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Draft of Journal which will be submitted to Law Review Sri Wijaya Implementation of Death Sentence for Corruptors Embezzling the Funds for Handling Covid-19 Pandemic Nelvitia Purbaa, Muhammad Arif Sahlepib, Sri Sulistyawatic The Faculty of Law, Muslim Nusantara Al Washliyah University Email:nelvitiapurba@umnaw.ac.id The Faculty of Law, Panca Budi University. Email: arif.sahlepi@gmail.com. The Faculty of Law, Muslim Nusantara Al Washliyah University Email: srilistya@umnaw.ac.id Abstract The Indonesian government has made various efforts to handle the Covid-19 pandemic which is becoming massive. One of them is the issuance of Perppu No.

1/2020 on the Policy on the State Finance and the Stability of the Financial System of Handling Covid- 19 Pandemic. In order to safeguard of corruption criminal offense in the government's financial aid to the people affected by Covid-19, the sanction of death sentence will be imposed on those who commit it. The research data were analyzed qualitatively, using juridical normative method_ through statute approach and conceptual approach.

Death sentence, regulated in the Law on Corruption Criminal Offense, is specified in Article 2 of Law No. 31/1999 in conjunction with Law No. 20/2001 on the Eradication of Corruption Criminal Offense which reads as follows: Anyone who illegally enriches himself or other people or commits corruption which can harm the State Finance or the State Economy shall be sentenced for life imprisonment or the shortest imprisonment of 4 (four) years and the longest imprisonment of 20 (twenty) years and shall be fined IDR.200,000,000 (two hundred million rupiahs) at the least and IDR.1,000,000 (one billion rupiahs) at the most.

Regarding corruption criminal act as it is specified in the paragraph (1), in certain cases,

death sentence can be imposed on the perpetrators. The implementation of death sentence for corruptors is not the violation of the Human Rights, and death sentence is an effective device to eradicate corruption completely. Even though there has been no death sentence imposed on corruptors in Indonesia,, any embezzlement in the financial aid for handling Covid-19 pandemic should be sanctioned with death sentence.

Keywords: Death Sentence, Perpetrators of Corruption Criminal Offense, Covid-19 Pandemic INTRODUCTION An English proverb says that "money is the root of evil." This proverb is very in accordance with the anatomy of corruption criminal offense since it is identical to the economic, positional, and political problems which eventually end in material that is identical to money._

Corruption criminal act **is one of the** forms and dimensions of the development of crime today which has become the international attention and concern._ Corruption is actually not a new problem in Indonesia because it has existed since 1950s, as if it were a part of life and had become a system which converges in a governmental system._

The phenomenon of corruption in Indonesia has actually been existed for a long time, since long before Indonesia got its independence; it had been existed since the colonial period. It can be proved by the tradition of tribute paid by a subject to those in authority or by a subject people to their conquerors (a kind of gratification) at that time._

In the post-World War II, there was a new era when the incidence of corruption increased rapidly in the development countries and the countries which had just gotten their independence. **Corruption is very dangerous because it can destroy** social network which can indirectly weaken the national defense and **the existence of a nation.** Reimon Aron (a sociologist) points out that corruption can trigger a revolution since it can be a significant device to discredit a certain nation._

It seems that corruption in Indonesia is becoming worse and acute; **it is like a** malignant tumor which spreads to the cells of public organs, to high state agencies such as legislative, executive, and judicative institutions, and to BUMN (State's Own Enterprises). There are so many cases of corruption which have been exposed, either they are in small scales or they are in large scales.

By **the end of the** new order era, it has been running rampant, from small to high-ranking officials._ In the last few months, the Indonesian government has attempted to handle the impact of Covid-19 pandemic which become spread massively. **One of them is** by issuing Perppu No.

1/2020 on the Policy on the State Finance and the Stability of Financial System to cope with the spread of Covid-19 pandemic and/or to face the threat which can endanger the National Economy and/or the Stability of Financial System. It was signed by the President of the Republic of Indonesia, Joko Widodo, on March 31, 2020. Through this Perppu, the government has disbursed additional APBN (national Budget) for 2020 of IDR.405.1

trillion for handling Covid-19 pandemic with the details as follows: IDR. 75 trillion for Financing Health; IDR. 110 trillion for Social Protection; IDR. 70.1 trillion for Taxation Incentive and Stimulant for KUR (People's Business Credit); IDR. 150 trillion for Financing the National Economy Restoration Program, including for Credit Restructuring and Guaranteeing and Financing Businesses through reallocating and refocusing the 2020 budget of each regional government.

This large amount of financing the handling of Covid-19 pandemic has to be on target according to its allotment. The officials in the central government and in the regional governments who have been given the trust in managing this fund have to be cautious; they should be careful not to abuse their authorities in using it on target.

When the fund for handling Covid-19 pandemic is not on target, there will criminal sanction and/or death sentence imposed on the perpetrators who embezzle the fund since it is committed in an emergency situation such as the people's health emergency status of Covid-19 pandemic. The sanction of death sentence is specified in Article 2, paragraph (2) of Law No.

31/1999 on Tipikor (Corruption Criminal Act) which imposes the sanction of death sentence upon corruptors. The Head of KPK (Corruption Eradication Commission), Firli Bahuri, even warns those who commit corruption criminal offenses in the emergency situation such as in the Covid-19 pandemic which is occurring now to be sentenced with death penalty.

He says, "We are facing Covid-19 pandemic now; it is ridiculous if someone still dares to commit corruption and has no empathy to NKRI (Unitary State of the Republic of Indonesia). Therefore, when he gave some guidelines to all Indonesian regional heads concerning eradication of corruption criminal offenses in procuring goods and services during the handling of covid-19 epidemic, he repeatedly said that the procurement of goods and services for the acceleration of handling Covid-19 is the responsibility of PA (Budget Users); he further said that it was not necessary to be too apprehensive which will impede the handling of this health disaster.

Lord Acton, in Ermansyah Djaya's book, *Memberantas Korupsi Bersama KPK*, makes an expression which associates corruption with power. He says that "Power tends to corrupt, and absolute power corrupts absolutely" which means that power is a vulnerable part of corruption. It implicitly indicates that power can be easily used as a device by an official to be a corruptor.

Corruption criminal offense has become a serious problem in Indonesia because it has spread widely and systematically throughout all aspects of people's life. It is a real violation against public social rights which are endemic and systematic. It is also committed by officials or ex-heads of government offices, as it is called a 'high profile crime', and the most part of the illegal properties was saved in foreign countries. It is also the root of many problems which worsen the economic crisis in this country and impede legal system specified in laws.

Corruption is considered as something which not only harms the state's finance and/or economy but also violates people's social and economic rights as a part of human rights. Therefore, there are many reasonable reasons for categorizing it as an extraordinary crime which can be eradicated by taking extraordinary measures and using extraordinary instruments.

Based on the explanation above, the researchers were interested in doing a research with the title, "Implementation of Death Sentence for Corruptors Embezzling the Funds for Handling Covid-19 Pandemic." RESEARCH METHOD This research used juridical normative method with statute approach, conceptual approach, and comparative approach.

The statute approach was used to analyze the implementation of death sentence in corruption criminal offenses as it was specified in laws. Conceptual approach was used to analyze the concepts of death sentence in eradicating corruption criminal offenses and its implementation, and comparative approach was used to compare the implementation of imposing death penalties in some countries. The research data consisted of primary data and secondary data.

Primary data were obtained from legal provisions which were composed of 1. Articles 28A – 28J of the 1945 Constitution on Human Rights; 2. Law No. 31/1999 on Eradication of Corruption Criminal Offenses; 3. Law No. 20/2001 on the Amendment of Law No. 31/1999 on Eradication of Corruption Criminal Offenses; 4. Law No. 39/1999 on Human Rights; 5. Law No. 6/2006 on the Court of Human Rights; 6. KUHP (the Criminal Code).

Secondary data were obtained from general criminal law and special criminal law, journals on law, jurisprudence (judges' verdicts), dictionaries on law, encyclopedia on law, and articles related to death sentence in corruption criminal offenses. The technique of gathering the data was done by studying documents._ A document is a written material or object **related to a certain** event/activity._

Documentary study was done by tracing to find some data which were relevant to the current issue on law. They were then recorded, edited, studied, and summarized, including the theories, ideas, concepts, and the related provisions. All of them were recorded by using a card system which contained records on the result of the research.

Before that, they were selected and sorted according to the needs for analysis by explaining the issues on law in this research. The data which consisted of primary, secondary, and tertiary data were gathered, organized, and grouped according to the research problems. REGULATIONS ON DEATH SENTENCE IN THE LAW ON CORRUPTION CRIMINAL OFFENSE The regulations on death sentence in the KUHP (the Criminal Code) as *lex generalis* will be explained before explaining the regulations on it in the Law on Corruption Criminal Offense.

Death sentence in Indonesia has been introduced in the KUHP as *lex generalis* in Book I of General Regulation, Article 10 of Chapter II, on Crime (Types of Punishment). Death sentence was basically the form of a classical punishment which was assumed as a kind of punishment which was able to imprison those who had not yet committed criminal offenses. Its form was still a punishment which had a power for making perpetrators who had not committed crimes learn their lessons.

Its ideal substance when it is applied is how far the punishment is able to terrorize people psychologically so that they will not commit the same crime. In many cases, it is not uncommon that the perpetrators are recidivists (repeat offenders) who have committed crimes repeatedly since it is considered as an ordinary crime.

Usually, objection to death sentences is based on the human point of view toward the perpetrators without looking on the human point of view of the victims, their families, relatives, and communities that rely on them. It is different when the victims' families have forgiven the perpetrators so that the punishment can be changed according to clear conditions._

Regulation on death sentence in the Law on Eradication of Corruption Criminal Offense has only 1 (one) Article - **Article 2 of Law No. 31/1999 in conjunction with Law No. 20/2001 on** Eradication of Corruption Criminal Offense which reads as follows: Whoever

illegally and intentionally commit an act to enrich him or other people or a corporation which can harm the State's Finance or Economy shall be imprisoned in the minimum of 4 (four) years and the maximum of 20 (twenty) years and fined in the minimum of IDR.200,000,000 (two hundred million rupiahs) and the maximum of IDR.1,000,000,000 (one billion rupiahs).

2) In the case of corruption criminal offenses as it is specified in paragraph (1), anyone who commits in a certain situation, shall be sentenced to death. The explanation of Article 2 above reads as follows: "What it means by "illegally" in this Article formally and materially, even though the offense is not regulated in legal provisions since it is opposed to justice or public social life norms, the offenders can be imprisoned.

In this regulation, the word, "can" before the phrase, "harms the State's Finance or Economy" indicates that corruption criminal offense is a formal offense, the existence of corruption is identified by the fulfillment of the elements of action which have been formulated by not mentioning the effect." "What it means by "certain event" in this regulation is an event which can be used as the reason for sentencing corruptors when the corruption criminal offenses are committed on any funds used for the acceleration of handling emergency, handling national natural disasters, handling endemic social riots, handling economic and monetary crisis, and handling corruption criminal offenses." The regulation on criminal offense in Article 2, paragraph (1) is a formal offense.

In the general explanation in Law No. 31/1999, it is also explained as follows: "In this law, corruption criminal offense is firmly formulated as a formal criminal offense. This definition is very important for evidence.

By the formulation of the word 'formal' in this law indicates that even though the properties having been corrupted have been returned to the State, the perpetrators have to be tried in the court and sentenced." By formulating corruption criminal offense as a formal offense, the State's financial loss should not occur since what it means by 'formal offense' is an offense which is considered as having been over by an illegal act so that the perpetrators can be sanctioned by law._

Therefore, in order that a person is found guilty by committing corruption criminal offense as it is specified in Article 2, paragraph (1), it is not necessary to present evidence to prove that there is a State's financial and economic loss. If the regulation on corruption criminal offense specified in Article 2, paragraph (1) of Law No.

20/2001 is compared with that in Article 1, paragraph (1), letter a of Law No. 3/1971, it is

found that the regulation specified in Article 2, paragraph (1) of Law No. 20/2001 is a formal offense while the regulation specified in Article 1, paragraph (1), letter a of Law No.

3/1971 is a material offense which is considered having been proved by the existence of illegal effect so that the perpetrators are sanctioned by laws. IMPLEMENTATION OF DEATH SENTENCE FOR CORRUPTORS EMBEZZLING THE FUNDS FOR HANDLING COVID-19 PANDEMIC Textually, implementation of death sentence is contradictory to human rights as it is specified in Article 28A and Article 281 of the 1945 Constitution, Article 4 and Article 9 of Law No.

39/1999 and Article 3 of DUHAM (Universal Declaration on Human Rights). Article 28A of the 1945 Constitution reads as follows: "Everyone shall have the right to live and to defend his/her life and existence." Article 28I, paragraph (1) says that "everyone has the rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances." Article 4 of Law No.

39/1999 determines "the rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances and by anyone."

The researchers believe that corruption is an extraordinary crime so that its perpetrators have to be sanctioned with death sentence which is balanced with their crimes. Let alone if they embezzle financial aid for handling Covid-19 pandemic although DUHAM firmly states that death sentence is not relevant anymore to any form of punishment. The process of attempting to make corruptors aware of their disgraced and illegal acts take a very long time due to the weak form of punishment.

The form of death sentence specified in Tipikor law in Article 2, paragraph (2) is about death sentence only in certain cases. In this context, the implementation of death sentence for corruptors is not a violation against Human Rights, and death sentence is an effective device in eradicating corruption completely; therefore, there is no death sentence which has been implemented in Indonesia.

If there is any, we hope that those who embezzle financial aid for handling Covid-19 pandemic have to be sanctioned with death penalty. CONCLUSION Based on the explanation above, it could be concluded that the regulation on death sentence

specified in Law on Eradication of Corruption Criminal Offenses is only found only in one article: Article 2, paragraph (2).

In this Article it is clearly explained that death sentence can be imposed on the perpetrators of corruption criminal offenses in "a certain circumstance." There are two things about death sentence in corruption criminal offense which can be implemented for perpetrators of corruption criminal offense which are not imposed by judges: first, the word, "can" in Article 2, paragraph (2) of Law on Eradication of Corruption Criminal Offense is only optional and not imperative; secondly, the phrase "in certain circumstance" means that death sentence cannot be implemented toward anyone who commits corruption, but it is only corruption in a certain condition.

Therefore, it is recommended that law enforcement, especially judges, impose death sentence on the perpetrators of corruption criminal offenses in financial aid for handling Covid-19 pandemic to be jurisprudence, and deterred effect will be accomplished when death sentence is implemented optimally. Optimization of implementing death sentence for the perpetrators of corruption criminal offense in Indonesia has never been implemented because law enforcement never takes to court and indict corruptors specified in Article 2,, paragraph (2) of Tipikor Law although before Covid-19 pandemic occurs a lot of corruptors embezzled social financial aid such as funds for disasters (flood, earthquake, volcanic eruption, etc.); therefore, the implementation of death sentence is only studied textually and, therefore, law enforcement in Indonesia think that the implementation of death sentence is contrary to human rights as it is specified in Article 28A, paragraph (1), Article 28I, paragraph (1) in conjunction with Article 4 of Law No.

39/1999 in conjunction with Article 3 of DUHAM. However, if it is studied contextually by using extensive and teleological interpretation, the implementation of death sentence is not contrary to human rights. The argumentation is that the effect of corruption criminal offense has much greater impacts than genocide, terrorism, narcotics, and other crimes on human beings.

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