

# Juridical Review Of Death Criminal For Persons Of Corruption Crime

*by Aan Ashpianto*

---

**Submission date:** 15-May-2023 12:23PM (UTC+0700)

**Submission ID:** 2093425143

**File name:** cal\_Review\_Of\_Death\_Criminal\_For\_Persons\_Of\_Corruption\_Crime.pdf (355.53K)

**Word count:** 3970

**Character count:** 20869

## Juridical Review Of Death Criminal For Persons Of Corruption Crime

Aan Asphianto

Universitas Sultan Ageng Tirtayasa

doi: <https://doi.org/10.37745/gjahss.2013/vol11n54552>

Published: May 14, 2023

**Citation:** Asphianto A. (2023) Juridical Review of Death Criminal for Persons of Corruption Crime, Global Journal of Arts, Humanities and Social Sciences, Vol.11, No.5, pp.45-52

**ABSTRACT:** *Law enforcement against criminal acts of corruption in social assistance, if it is related to the Corruption Law, is far from the expectation that Law Number 31 of 1999 concerning the Eradication of Corruption Crimes in conjunction with Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption Crimes where in Article 2 paragraph (2) it is stated that in the case of a criminal act of corruption being committed under certain circumstances the death penalty can be imposed, but in its enforcement it is far from the expectation of the establishment of the Corruption Law. Death penalty in corruption cases should be applied in certain circumstances which can be used as a reason for criminal punishment for perpetrators of corruption, and the 2020 social assistance fund corruption crime should have met the reasons for aggravation because these funds are intended for overcoming economic and monetary crises, as well as overcoming situations danger. Indonesia in 2020 experienced an economic and monetary crisis, and the country was in a state of danger as evidenced by the large number of layoffs and limited people's mobility, so social assistance funds were issued to overcome this.*

45

**KEYWORDS:** law enforcement, corruption, social assistance, community mobility, economic monetary

### INTRODUCTION

Death penalty is still recognized in Indonesia. Death penalty is the final sanction in law enforcement. Death penalty is contained in the Criminal Code and other laws outside the Criminal Code, one of which is the Corruption Crime Act. Death penalty against perpetrators of corruption can be imposed in certain circumstances. What is meant by certain conditions are circumstances that can be used as reasons for criminal prosecution for perpetrators of corruption. Corruption in Indonesia has occurred widely, not only causing losses to state finances, but also violating the social and economic rights of the people. The criminal act of corruption is classified as a crime whose eradication must be carried out in an extraordinary way, especially in 2020 the government will issue social assistance funds to overcome the

economic and monetary crisis, and in 2020 the country will be in a state of danger where people's mobility will be limited and will affect Indonesia's economic situation. social assistance is one solution, but it turns out that the funds are corrupted. The problems faced are, firstly, whether law enforcement against criminal acts of corruption in social assistance if it is linked to the Corruption Law can be enforced, secondly, how about the death penalty in corruption crimes.

The research method used is normative juridical, the source of the data obtained through the study of libraries and legal documents, then the data obtained and collected in the study were analyzed qualitatively. Data The data in this study comes from secondary data, namely data obtained by a researcher indirectly from the source (object of research), but through other sources, (Hilmi, 2021).

The research results obtained are about law enforcement against criminal acts of corruption in social assistance if it is related to the Corruption Law, and about capital punishment in corruption crimes.

Death penalty has existed for a long time and is imposed based on retaliation for a very cruel act of a human being. The aim of imposing and carrying out the death penalty is always directed at the general public so that they, under the threat of the death penalty, will be afraid of committing acts of cruelty that will result in them being sentenced to death. Well-known are the stories describing conditions in France during its revolution in the late 18th century, where several people in a square were publicly executed by the guillotine, a heavy sharp object dropped from the neck of a person. But because of the horror at seeing the image of the guillotine falling on a human neck, during the 19th century voices resounded against the death penalty, (Wirjono, 2019).

Death penalty is one of the most serious types of punishment for perpetrators of criminal acts. This type of crime takes the life of the perpetrator of the crime as a result of the crime he committed. In its development, the death penalty has become controversial along with the increasing understanding of human rights.

Death penalty in Indonesia still gets legality. Death penalty is regulated in Book 1 of Article 10 of the Criminal Code as one of the main types of punishment. This death penalty provision is general in nature meaning that it can be applied both in criminal acts regulated in the Criminal Code and criminal acts regulated outside the Criminal Code. One of the laws and regulations outside the Criminal Code is Law Number 31 of 1999 which regulates capital punishment. The existence of the death penalty is strengthened by the Constitutional Court (MK) Decision Number 2-3/PUU-V/2007 which states that the death penalty is not contrary to the 1945 Constitution.

The death penalty was included in the Criminal Code which was inherited from the colonial government, and remained so when it was nationalized under Law Number 1 of 1946. Even after Indonesia's independence, several laws were issued later. Thus, the reason that the death penalty is listed in the W.v.S. (KUHP) at the time it was enacted by the colonial government was based on, among other reasons, racial factors, (Hamzah, 2019).

De Bussy defended the death penalty in Indonesia by saying that in Indonesia there is a special situation. The danger of serious disturbance of law and order in Indonesia. Criminal acts of premeditated murder, criminal acts of terrorism, and criminal acts of narcotics are subject to the death penalty, but what about criminal acts of corruption. Corruption comes from the Latin *corruptio* or *corruptus*. *Corruptio* also comes from the original word *currumpere*. It was from Latin that it descended into many European languages such as English, namely *corruption*, *corrupt*, French, namely *corruption*, and Dutch, namely *corruptie*. The word *corruptie* from Dutch then descended into Indonesian to become the word *corruption* which was interpreted by W.J.S. Poerwadarminta in the General Indonesian Dictionary is a bad act such as embezzlement of money, receiving bribes and so on. According to Fockema Andrea, the word *corruptie* is mainly used for state employees who receive bribes, namely accepting gifts and so on, whereas they know that these gifts are intended to do things that are contrary to their official obligations.

Corruption is a type of white collar crime or tie crime. In contrast to conventional crimes involving street criminals (street crime, blue collar crime, blue jeans crime), in white collar crime, the parties involved are those who are respected people in society and are usually highly educated. In fact, the *modus operandi* for white collar crime, like corruption, is often carried out in sophisticated ways, even mixed with theories in the fields of science, such as accounting and statistics. Therefore, even though there is a folding game, from the surface it seems as if the actual act is a white collar crime and it looks like an ordinary legal action. If measured from the sophistication of the *modus operandi*, seen from the class of people involved, or seen from the amount of funds looted, the act of white collar crime is clearly a high-class crime, which is actually motivated by the wrong principle, namely greed is beautiful. (Fuady, 2018).

A white collar crime can also occur in the public sector, namely those involving parties holding public power or government officials, so it is often referred to as occupational crime. This white collar crime seems to occur in the form of corruption and bribery, resulting in abuse of public authority. Corruption and bribery among law enforcers, such as the police, prosecutors, and judges are very intensely discussed everywhere, in addition to corruption among members of the legislature and executive, (Ismansyah, 2020). Many factors work and influence each other to produce the conditions we face. All that can be done is to state the factors that play the most role. Causaliteits redeneringen must be very careful and not careless. The poor economy will not necessarily result in an epidemic of corruption among officials if other factors are not working. Lack of salary is also not a determining factor. Many wealthy people commit

corruption. The convoluted procedures are also not something that needs to be highlighted because corruption also extends to simple sections, in the village, in the offices of small authorities, on trains, at stations, at zoo ticket counters. , etc.

Indonesia already has a special institution to enforce the law on corruption cases. The corruption eradication agency was formed based on Law Number 30 of 2002 concerning the Corruption Eradication Commission. The basis for criminal acts of corruption is Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, which has been amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes.

So far, none of the criminal acts of corruption has been subject to death penalty even though this has been regulated by Article 2 paragraph (2) of Law Number 31 of 1999. However, in order to be sentenced to death there are conditions that must be met, namely if the crime is committed for funds intended for overcoming emergencies, national natural disasters, overcoming the consequences of social unrest, overcoming economic and monetary crises, and overcoming criminal acts of corruption, this is based on the Elucidation of Law Number 20 of 2001.

Death penalty for perpetrators of corruption is interesting to study. Corruption is a common practice in Indonesia. Efforts to eradicate corrupt practices are still being maximized today. corruption is a big PR for this country, (Azizah, 2022).

## **METHOD**

The type of research used is normative legal research or doctrinal research, namely legal research conducted by examining legal materials, whether in the form of doctrines or legal principles in the science of law. Meanwhile, the approach used in this study is the statutory approach, the case approach, and the conceptual approach. The types and sources of legal materials used in this normative legal research consist of Primary Legal Materials, Secondary Legal Materials, and Tertierm Legal Materials, (Ibrahim, 2018).

Legal material analysis techniques are carried out by interpreting, evaluating, and assessing all legal materials, which are then identified to determine patterns or themes in these legal materials in accordance with the focus of the problems specified in this research, (Mamudji, 2021).

## **FINDINGS AND DISCUSSION**

Law enforcement is the process of making efforts to uphold or actually function legal norms as a guideline for behavior in traffic or legal relations in the life of society and the state. Judging from the point of view of the subject, law enforcement can be carried out by a wide range of



subjects and can also be interpreted as law enforcement efforts that involve all legal subjects in every legal relationship. Anyone who carries out normative rules or does something or does not do something based on the norms of the applicable legal rules means he is carrying out or enforcing the rule of law. In a narrow sense, from the perspective of the subject matter, law enforcement can only be interpreted as an effort by certain law enforcement officials to guarantee and ensure the upholding of the law, if necessary, law enforcement officials are permitted to use coercive force.

The definition of law enforcement can also be viewed from the point of view of the object, namely from a legal perspective. In this case, the meaning also includes broad and narrow meanings. In a broad sense, law enforcement includes the values of justice contained in the sound of formal rules and values of justice that live in society. But in a narrow sense, law enforcement only concerns the enforcement of formal and written regulations. Therefore, the translation of the word law enforcement into Indonesian using the word "law enforcement" in a broad sense can also use the term "enforcement of regulations" in a narrow sense.

This distinction between the formality of written legal rules and the range of justice values they contain even arises in English itself with the development of the term the rule of law or in terms of the rule of law and not of a man versus the term "the rule by law which means the rule of man by law In terms of the rule of law contained the meaning of government by law, but not in a formal sense, but also includes the values of justice contained therein. Therefore, the term the rule of just law is used. In terms of the rule of law and not of man, it is intended to emphasize that in essence the governance of a modern legal state is carried out by law, not by people. The opposite term is the rule by law which is intended as government by people who use law only as a mere tool of power.

49

Law enforcement is an attempt to realize the ideas of justice, legal certainty and social benefits into reality. Law enforcement is essentially a process of realizing ideas. Law enforcement is the process of carrying out efforts to uphold or function legal norms in a real way as a guide for actors in traffic or legal relations in the life of society and the state. Law enforcement is a process that involves many things.

Law enforcement, especially in criminal law, is the implementation of the law, to determine what is according to the law and what is contrary/against the law, determines which actions can be punished/punished according to the provisions of material criminal law, and instructions regarding actions and efforts required for the smooth operation of the law, both before and after the unlawful act occurred in accordance with the provisions of the formal criminal law. In the sense of law enforcement (criminal law) it contains the meaning of provisions, namely the power that must exist in order to carry out the function of law, so that law enforcement has a relationship between law and power.

Criminal law enforcement is related to the reality of the principle of legality. The reality of the principle of legality in Indonesia is the main tool in enforcing criminal law. The nature of legal certainty attached to the principle of legality makes criminal law a definite field of legal science in the eyes of law because it is attached to clear and firm legal frames, which make it an instrument of guidance, guidance and restrictions in the application of concrete cases.

Satjipto Raharjo stated that Indonesia needed a progressive type of law enforcement. What should be emphasized more first is the dimensions and human factors of actors in upholding the law (judges, prosecutors, advocates) who have a vision and philosophy that underlies progressive law enforcement. That is, a philosophy that is not liberal, but tends towards a communal vision. The interests and needs of the nation are given more attention than playing around with articles, doctrines and procedures. Second, the need for some kind of building among academics, intellectuals and scientists as well as legal theorists in Indonesia. For more than a hundred years they have been good students of liberal legal philosophy, now they are challenged by the suffering needs of the nation to dare to break free from the teachings and doctrines that have been carried out so far.

Regarding legal protection stated by Philipus M. Hadjon that legal protection for the people is divided into two types: first, preventive legal protection and second, repressive legal protection. In preventive legal protection, the people are given the opportunity to submit objections or opinions before a government decision takes a definitive form. Thus preventive legal protection aims to prevent disputes from occurring, while repressive legal protection aims to resolve disputes.

Lawrence M. Friedman Friedman stated that the legal system consists of three components, namely structure (legal structure), substance (legal substance), and culture (legal culture). The first part, namely the legal structure, is an institution created by the legal system with various functions in order to support the operation of the system. This component makes it possible to see how the legal system provides services for the regular processing of legal materials. Second, legal substance is the output of the legal system, in the form of regulations, decisions that are used by both those who regulate and those who are regulated. The third is the legal culture which consists of values and attitudes that influence the operation of law as a bridge that connects legal regulations with the legal behavior of all citizens. Third, culture (legal culture) is general culture - habits, opinions, ways of working and thinking that bind people to approach or move away from the law in a special way, (Sutripto, 2022).

Law enforcement regarding the structure (legal structure) and substance (legal substance) when associated with criminal acts of corruption in social assistance will be explained below, (Sahetapy, 2019). Structure is likened to a machine in which there are law-making and enforcement institutions, such as the DPR, Executive, Legislature, Police, Attorney General's Office and Courts. In Indonesia itself, it is still a big homework for this country to improve the

existing legal structure. The large number of persons involved in corruption cases greatly hampers the functioning of law in Indonesia. Starting from the ranks of law enforcers, to the legislative and executive governments, they are often caught in corruption cases. With the condition of the legal structure that is apprehensive, it will be difficult to enforce the law and justice will be difficult to achieve.

The criminal act of corruption in social assistance can be seen from the legal structure, from the ranks of law enforcers to the legislative and executive governments, which are often caught in corruption cases. With the condition of the legal structure which is of concern, it will be difficult to enforce Article 2 paragraph (2) of Law Number 31 of 1999 in cases of criminal acts of corruption in social assistance, (Suyanto, 2018).

Substance is what is done and produced by legislators, in the form of decisions and decrees, statutory regulations, and also includes rules that are outside the book of laws. The existence of community involvement in the formation of a law will have an impact on the effectiveness of the enactment of the law. As Yuliandri said, there is no point in a law that cannot be implemented or enforced, considering that the experience in Indonesia shows that there are many laws that have been declared valid and promulgated but cannot be implemented. The criminal act of social assistance corruption when viewed from the theory of legal substance as stated above that Article 2 paragraph (2) which should have an impact on the effectiveness of the enforcement of a law is as if it is useless if a law that is clear is not enforced, (Soedarso, 2019).

51

## CONCLUSION

Law enforcement against criminal acts of corruption in social assistance, if it is related to the Corruption Law, is far from the expectation that Law Number 31 of 1999 concerning the Eradication of Corruption Crimes in conjunction with Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption Crimes where in Article 2 paragraph (2) it is stated that in the case of a criminal act of corruption being committed under certain circumstances the death penalty can be imposed, but in its enforcement it is far from the expectation of the establishment of the Corruption Law. Death penalty in corruption cases should be applied in certain circumstances which can be used as a reason for criminal punishment for perpetrators of corruption, and the 2020 social assistance fund corruption crime should have met the reasons for aggravation because these funds are intended for overcoming economic and monetary crises, as well as overcoming situations danger. Indonesia in 2020 experienced an economic and monetary crisis, and the country was in a state of danger as evidenced by the large number of layoffs and limited people's mobility, so social assistance funds were issued to overcome this.



## REFERENCES

- Bachtiar Hilmi, Rena Yulia, M. Noor Fajar Al Arif, *Melindungi Anak Korban Bullying Di Sekolah (Suatu Kajian Pembaharuan Hukum Pidana)*, Jurnal Hukum Mimbar Justitia Fakultas Hukum Universitas Suryakencana Vol. 8 No. 2 – Desember 2022, hlm. 437. <https://jurnal.unsur.ac.id/jmj>
- Fuady, Munir. *Bisnis, Kotor Anatomi Kejahatan Kerah Putih*, cet. ke-1. Bandung: Citra Aditya Bakti, 2004.
- Hamzah, Andi. *Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional*. Jakarta: Raja Grafindo Persada, 2019.
- Hamzah, Andi dan A. Sumangelipu, *Pidana Mati di Indonesia di Masa Lalu, Kini dan di Masa Depan*. Jakarta: Ghalia Indonesia, 2018
- Ismansyah dkk. *Meretas Tindak Pidana Korupsi dan Upaya Penegakan Hukum*, cet. ke-1. Depok: Rajawali Pres, 2020.
- Johnny Ibrahim, Teori & Metodologi Penelitian Hukum Normatif, Malang: Bayu Media Publishing, 2018
- Laeli Nur Azizah. Apa itu Korupsi? *Penyebab dan Dampaknya*. Gramedia. Diakses 02 November 2022, dari <https://www.gramedia.com/literasi/apa-itu-korupsi/#:~:text=Pengertian%20korupsi%20merupakan%20sebuah%20istilah,agama%2C%20mental%2C%20dan%20hukum>
- Projudikoro, Wirjono. *Asas-asas Hukum Pidana di Indonesia*, cet. ke-6. Bandung: Eresco, 2019.
- Raharjo, Satjipto. *Polisi Indonesia Mandiri, Program Pascasarjana Kajian Ilmu Kepolisian Universitas Indonesia*. Jakarta: Yayasan Obor Indonesia, 2019.
- Sahetapy. *Ancaman Pidana Mati terhadap Pembunuhan Berencana*. Bandung: Alumni, 2019.
- Sofyan, Andi dan Nur Azisa. *Buku Ajar Hukum Pidana*, cet. ke-1. Makassar: Pustaka Pena Press, 2019.
- Soedarso. *Korupsi di Indononesia*. Jakarta: Bhratara Karya Aksara, 2019.
- Sri Mamudji, Penelitian Hukum Normatif Suatu Tinjauan Singkat, Jakarta: Raja Grafindo, 2021
- Suyanto, *Pengantar Hukum Pidana*. cet. ke-1. Yogyakarta: Deepublish, 2018

# Juridical Review Of Death Criminal For Persons Of Corruption Crime

---

## ORIGINALITY REPORT

---

23%

SIMILARITY INDEX

19%

INTERNET SOURCES

12%

PUBLICATIONS

9%

STUDENT PAPERS

---

## MATCH ALL SOURCES (ONLY SELECTED SOURCE PRINTED)

---

2%

★ Submitted to University of South Australia

Student Paper

---

Exclude quotes On

Exclude matches Off

Exclude bibliography On

# Juridical Review Of Death Criminal For Persons Of Corruption Crime

---

## GRADEMARK REPORT

---

FINAL GRADE

**/0**

GENERAL COMMENTS

**Instructor**

---

PAGE 1

---

PAGE 2

---

PAGE 3

---

PAGE 4

---

PAGE 5

---

PAGE 6

---

PAGE 7

---

PAGE 8

---