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Legal Review Of Death Penalty Sanctions And Asset Forfeiture In Corruption Crimes Reviewed From The Perspective Of Justice

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Abstract

The crime of corruption in Indonesia is regulated by Law Number 31 Year 1999 on the Eradication of Corruption, which was later updated by Law Number 20 Year 2001. This research aims to legally discuss the application of death penalty and asset forfeiture in corruption cases, by considering the principle of justice. The research uses a normative juridical method, in which data is collected from various applicable legal regulations, and the results are presented descriptively-analytically. Although the death penalty is regulated in Indonesian positive law, until now its implementation in corruption cases has never been realized. As a result, the applicable law has not fully provided an adequate sense of justice for the state and the people harmed by acts of corruption. On the other hand, the Asset Forfeiture Bill (RUU) as an effort to recover state losses has been proposed. Asset forfeiture as an additional criminal offense is already regulated in Article 10 letter (b) of the Criminal Code. While the death penalty is the main punishment, both have different implementation procedures, but both aim to realize justice. Both the death penalty and asset forfeiture are expected to have a deterrent effect on perpetrators of corruption and reduce the number of corruption crimes in Indonesia.

Keywords: Death Penalty Sanctions, Asset Confiscation, Corruption, Justice Perspective.

INTRODUCTION

The incidence of corruption crimes in Indonesia rises annually. This increase is seen to be even more specific, where Indonesia is included in the top five corrupt countries in the ASEAN group in 2023, according to a report by Transparency International (TI). The IT report shows that Indonesia's Corruption Perception Index (GPI) score has remained stagnant at 34 points on a scale of 0-100 points since 2022, while the global average GPA score is 43 points in 2023. This indicates that Indonesia's score is below global standards, indicating a higher level of corruption than the world average. Based on data from the ICW report the potential state losses due to corruption in the 2012-2022 period reached Rp138.39 trillion. During 2023, the Indonesian Prosecutor's Office handled more than a thousand cases of corruption. In the ASEAN group, this poor achievement makes Indonesia the fourth most corrupt country, a position not much different from 2022 with the same fifth ranking. This data is an important background for this study, where the number of corruption cases increases every year and the country's losses are getting bigger. This tarnishes Indonesia's law enforcement system, which employs punishments that are deemed ineffective in deterring corruption criminals. An examination of the corruption legislation reveals that the death penalty can be a serious and predictable punishment. This can be realized while the asset forfeiture measure is being ratified. These two legislative devices are supposed to help resolve corruption cases in Indonesia. Ideally, the death sentence and confiscation of assets resulting from illegal conduct can be among the sanctions used to deter economic crime criminals. Given that many assets stemming from criminal conduct are continuously enjoyed by perpetrators even after they have served their sentences.

From a legal standpoint, the definition of corruption is explicitly outlined in “13 articles in Law No. 31/1999”, which was later updated through “Law No. 20/2001 on the Eradication of

Corruption." These articles detail the acts that can be considered as corruption offenses, which are ultimately divided into 30 types of crimes. Corruption can be classified into several categories, including acts that cause state financial losses, bribery, embezzlement in employment, extortion, and conflict of interest in the procurement of goods and services. In addition, there are also acts involving improper practices and fraudulent acts in various forms (Yanto, 2017).

The term "corruption" originates from the Latin words corruptio and corruptus, which refer to acts that are bad, decayed, perverse, bribed, and unethical. In Arabic, the term "riswah" signifies theft, greed, immorality, and any deviation from the truth. Corruption is a criminal offense that inflicts considerable damage on the state. The impact of such crimes extends beyond just the government as an administrative body, affecting the broader society as well. Several factors that are expected to improve community welfare, such as infrastructure development, economy, health, and education, will have a large impact if corruption instances grow and rise. Moreover, corruption carried out on a large scale in all sectors with a very high amount of losses will harm the country's finances. Corruption itself is a crime that is included in the category of extraordinary crime because it is able to destroy morals and cause losses that have an impact on the pace of development and close the road to justice, welfare, and prosperity of the Indonesia nation. Currently, Indonesia has never imposed the death penalty on corruption perpetrators, and the asset confiscation bill that is being echoed has not been passed, so the law in Indonesia against corruption crimes is considered insufficient to ensnare the perpetrators as severely as possible. The mandate of the 1945 Constitution Article 1 paragraph (3) states that Indonesia is a State of Law. One type of law that exists is criminal law, which is a whole of rules that regulate crimes and must and provide sanctions for the perpetrators (Tantimin, 2021).

The death sentence is the harshest punishment available for some serious offenses. Indonesia is one of the countries that still carries out the death sentence, both legally and in practice. The history of the death penalty begins with King Hammurabi in the Codex Hammurabi of Babylon in the 19th century. In Indonesia, the death penalty has existed for a long time in the context of military criminal law, used as a response to strengthen the country's defense strategy and defend independence, especially in the period 1945-1949. During the liberal democracy of 1951, the death penalty was retained. The death penalty is one of the world's oldest and most controversial crimes. According to the old Criminal Code and Law No. 1 of 2023, the death sentence is not contained in the main Criminal Code. The death sentence is discussed in a separate article to demonstrate that this type of crime is truly unique as a final resort for protecting society. The death penalty is the most serious offense and must always be threatened with either life imprisonment or a maximum jail sentence of 20 years. Although the death penalty in Indonesia is not mandatory, it remains one of the threat of punishment provided by law so that judges can choose to impose it. Before the judge sentences the death penalty, there are criteria for crimes that can be sentenced to death. The death penalty is regulated in Article 11 Jo. Article 10 of the Criminal Code which was later amended and described in Law No. 2/PNPS/1964. According to the law, the death penalty is the harshest punishment that can be meted out to a person for their conduct, and it can be applied either with or without a court. When the death penalty is applied by a general or military court, it is executed by shooting the victim to death.

Article 10 of KUHP stipulates the death penalty as one of the main forms of punishment. Some types of crimes that are punishable by death according to the Criminal Code include: treason with the aim of killing the head of state, inviting a foreign country to attack Indonesia, providing assistance to the enemy when the country is at war, and killing the head of a friendly country. In addition, other crimes that can be subject to the death penalty include premeditated murder, theft with violence committed by more than one person resulting in serious injury or death. The death penalty is also applied in cases of narcotics abuse according to Law No. 35 of

2009, corruption crimes that result in large losses in accordance with Law No. 31 of 1999, and gross violations of human rights under Law No. 26 of 2000.

The death penalty is placed as an ultimum remedium, which is a form of final punishment considered by a judge only if the other punishment is deemed to be ineffective in achieving the goals of the penal system. There are specific limitations in imposing the death penalty, including there must be aggravating circumstances, without any mitigating circumstances, examination of alleged torture, sadistic treatment, cruel motives, and not targeting victims who are vulnerable groups.

The law that regulates corruption crimes is Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. In the Law, there are three threats that can be imposed on corrupt defendants, namely:

1. The death penalty can be imposed on individuals who intentionally break the law by enriching themselves, others, or corporations at the expense of the State's finances or economy, as stated in Article 2 paragraph (1) of Law No. 31 of 1999, as well as Law No. 20 of 2001 on the eradication of corruption, under specific circumstances. These circumstances, detailed in the law's explanation, include crimes involving funds designated for managing dangerous situations, national disasters, widespread social unrest, economic crises, and repeated corruption offenses. However, applying these elements is challenging, as current corruption cases often fail to meet these criteria, overlooking the broader impact on the nation, especially on the people indirectly harmed by corruption. Although the law allows for the death penalty in certain corruption cases, judges are limited by the provisions outlined in Article 2 paragraph (2) of the Corruption Law and may not impose such sentences except under specific conditions. This issue requires serious attention as corruption escalates and state losses grow, while the law struggles to adequately punish offenders.
2. Other criminal sanctions, including imprisonment and fines, are in accordance with the provisions contained in the Law on the Eradication of Corruption.
3. Administrative sanctions, such as revocation of business licenses or positions, business bans, or other administrative actions in accordance with applicable regulations.

President Joko Widodo has sent Presidential Letter Number R22/Pres/05/2023 and the text of the Asset Forfeiture Bill to the Speaker of the House of Representatives of the Republic of Indonesia with a message that this discussion and instruction should be a top priority. In simple terms, the Asset Forfeiture Bill aims to present a way to recover state losses so that the losses suffered by the state are insignificant. This bill has gone through a long journey since the beginning of 2010. In the 2015-2019 Prolegnas period, this bill was included in the national legislation program, but it was never discussed because it was not included in the bill's priority list. Then, in the 2020-2024 Prolegnas period, the Asset Forfeiture Bill was again included and the Government proposed that this bill be included in the 2020 Prolegnas, unfortunately the proposal was not approved by the House of Representatives of the Republic of Indonesia. In 2023, the government and the House of Representatives of the Republic of Indonesia reached an agreement to include the Asset Forfeiture Bill in the 2023 Prolegnas.

The Asset Forfeiture Bill, promoted as a means to impoverish the corrupt and provide a deterrent effect in corruption cases, was proposed by the "Financial Transaction Reports and Analysis Center (PPATK)" in 2003, in line with the "United Nations Convention Against Corruption (UNCAC)." The bill is seen as a step towards achieving justice through the rehabilitation paradigm (Agustine, 2019). Without the law, corrupt individuals and their families can continue to enjoy the benefits of their crimes, even after the perpetrators have served their sentences. According to the bill, assets that can be confiscated include those acquired from the profits of corruption, whether transferred, converted into personal property, or given to another

person or company, as well as income, capital, or profits derived from such assets. In addition, assets used to commit crimes and other property may be seized in lieu of assets that have already been seized. Asset confiscation can also be applied when the wealth of the corrupt exceeds what can be justified by lawful income or proven sources. The bill sets a minimum confiscation threshold of IDR 100 million and authorizes the Attorney General to confiscate assets controlled by corruptors or other criminals (La Ode & Yulestari, 2024).

Although there are concerns about the potential for abuse of power and violation of human rights, especially property rights, the primary objective of asset forfeiture is to reclaim state assets that have been lost as a result of corruption. The seizure of corruptors' assets is directly related to the extent of financial damage caused to the state. In principle, the seized assets should aim to recover or compensate the state's losses as much as possible (Najib, 2023). Consequently, implementing the death penalty and asset forfeiture can serve as alternative measures in the fight against corruption, as the prospect of severe penalties is anticipated to deter potential offenders from engaging in corrupt activities.

Previous research by Latumaerissa (2014) on "Juridical Review of the Application of the Death Penalty in the Crime of Corruption" concluded that the death penalty, which is the heaviest punishment, is placed as the main punishment in accordance with Article 10 of the law. In addition, the application of the death penalty in Law "No. 31 of 1999 which was amended by Law No. 20 of 2001 concerning Eradication of Corruption is regulated in Article 2 paragraph (2)." However, its implementation depends on certain conditions set by the law. One of the primary challenges in enforcing the death penalty is the insufficient commitment of lawmakers to clearly define the death penalty sanctions in legislation, which impedes its implementation in Indonesia.

Another study by Pranoto et al. (2019) on "Juridical Study of Corruption Asset Forfeiture in Efforts to Eradicate Corruption According to Indonesian Criminal Law" found that asset forfeiture from corruption is one of the most effective legal strategies. If asset forfeiture penalties are implemented successfully, the recovery of state losses resulting from corruption can be achieved more effectively. However, the application of this sanction is constrained by various weaknesses that hinder its effectiveness. Therefore, a criminal law policy regulated in the Corruption Eradication Law is needed, which clearly and explicitly regulates the position of asset forfeiture as the main punishment, the standard for calculating state losses, the agency authorized to determine losses, and the acceleration of the process of confiscating corruptors' assets.

The novelty of this research lies in the juridical study of the death penalty and asset forfeiture in corruption crimes by considering the principle of justice. This research offers a new perspective by combining two types of punishment that have been discussed separately, namely the death penalty as the main punishment and asset forfeiture as a form of state loss recovery. Thus, this research can make a new contribution to the efforts to eradicate corruption in Indonesia by considering the balance between the provision of strict punishment and fair recovery of state losses.

RESEARCH METHODS

The study approach employed to examine the discussed issues is the normative legal method, which emphasizes established legal norms, commonly known as *ius constitutum* (Soekanto & Mamudji, 2009). This approach identifies aspects that relate to the relevant rules. In this article, the findings are presented in a descriptive-analytical format, enabling the author to provide an extensive overview of the topic through thorough analysis. The study uses a normative juridical approach by examining current legislation, utilizing a statutory approach, a

conceptual approach, and an analysis of corruption cases in Indonesia where the death penalty was not imposed despite meeting the elements of corruption law (case approach), and a comparing the regulations of the death penalty and asset forfeiture from the standpoint of legal justice. This research method not only facilitates the understanding of the issues at hand but also offers an organized framework for examining the associated normative elements. By employing this approach, the article seeks to provide valuable insights and make a meaningful contribution to the comprehension of the legal issues examined.

RESULT AND DISCUSSION

In Indonesia's legal system, several crimes still carry the possibility of the death penalty. These include Law No. 35 of 2009 on Narcotics, Law No. 26 of 2000 on Human Rights Courts, Law No. 15 of 2003 on the Eradication of Terrorism, and Law No. 20 of 2001 on the Eradication of Corruption. The death penalty for corrupt acts is specifically addressed in Article 2 paragraph (2) of Law No. 20 of 2001. However, to date, the President and the House of Representatives have not agreed on implementing the death penalty for corruption cases. President Jokowi's comments on the death penalty for corruptors remain a discourse, and no court has yet sentenced a corruptor to death. Nevertheless, the threat of the death penalty remains in place for both general and specific crimes under Indonesian law. Article 2 paragraph (1) of the Corruption Eradication Law covers acts of self-enrichment or enrichment of others that harm state finances, while paragraph (2) allows for the death penalty if such acts are committed under certain conditions.

According to Purwaning, the recovery of assets obtained through corruption is grounded in the principles of social justice, meaning that state and legal institutions have the duty and responsibility to ensure the welfare of every individual or society. In cases of corruption that hinder the state's ability to fulfill its duties, the state is obligated to seek the return of unlawfully taken wealth. Asset recovery plays a crucial role in the fight against corruption, as the success of corruption eradication is not only measured by the conviction of perpetrators but also by the effectiveness of recovering the misappropriated state assets.

Death Penalty Sanctions in Indonesia.

The death penalty for perpetrators of corruption is expected to have a deterrent effect and prevent others from committing similar acts. However, to date, the death penalty has never been applied to corruptors in Indonesia even though the Corruption Crime Law (Law No. 20 of 2001) includes the death penalty in Article 2 paragraph (2). This article states that the death penalty can be given if the crime of corruption is committed under certain circumstances. The clause ‘certain circumstances’ in this article needs to be clarified. According to the Chairman of the KPK, Busyro Muqoddas, there are several criteria that must be considered before giving the death penalty to corruption offenders, namely: a. The value of state money corrupted is more than Rp 100 billion and harms the people; b. The perpetrator is a state official; c. The perpetrator has repeatedly committed acts of corruption.

Examples of cases of corruption cases in times of disaster without a death sentence which is included in corruption which, according to the author, is in accordance with the provisions of Article 2 paragraph 2 of Law No. 20 of 2001.

a. Corruption of Tsunami Disaster Relief Funds in Nias.

In 2011, former Nias Regent Binahati Benedictus Baeha was implicated in a corruption case involving Rp 3.7 billion of tsunami relief funds out of Rp 9.4 billion allocated. Alongside Binahati, other suspects, including a Nias DPRD member, were tried. Initially sentenced to 8 years in prison by the Corruption Court in Medan, Binahati's sentence was later reduced to 5

years and a Rp 200 million fine, or an additional 4 months of imprisonment, by the Supreme Court.

b. Eks Member DPRD Mataram.

In September 2019, Muhir, a former Golkar faction member of the Mataram DPRD, was arrested by the Mataram District Attorney's Office for illegal levies related to Rp 4.2 billion in project funds from the 2018 APBD. These funds were designated for repairing 14 schools damaged by an earthquake in Mataram. Muhir was sentenced to 2 years in prison and fined Rp 50 million by the Mataram Corruption District Court.

c. Corruption of Water Supply Projects in Disaster Areas.

The KPK arrested eight officials from the Ministry of Public Works and Housing for bribery in SPAM projects in disaster-struck areas like Donggala and Palu. Suspects include Anggiat Partunggul Nahot Simaremare, Meina Woro Kustinah, Teuku Moch Nazar, and Donny Sofyan Arifin, accused of accepting bribes, while Budi Suharto, Lily Sundarsih, Irene Irma, and Yuliana Enganita Dibyo are suspected of offering bribes. The total bribes amounted to Rp 5.3 billion, USD 5,000, and SGD 22,100, 10% of the Rp 429 billion project value. Court sentences include Anggiat with 8 years and a Rp 400 million fine, Meina with 5.5 years and a Rp 300 million fine, Nazar with 8 years and a Rp 500 million fine, and Donny with 5.5 years and a Rp 300 million fine.

d. Corruption in the Procurement of Reagents and Consumables for the Handling of Avian Flu Virus.

The KPK has named several suspects in the alleged corruption case involving the procurement of reagents and consumables for avian influenza under the 2007 State Budget. The suspects include Freddy Lumban Tobing, President Director of PT Cahaya Prima Cemerlang (CPC), Ratna Dewi Umar, Director of Basic Medical Service Development at the Ministry of Health, Siti Fadilah Supari, former Minister of Health, and Tatat Rahmita Utami, Trading Director of PT Kimia Farma Trading Distribution (KFTD). The court sentenced Freddy to 16 months in prison and a Rp 50 million fine, Ratna Dewi Umar to five years in prison and a Rp 500 million fine, and Siti Fadilah to four years in prison, a Rp 200 million fine, and Rp 550 million in restitution, with additional confinement.

e. Corruption Related to COVID-19 Pandemic Social Assistance Funds.

The KPK has named Minister of Social Affairs Juliari Peter Batubara and four others as suspects in a bribery case related to COVID-19 social assistance. Juliari is accused of receiving Rp 14.5 billion in bribes, with Rp 8.2 billion from the first period and Rp 8.8 billion from the second period of aid. The other suspects include Matheus Joko Santoso and Adi Wahyono, Commitment Making Officials for the social assistance, and Ardian I M and Harry Sidabuke, suppliers for the program. Juliari faces charges under Article 12 or Article 11 of the Corruption Eradication Law, while Matheus and Adi face similar charges, and Ardian and Harry are charged under Article 5 or Article 13 of the same law.

Examples of corruption cases with a loss value of more than 100 billion which massively harm the state and society's finances.

a. Alleged corruption involving PT Timah Tbk with state losses of up to Rp 271 trillion occurred during the 2015-2022 period. This corruption case is related to the tin commodity trading system within the mining business permit (IUP) area of PT Timah.
b. The BLBI case with losses of Rp 147.7 trillion occurred during the monetary crisis that hit Indonesia in 1997. At that time, dozens of banks experienced bankruptcy due to a surge in debt and a weakening of the rupiah exchange rate against the US dollar.
c. Corruption in land grabbing in Riau with losses of Rp 39.7 trillion involved the owner of PT Duta Palma Group, Surya Darmadi, and the former Regent of Indragiri Hulu for the 1999-2008 period, R. Thamsir Rachman. Surya Darmadi is suspected of corruption in the seizure

of 37,095 hectares of land in the Riau region through PT Duta Palma Group, which harmed the state.

d. The corruption case of PT Trans-Pacific Petrochemical Indotama (TPPI) with state losses reaching Rp 37.8 trillion.

The next corruption case with the largest state loss value is the condensate corruption case involving PT Trans-Pacific Petrochemical Indotama (TPPI). In this case, the state suffered losses of up to Rp 2.7 billion United States dollars or equivalent to Rp 37.8 trillion. On the other hand, there are still a number of corruption cases that cause state losses in the calculation of tens to hundreds of trillions of rupiah. In fact, Rp 1 trillion in state losses alone, if realized in the form of subsidized houses for Rp 180 million, can buy around 5,555 houses.

From this analysis, it is appropriate that the execution of the death penalty based on justice does not have to be contained in Article 2 paragraph 2 of the Corruption Law, but can be aimed outside the weighting clause of certain circumstances. The death penalty can be imposed outside of these provisions based on the level of damage and systemic impact, including the adverse impact of corruption on a country's economy. Corruption hampers economic growth, causes low levels of investment, and results in inefficient allocation of resources, so that state revenues cannot be used to improve people's welfare. If corruption continues to occur in the long term, then the impact can be very detrimental to society and the country as a whole. The death penalty for corruption can be found in several countries that have implemented it, such as China. China is known as one of the countries that is very strict in cracking down on corrupt perpetrators who have been proven to be detrimental to the country. The death penalty has been applied to Liu Zhijun, China's former Minister of Railways, who was found guilty of corruption. The imposition of the death penalty has become increasingly common in China since Xi Jinping took office. Another example is Malaysia, which has implemented severe punishments, even the death penalty, for corruption perpetrators since 1961 with the Prevention of Corruption Law. In 1997, Malaysia began imposing hanging sentences for corrupt perpetrators.

Analysis of the Application of Asset Forfeiture in Corruption Crimes in Indonesia.

Confiscating the proceeds of corruption crimes is a legal action aimed at seizing and recovering assets and items acquired through corruption. This process seeks to compensate for state losses and deter future wrongdoing. The procedure for asset confiscation in corruption cases is governed by Law No. 20 of 2001 on the Eradication of Corruption Crimes. Confiscation is carried out through a court trial involving the public prosecutor and the judge, with the prosecutor responsible for proving the occurrence of a corruption crime. The state or authorities can seize various forms of assets, including money, property, or other valuables. Recovering these assets helps to offset the financial damage incurred by the state. The term "asset" originates from the UK and refers to: 1. A valuable person or quality; 2. An owned item, especially property, that can be sold to settle debts (Suranta, 2010). Romli Atmasasmita explained that the meaning of the term "criminal assets" is that criminal assets are seen as the subject and object of criminal law. Assets as criminal law subjects are assets that are used as a means to commit criminal acts or that assist or support the preparation and planning activities of a criminal act. Meanwhile, assets as objects of criminal law are assets that are the result of a criminal act. The juridical aspect of the term "criminal assets" has legal consequences where criminal assets are seen as "separated" from their owners (perpetrators of criminal acts) who have controlled (not owned) the assets.

If enacted, the Asset Forfeiture Bill will serve as a key legal framework for tackling cases involving substantial funds, such as corruption. The bill outlines that assets eligible for seizure include: a. Assets valued at a minimum of IDR 100,000,000 (one hundred million rupiah); or b. Assets obtained from crimes punishable by imprisonment of four years or more. In Indonesia's criminal law, the regulations for confiscating assets related to corruption are detailed in Article

18 of the Law on the Eradication of Corruption Crimes. Criminal Asset Forfeiture, or Asset Forfeiture, is the state's legal mechanism to forcibly assume control and/or ownership of assets obtained through criminal activities, based on a court decision that is final and binding, independent of any criminal penalties imposed on the perpetrator.

Legal politics is a strategy carried out by the government through authorized institutions to pass the desired regulations and can represent the values that exist in society to achieve the desired goals. One aspect of legal politics is the juridical aspect. The mechanism of asset forfeiture in Indonesia's legal system consists of three mechanisms: criminally by law enforcement officials through legal proceedings and obtaining a final court decision, civil if there is insufficient evidence and the suspect dies but there is a state loss, and administratively through excise, tax, or customs. The Asset Forfeiture Bill is expected to be able to regulate the application of the reverse proof principle so that the burden of proof is no longer in the hands of law enforcement officials, but on the suspect. Corruptors and criminals can be impoverished by asset confiscation if they cannot prove the legitimacy of their acquisitions. Asset forfeiture does not require a judicial process first, and the Prosecutor's Office is authorized to seize assets with or without judicial examination. The lack of a law on asset confiscation is often used by criminals or corruptors to hide the proceeds of corruption.

Article 38 B paragraph 2 of Law 20/2001, the confiscation of assets can be carried out as follows: "*In the event that the Defendant cannot prove that the property as referred to in paragraph (1) was obtained not due to the crime of corruption, the property is considered to have been obtained also from the crime of corruption and the judge is authorized to decide that all or part of the property is confiscated for the state."*

Asset confiscation is carried out when there is evidence that shows that the confiscated assets are the result of a corruption crime (Jaya, 2017). Meanwhile, the form of asset expropriation is carried out when the court decision has stated that the asset is the result of a criminal act of corruption. Based on the decision of the Constitutional Court Number: 003 PUU-IV/2006 dated July 24, 2006, losses to state assets, whether committed or not committed, must still be determined by experts in state assets and state finance by using an analysis of the relationship between personal or individual acts and such losses.

Thus, the confiscation of corruption assets or wealth is a forced action by investigators that aims to prevent the loss of state assets due to crime. Meanwhile, the confiscation of assets or assets confiscated from the proceeds of corruption crimes is carried out based on the decision of a judge who has obtained permanent legal force, as an effort to recover state financial losses or as an additional penalty.

Analysis of Law Enforcement in Corruption Crimes Reviewed from the Aspect of Justice.

According to the Absolute Punishment Theory, a crime is punished simply because it has been committed. Criminal punishment is viewed as a necessary consequence, a form of retribution that must follow the act of crime itself. The justification for punishment is based solely on the occurrence of the crime. The primary aim of criminal justice is to fulfill the demands of justice, rather than to achieve other goals. The death penalty is seen as a fitting retribution for severe crimes, as outlined in the Criminal Code, which serves as the general legal framework. In Indonesia, the death penalty is established in the Criminal Code's General Rules, specifically in Chapter II, Article 10, related to criminal justice. This form of punishment is a legal measure that allows the state or legal system to impose the death penalty for serious crimes such as corruption. Law No. 20 of 2001 was enacted because widespread corruption has not only harmed state finances but also violated the social and economic rights of the community. Consequently, corruption is classified as a crime that requires extraordinary measures for its eradication.

The following are the purposes and functions of the death penalty :

1. Punishment of Revenge.

   Retaliation is the primary goal of the death penalty. One of the claims made is that the death penalty restores justice and acts as a sort of retaliation against victims and society. His defenders contend that severe offenders ought to be punished according to the seriousness of their crimes.
2. Deterrent Effect.

   The death penalty's deterrence effect serves as its second goal. The argument put up by proponents of the death sentence is that it can dissuade potential offenders by creating a fear of death. They contend that the death penalty's existence can lessen the motivation to commit significant crimes.
3. Community Protection.

   The community's protection is the third reason for the death penalty. Some people believe that the death penalty is a useful tool for deterring dangerous offenders and lowering the likelihood that crimes will be committed again. It is anticipated that the death penalty will deter future offenders from carrying out similar crimes.
4. Justice and Equality.

   Providing justice and equality is the death penalty's fourth goal. Some supporters of the death penalty contend that applying the death penalty to some criminals is an equitable and just way to resolve legal disputes. They contend that severe offenses call for harsh penalties that are appropriate.
5. Rehabilitation is not possible.

   Rehabilitation is the death penalty's fifth objective. Some advocates of the death sentence contend that there are situations in which it is seen to be impossible for a criminal to be rehabilitated. They believe that the only effective way to safeguard society is through the death sentence.

The death penalty is traditionally viewed as a strong deterrent designed to prevent crime by instilling fear in potential offenders. It remains a significant deterrent, aiming to create psychological terror that dissuades individuals from committing similar offenses. Nonetheless, some repeat offenders continue to commit crimes, often due to inadequate punishment. The introduction of the death penalty for corruption in Indonesia has been suggested under Article 2 Paragraph (2) of the Law on the Eradication of Corruption Crimes. However, the broad interpretation of "certain circumstances" within this law has sparked various interpretations and debates among law enforcement, complicating its application. Additionally, issues such as overlapping responsibilities between the police and the KPK can lead to conflicts affecting judgments against corruptors. The debate is further fueled by societal divisions, with some arguing that the death penalty infringes on human rights. Despite this, the principle of lex posteriori derogate legi anteriori (later laws supersede earlier ones) suggests that Law Number 39 of 1999 on human rights does not apply here, as Law Number 26 of 2006 includes provisions for the death penalty. Therefore, the death penalty is considered compatible with human rights. According to Law No. 20/2001, the death penalty is applicable in specific cases of corruption. This should be accepted as a legitimate aspect of Indonesian law, reflecting the country's values, empirical realities, and legal principles.

According to Saint Thomas Aquinas (Andini, 2019) positive law refers to laws that are made or applied in society. Aquinas believed that the law was based on a code of conduct that restricted or prohibited certain actions, relied on reason, and had the power to realize what was right. He divided the concept of justice into two parts: universal justice, which affirms the giving of what is to which man is entitled, and special justice, including distributive, exchange, and

retributive justice. In the context of the death penalty, Aquinas associates it with corrective justice that requires the imposition of a commensurate punishment for the perpetrator of the crime. He emphasized that a fair positive law must meet several conditions, including: being ordered or promulgated for the public good, stipulated by legislators who do not abuse their authority, and providing a commensurate burden for the benefit of the public good. These principles of natural legal justice serve as a regulatory standard for positive law, providing a basis for evaluating judicial decisions. Thus, in the context of the death penalty for corruption in Indonesia, it can be assumed to be a characteristic of positive law. However, if the death penalty is no longer considered a characteristic of positive law at the level of specificity as explained in article 2 paragraph 2 of Law No. 20/2001, then the principle of the value of justice in this aspect is not covered by the content of the positive law.

Article 18 of the Law on the Eradication of Corruption Crimes outlines the provisions for criminal sanctions related to the confiscation of assets obtained through corruption. According to Article 18 (1), in addition to other penalties specified in the Criminal Code, sanctions include the seizure of both tangible and intangible movable property, as well as immovable assets used in or derived from corruption crimes. This also encompasses companies owned by the convicted individual where the corruption occurred, along with any replacement assets. Normatively, Article 18 (1) letter a is intended to be an effective legal tool for recovering state losses caused by corruption. It is seen as a suitable measure for achieving justice within the legal framework. However, the article's limitation is that it applies only as an additional penalty rather than a primary one. As a nation that has ratified the "United Nations Convention Against Corruption (UNCAC)", Indonesia is encouraged to incorporate key principles of asset forfeiture into its legislation. It is crucial to establish a clear and specific definition within the Asset Forfeiture Law to prevent ambiguity and ensure precise interpretation.

Another opinion was put forward by Utrecht, an expert in criminal law, who distinguishes between the principal crime and the additional crime as follows:

1. In accordance with the term "additional" located after the word "punishment", additional punishment can only be imposed in conjunction with one main punishment. If the judge cannot impose one main penalty, then he cannot impose an additional penalty either.
2. Additional penalties are optional. Even if the judge is confident that the defendant is guilty, he must establish one main sentence. However, judges are not required to impose additional penalties; This decision became his prerogative. However, there are exceptions where the Criminal Code provides for the imperative confiscation of goods in some situations. In such cases, the judge is required to enforce the forfeiture. Examples can be found in articles 250 bis, 261, and 275 of the Criminal Code (Utrecht, 1987).

The next opinion was put forward by Joko Prakoso (Prakoso, 1988) that additional crimes cannot be imposed separately, but must be enforced in conjunction with the primary penalty. This means that the type of principal penalty must be enforced together with the additional crime that stands alone, and conversely, the imposition of the additional penalty must be concurrently with the principal penalty. Therefore, it is necessary to immediately make changes to the formulation of the Law on the Eradication of Corruption, especially in the provisions that regulate criminal sanctions for the confiscation of corrupt assets. When the Asset Forfeiture Bill is passed into law, the state can confiscate assets suspected of being the result of the crime without the need to punish the perpetrators based on a court decision (non-convicted based). This, according to the author's analysis, is a tangible form of enforcement of the second and fifth precepts of Pancasila. The Asset Forfeiture Law affirms corrupt practices that are contrary to human values by returning the rights of the people to the people, because that is where the principle of justice is rooted in the efforts to recover state losses. Nevertheless, the death penalty

serves as a measure by the state to deter perpetrators of corruption and to reinforce legal certainty in the pursuit of justice in combating corruption offenses.

Indonesia's legal system is based on civil law, or the legal system of Continental Europe. Its history, legal politics, sources of law, and system of law enforcement all demonstrate this. The Indonesian laws that are in force will be directly impacted by the judicial system, particularly with regard to the enforcement of asset forfeiture. As per the author's analysis, the common law system mandates the burden of proof for criminal asset forfeiture to be beyond a reasonable doubt or intimate conviction. This implies that the defendant must be found guilty beyond a reasonable doubt and the assets must be the consequence of their criminal act (Harahap, 2006). Conversely, asset forfeiture under the civil law legal system relies on a negative legal proof system (negatief wettelijk stelsel), which calls for proof based on legally admissible evidence and the judge's confidence derived from that evidence in order to establish the defendant's guilt or innocence. Since asset confiscation measures related to the proceeds and instruments of a crime can only be implemented once the offender has been convicted by the court, the application of personal asset confiscation is limited (Husein, 2010).

The death penalty is a severe criminal sanction that invariably causes significant suffering or negative consequences. It is imposed by authorities on individuals convicted of criminal acts as defined by the law. The aim of criminal penalties is to restore the moral equilibrium that has been disturbed by criminal activity. Because the criminalization process involves moral considerations, it often lacks precise measurement. The death penalty serves as a strong deterrent, allowing the government to safeguard public interests and maintain order. In contrast, asset confiscation involves tangible measures where losses can be quantified and addressed. The goal of asset forfeiture is to return the perpetrator to their original state before the crime occurred, thereby compensating for the damage caused. To achieve this, a specialized state institution should be established to manage state asset recovery. This institution would be responsible for the legal confiscation of assets acquired through corruption, operating under the oversight of the Attorney General’s Office to ensure proper execution.

CONCLUSION

Indonesia, as a country governed by the rule of law, is committed to upholding legal protection and certainty through principles of justice and truth, as outlined in the Preamble to the 1945 Constitution. The death penalty for corruptors is seen as a last resort to curb and potentially prevent the spread of corruption. However, the effectiveness of this penalty, as prescribed by law, has not yet been fully achieved. The intention behind imposing the death penalty on those convicted of corruption is to serve as a strong deterrent, deterring others from committing similar offenses. Yet, it cannot be automatically applied to every corrupt individual, as the law specifies certain criteria that must be met for a death sentence to be imposed. Traditionally, asset forfeiture is applied to crimes involving the use or acquisition of property and is considered an additional penalty, as outlined in Article 10 of the Criminal Code. Both the death penalty and the Asset Forfeiture Bill are seen as potential solutions to enhance justice and stabilize the country's finances. However, effective implementation requires collaboration between the government and the House of Representatives, focusing on national interests to strengthen anti-corruption efforts and ensure justice. Despite the growing number of corruption cases in Indonesia, the death penalty for corruptors who severely impact the country's finances and economy has not yet been applied, and the Asset Forfeiture Bill remains unpassed.

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