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THE POLICY OF THE FORMULATION OF DEATH PENALTY AGAINST PERPETRATORS OF CORRUPTION

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Abstract
The policy of the formulation of death penalty against perpetrators of corruption should be implemented quickly, given that corruption as an extraordinary crime and which carries massive seriousness has become a systemic crime and even has a destructive impact on the world , and therefore should be given the heaviest penalty, i.e. the death penalty. The current Corruption Eradication Act has not established the criteria of corruption with specific seriousness, as well as the minimum limit of the specified amount which is punishable by death penalty. This limitation of norm needs to be addressed by comparing it with the provisions of the corruption acts in China and Thailand which have explicitly established death penalty to eradicate corruption in their nations. Therefore, it is time for Indonesia to improve the Corruption Act by including provisions of a strict death penalty to minimize corruption in Indonesia.
Keywords: Formulation Policy, Corruption, Extraordinary Crime, Death Penalty

4. Introduction

Indonesia is an archipelago with abundant natural resources and consequently should have been a prosperous nation. This richness is combined with the noble values of Pancasila, which are rooted in the religious values of Indonesian people and are widely applied to the lives of the people scattered throughout the Indonesian archipelago. The noble values of Pancasila are those which are based on truth and justice. This combination of abundant natural resources and the noble values of Pancasila should have made Indonesia into a just and prosperous nation.

The principle of social justice for all Indonesian people has been entrenched in the fifth precept of Pancasila as the foundation of the nation, with the aspiration and hopes that Indonesian people will become a just and prosperous society. Consequently, the government should actively pursue social justice with regard to the livelihood of many people. Nevertheless, in reality the achievements are still far from ideal. Poverty, unemployment and social inequality are the problems that need to be resolved.

One reason for the problems is the proliferation of corruption practices which to date has increasingly grown and has not been able to be handled in a focused manner. An example of such situation can be seen from the increasing number of corruption cases in Indonesia, in which the losses suffered by the nation due to corruption from 2004 to 2011 has reached 39.3 IDR. If corruption could be reduced, Indonesia would be able to build its infrastructure and improve the quality of its people's lives.

The phenomenon of corruption as an extraordinary crime in Indonesia has become a serious threat since various mitigation efforts have been conducted but have not shown significant success; corruption has increasingly proliferated as if there is no way to stop it. One reason is because the penalties listed in the Corruption Eradication Act for the extraordinary crime have inadequate sanctions. This situation has given rise to the idea that perpetrators of corruption with specific seriousness should be given the death penalty as an alternative to the usual punishment. In fact, it is time for Indonesia to formulate death penalty as the punishment for corruption by making a comparison with other nations which has first succeeded in overcoming corruption, in order to become a reference for Indonesia in the effort to defeat corruption.

In this paper, the urgency of death penalty is based on the thinking that the formulation of the material act which is punishable by death is limited to the provision of Article 2, paragraph 2 of the Law of Republic of Indonesia no. 31, 1999, in conjunction with the Law of Republic of Indonesia no. 20, 2001, on the Eradication of Corruption.

Article 2, paragraph 1 states the following:

"Any person who unlawfully seeks to enrich themselves or other people or a corporation in a manner which is detrimental to the state finance or economy, shall be sentenced to life imprisonment or imprisonment of 4 (four) years at minimum and imprisonment of 20 (twenty) years at maximum, and a fine of at least 200 million IDR and at most 1 billion IDR."

Article 2, paragraph 2 states the following:

"In the case of corruption as referred to in paragraph 1 which is committed in specific circumstances, the death penalty may be imposed."

The explanation for article 2, paragraph 2 states the following:

The definition of "specific circumstances" in this case is the situations which may be used as the basis for the seriousness of the punishment for perpetrators of corruption, i.e. when the offense is committed against funds intended for handling emergency situations, national disasters, effects of widespread social unrest, economy and monetary crises, and repetitive acts of corruption.

The formulation of norm in article 2, paragraph 2 has limitations which causes the imposition of death penalty cannot be applied to perpetrators of corruption in Indonesia. One limitation is that the death penalty can "only" be imposed for offenses committed in "specific circumstances". This has become a weakness because when a case of corruption is committed "not in specific circumstances", as referred to in the explanation for the article above, the death penalty then cannot be imposed.

This limited formulation of norm has caused perpetrators of corruption in Indonesia to be unreachable by capital punishment. Therefore, it is necessary to have a "refinement" to expand the norms set out in Article 2, paragraph 2, of the Law of the Republic of Indonesia no. 20, 2001, on the Eradication of Corruption.

As a comparison, China can be used as an example of a nation which has successfully eradicated corruption. This is because the law used to settle corruption cases contains penalty of death which is not limited to specific circumstances like in Indonesia.

In this comparison with China, capital punishment is not limited to "specific circumstances" only. This is regulated in, among which, the Criminal Law of the People's Republic of China or the Special Provisions of China's Criminal Code, Chapter VIII, particularly in Article 383.

The offense of embezzlement is defined in Article 383, China's Criminal Code, whose complete definition is as follows:

Article 383: Persons who commit the crime of embezzlement shall be punished respectively in the light of the seriousness of the circumstances and in accordance with the following provisions:

3. An individual who embezzles not less than 100.000 yuan shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and may also be sentenced to confiscation of property; if the circumstances are especially serious, he shall be sentenced to death and also to confiscation of property.

4. An individual who embezzles not less than 50.000 yuan but less than 100.000 yuan shall be sentenced to fixed-term imprisonment of not less than five years and may also be sentenced to confiscation of property; if the circumstances are especially serious, he shall be sentenced to life imprisonment and confiscation of property (Criminal Law of the People's Republic of China, pp. 89-90).

Therefore, the law enforcement forces are expected to implement death penalty to realize the government's commitment in fighting the ever increasing corruption. The hoped-for impact of the implementation of death penalty is to reduce Indonesia's rank as the most corrupt nation in Asia.

The inclusion of death penalty, as set forth in Article 2, paragraph 2 of the Law of the Republic of Indonesia, no. 20, 2001, has never been achieved and in the end has become a new phenomenon in corruption prevention efforts in Indonesia. With the increasingly widespread cases of corruption recently and the inadequate efforts to mitigate them, these situations are certainly worth to ponder upon, particularly by law enforcement officers and the government, in order to conduct a series of serious and concrete efforts to fight corruption, so that the corruption cases that currently exist do not become mere political commodity but can be truly resolved through transparent and just legal procedures.

Based on the background outlined above, the discussed problem formulation is the philosophical basis which reinforces the need for death penalty for perpetrators of corruption and the formulation of the norm needed for corruption offenses which are punishable by death in the future.

5. Research Method

This is a qualitative research using normative legal research type. A normative research must employ statute approach because the focus and its central theme are laws (Johnny Ibrahim: 2010). Normative legal

research is employed because its point of departure is the analysis on the considerations of some international laws as well as national laws which are used as the basic concepts for the philosophical basis of the formulation policy of laws on diversion outside criminal justice system for corruption and death penalty.

To achieve the goal of the research, statute approach and comparison approach are used. The legal materials used in this research cover considerations of some international laws and national laws. The secondary materials are opinions of legal experts. They are accompanied by tertiary material as well. Those three legal materials are processed and analyzed juridically and qualitatively in order to find solutions of the research problem.

6. Result of Research and Analysis

3.1. Philosophical Bases which Enforce the Necessity of Death Penalty for Perpetrators of Corruption in the Future Concept of Indonesia's Corruption Act

The philosophical bases of the Preamble to the Law of the Republic of Indonesia, no. 20, 2001, on the Amendment to the Law of the Republic of Indonesia no. 31, 1999, on the Eradication of Corruption, currently in effect, only contains the principles of justice, protection, and legal certainty. If this is the case, the purpose of the formulation of Corruption Act, i.e. to achieve a just and prosperous society, cannot be achieved based on those three principles alone.

The authors propose a concept of philosophical bases to be formulated in the Preamble to the future Corruption Act, containing these principles: the principle of justice, protection, welfare, legal certainty, economic stability, national security, national development, and the principle of recovering assets gained through corruption.

3.1.1. Formulation of the Preamble for the new concept of the future Corruption Act is, among others:

e. Corruption, which currently has been widespread and systemic, not only harms the state finance but also harms the people and is a violation of the social and economic rights of the society at large; hence, corruption is categorized as a crime whose eradication should be done in an extraordinary manner;

f. To ensure legal certainty and to protect the social and economic rights of the people, as well as enforcing the law, it is necessary to have some measures to maintain economic stability and national security to continue the national development programs, in order to achieve the ideals of the Indonesian people, i.e. to achieve justice and wellbeing for all Indonesian people;

g. To achieve fair treatment in eradicating corruption and recovering national assets, it is necessary to have some measures to return the assets gained through corruption;

h. Based on the considerations set forth in points a, b and c, it is necessary to draft an Amendment to Law no. 20, 2001, on the Eradication of Corruption.

Those principles are used as philosophical bases, with the rationale and considerations as follows Based on the juridical reference set out in the preamble, some of the international provisions and national legislation are:

- Principle of justice

Contained in United Nations Convention Against Corruption (UNCAC), 2003, paragraphs 1 and 11; Preamble to Universal Declaration of Human Rights, paragraph 1; preamble to the Constitution of the Republic of Indonesia 1945, paragraphs 1, 2 and 4; preamble to the Law of the Republic of Indonesia no. 31, 1999, on the Eradication of Corruption, point b; preamble to the Law of the Republic of Indonesia no.20, 2001, on the Amendment to Law no. 31, 1999, point b; Academic Paper of Money Laundering Act, paragraph 3; and Academic Paper of Corruption Eradication Act, paragraph 1, which specifies that the principles of public asset management, fairness and equality before the law, are to increase denunciation of corruption practices. Perpetrators of corruption have violated the principles of justice, particularly the justice which has been philosophically stated in the fifth precept of Pancasila. Justice is an ideal of Indonesian people, but it has yet to be realized due to the obstacle set by corruptors who continuously commit corruption. Therefore, it is appropriate to threaten corruptors with death penalty.

- **Principle of Law Enforcement**

Contained in United Nations Convention Against Corruption (UNCAC), 2003, paragraphs 1 and 7; Law no. 8, 2008, on Money Laundering, point b, which determines that unlawful acquisition of personal wealth could damage both the national economic system and law enforcement. Unlawful acquisition of personal wealth, particularly unlawful acquisition of state assets, whether by money laundering or corruption, could damage the national economic system. Therefore, any person who has illegally acquired state wealth deserves the threat of death penalty so that they will not damage the national economic system, as well as to uphold the law.

- **Principle of Protection**

Contained in the Preamble to the Constitution of the Republic of Indonesia 1945, paragraph 4; contained in the Preamble to the Law of the Republic of Indonesia no. 39, 1999, on Human Rights, point b; the Law of the Republic of Indonesia no. 20, 2001, on the Amendment to Law no. 31, 1999, point b; Academic Paper of Money Laundering Act, paragraph 9; Academic Paper of Corruption Eradication Act, paragraph 3, and the opinion of A. Muhammad Asrun who suggested that the imposition of death penalty with regard to extraordinary crime should be viewed as an effort to protect the people's right to live.

- **Principle of Welfare**

Contained in the Preamble to the Constitution of the Republic of Indonesia 1945, paragraph 4; and contained in the Preamble to the Law of the Republic of Indonesia no. 39, 1999, on Human Rights, point a, which determines that the aspiration of Indonesian people is to achieve a just, prosperous and thriving society. Corruption is an obstacle to the welfare of Indonesian people; hence corruptors deserve the death penalty.

- **Principle of Legal Certainty**

Contained in the Law of the Republic of Indonesia no. 20, 2001, on the Amendment to Law no. 31, 1999, point b; and Academic Paper of Money Laundering Act, paragraph 9; Academic Paper of Corruption Eradication Act, paragraph 1, which specifies that in order to ensure legal certainty and protect the social and economic rights of the people, as well as to provide fair treatment, it is necessary to fight corruption. Perpetrators of corruption have robbed the people's social and economic rights, therefore, to ensure legal certainty any person who is bold enough to rob the rights of the society is rightly threatened with death penalty.

- **Principle of National Security**

Contained in Law no. 15, 2002, on Money Laundering as amended by Law no. 25, 2003, point c, which specifies that crimes involving state wealth should be minimized to safeguard the national security. Corruption is a crime which harms state finance, harms the livelihood of the already afflicted Indonesian people, and consequently increases various kinds of crimes. Since increased crime rate threatens national security, it is fitting that perpetrators of very serious corruption offenses, particularly those who are state officials, deserve the death sentence.

- **Principle of Economic Stability**

Contained in Law no. 15, 2002, on Money Laundering Crime as amended by Law no. 25, 2003, point c; Law no. 8, 2008, on Money Laundering Crime, point a; and Academic Paper of Money Laundering Act, paragraph 4, which determines that corruption is a form of crime that could result in poverty, could destroy financial structure and disturb economic stability; therefore, perpetrators of corruption deserve to be sentenced to death.

- **Principle of National Security**

Contained in the Law of the Republic of Indonesia no. 31, 1999, on Eradication of Corruption, point b, which determines that corruption hinders the growth and continued existence of national development, so that the nation's aspiration to achieve national development would be unattainable. This kind of crime, as in corruption with fantastic amount, truly upsets the national development; hence the perpetrators deserve to be sentenced to death.

- **Recovering Assets Gained Through Corruption**

Contained in Law no. 8, 2008, on Money Laundering Offense, point b; Academic Paper of Corruption Eradication Act, paragraph 6, which determines the necessity to have a solid foundation to ensure legal certainty, effectiveness of law enforcement, and to trace and recover the assets gained through criminal

acts, particularly to confiscate state wealth previously appropriated by corruptors to restore state losses. Therefore, corruptors who have no good will to return the stolen state wealth deserve to be sentenced to death.

- **Principle of Humanity**

Principle of humanity could be viewed from Bismar Siregar's opinion that states that if a criminal has proven to be too vile so as to lose his/her humanity, what other punishment is more appropriate than death sentence; and Oemar Seno Adji's opinion that states that as long as our country is still endangered by inhuman entities, it still needs the death penalty. Perpetrators of corruption no longer have their humanity in their hearts; they are full of greed and no longer care about their fellow human beings. If any corruptor is found to have this heinous trait, he/she deserves to be sentenced to death.

3.1.2 Formulation of the Norm of Corruption Offenses Punishable by Death Penalty in the Future

Indonesian Corruption Act currently in force has not regulated death penalty against State Officials who commit corruption with specific nominal value. Therefore, the future Corruption Act should be more explicit in applying death penalty to State Officials who commit corruption.

Through analysis on formulations of norms currently in force in China and Thailand, and through comparison with those in Indonesia, the authors then propose a concept for the time to come *(ius contituendum)* on the concept of death penalty to be applied to perpetrators of corruption, as follows:

3.1.2.1 Formulation of the Current Norm:

Article 2, paragraph 2, of the Law of the Republic of Indonesia no. 31, 1999, in conjunction with the Law of the Republic of Indonesia no. 20, 2001, on the Eradication of Corruption.

Article 2, paragraph 2 states the following:

"Any person who unlawfully seeks to enrich themselves or other people or a corporation in a manner which is detrimental to the state finance or economy, shall be sentenced to life imprisonment or imprisonment of 4 (four) years at minimum and imprisonment of 20 (twenty) years at maximum, and a fine of at least 200 million IDR and at most 1 billion IDR."

Article 2, paragraph 2 states the following:

"In the case of corruption as referred to in paragraph 1 which is committed in specific circumstances, the death penalty may be imposed."

3.1.2.2 The concept of the formulation of norm in Indonesia's Corruption Act in the future:

Adding to the wording of the General Provisions in Article 1, plus paragraph 4 which states the following:

Paragraph 4 The Executives of the State are State Officials who perform the executive, legislative, or judicial functions, and other officials whose core functions and duties are related to the administration of the state in accordance with the provisions of Law no. 28, 1999, on the Administration of the State Free from Corruption, Collusion and Nepotism.

Modifying and adding to the wording in Article 2, as follows:

Paragraph 1 Any person who unlawfully seeks to enrich themselves or other people or a corporation of which is proved to be detrimental to the state finance or economy, with the amount of 100.000.000 IDR (one hundred billion rupiah) or more, is liable to be sentenced to life imprisonment or a minimum imprisonment of 10 years and also be sentenced to confiscation of property.

Paragraph 2 Any State Official who unlawfully seeks to enrich themselves or other people or a corporation of which is proved to be detrimental to the state finance or economy, with the amount of 50.000.000 IDR (fifty billion rupiah) or more, is liable to be sentenced to death and also be sentenced to confiscation of property.

Paragraph 3 In the case of corruption as referred to in paragraphs 1 and 2, which is committed in "specific circumstances", the sentence imposed is death sentence and confiscation of property.

Paragraph 4 Execution of the death sentence may be delayed by a stay period of 2 (two) years, if the convicted through good will return the money or asset they had embezzled.

Paragraph 5 If the convicted during the stay period as referred in paragraph 4 has returned the money or asset previously embezzled as well as demonstrating commendable behavior and actions, the death sentence may be overturned to imprisonment, by the Decree of the Minister responsible in the legal area.

Paragraph 6 If the convicted during the stay period as referred to in paragraph 4 does not return the money or asset previously embezzled as well as demonstrating deplorable behavior and actions, the death sentence may be carried out by the command of the Attorney General.

3.3. Based on the juridical reference of the Laws and Regulations in China and Thailand

The concept is proposed on the basis of the following thought and consideration:

f. Criminal Law of the People's Republic of China, Article 383 point (1), determines that any individual who embezzles not less than 100.000 yuan shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall be sentenced to confiscation of property.

   If the offense is committed by a state official, they shall be sentenced to death and also be sentenced to confiscation of property.

g. Referring to the judicial provisions of the Criminal Law of the People's Republic of China. Article 383 point (2), any individual who embezzles 50.000 yuan to 100.000 yuan shall be sentenced to imprisonment of a maximum 5 years and shall be sentenced to confiscation of property.

   If the offense is committed by a state official, they shall be sentenced to death and also be sentenced to confiscation of property.

h. The Thai Penal Code, Section 148, 149 and 201, determines that any corruption offense committed by a Thailand state official is liable to be sentenced to imprisonment of 5 to 20 years, or life imprisonment and a fine of 2.000 to 4.000 Baht, or a death sentence.

i. Regarding the stay of execution in China, referring to the Criminal Law of the People's Republic of China, Article 48, it determines that the execution date of a death row inmate may be postponed and for two years since the date of the conviction.

   The current Corruption Act has not regulated the stay of the execution of a judgment of death, which is one of the absences of norms, hence the necessity to have a new norm to fill the absence.

j. Based on the juridical reference to Islamic Law.

   Corruption offenses with particular seriousness may be qualified as *jarimah had,* i.e. *haribah* (to cause harm to the earth) *yasauna fil'ardi fasad* with the heaviest penalty, i.e. the death sentence. Therefore, based on Islamic teachings, there is a chance to threaten perpetrators of corruption with death, i.e. when corruption has reached a certain stage that causes damage to the earth.

   The basic value used to establish corruption as an act that damages the earth is the word of God in sura Al Maidah verse 33 which determines that the punishment for those who wage war against God and his Prophet and who cause damage on earth, is execution or crucifixion, or having their limbs cut, or being exiled from their homes. This is to humiliate them in this life, and in the hereafter they are to be greatly tormented.

3.3. Viewed from Theoretical Studies, as an analytical tool of the problem, this study uses the following theories:

a. Criminal Policies Theory

Referring to the Theory of Criminal Policies developed by G. Peter Hoefnagels, this theory is used because Criminal Policy is one of crime prevention efforts. Muladi and Barda Nawawi Arief also suggested that the crime prevention mechanism integrated into the legislation is comprised of: the policy on what conducts are prohibited, the policy on sanctions against violators, and the policy on the mechanisms of the criminal justice system (G. Peter Hoefnagels, 1972). The mechanisms are used as an analysis to design a prevention of corruption offenses by creating a policy which is then put into the concept of the future Corruption Act, among which is the policy on the criteria of officials who commit corruption with a certain nominal amount, who then may be given the death penalty.

Correspondingly, Barda Nawawi Arief also suggested that the meaning and nature of legal reform, when viewed from the perspective of policy approach, is as a reform of criminal law and is essentially a part of the effort to reform the legal substance in order to increase the effectiveness of law enforcement (Barda Nawawi Arief, 1996)

Thus the new concept proposed by the authors to be formulated in the future Corruption Act is a reform of the criminal law in order to improve the legal substance in increasing the effectiveness of death penalty for perpetrators of corruption.

b. Theory of Criminal Purpose

Regarding the purpose of criminal punishment, the purpose of the sentence given should be given attention in the legislative policies as an effort to reform the criminal law conducted, so that the criminal

punishment will be effective and capable to be a means to achieve the bigger objective, i.e. the society's social welfare. Hence the formulation of the new concept should be proposed with the intent to eradicate corruption for the sake of social welfare.

This analysis refers to the Theory of Criminal Purpose put forward by Johannes Andenaes, whose theory is commonly divided into the following theoretical categories:

c) Absolute theory or Retributive theory *(vergelding theorieen)*;

d) Relative theory or Utilitarian theory *(doeltheorieen* (Muladi and Barda Nawawi, 1992).

Absolute theory is used based on the analysis that a criminal punishment is given solely because an individual has committed a crime or a criminal offense *(quia peccatum est)*. Punishment is an absolute result which must exist as a retributive act against the individual who committed the crime. Therefore, the basis of the justification for the punishment lies in the existence or the occurrence of the crime itself. The primary purpose of punishment according to absolute theory is "to satisfy the claims of justice".

Based on the theory of utilitarian punishment, it is utilized as the analysis in this writing. The retributive theory or *absolute theorien/vergelding theorien* is used because of the continuous practices of corruption occurring in Indonesia to date, so it is time that corruptors be threatened with death penalty as a shock therapy, and as retribution against the acts that have greatly cost the state and have increased poverty rate in Indonesia. Relative theory is used with the intent to protect the interests of the society, so that the state finance are not enjoyed by the most corrupt individuals, but is directed to achieve social welfare.

c. Social Cost Theory

Social Cost Theory, which was proposed by Gary Becker, is used as an economic analysis, assuming that death sentence may reduce the expenses of the state, and assuming that sustaining corruptors through life imprisonment would require more maintenance costs and that they would become the burden of the state. Conversely, if a corruptor had the good will to return the money or assets they had had embezzled, there would be an improvement in the economy of the state.

The analysis refers to Gary Becker's belief that argued for the concept of rationality in relation with criminal law, among others:

Firstly, the optimal criminal justice policy. This idea is linked to cost and benefit analysis.
Secondly, the individual's decision about criminal activity.
Thirdly, the existence of criminal category.

The economic analysis is related to this efficiency principle if linked to the imposition of criminal sanctions for offenders; the first thing to be considered is what forms of criminal sanctions are available to be applied. Then, the existing forms of criminal sanctions are analyzed to find the most efficient one based on the principle of cost and benefit. Generally, the forms of criminal sanctions consist of capital punishment, life imprisonment, imprisonment, and fine. In the context of economic analysis, the most efficient and fitting criminal sanctions to be used in relation to the principle of cost and benefit are capital punishment and fine. Whereas imprisonment, viewed from the point of view of economic analysis, is less appropriate. The implementation of imprisonment in reality requires a high social cost, and it all has to be shouldered by the state.

In line with the analysis, for the new concept of the future Corruption Act, the authors propose a criminal sanction in the form of death penalty and confiscation of property to be returned to the state, as formulated by the authors in the new concepts for Article 2, paragraphs 1 and 2.

4. Conclusion

The philosophical bases which reinforce the need for death penalty for perpetrators of corruption in the future include the following points:

The principle of justice, protection, welfare, legal certainty, economic stability, national security, national development, law enforcement, the principle of humanity and the principle of returning the assets gained through corruption.

The above principles are contained in the preambles to some international provisions related to corruption, the preambles to some national legislation on corruption, and the philosophical basis which supports the need to apply death sentence to corruptors according to the opinions of some legal experts.

The policy of the formulation of the future norm of corruption offenses punishable by death is based on:

c. Criminal Law of the People's Republic of China, which determines that any individual who embezzles not less than 100.000 yuan shall be sentenced to fixed-term imprisonment of not less than 10 years or life

imprisonment and shall be sentenced to confiscation of property. If the offense is committed by a state official, they shall be sentenced to death and also be sentenced to confiscation of property.

d. Legislative provisions in Thai Penal Code, which determines that any corruption offense committed by a Thailand state official is liable to be sentenced to imprisonment of 5 to 20 years, or life imprisonment and a fine of 2.000 to 4.000 Baht, or a death sentence.

e. In Islamic law, corruption is included as *jarimah had,* i.e. *haribah* (to cause harm to the earth) *yasauna fil'ardi fasad* with the heaviest penalty, i.e. the death sentence. The act that damages the earth in the word of God in sura Al Maidah verse 33 which determines that the punishment for those who wage war against God and his Prophet and who cause damage on earth, is execution or crucifixion, or having their limbs cut, or being exiled from their homes. This is to humiliate them in this life, and in the hereafter they are to be greatly tormented. Therefore, based on Islamic teachings, there is a chance to threaten perpetrators of corruption with death, i.e. when corruption has reached a certain stage that causes damage to the earth.

f. The opinions of some legal experts, which essentially state that corruption is an extraordinary crime which may destroy the state economy and lead to poverty. Corruption is a crime against Human Rights, as it has a widespread and systemic nature. Perpetrators of corruption could be threatened with death penalty like in China, in order that the sanction may have a deterrent effect. Perpetrators of corruption could be threatened with death penalty if the value of the embezzled money is massive or more that 100 billion IDR. Besides the threat of death penalty for corruptors, it is necessary to apply confiscation of property and impoverishment of corruptors in order to more effectively suppress corruption.

References

A.T. Cheng & Y. Chung, 'China: Power Corrupts', *Asiaweek*, 9 February 2001 dan S. Green, *Reforming China's Economy: A rough Guide*, The Royal Institute of International Affairs and the University of Cambridge, London, January 2003.

Barda Nawawi Arief. *Bunga Rampai Kebijakan Hukum Pidana (Compilation of the Policies of Criminal Laws).* Citra Aditya Bhakti, Bandung, 1996.

Adji, Oemar Seno, *Hukum dan Hakim Pidana*. Erlangga. Jakarta. 1984.

Ali, Ahmad. 2008, *Menguak Tabir Hukum,* Bogor, Ghalia Indinesia.

Alkotsar, Artdjo dan M. Soleh Amin. *Pembangunan Hukum dalam Perspektif Hukum Nasional*. Rajawali Press. Jakarta, 1999.

Amidhan.2006, *Catatan Akhir Tahun 2006 Tentang Pelindungan dan Pemenuhan Hak Ekonomi, Sosial dan Budaya,* Jakarta, Komnas Ham.

Andrea Ata Ujan, *Keadilan dan Demokrasi,* Kanisius. Yogyakarta. 2001.

Barda Nawawi Arief. *Perbandingan Hukum Pidana (Comparison of Criminal Laws).* Rajagrafindo Persada, Jakarta.

Barnes Jr., William L. "Revenge on Utilitarianism: Renouncing A Comprehensive Economics Theory of Crime and Punishment", article in *Indiana Law Journal*, Vol. 74, 1999, p. 639.
Criminal Law of the People's Republic of China, pp. 89-90.

B. Brugger & S. Reglar, *politics, Economy and Society in Contemporary china*, Macmilan, Hampshire, 1994.

Baringbing, R.E.2001,*Catur Wangsa yang Bebas Kolusi Simpul Mewujudkan Supremasi Hukum,* Jakarta, Pusat Kajian Reformasi.

Barker, Thomas, & L Carter, David. 1999, *Police Deviance (Penyimpangan Polisi),* Jakarta, Cipta Manunggal.

Bentham, Jeremi. *Teori Perundang-undangan, Prinsip Legislasi, Hukum Perdata dan Hukum Pidana*. Terjemahan. Nusamedia, Bandung, 2006.

Bertem K., *Pengantar Etika Bisnis.* Kanisius. Yogyakarta. 2000.

Black, Henry Champbel. Black's Law Dictionary. St. Paul Minn. West Publishing. Co.1979.

Buyung, Adnan Nasution.2004, *Pergulatan Tanpa Henti,Pahit Getir Merintis Demokrasi,* Jakarta. Aksara Karunia.

Hoefnagels, G. Peter. *The Other Side of Criminology, (An Inversion of the Concept of Crime).* Kluwer, Deventer, Holland, 1972, p.57.

Moh. Mahfud MD, *Pancasila dan UUD 1945 Sebagai Dasar Solusi Persoalan Bangsa (Pancasila and 1945 Constitution as the Basis for the Solution to the Problems of the Nation).* Paper on General Lecture at Merdeka University, Malang, 2 Februari 2012, p. 8.

Munir Fuadi. *Perbandingan Ilmu Hukum (Comparison of Law Sciences).* Refika Aditama. Bandung, 2007, p. 2.

Peter Mahmud Marzuki. *Penelitian Hukum (The Study of Law).* Prenada Media Group, Jakarta, 2007, p.25.

www.sindonews.com, Wijaya Kusuma Subroto, *Hukuman gantung bagi koruptor (Hanging punishment for corruptors)*, Lecturer at the Faculty of Communication Studies, Tarumanegara University, accessed on Wednesday, October 9, 2013 – 07:11 WIB.

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