corruption is an act of state officials who abuse their authority to seek personal or group benefits so that it can harm the country.

What is meant by "certain conditions" in this provision is a condition that can be used as a reason for criminal prosecution for the perpetrators of criminal acts of corruption, namely if the crime is committed against funds intended for the handling of dangerous conditions, national natural disasters, due to widespread social unrest, economic and monetary crises, and corruption.

Death Sentence for Corruption of Covid -19 Pandemic Aid Funds

Amid the current era of the New Normal, the prevention, treatment and response of the Covid-19 Pandemic require communities' commitment to work together among all parties to be free from this non-natural disaster. To deal with the Covid-19 problem, the government is reallocating funds or adding more from the 2020 State Budget. Therefore, caution is needed in carrying out and guarding the distribution of these funds so that it is not on the wrong direction and/or causes an act that is detrimental to the state which will naturally confront with the law.

The death sentence, as the primary punishment for certain crimes, has long been used by countries in the world, including Indonesia. Based on Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Eradication of Corruption, it is regulated that corruption threatens a maximum sentence of 20 years or a lifetime. There are exceptions if the criminal act of corruption is carried out during a natural disaster, then the threat of punishment could be a death sentence.

Regarding the threat of death sentence that applies to perpetrators of corruption in the context of natural disasters, so far no one has been sentenced to death. Generally, this is related to both burdensome and mitigating reasons, and in many cases, mitigating factors are far more dominant in terms of the highest sentence limits, such as education. Given the increasingly widespread corruption in Indonesia, it is suitable if the death sentence is applied against such perpetrators of corruption. If it is related to the theory of punishment, a crime is imposed because someone has committed a crime. Criminal offence is an absolute consequence that must exist as retaliation to someone who has committed a crime. The basis of criminal justification lies in ex-

istence, or occurrence of the crime itself. Thus the criminal is not a means to an end, but to realize justice.

In the criminal law system, the theories of criminal objectives include:¹⁷

1. Absolute Theory

This theory is developed since the late 18th century which was largely adhered to by German philosophers. This absolute theory considers that punishment is carried out because someone has committed a crime or a crime. A crime received by a criminal or criminal offence is retaliation for an act he has committed. That is if a crime occurs, then there will be criminal sanctions for the perpetrators so that the interests of the community can be protected from the consequences of a crime.

2. Relative Theory or Purpose Theory

Relative theory or purpose theory views that retaliation in absolute theory does not have a significant meaning except only to protect the interests of the community. Relative theory or purpose theory views that criminal imprisonment for the perpetrators of crimes or criminal offences must have a preventive purpose such as give fear so that someone does not commit a crime. Besides, this theory views that criminal conviction must also be based on a consideration of benefits, namely educating perpetrators so that in the future they will not repeat their actions and can become good people in the society.

3. Combined Theory

The combined theory is a combination of the absolute theory and purpose theory. The combined theory adopts the objectives of punishment outlined in these two theories so that the purpose of punishment is in addition to protecting the interests of the community from the consequences of a criminal act (retaliation), the purpose of punishment is to educate the offender so that he no longer repeats his actions and can become a good and beneficial person to the community later on.

Based on these theories, the imposition of the death sentence is a crime that is applied in the Indonesian legal system where Indonesia adheres to a combined theory (a combination of absolute theory and purpose theory). With the situation of the Indonesian state in an alarming condition with the Covid-19 outbreak, of course, the government is trying to restore the condition through New Normal by pouring in an amount of money, and of course, this is expected to be distributed to the rightful people. For this reason, the role of the relevant authorities to indeed carry out the mandate and not misuse the funds as an opportunity to commit corruption is highly expected. Former Chief Justice of the Constitutional Court, Mahfud MD, said that anyone who violates the law would be processed by law, including officials, primarily if found to be corrupt in the middle of this pandemic. Mahfud firmly stated that those who commit corruption amid the Coronavirus pandemic must be punished with the threat of a death sentence.¹⁸ This is reinforced by what was conveyed by the Chairman of the Corruption Eradication Commission (KPK), Firli Bahuri, about the Corona Virus Handling Budget, which is prone to corruption. The vulnerability is related to the handling of Covid-19 which involves many parties such as the Regional Gov-

¹⁷ Muhammad Afdhal Askar, "Pidana Mati Pelaku Tindak Pidana Korupsi Menurut Sistem Hukum Di Indonesia," *Jurnal Ilmiah Syariah* 18, no. 1 (2019).

¹⁸ Edi Yuhernyandah and Zaziratul, "Pidana Mati Dalam Undang-Undang Tindak Pidana Korupsi," *Jurnal Legitimasi* VI, no. 1 (2017).

ernment, Regency, City, Province, which totals 542 and at the same time, 270 regions will conduct regional head elections (Pilkada). Of the 542 funds allocated for handling Covid-19, not all areas were exposed to Covid-19. Firli stressed that government officials or anyone should not try to exploit the Corona Virus Pandemic moment (Covid-19) only to undermine state money, because of the threat of death sentence for those who steal the opportunity to corrupt state money in the midst of the Coronavirus outbreak in the Republic of Indonesia and, no kidding, that is for sure. Therefore, in terms of carrying out tasks in the field for the supervision of the distribution of funds and in the use of this budget, the KPK has formed a task force that has collaborated with a number of parties. To restore Indonesia to a stable state as before in the era of the new normal, cooperation between all parties is needed to oversee the funds channeled to be right on target so that the community is helped to ease the burden of suffering for those whose economy has become chaotic.¹⁹

CONCLUSION

Based on the description as described above it can be concluded that the arrangement of death sentence in the Corruption Law is only in one article, namely article 2 paragraph (2). The article explained that the death sentence could be applied to perpetrators of criminal acts of corruption in "certain circumstances". Therefore, law enforcement officials should be able to apply the death sentence to corruptors in the Covid-19 Disaster Management Fund. Also, the death sentence for corruption actors in Indonesia until now has never been applied, because the law enforcement officials up to now had never demanded and charged Corruption Criminals with Article 2 Paragraph (2) of the Corruption Law, even before the Covid-19 Pandemic period many corruption perpetrators misused the social assistance funds, such as the natural disaster funds (floods, earthquakes, mount eruptions and others). Therefore, so that no party commits a criminal act of corruption amid the Covid-19 virus outbreak, the perpetrators of corruption can be sentenced to death.

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¹⁹ Tim Detikcom, "Tuntutan Mati Menanti Pelaku Korupsi Di Tengah Pandemi," *Detiknews*, April 2020.

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