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POLEMICS OF LEGAL SANCTIONS AGAINST CORRUPTION IN INDONESIA

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Abstract

The practice of power mentioned as not siding with the people and which is not fair is manifested in the form of actions that are detrimental to the state such as collusion, corruption and nepotism which are increasingly rampant everywhere. The Criminal Act of Corruption which has become a current political issue since the past until now, has become the government's concern and also our common concern to be overcome. The birth of Law Number 3 of 1971, followed by Law Number 28 of 1999, amended by Law Number 31 of 1999 then amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, became the basis for handling corrupt behavior in Indonesia, however all of these laws and regulations are considered unable to overcome the conditions of corrupt practices. On this basis, it is used as the focus of this study, the aim is to realize welfare and justice for all people, these noble ideals, require the best legal system to overcome it. This study is desired as a manifestation of efforts to improve the applicable legal system. The improvement of the legal system is intended, with the hope of overcoming corrupt practices that occur in order to improve the bureaucratic service system that is clean and free from nepotism, collusion, corruption as desired by the people.

Keywords: *corruption; legal sanctions; justice; legal reform; and public welfare.*

Abstrak

Praktik kekuasaan yang dimaksud tidak berpihak kepada rakyat dan tidak berkeadilan tersebut terwujud dalam bentuk tindakan-tindakan yang merugikan negara seperti kolusi, korupsi dan nepotisme yang semakin marak dimana-mana. Tindak Pidana Korupsi yang menjadi isu politik terkini sejak dulu hingga sekarang, telah menjadi perhatian pemerintah dan juga perhatian kita bersama untuk segera diatasi. Lahirnya Undang-Undang Nomor 3 Tahun 1971, yang dilanjutkan dengan Undang-Undang Nomor 28 Tahun 1999, diubah dengan Undang-Undang Nomor 31 Tahun 1999 kemudian diubah dengan Undang-Undang Nomor 20 Tahun 2001 tentang Pemberantasan Tindak Pidana Korupsi, menjadi dasar penanganan perilaku korupsi di Indonesia, namun demikian semua peraturan perundang-undangan tersebut dinilai belum mampu mengatasi kondisi praktik korupsi. Atas dasar tersebut, maka dijadikan fokus kajian ini, tujuannya adalah untuk mewujudkan kesejahteraan dan keadilan bagi seluruh rakyat, cita-cita luhur tersebut, memerlukan sistem hukum yang terbaik untuk mengatasinya. Kajian ini diinginkan sebagai wujud dari upaya perbaikan sistem hukum yang berlaku. Perbaikan sistem hukum dimaksudkan, dengan harapan dapat mengatasi praktik KKN yang terjadi dalam rangka memperbaiki sistem pelayanan birokrasi yang bersih dan bebas dari nepotisme, kolusi, korupsi sebagaimana yang dikehendaki oleh masyarakat.

Kata kunci: korupsi; sanksi hukum; keadilan; reformasi hukum; dan kesejahteraan publik.

INTRODUCTION

The formation of the Indonesian state with a noble goal, namely to encourage the creation of general welfare under the umbrella of the Unitary State of the Republic of Indonesia based on Pancasila. These goals and ideals are reflected in the opening of the 1945 Constitution of the Unitary State of the Republic of Indonesia in paragraph 4 (four) which states "then from that to form an Indonesian State Government that protects all the Indonesian people and all of Indonesia's territory and to advance general welfare, educate the life of the nation and participate in implementing world order based on independence, eternal peace and social justice (The 1945 Constitution of the Republic of Indonesia, 2000).

The welfare of all people is the main foundation for every policy maker, including legislative policy as its main task. The goal is to improve the standard of living of the people, which is basically the constitutional right of every Indonesian citizen. The welfare of the Indonesian people today is merely an ideal, without being accompanied by real efforts by state administrators in carrying out the constitutional mandate. One real action is to formulate good legislation, aimed at protecting the entire nation and homeland from all arbitrariness including arbitrariness over the economic rights of the people. Protection of the entire nation is absolute, but must be followed by a good legal basis and apparatus, so that the applicable legal apparatus is absolutely realized, not just with words to protect the entire nation and homeland.

However, (The 1945 Constitution of the Republic of Indonesia, 2000) if it turns out that the people still suffer in the form of inequality in economic rights and this reflects the lack of prosperity of all Indonesian people (Ridwan, 2009). This condition shows a system of government that is not socially just for all Indonesian people. If in Indonesia there is still tolerance for the practice of government power being carried out arbitrarily and not on the side of the people, it means that the government is considered unjust (Ridwan, 2009).

The practices of power mentioned are not on the side of the people and are not fair are manifested in the form of actions that are detrimental to the state such as collusion, corruption and nepotism (KKN) which we have known since the past until now, have become the government's concern and also our common concern, we need to be aware of them. This has become a polemic in the mass media so that a statement has emerged that there is disinformation that has been circulating with a video on social media Youtube entitled "Finally Indonesia applies the death penalty for corruptors". In the video there is also an excerpt from an interview with President Jokowi about the death penalty for corruptors. In fact, the death penalty for corruptors in Indonesia has actually been regulated in Article 2 paragraph (2) of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of

Criminal Acts of Corruption. However, until now the President and the DPR have not reached an agreement on the application of the death penalty for corruptors. President Jokowi's statement regarding the death penalty for corruptors is only a discourse. Until now, no corruptors have been sentenced to death by the court (Disinformation, 2025).

To realize these noble ideals, a good legal system is needed to eradicate criminal acts of corruption, the manifestation of which is the welfare of all Indonesian people. For the legal system that must be renewed, it is hoped that a guideline will be born for the implementation of a clean state free from corruption, collusion, and nepotism as desired in Law Number 28 of 1999. The law contains principles or principles of legal certainty, orderly state administration, public interest, openness, proportionality, and accountability, which are described in the explanation of the article. (3) namely:

1. the principle of legal certainty, namely the principle in a state of law that prioritizes the basis of statutory regulations, propriety and justice in every policy of state administrators;
2. the principle of orderly state administration, namely the principle that is the basis for order, harmony and balance in controlling state administration;
3. the principle of public interest, namely the principle that prioritizes public welfare in an aspirational, accommodating and selective manner;
4. the principle of openness, namely the principle that opens itself to the rights of the community to obtain correct, honest and non-discriminatory information about state administration while still paying attention to the protection of personal, group and state secret human rights;
5. the principle of proportionality, namely the principle that prioritizes the balance between the rights and obligations of state administrators;
6. the principle of professionalism, namely the principle that prioritizes expertise based on the code of ethics and provisions of applicable laws and regulations;
7. principle of Accountability, namely the principle that determines that every activity and final result of the activities of State Administrators must be accountable to the community or people as the holders of the highest sovereignty of the state in accordance with the provisions of applicable laws (Law Number 28,1999).

The principle of accountability, namely the principle that determines that every activity and final result of the activities of State Administrators must be accounted for to the community or people as the holders of the highest state

rights in accordance with the provisions of laws and regulations. The concept is as follows; There are sanctions for the State Money Return policy, namely; 1). Any person who unlawfully commits an act of enriching themselves, others, or a corporation that is detrimental to state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 2 (two) years and a maximum of 20 (twenty) years. 2). Monitoring the process of returning state assets due to corruption, the role of the Corruption Eradication Commission (KPK) has an important role in the process of returning state losses, including in tracing and confiscating assets. Monitoring is carried out by the Ministry of Law and Human Rights. which has an important role in supervising and managing confiscated assets, where the Process of Returning Assets from corruption crimes that are confiscated is managed by Rupbasan and can be reused for the benefit of the state, the Corruption Eradication Commission (KPK) is responsible for managing all assets from corruption crimes reported by state administrators or civil servants to investigators.

RESEARCH METHOD

This paper examines the current state of the evolution of corruption in Indonesia, with various controversies about legal sanctions against the perpetrators. Corruption practices that occur are influenced by various interests, both political interests and the culture of society itself, as well as the various interests of various social groups that exist. On this basis, this study was conducted specifically to analyze the corruption model that occurs by analyzing the appropriate legal policy model. Although there have been several laws and regulations that have been enacted to overcome corruption in Indonesia, they have not been able to overcome it. Although there is a legal clause that requires the death penalty for corruptors, corruption is still carried out. This research is normative juridical in nature with the aim of analyzing the implementation of several laws and regulations that have been in effect and examining policy solutions to overcome the corrupt practices that occur. This study uses a legislative approach, a conceptual approach and a casuistic approach. The study of laws and norms to find the right legal policy solution, a casuistic approach to examine each case of corruption that occurs. The data source obtained through legal materials in the form of primary data in the form of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, data collection is carried out through a literature study and document study basis. The object of the study is about the polemic of the application of legal sanctions against corruptors in Indonesia.

RESULT AND DISCUSSION

A. Death Penalty Politics

Regarding the death penalty for corruptors in Indonesia, commented by President Joko Widodo, responded by Sarifuddin Sudding to President Joko Widodo not throwing the discourse of implementing the death penalty for corruptors to the public. He should have encouraged the government to propose legislation related to the issue. So far, the law on corruption has not imposed the death penalty, except for one article on corruption in the misuse of disaster funds. Previously, Jokowi said the death penalty for perpetrators of corruption could be applied if it was the will of the public (Jokowi Says, 2025).

He said the death penalty for corruptors could be accommodated through the revision of Law Number 20 of 2001 concerning amendments to Law Number 30 of 1999 concerning the Eradication of Corruption. If the community wants it like that, the death penalty is included in the draft of the Corruption Crime Law, but once again if there is a will in the legislature. According to Yasonna, "The Death Penalty for Corruptors is Still a Discourse, while Deputy Chairman of Commission III of the Indonesian House of Representatives Desmond Junaidi Mahesa agrees with the death penalty for corruptors. However, he questioned which people Jokowi meant. The question is which people?" Desmond told reporters, I agree, he added. It is known that the threat of the death penalty is stated in the Corruption Eradication Law. "In the case of a criminal act of corruption as referred to in paragraph (1) being committed under certain circumstances, the death penalty may be imposed," reads Article 2 paragraph (2) of the Corruption Law in the explanation section of the Corruption Law, which means 'certain circumstances' in this provision is intended as an aggravation for perpetrators of criminal acts of corruption if the crime is committed at a time when the country is in danger in accordance with applicable laws, at the time of a national natural disaster, as a repetition of a criminal act of corruption, or at a time when the country is in an economic crisis, while member of Commission III of the People's Representative Council from the National Mandate Party Faction Sarifuddin Sudding asked Jokowi to initiate the creation of a Law on the death penalty for corruptors. (ANTARA FOTO/Reno Esnir) "If Jokowi feels the urgency to impose the death penalty, then the government, the president, initiates the law. "Don't throw it to the public," he said, at the Parliament Complex, Senayan, Jakarta on Tuesday (10/12), while Mahfud MD said, regarding the Death Penalty for Corruptors, sometimes Judges Decide lightly, on the other hand Sudding, who is also a PAN Politician, stated that the application of the death penalty

for corruptors can only be done through a revision of the regulation. The reason is, the current regulation only imposes the death penalty on corruptors in certain cases. (the CNN Indonesia,2023) Law Number 20 of 2001, changes the formulation of the Criminal Act of Corruption in Articles 5 to 12 of Law Number 31 of 1999 by not referring to the articles of the Criminal Code, but directly mentioning the elements of the crime in question by inserting/adding new articles into Law Number 31 of 1999 (Law Number 31 of 1999, 2025):

(1) Article 12A (1) Criminal provisions in Article 5 to Article 12 do not apply to Corruption Crimes worth less than Rp. 5,000,000.00 (five million rupiah), (2) Corruption Crimes worth less than Rp. 5,000,000.00 (five million rupiah), are subject to a maximum of 3 (three) years in prison and a maximum fine of Rp. 50,000,000.00 (fifty million rupiah).

(2) Article 12B (gratification): (1) Gratification to Civil Servants/State Administrators is considered a bribe, if it is related to their position, and is contrary to their obligations/duties with the following provisions: a). the value is Rp. 10,000,000.00 (ten million rupiah) or more where the proof (as not a bribe) is with the recipient (defendant); b). the value is less than 10,000,000.00 (ten million rupiah), then the proof (as a bribe) is on the public prosecutor. The scope of corruption crimes is quite broad, as regulated in Number 31 of 1999 in conjunction with Law Number 20 of 2001, in essence is quite good. However, in the Law, there are still legal problems in the formulation of corruption crimes, where the problems that complicate the operationalization of the Criminal Code as the main system in bridging the eradication of Corruption.

The problems in question include: 1). Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Criminal Acts of Corruption has not formulated legal limitations or legal understanding of criminal acts of corruption regarding conspiracy, while conspiracy contained in the Criminal Code Article 88 is a term regulated in Chapter IX that cannot be operationalized considering that Article 103 of the Criminal Code requires that the provisions in Chapters I to VIII apply to acts that are subject to criminal penalties by other statutory provisions. Likewise, the term "assistance" which is a legal term, has not been regulated in this law. 2). Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Corruption Crimes does not include the qualification of the offense as a “violation” or a “crime” so that the Criminal Code cannot be applied to corruption crimes, especially regarding attempted crimes, because in the Criminal Code only attempted crimes can be punished. In essence, the right to life is the most basic right that cannot be reduced under any circumstances guaranteed by the constitution. On the other hand, the death penalty still exists in positive law in Indonesia to prevent

and create a deterrent effect for perpetrators of criminal acts, one of which is for perpetrators of corruption as stated in Article 2 paragraph (2) of Law No. 20 of 2001 concerning Corruption Crimes, the aggravation of which is the application of the death penalty, even though there is no correlation between the application of the death penalty and prevention efforts and deterrent effects in eradicating corruption, according to the Chairman of the Indonesian National Human Rights Commission, Ahmad Taufan Damanik, when he was a speaker in an Online Discussion entitled "Death Penalty for Corruptors: Is It Appropriate? which was organized by Imparsial with other speakers, Member of Commission III of the Indonesian House of Representatives, Arsul Sani, KPK Spokesperson Ali Fikri, ICW Coordinator Adnan Topan Husodo, Imparsial Researcher Amalia Suri and moderated by Imparsial Researcher Gustika Jusuf (Friday, 12/3/2021). Taufan then assessed that the death penalty is not the right solution to eradicate corruption, because apart from not being effective enough to overcome corruption, it also conflicts with human rights norms. According to Taufan, Indonesia is not only judged on how strong it is in building a prevention and prosecution system against corrupt practices, but will also be judged on how far it has commitment to compliance with human rights standards (Corruption Perception Index Stagnant, ICW, 2025).

Quoting Adnan Topan's opinion from ICW, he stated; China's 2020 Corruption Index (CPI) score, as one of the countries that is actively implementing the death penalty for corruption perpetrators, was recorded at 42 on a scale of 0-100 where a higher value is an indicator that respondents gave a good assessment, while a low value indicates that respondents consider that in their area corruption practices are still high, which means that corruption practices there are still quite high. On the other hand, the countries with the best Corruption Perception Index (between (85-87) namely Denmark, New Zealand, Finland, Singapore, Sweden and Switzerland, (except Singapore which still implements the death penalty but not for corruption crimes), these countries have long abolished the death penalty. Meanwhile, the countries with the worst Corruption Perception Index (between 10-14), namely North Korea, Yemen, South Sudan, Syria and Somalia, are actually countries that implement the death penalty.

From the beginning, the National Human Rights Commission did not agree with the death penalty, because for the National Human Rights Commission the right to life is an absolute human right, in various UN studies it has concluded that there is no correlation between the eradication of criminal acts and the death penalty. Although in the International Covenant on Civil and Political Rights (ICCPR) article 6 paragraph 2 still justifies the death penalty, it is only applied to the most

serious crimes, namely gross violations of human rights, namely genocide, crimes against humanity, war crimes and aggression, and does not include corruption. The UN Human Rights Council resolution actually encourages the abolition of the death penalty. Currently, only a few countries still implement the death penalty, including our country Indonesia (Taufan Damanik). In international forums, Indonesia is considered to have shown good steps, because in the RKUHP it no longer places the death penalty as the main punishment, but rather as an alternative punishment and provides a 10-year review period during which if during that time the death row convict is considered to have behaved well, his sentence can be reduced to life imprisonment or lighter than the initial sentence. However, by re-emerging the discourse of the death penalty for corruptors, Indonesia is again in the international spotlight because it is considered disobedient and does not have a strong commitment to human rights.

B. Politics of legal sanctions for returning state money

In the provisions of the 2023 Criminal Code, Article 6O3 states that "Any person who unlawfully commits an act of enriching himself, another person, or a corporation that is detrimental to state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 2 (two) years and a maximum of 20 (twenty) years and a fine of at least category II and a maximum of (category VI)" (Criminal Code based on Law No. 1 of 2023, 2025).

ICW Coordinator Adnan Topan views that the demand for the death penalty is a reflection of public frustration over efforts to eradicate corruption that have not been carried out effectively so that the death penalty seems to be a shortcut to solving deep-rooted corruption problems. Adna further examines that corruption is a symptom, rather than a disease, of systemic irregularities in the government, private and community sectors (symptomatic). "Handling corruption requires three approaches at once, namely action, prevention and education, as well as shifting the paradigm from following the suspect to following the money (asset recovery as a priority)," he said carefully. "Of course we all have the same commitment to eradicating corruption, especially in corrupt practices that cause misery to the community, so corruption of social assistance funds is something very cruel and very inhumane, which disappoints all parties. But once again, the reflection of social frustration should not be answered with frustration in making policies," said Taufan Damanik. Taufan Damanik emphasizes an effective corruption eradication strategy rather than prioritizing the death penalty as a punishment. According to him, massive and systemic governance improvements from the root of the problem can be a strategy to eradicate corruption. Then in terms of the culture of corruption that is prevalent in society, for example, by intensifying efforts to educate

compliance with the law from an early age and implementing clean government at the government level. KPK spokesman, Ali Fikri, also argued that the death penalty is an aggravation and not the main point in the Corruption Eradication Law. He said that the priority for the KPK is education and prevention, then action. Through efforts to prevent corruption, the potential for state losses can be minimized and through anti-corruption education, a system with more integrity can be built (Komnas HAM, 2025).

A more detailed legal explanation is needed so that the constitutional obligation is truly carried out properly, by creating open, transparent government practices that are always responsible for the interests of the wider community, the end point of which is real welfare for the wider community by referring to the principle of social justice based on the Almighty God. Thus, being able to protect the entire Indonesian nation and all of Indonesia's territory can also mean a hard and real effort to free all Indonesian people from real suffering. To realize this noble ideal, a good legal system is needed to eradicate criminal acts of corruption, the manifestation of which is welfare for all Indonesian people. With the legal system that must be reformed, it is hoped that a guideline will be born for the administration of a clean state that is free from corruption, collusion, and nepotism. and nepotism as required in Law Number 28 of 1999. This law contains the principles of legal certainty, orderly administration of the state, public interest, openness, proportionality, and accountability, which are described in the explanation of article (3) Law Number 28 of 1999 namely: (1) the principle of legal certainty, namely the principle in a state of law that prioritizes the basis of legislation, propriety, and justice in every policy of state administrators; (2) the principle of orderly state administration, namely the principle that is the basis for order, harmony, and balance in controlling state administration; (3) the principle of public interest, namely the principle that prioritizes public welfare in an aspirational, accommodative, and selective manner; (4) the principle of openness, namely the principle that opens itself to the rights of the community to obtain correct, honest, and non-discriminatory information about state administration while still paying attention to the protection of personal, group, and state secrets; (5) the principle of proportionality, namely the principle that prioritizes the balance between the rights and obligations of state administrators; (6) the principle of professionalism, namely the principle that prioritizes expertise based on the code of ethics and provisions of applicable laws and regulations; (7) The principle of accountability, namely the principle that determines that every activity and final result of the activities of State Administrators must be accounted for

to the community or people as the holders of the highest sovereignty of the state in accordance with the provisions of laws and regulations.

Guidelines for the Implementation of a Clean and Collusion-Free State Corruption Nepotism are important and very necessary to avoid the practice of Collusion, Corruption and Nepotism which not only involves officials but also their families and cronies, which if allowed to continue, the Indonesian nation will be in a very disadvantaged position. According to Marzuki Darusman, the spread of Corruption practices (Ridwan, 2009) Collusion and Nepotism have become so widespread that it can be said to be very corrupt. The practice of Corruption, Collusion and Nepotism itself is the provision of facilities or special treatment by government officials/State-Owned Enterprises/Regional-Owned Enterprises to an economic unit/legal entity owned by the relevant official (Ridwan, 2009).

So if this practice is allowed to continue, the people as the sovereign owners of the state will not get their constitutional rights, namely the right to justice and welfare as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, as a replacement for Law Number 3 of 1971. The issuance of this law is expected to accelerate the growth of people's welfare, by overcoming the evil nature of corruption. Corruption is an act that can not only harm state finances but can also cause losses to the people's economy. Barda Nawawi Arief is of the opinion that criminal acts of corruption are very reprehensible, condemned and hated by most people; not only by the people and nation of Indonesia but also by the people of nations in the world (Muladi and Barda Nawawi Arief,1999).

Therefore, as a nation that has the spirit to create prosperity evenly and fairly, it should be able to avoid all forms of corruption. Forms of corruption that are simply and unknowingly often carried out by certain people are expected to become a common enemy that must be eradicated and eliminated from the face of the earth of Indonesia. The forms of corruption referred to by Syed Hussein Alatas as quoted by Nyoman United Putra Jaya have divided them into 7 typologies of corruption, namely (Nyoman Union Putra Jaya,2025):

1. Transactive corruption. Here there is a reciprocal agreement between the giver and the recipient for the benefit of both parties and actively seeks to obtain the benefit for both parties;
2. Extortive corruption, which is a type of corruption carried out by forcing the giver to give a bribe in order to avoid losses that threaten him, his interests, or people and objects that he upholds;

3. Investive corruption, which is the behavior of victims of corruption by extorting. This corruption is carried out to defend themselves, such as providing goods or services without any direct connection to certain benefits, other than the benefits that are imagined to be obtained in the future;
4. Nepotistic corruption, which is the illegal appointment of friends or relatives to occupy positions in government, or actions that provide special treatment in the form of money or other forms, which are contrary to applicable norms and provisions;
5. Defensive corruption, here the giver is not guilty but the recipient is guilty. For example: a cruel businessman wants someone's property, then it is not sinful if he gives some of the property to the ruler to save the remaining property;
6. Autogenic corruption is a form of corruption that does not involve other people and is done alone;
7. Supportive corruption here does not directly involve money or other forms of compensation. The actions taken are to protect and strengthen existing corruption.

These forms of corruption, especially in the form of bribery, are a very acute disease for Indonesian society, because in almost every public service institution bribery has become commonplace, which ultimately creates difficulties in detecting corruption, and preventing it. increasingly difficult to do, and corruption continues to grow, infiltrating every aspect of life. It is worth noting and reflecting on what Habibur Rahman Khan said that "the modern world is fully aware of this acute problem. (Barda Nawawi Arief, 2000).The development of corruption in Indonesia is still relatively high, while its eradication is still very slow, Romli Atmasasmita, stated that corruption is also related to power because with that power the ruler can abuse his power for personal interests, family, and his cronies (Barda Nawawi Arief, 2000).

Based on Law Number 31 of 1999 concerning the Eradication of Corruption, the rules regarding the Return of State Financial Losses are regulated in Article 32, Article 33 and Article 34 and Article 38 of Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999. These provisions provide a legal basis for the state represented by the State Attorney (JPN) or the injured party to file a civil lawsuit against the perpetrator of the corruption crime and/or their heirs. The use of civil instruments in the return of state financial losses results in the asset return procedure being fully subject to the applicable civil provisions, both material and formal. The relationship between is regulated in property law

which falls within the area of civil law or civil law (R. Subekti and Tjitrosudibio,1992).

Filing a lawsuit by applying the Civil Law instrument as stipulated in the Civil Code and the Civil Procedure Law HIR/RBg only applies as long as the object is in the territory of Indonesia or on an Indonesian-flagged ship, thus if the object is outside the territory of Indonesia, the issue of ownership and other property rights will be regulated according to the civil law applicable in that country. Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption adopts a repressive law enforcement strategy. Article 4 of Law Number 31 of 1999 confirms this and at the same time regulates the return of state financial losses carried out through prosecution of perpetrators of criminal acts of corruption, the return of state financial losses using criminal instruments according to the Law on the Eradication of Criminal Acts of Corruption (PTPU) is carried out through the process of confiscation, confiscation and criminal fines (Romli Atma Sasmita, 2004).

The laws and regulations, especially Law Number 20 of 2001 concerning the Eradication of Corruption, in the process of returning state financial losses due to perpetrators of corruption are carried out through 3 approaches, namely: 1) Civil Path Civil Lawsuit, namely the State Attorney can file a civil lawsuit with the District Court to return state losses caused by corruption, with the Civil Lawsuit Procedure following the procedures applicable in civil courts, where the State Attorney acts as the plaintiff. This approach through the civil path can be seen in the provisions of Article 32 paragraph (1) which stipulates that assets with a person, whether he is a perpetrator or not a perpetrator of a crime, in the event that the investigator finds and is of the opinion that one or more elements of corruption do not have sufficient evidence, while there has clearly been a state financial loss, the investigator will immediately submit the case files resulting from the investigation to the State Attorney to be filed a civil lawsuit or submitted to the injured agency to file a lawsuit. Meanwhile, Article (2) stipulates that an acquittal in a corruption case does not remove the right to sue for losses to state finances. Article 33 stipulates that in the event that a suspect dies during an investigation, while there has clearly been a loss to state finances, the investigator must immediately submit the case file resulting from the investigation to the State Attorney or submit it to the agency that suffered the loss to file a civil lawsuit against the heirs. Furthermore, Article 38 C stipulates that if after the court decision has obtained permanent legal force (Inkrach Van Gewijde), it is known that there are still assets belonging to the convict that are suspected or reasonably suspected of also originating from corruption that have not been confiscated, the state can file a civil lawsuit against the convict and/or his heirs. 2). Criminal Route, the

Corruption Eradication Law stipulates that in addition to imprisonment, perpetrators of corruption can be subject to fines that vary according to the level of state losses. In addition, in terms of confiscation, it is regulated in Law Number 8 of 1981 concerning the Criminal Procedure Code, in (Criminal Code and Criminal, 2007) Article 38 which regulates that confiscation can only be carried out by investigators with a permit from the local District Court chairman as stipulated in paragraph (1), with the exceptions as stipulated in paragraph (2) without reducing the provisions of Article 39 paragraph.(Criminal Code and Criminal, 2007) (1); about objects subject to confiscation; Article 42.(Criminal Code and Criminal, 2007)) regarding the authority of investigators to order people who control objects that can be confiscated to hand over the objects for the purposes of examination; and Article 273 (Criminal Code and Criminal, 2007) Article (3) which regulates that if the court decision also determines that the confiscated evidence is for the state, other than the exceptions as stipulated in Article 46, the Prosecutor shall attempt to have the object to the State Auction Office within three months to be auctioned, then the proceeds shall be deposited into the State Treasury for and on behalf of the Prosecutor. c) Asset Confiscation Route, Confiscation of Assets from corruption can be confiscated and stored at the State Confiscated Goods Storage House (Rupbasan) which is under the Ministry of Law and Human Rights. Confiscation of State assets with the intention of Returning Replacement Money, namely Corruption perpetrators can also be required to pay replacement money equal to the state losses experienced. Returning State Losses Does Not Eliminate Criminal Punishment with the intention, Returning state losses does not eliminate criminal penalties against corruption perpetrators, but can be a consideration for judges to reduce sentences, where the purpose of returning state losses is to restore losses experienced by the state due to corruption. In the case of confiscation of state assets due to perpetrators of corruption, the provisions are regulated in Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (Tipikor) Article 38 (Law Number 31 of 1999) Article (5) which stipulates that in the event that the accused dies before the verdict is rendered and there is sufficient evidence that the person concerned has committed a criminal act of corruption, the law on the demands of the public prosecutor stipulates the confiscation of the goods that have been confiscated. Article 38 paragraph (Law Number 31 of 1999) (6) which stipulates that the decision on confiscation as referred to in paragraph (5) cannot be appealed against, whereas Article 38 b paragraph (2) (Law Number 31 of 1999) which stipulates that in the event that the defendant cannot prove that the assets as referred to in paragraph (1) were not obtained due to a criminal act of corruption, the assets are deemed to have also been obtained from a criminal act of corruption and the judge is

authorized to decide that all or part of the assets be confiscated for the state. In an effort to restore state financial losses using the legal system theory developed by Friedman.

Referring to the legal system theory, there are three elements that form the legal system for returning state financial losses due to perpetrators of criminal acts of corruption, namely: elements of substance, elements of structure and elements of legal culture where these elements have broad, effective and comprehensive characters. These legal structure elements in returning state financial losses include international, regional organizations and institutions within each country that have the authority and competence in the duties and responsibilities of returning state financial losses, while the legal culture elements for returning assets include aspects of awareness and attitudes of the international, regional and national communities.

The Form of Implementation of Corruption Crimes in Efforts to Return State Financial Losses in Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption concerns the types of principal criminal acts contained in Article 10 of the Criminal Code, however the types of additional criminal acts contained in this Law on the Eradication of Criminal Acts of Corruption are not new to the types of Principal Criminal Acts contained in Article 10 of the Criminal Code, however they are contained in Article 18 paragraph (1) of Law Number 31 of 1999 namely: First, Confiscation of tangible or intangible movable property or immovable property used for or obtained from corruption, including the company owned by the convict where the corruption was committed, as well as the price of the goods replacing the goods. Second, Payment of replacement money in an amount that is at most equal to the property obtained from the corruption, Third, Closure of all or part of the company for a maximum of 1 (one) year, Fourth, Revocation of all or part of certain rights or elimination of all or part of certain benefits that have been or may be given by the government to the convict. So regarding how the legal review of the implementation of criminal corruption in efforts to return state financial losses contained in Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, according to the author's view, contains criminal content used by law enforcement officers to eradicate perpetrators of corruption crimes which are considered extraordinary crimes (Extra Ordinary Crimes) are increasingly complex in terms of their criminal provisions, so that they can facilitate efforts to return state financial losses due to their actions, this is proven by the affirmation in various articles that the author has explained above.

C. Monitoring the process of returning state assets due to corruption

The role of the Corruption Eradication Commission (KPK) has an important role in the process of returning state losses, including in tracing and confiscating assets. Monitoring is carried out by the Ministry of Law and Human Rights which has an important role in monitoring and managing confiscated assets, where the Process of Returning Assets from confiscated corruption is managed by the State Confiscated Goods Storage House and can be reused for the benefit of the state, the Corruption Eradication Commission (KPK) is responsible for managing all assets from corruption crimes reported by state administrators or civil servants to investigators. Management and maintenance of these assets require a lot of money. Therefore, the KPK periodically auctions these items after the corruption case is declared final (permanent legal) by the court. There are two types of assets from corruption managed by the KPK, including (This is How the KPK Re-Uses, 2025):

1. Assets resulting from gratification, gratification is one of the seven types of corruption most often committed by corruptors prosecuted by the KPK. Referring to Law Number 20 of 2001, gratification is defined as, "Giving in a broad sense, namely including giving money, goods, rebates (discounts), commissions, interest-free loans, travel tickets, accommodation facilities, travel, free medical treatment and other facilities. The gratification is received both domestically and abroad and is carried out using electronic means or without electronic means."Every state administrator or civil servant who receives gratification is required to report the object so as not to be subject to the criminal act of corruption. The reporting procedure is quite easy, the recipient of the gratification makes a written report by filling out a form (download here). Next, Stage 1 Commitment from the Head of the Agency Stage 2 Preparation of Gratification Control Rules Stage 3 Formation of the Gratification Control Unit (UPG) Stage 4 Monitoring and Evaluation of Gratification Control.
2. Assets resulting from confiscation and seizure, In addition to prosecuting and impoverishing corruptors, confiscation and seizure of assets resulting from corruption is also an effort by the KPK to help return the amount of assets that have been corrupted to the state. In the Corruption Crime Module, it is stated that the process of confiscation and seizure of assets resulting from corruption can be carried out by investigators during the investigation action stage.
3. Auction of corruption assets, Assets resulting from corruption received by the KPK are then stored in the State Confiscated Goods Storage House (Rupbasan) under the Ministry of Law and Human Rights of the Republic of Indonesia. After the action process is complete, the assets will be handed over to the State Assets and Auction Service Office (KPKNL) to be

auctioned publicly. In relation to the task of the KPKNL as a place to auction corruption assets, its existence is to directly see the objects of corruption assets that will be auctioned. The auction process for assets resulting from gratification or confiscation and seizure is carried out separately.

However, the auction procedure remains the same. The stages are as follows: 1) Register. The first stage to participate in the corruption asset auction is to create an account on the Indonesian Auction site owned by the Directorate General of State Assets. When registering, simply fill in your personal data according to the columns provided and then upload a softcopy of your KTP, NPWP, and account number in your own name to the Indonesian Auction site database. 2) Deposit the auction deposit. The next stage is to deposit the auction deposit in full according to the nominal amount set by the DJKN or KPKNL where the asset is located to the Virtual Account (VA) number provided by the system. This deposit must be received by the KPKNL no later than one working day before the auction is held. 3) Make a closed auction bid. The corruption asset auction process is always carried out in a closed manner or closed bidding through the Indonesian Auction site. However, it must be done according to the specified time. For this reason, continue to monitor the Indonesian Auction account or via its e-mail so that you know when the closed bidding for the targeted corruption asset will take place. 4) Make payment if declared the winner. If the auction bid is declared the winner, it is mandatory to pay the purchase price and auction fees no later than 5 working days from the auction. If you decide not to pay off the payment obligations according to the provisions, the deposit that has been paid will be considered forfeited and deposited into the state treasury. On the other hand, if the auction bid is declared the loser, the money that has been deposited will be returned in full to, unless there are transaction fees charged by the bank (then it becomes the responsibility of the auction participant).

D. Urgency of Implementing the Death Penalty and Impoverishing Corruptors

One of the issues that is often debated in the eradication of corruption in Indonesia is the application of the death penalty for perpetrators of corruption. Article 2 paragraph (2) of Law No. 20/2001 states that the death penalty can be imposed under certain conditions, namely if the crime of corruption is committed under certain circumstances, such as when the country is in a state of economic crisis or natural disaster. The application of the death penalty aims to provide maximum deterrent effect for the perpetrators and emphasizes that corruption is a serious crime that is detrimental to the wider community.

In addition to the death penalty, the concept of impoverishing corruptors has also begun to receive attention in an effort to increase the deterrent effect on perpetrators of corruption. Impoverishment of corruptors is carried out through the mechanism of confiscating all assets resulting from corruption and imposing very high fines so that the perpetrators no longer have the resources to enjoy the proceeds of their crimes.

The urgency of implementing the death penalty and impoverishing corruptors is based on the high level of corruption that still occurs in Indonesia, as well as the negative impacts it has on society and the country's economy. In some cases, the sentences given to perpetrators of corruption are considered too light, so they do not provide enough of a deterrent effect. Therefore, the application of heavier sanctions is expected to reduce corruption rates and strengthen integrity in the government system and law enforcement. With strict regulations and the application of more effective sanctions, Indonesia is expected to further strengthen the corruption eradication system and create a more transparent, accountable government that is free from corrupt practices. Strict and impartial law enforcement against perpetrators of corruption will be the main key to realizing clean and integrated governance.

One of the elements of a criminal act of corruption is the existence of state financial losses or state economy which are fundamentally regulated in Article 2 and Article 3 of Law 31/1999jo. Constitutional Court Decision No. 25/PUU-XIV/2016, as follows: (1) Any person who unlawfully commits an act of enriching himself or another person or a corporation that is detrimental to state finances or the state economy, shall be punished with life imprisonment or a minimum imprisonment of 4 years and a maximum of 20 years and a fine of at least IDR 200 million and a maximum of IDR 1 billion. (2) In the case of a criminal act of corruption as referred to in paragraph (1) being committed under certain circumstances, the death penalty may be imposed. What is meant by this provision; Any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position or position that is detrimental to state finances or the state economy, shall be punished with life imprisonment or a minimum imprisonment of 1 year and a maximum of 20 years and or a fine of at least IDR 50 million and a maximum of IDR 1 billion.

The Urgency of Implementing the Death Penalty and Impoverishing Corruptors One of the issues that is often debated in the eradication of corruption in Indonesia is the implementation of the death penalty for perpetrators of corruption. Article 2 paragraph (2) of Law No. 20/2001 states that the death penalty can be imposed under certain conditions, namely if the crime of corruption is committed under certain

circumstances, such as when the country is in a state of economic crisis or natural disaster. The application of the death penalty aims to provide maximum deterrent effect for the perpetrators and emphasizes that corruption is a serious crime that is detrimental to the wider community. In addition to the death penalty, the concept of impoverishing corruptors has also begun to receive attention in an effort to increase the deterrent effect on perpetrators of corruption. Impoverishment of corruptors is carried out through the mechanism of confiscation of all assets resulting from corruption and the imposition of very high fines so that the perpetrators no longer have the resources to enjoy the proceeds of their crimes. The urgency of implementing the death penalty and impoverishing corruptors is based on the high level of corruption that still occurs in Indonesia, as well as the negative impacts caused to society and the country's economy. In several cases, the sentences given to perpetrators of corruption are considered too light, so that they do not provide enough deterrent effect. Therefore, the application of heavier sanctions is expected to reduce the rate of corruption and strengthen integrity in the government system and law enforcement. With strict regulations and more effective sanctions, Indonesia is expected to further strengthen its anti-corruption system and create a more transparent, accountable, and corrupt-free government. Strict and impartial law enforcement against perpetrators of corruption will be the main key to realizing clean and integrated governance.

E. Legal Policy Analysis

1. Penal Policy to Prevent Corruption

As a crime that endangers social life, corruption is always associated with culture or social conditions of society. According to Robert Klitgaard, the main cause of corruption is the giving of gifts which is already a custom (Robert Klitgaard,1998). In line with this opinion, Umi Kulsum is of the opinion that criminal acts of corruption in Indonesia are acts that have become rooted in various aspects of human life, and are considered as if they are a culture (Umi Kulsum, 2009). The term gift that later developed into bribery as if it had become a culture, is something that is very dangerous for the further development of corruption. There is an adage "if someone is suspected of committing corruption and then investigated by law enforcement, then the law enforcement has started corruption at the time of the investigation, because it is during the investigation that bribery occurs to the investigator. This is suspected as a culture that grows due to the mentality of dishonest state officials. This condition is certainly not without reason, because according to Koentjoroningrat, one of the characteristics of the Indonesian people's

mentality is the attitude to achieve goals as quickly as possible, without much willingness to try step by step (Satjipto Rahardjo, 2009).

This mental attitude is what then drives state administrators or precisely law enforcers to commit reprehensible acts, namely bribery. This definition shows that corruption as evil behavior is not a culture, it can even be said that corruption is essentially an anti-cultural act (anti-good habits that should be behavior that can be passed down from generation to generation). As a crime, corruption is essentially the result of a learning process, according to Sutherland, through his famous theory, namely the differential association theory which emphasizes that a crime (including corruption or in his language White collar Crime) is a crime that is obtained by learning, with the proposition: (Paulus Hadisuprapto, 2008) a) Criminal behavior is a behavior that is learned negatively, meaning that this behavior is not inherited). b) Criminal behavior is learned in interaction with other people in a communication process. This communication can be mainly oral or using sign language). c) The most important part of the process of learning this criminal behavior occurs in intimate personal groups. Negatively, this means that communication that is impersonal, relatively does not have an important role in the occurrence of crime). d) If criminal behavior is learned, then what is learned includes; a) techniques for committing crimes, b) certain motives, drives, justifications including attitudes), and c) The direction of the motives and drives is learned through definitions of legal regulations.

In a society, sometimes a person is surrounded by people who simultaneously see what is regulated in legal regulations as something that needs to be considered and obeyed, but sometimes he is surrounded by people who see legal regulations as something that provides opportunities for crime). Someone becomes a delinquent because of access to thought patterns that see legal rules as giving opportunities to commit crimes rather than seeing the law as something that must be considered and obeyed). Differential Association varies in terms of frequency, duration, priority, and intensity). The process of learning criminal behavior that is obtained through relationships with crime and anti-crime patterns that involve all the mechanisms that usually occur in every learning process in general). Meanwhile, criminal behavior is a statement of general needs and values, but this is not explained by those general needs and values, because behavior that is not a crime is also a statement of the same needs and values.

Further developments, corruption is not only a crime that can be committed by White Collar Crime alone but also by professionals, which according to Muladi, include accountants, engineers, legal advisors,

doctors and so on and this category of criminals always involves their expertise in their actions, either in the form of intentional, negligence, dolus eventualis (a kind of recklessness), or in the form of disciplinary violations (Muladi, 1995). Furthermore, according to him, this crime is very interesting because of several dimensions of the mind as follows:(Muladi, 1995) (1) The perpetrators of the crime are members of a legitimate professional organization. (2) By members of other organizations, their actions are considered beyond the pale and unacceptable forms of behavior. (3) However, their actions are often carried out in collusion with other professions. (4) The perpetrators always consider themselves (self concept) not to be criminals, because they are serving the legitimate and commendable public interest. (5) The crimes committed are usually difficult to detect or if they can be detected, prosecution requires evidence that is not easy besides its nature as ambulance chasing. (6) Often members of other professional organizations in certain cases are ambivalent. To prevent corruption as a crime that is dangerous to social life, a cultural change is needed, however, cultural change is a very big change and is not an easy job, even according to Satjipto Rahardjo, this change requires careful study and research (Satjipto Rahardjo, 2009). The change can also be done through a restructuring of the criminal law system that regulates corruption, which is expected to be able to influence the attitudes of the Indonesian people without exception. Cultural change through legal arrangements by Soerjono Soekanto is called social engineering or social planning, namely ways to influence society with a system that is orderly and planned in advance (Soerjono Soekanto, 2002). Social engineering is closely related to the function of law, which according to D. Schaffmeister, law has a creative function if the legal norm deviates from social norms and thus humans will behave differently than before (D.Schaffmeister,et.al, t.th). To create social change through the arrangement of the legal system, good social engineering is needed, where the law that will be used must truly reflect the protection of public interests. As an illustration, (Andi Hamzah, 2005) For this reason, efforts are needed through penal policy. According to Marc Ancel, penal policy is a science that has a practical goal to enable positive legal regulations to be formulated better and to provide guidance not only to lawmakers, but also to courts that apply laws and also to organizers or implementers of court decisions (Barda Nawawi Arief, 2008). This understanding is very identical to the understanding of "straf recht spolitiek" which is defined by A. Mulder as a line that determines: a). how far the applicable criminal provisions need to be changed or updated; b). what can be done to prevent criminal acts from occurring (Barda Nawawi Arief, 2008).

In line with A. Mulder's opinion, Sudarto formulated legal policy as an effort to create good regulations in accordance with the circumstances and situations at a certain time (Sudarto,1977). This was also emphasized by Barda Nawawi Arief that studying criminal law policy is basically studying the problem of how criminal law should be made, structured and used to regulate/control human behavior, especially to combat crime in order to protect and improve the welfare of society (Barda Nawawi Arief, 2007). In relation to changes or legal reforms aimed at improving the welfare of society, it is inseparable from criminalization efforts, namely the process of determining a person's actions as acts that can be punished. This process ends with the formation of a law where the act is threatened with a sanction in the form of a criminal offense.(Barda Nawawi Arief, 2007) According to Sudarto, criminalization must have the following criteria (Barda Nawawi Arief In Muladi,1998): a.) the use of criminal law must take into account the objectives of national development, namely to create a just and prosperous society that is evenly distributed materially and spiritually based on Pancasila; in this regard, the (use of) criminal law aims to combat crime and enforce the countermeasures themselves, for the welfare and protection of society, b.) acts that are attempted to be prevented or dealt with by criminal law must be "undesirable acts", namely acts that cause losses (materially and/or spiritually) to members of society; c.) the use of criminal law must also take into account the principle of "costs and results"; d.) the use of criminal law must also take into account the capacity and ability of the workforce of law enforcement agencies, namely that there must be no excess of the workload.

In line with what was stated by Sudarto, according to Bassiouni, the decision to carry out criminalization and decriminalization must be based on certain policy factors that consider various factors, including (Barda Nawawi Arief In Muladi,1998); a) balance of means used in relation to the desired results; b) analysis of costs against the results obtained in relation to the goals sought; c) assessment or estimation of the goals sought in relation to other priorities in the allocation of human resources; d) the social impact of criminalization and decriminalization related to (viewed in terms of) its secondary effects. Thus, the ultimate goal of legal reform is to combat crime and improve the welfare of society, for which the placement of public interest or community interest must be the main priority, with penal policy there will be a "refinement of the law" which according to Scholten legal refinement aims to use general provisions more appropriately and fairly (Satjipto Rahardjo, 2009).

Moreover, the issue of corruption has a great impact on the economic interests of society, so justice is something that must be realized for the

sake of society or the public. In line with this, Baharudin Lopa stated that preventing collusion and corruption is not that difficult, if we consciously put public interests above personal and group interests (R.Diyatmiko Soemodihardjo, 2008).

2. Analysis of the treatment of state money return sanctions or death penalty sanctions

Good legal arrangements through penal policy or legal politics by considering the criteria in carrying out criminalization as described above, are expected to no longer occur social inequalities. According to Indriyanto Seno Adji, the quality and typology of crime increases in a country due to economic development and development (Universal Declaration of Human Rights, 2025).

This increase in development is also development that is not well planned, resulting in social inequality. These social inequalities then give rise to social injustice that is felt by society in general and ultimately gives rise to crime. In order for social order to run in accordance with the foundations of social justice, there needs to be changes to the formulation of criminal acts regarding corruption as regulated in Law Number 31 of 1999 in conjunction with Law 20 of 2001 as long as it meets the needs of society and aims to create public welfare or general welfare. In essence, general welfare will be easily achieved if corrupt behavior can be prevented through better legal arrangements. Another solution that must be taken is to do;

a. Anti-Corruption Education in Schools must integrate anti-corruption education into the curriculum to shape the character and ethics of the younger generation. This is important so that they understand the negative impacts of corruption and the importance of honesty. Research by Kurniawan (2021) shows that anti-corruption education can reduce tolerance towards corrupt practices among students.

b. Multi-Agency Collaboration, better cooperation is needed between the Corruption Eradication Committee, government agencies, and the community to improve supervision and transparency in every administrative process. Through a collaborative approach, supervision of the use of budgets and public services can be more effective.

c. Increasing Access to Information, the public must be given greater access to public information to ensure transparency in decision-making and the use of public funds. This is in accordance with the principles stipulated in the Law on Public Information Disclosure.

d. Consistent Law Enforcement: Law enforcement against corruption violators must be carried out firmly and fairly. Heavier sanctions and

strict supervision will provide a deterrent effect for perpetrators of corruption. If there is a death penalty for corruptors, it will indicate a politic about a person's right to life as a citizen, which is legally protected by the State.

Furthermore, if the death penalty is imposed on corruptors, it is possible that the sanction can overcome the corrupt practices that have occurred so far or could even increase. Between the treatment of returning state money and the death penalty, it will always be a question mark for all of us, whether a legal principle like this can be a reason to overcome corruption practices in Indonesia, or whether it is still carried out as a human culture, which of course becomes a legal event that can increase the burden of the State on certain parties who become victims due to the implementation of the death penalty. From this side, the State is obliged to consider the continuation of the regeneration of the nation in the future, those who become victims of the death penalty, such as children, wives are certainly considered to be a burden on the State for them because they are abandoned by people who are given the death penalty, and is this allowed?

Law No. 4 of 1979 concerning Child Welfare, expressly states that children have the right to care and protection since in the womb of their mother. In addition, children have the right to protection against the environment that is dangerous or inhibits their growth naturally. In line with these rules, it is relevant to the Universal Declaration of Human Rights (UDHR) of the United Nations General Assembly in Paris on December 10, 1948 (General Assembly resolution 217 A) as a general standard of achievement for all people and all countries, in article 11) Everyone charged with a crime has the right to be presumed innocent until proven guilty according to law in a public trial, at which he has had all the guarantees necessary for his defense. No one shall be found guilty of a crime on account of an act or omission that did not constitute a crime, under national or international law, at the time it was committed. And no heavier penalty may be imposed than the penalty applicable at the time the crime was committed (Universal Declaration of Human Rights, 2025).

Human Rights Violations are any act by a person or group of people, including state officials, whether intentional or unintentional or through negligence, which unlawfully reduces, hinders, limits and/or revokes the human rights of a person or group of people guaranteed by law, and does not receive or is feared that it will not receive a fair and correct legal resolution based on the applicable legal mechanisms (Rizky Ariestandi Irmansyah, 2013).

Children who are victims of the death penalty due to corruption committed by their parents need to receive legal protection as an effort to support the fulfillment of rights and obligations, a child who has the right to obtain and maintain the right to grow and develop in a balanced and positive life, this means receiving fair treatment and avoiding threats that are detrimental. Child protection efforts can be a legal action that has legal consequences, this is also a step to prevent children from arbitrary actions by parents or adults. Child protection is an effort to create conditions and situations that allow the implementation of children's rights and obligations in a humane manner, which is also a manifestation of justice in a society, and in various aspects of life in society and in the state, society, and family based on law (Faisal Salam, 2005).

From the perspective of criminal law theory, there are three main theories regarding the purpose of punishment, namely retributive theory, preventive theory, and rehabilitative theory (Megawati et al., 2024). 1) Retributive Theory, Retributive theory emphasizes the concept of "equitable retribution, where perpetrators of criminal acts must be punished according to the actions they have committed (Haikal, 2024). This theory is rooted in the principle of justice that sees punishment as a way to repay evil deeds committed by the perpetrator, without focusing on the improvement or rehabilitation of the perpetrator. Although this theory has strong followers, especially in cases of serious crimes such as murder and corruption, this approach is often criticized for not providing an opportunity for the perpetrator to improve themselves. 2) Preventive Theory, Preventive theory aims to prevent the recurrence of criminal acts in the future, both by the same perpetrator and by society in general (Quraini, 2024). By imposing strict punishments, it is hoped that other individuals will think twice before committing similar crimes. In Indonesia, the preventive theory is reflected in Law No. 31 of 2003 concerning Criminal Procedure. 1999 on the Eradication of Corruption, which emphasizes the need for strict sanctions for perpetrators of corruption to prevent future corruption. 3) Rehabilitative Theory, Rehabilitative theory focuses on the improvement and rehabilitation of perpetrators of crimes. Rather than providing punishment that is merely retaliatory, this theory sees punishment as an opportunity to help perpetrators change their behavior, so that they can return to society as better individuals (Utami, 2024).

In this context, the correctional system in Indonesia has begun to introduce rehabilitation programs for perpetrators of crimes, including prisoners. The occurrence of political corruption is due to efforts by people to control or dominate certain positions or positions that are

considered important and profitable (Soekanto, 2002). These efforts are by placing people who are the closest relations, namely family, colleagues or groups with nepotism. Political corruption occurs in organizational life and their groups continue to occupy important positions in an organization, and if efforts to maintain or seize important positions take place unfairly, then these actions and efforts are included in corruption in the political sense (Soekanto, 2002). In Islam, theoretically the position of corruption is a criminal act (jinayah or jarimah) where the perpetrator is threatened with hudud (had) punishment and also ta'zir punishment (Husain Syahatah, 2005). Corruption in the dimension of theft (saraqah) according to its etymology means carrying out an action against another person in secret (Muhammad Amin Suma, 2001).

As with corruption that takes property by means of violation of rights and without the knowledge of its owner (the people/community). Embezzlement (corruption) committed by an official, then the perpetrator of the corruption, does not have his hand cut off which is known as (Qishash), because he also has shares in it, because the proceeds of the corruption that he took were state treasury money (HMK Barkkry,1958). In the history of Islamic justice, the supremacy of law (supremacy of court) is supported by several factors, namely: first, an independent judicial institution. This means that the judicial power must be free from all kinds of intervention by the executive power. Second, trust. This means that the judicial power is a trust from Allah SWT. Therefore, before deciding, the judge always seeks protection and hopes for Allah's pleasure so that the law that is determined has a sense of justice. The Islamic view on corruption (embezzlement of state funds) is contrary to the provisions of positive criminal law in Indonesia, where embezzlement by officials (Article 415 of the Criminal Code which has been adopted as a corruption offense by Law No. 20 of 2001) is threatened with a heavier penalty (maximum imprisonment) compared to ordinary embezzlement (Article 372 of the Criminal Code) which is threatened with a maximum penalty of 4 (four) years or a fine of Nine hundred rupiah.

In Malaysia there are also anti-corruption regulations. However, it is not known by the term corruption but by the term (risywah), which means corruption. Bribery corruption (risywah) in the view of Islamic law is a despicable act and also a major sin and Allah curses it very much. Etymologically Risywah comes from Arabic رشا-يرشو-رشوة which means "To stick out the head". The opinion of scholars such as Ibn Mandzur(Ibn Mandzur,322) mentions the words of Abul 'Abbas "Rusywah/Risywah is taken from the context of a baby bird/chicken that sticks its head into its mother's mouth while asking for the food in its mother's beak to be fed to it. Ibrahim Mustafa said that the sentence risywah comes from the

word.(Ibrohim Musthofa, 368) الرشاء which means a rope or bucket rope and the like. Thus, the punishment for corruptors falls into the ta'zier punishment. Only in the dimension of stealing is the hudud punishment.

Ta'zier punishment is a crime whose threat of punishment is not contained in the Nash. So it is fully handed over to the ruler. However, in imposing a punishment that is not contained in the nash, it must be based on considerations of common sense and the judge's belief in realizing the benefit and creating a sense of justice. In national law, Malaysia also uses legislation known as the Raswah Eradication Agency. The BPR was formed with the aim of eliminating all forms of corruption and abuse of power that are prohibited by the provisions of the laws in Malaysia (Ibrohim Musthofa, 368). Eradicating corruption and severely punishing corruptors without discrimination, as exemplified by Umar bin Abdul Aziz and Khulafaur Rasyidin before and the Prophet's edict SAW. which stated that even if his own daughter stole, her hand would be cut off. Considering that Law No. 31 of 1999 Jo Law No. 20 of 2001 concerning the Eradication of Corruption does not explicitly regulate sanctions against perpetrators of corruption as stated in Islamic law. From the perspective of Islamic law, the crime of corruption is called Rusywah or bribery falls into the category of ta'zier punishment, where the sanction is only a legal policy based on the opinion of a judge who decides the case. According to the author, the treatment of legal sanctions between the death penalty and the return of state money to corruptors is a dilemmatic consideration, however for the author, the reason for this is the consideration of the obligation to maintain the continuity of national regeneration as an important factor and a determining factor in the continuity of the nation's future generations. Based on this thinking, the legal sanction of returning state money is more appropriate than the death penalty imposed on corruptors in Indonesia.

CONCLUSION

Based on the explanation in the above discussion, the following conclusions can be drawn: So far, the law on corruption has not imposed the death penalty, only accommodated in one article on the misuse of disaster funds, through the revision of Law Number 20 of 2001 concerning amendments to Law Number 30 of 1999 concerning the Eradication of Corruption, this shows that there is no firmness in our legal system in Indonesia to apply the death penalty for corruptors.cEradication of corruption with the concept of returning state money as a way to impoverish corruptors and an effort to increase the deterrent effect on perpetrators of corruption. Impoverishment of

corruptors is carried out through the mechanism of confiscation of all assets resulting from corruption and the imposition of very high fines so that perpetrators no longer have the resources to enjoy the proceeds of their crimes.

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