

Reformulation of Certain Circumstances Indicators as a Prerequisite for the Imposition of Death Penalty in Corruption Crime

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Abstract

The massive practice of corruption is a serious threat to the welfare of a country, so the Indonesian government, through its regulations, stipulates corruption as one of the extraordinary crimes. Regulating the death penalty for perpetrators of corruption demonstrates how serious it is to eradicate corruption. The legislation on corruption governs the application of the death penalty and only applies to corruptors whose acts occur under specific conditions. This research analyzes the indicators of certain circumstances as a prerequisite for the imposition of the death penalty in the crime of corruption. The main approaches used in this research are the conceptual approach and the legislative approach. The results of this study indicate that the legal system has flaws, necessitating the juridical reformulation concerning certain circumstances indicators as a prerequisite before the death penalty can be imposed on corruption crimes.

Keywords: *Aggravation of Punishment; Corruption; Death Penalty.*

1. INTRODUCTION

The Preamble of the 1945 Constitution adopts the idea of a welfare state, contained in the Fourth Paragraph, which states “to form a government of the State of Indonesia that protects the entire Indonesian nation and the entire Indonesian homeland and to advance the general welfare, educate the nation’s life, and participate in implementing world order based on independence, lasting peace, and social justice”. This principle affirms the commitment to achieve public welfare.

The concept of a *welfare state* refers to a state whose primary function is to provide for the general welfare. This model, known as *welvaarstaats* or *verzorgingstaats*, reflects a modern view of the rule of law that assigns a central role to the government. The roles, powers, and responsibilities of government are rapidly expanding, both in quantity and quality, covering a wide range of areas to ensure the welfare of society as a whole.¹

¹ Marsudi Dedi Putra, “Negara Kesejahteraan (Welfare State) Dalam Perspektif Pancasila,” *Likhitaprajna* 23, no. 2 (2021): 139–51.

Security in the context of a welfare state refers to the government's efforts to provide protection and economic security to its population. Welfare guarantees cover various aspects, such as guaranteed access to education, health services, labor protection, and social assistance. The ultimate goal is to improve people's welfare while reducing social inequality.

The government plays an important role in realizing the country's economic growth for the welfare of the community, but corruption is often committed by individuals in the government. This phenomenon certainly weakens the legitimacy of the government and other democratic values.² The democratic system is also in practice accompanied by the phenomenon of political dynasties headed by incumbents; which are frequently accompanied by corruption as a means of maintaining power.³ Corruption committed by unscrupulous government officials is through buying and selling influence or control over public policies in a way that exclusively benefits certain individuals or groups (for example, families, cronies, and clients). Because corrupt officials hold certain positions and identities, their corrupt behavior is more easily covered up under the guise of legality (the concept of 'legalized corruption').⁴

Corruption poses a serious threat to the welfare of a country. Corrupt practices, in all their forms, hinder development breed poverty,⁵ threaten the resilience of the state, and undermine the fabric of society.⁶ Public funds that should be used to improve health care, education, infrastructure, and other basic services are often misused or depleted by corruption. The impacts include a reduction in the quality of public services, bottlenecks in the school system, and restricted public access to medical facilities. In addition to being morally right, combating corruption essential if nations are to grow and have sustainable development.

Massive acts of corruption force us to reflect on the steps that have been taken so far in eradicating this crime. Efforts to fight corruption began in the Old Order era, and until now, the status of corruption is considered an extraordinary crime and even a very dangerous crime against humanity. Based on a recapitulation conducted by the Corruption Eradication Commission (KPK), efforts to tackle corruption through the prosecution approach, including investigations, investigations, prosecutions, final decisions, and executions, have increased every year from 2011 to 2018.

2 NL A Wulandhari, A M Muqsith, and M Alamsyah, "Corruption Cases Mapping Based on Indonesia's Corruption Perception Index," in *Journal of Physics: Conference Series*, vol. 801 (IOP Publishing, 2017), 12019. DOI: <https://doi.org/10.1088/1742-6596/801/1/012019>

3 Titin Purwaningsih and Bambang Eka Cahya Widodo, "The Interplay of Incumbency, Political Dynasty and Corruption in Indonesia: Are Political Dynasties the Cause of Corruption in Indonesia?," *Revista UNIS-CI*, no. 53 (2020). <https://www.proquest.com/scholarly-journals/interplay-incumbency-political-dynasty-corruption/docview/2407649987/se-2>

4 Dwight Y King, "Corruption in Indonesia: A Curable Cancer?," *Journal of International Affairs*, 2000, 603-24. Retrieved from <https://www.proquest.com/scholarly-journals/corruption-indonesia-curable-cancer/docview/220716447/se-2>

5 Gabriel Zucman, *The Hidden Wealth of Nations: The Scourge of Tax Havens* (University of Chicago Press, 2015).. <https://doi.org/10.7208/9780226245560>

6 John Kenedi, "Preventing Corruption Crimes of Money Laundering through Community Participation and POLRI Investigators," *International Journal of Criminal Justice Sciences* 18, no. 1 (2023): 16-28.. doi: <https://doi.org/10.5281/zenodo.4756202>

Table 1. Corruption case handling by KPK ⁷

EN-FORCE-MENT	2011	2012	2013	2014	2015	2016	2017	2018	JML
Investigation	78	77	81	80	87	96	123	164	1.135
Investigation	39	48	70	56	57	99	121	199	887
Prosecution	40	36	41	50	62	76	103	151	719
Inkracht	34	28	40	40	38	71	84	106	578
Execution	34	32	44	48	38	81	83	113	610

Currently, there is a view that corruption in Indonesia is becoming more pervasive and growing rapidly every year. This is believed to be caused by a lack of commitment and consistency in law enforcement, especially in imposing criminal sanctions against corruption. Law Number 31 of 1999 concerning the Eradication of the Crime of Corruption attempted to address the above issue by imposing the death sentence, in fact, for more than two decades following the enactment of the law, not a single perpetrator of corruption has been sentenced to death. It is no secret that there is massive corruption as a result of lax enforcement that does not deter the perpetrators, light sentences, and the ability of corrupt perpetrators to remain comfortably in prison through bribing officials.⁸

The imposition of the death penalty is considered one of the ways to provide an effective deterrent effect against perpetrators of corruption. The article is a response to the public's calls during the reform era to provide severe punishment to perpetrators of corruption. Nevertheless, the death penalty remains a contentious issue with pros and cons, each with its own claims.

In a sociological context, the death penalty should reflect the seriousness of the government and the Parliament at that time in eradicating corruption. However, the reality shows that the implementation of the death penalty has never happened in the last twenty years. Juridical problems arise mainly in the formulation of the death penalty as a criminal aggravation, which is only applied to certain corruption crimes with the formulation of "certain circumstances."

The "certain circumstances", according to Article 2 paragraph (1), involve acts of unlawful self-enrichment when the state is in a state of danger, a national natural disaster, a repetition of corruption crimes, or an economic and monetary crisis. This research specifically focuses on conceptual analysis of legal norms related to criminal

⁷ <https://acch.kpk.go.id/id/berkas/penindakan/penyidikan>, August 23, 2019

⁸ Jon S T Quah, "Combating Police Corruption in Indonesia: Cleansing the Buaya (Crocodile)," *Asian Education and Development Studies* 9, no. 2 (2020): 129–143. doi: <https://doi.org/10.1108/AEDS-04-2018-0088>

aggravation in certain circumstances, especially related to national natural disasters. The purpose of this research is to answer legal issues related to certain circumstances indicators as a prerequisite for imposing the death penalty for perpetrators of corruption crimes and reformulation of these indicators.

2. ANALYSIS AND DISCUSSION

Indicators of Certain Circumstances As a Prerequisite for The Imposition of Death Penalty Sanctions for Perpetrators of Corruption Crimes

Corruption, according to international agreements, is a *transnational crime*,⁹ considered an act or criminal offense that not only violates the law, but also contradicts moral values, decency, propriety, and other good values. The crime of corruption is considered an *extraordinary crime* that requires serious efforts in eradicating and overcoming it. This crime is generally committed by individuals or groups that lack morals.

Factors that lead to corrupt behavior involve the poor condition of laws, inconsistent implementation of laws, and the attitudes and actions of law enforcement officials¹⁰. Therefore, Anti-corruption law policies should prioritize preventive measures to avert future crimes to safeguard society, applying deterrent effects, and improving the conduct of offenders. Moreover, the policy must also be repressive, punishing to create a deterrent effect, and rehabilitative and restorative to restore the harms that previous crimes caused.

The weakness of the death penalty sanction as an aggravation of punishment in the corruption crime law is that it only applies to corruption crimes listed in Article 2 paragraph (1) concerning “every person who unlawfully commits an act of enriching himself or herself or another person or a corporation that can harm state finances or the state economy”. Thus, in other types of corruption crimes, the perpetrators cannot be subject to the death penalty, even though in the general explanation of the corruption crime law it is emphasized that the purpose of its formation is to eradicate every form of corruption crime.

In addition to corruption crimes that harm state finances as stipulated in Article 2 and Article 3 of the Corruption Crime Law, there are other types of corruption crimes such as bribery, embezzlement in office, extortion, fraudulent acts, corruption in the procurement of goods and services, gratuities and other crimes related to corruption including the offense of *obstruction of justice*, not providing or providing false information. The other types of corruption offenses are not subject to the death penalty even though the impact is no less dangerous. In the view of the public and taking into account the nature of corruption as an official offense, the acts of “abusing the authority of office/position” (Article 3) and “accepting bribes by civil servants/state administrators, judges and advocates” (Article 12) are considered more despicable than “enriching oneself” (Article 2). At the very least, it should be considered that the three forms of corruption

⁹ Dewi Asri Yustia and Firdaus Arifin, “Bureaucratic Reform as an Effort to Prevent Corruption in Indonesia,” *Cogent Social Sciences* 9, no. 1 (2023): 2166196. doi: <https://doi.org/10.1080/23311886.2023.2166196>

¹⁰ William Clifford, “Reform in Criminal Justice in Asia and the Far East,” *Resource Material Series*, no. 6 (1973). pp. 107

offenses have an equal level of offense and therefore should be punishable by the death penalty, especially considering the important role of bribery offenses in various corruption cases that have occurred.

Regarding “certain circumstances” in Article 2 paragraph (2) of the corruption law as the basis for imposing the death penalty, it is not explicitly explained in the formulation of the article, but only included in the “elucidation of Article 2.” This ambiguity leaves open the possibility of a wide interpretation and raises questions regarding the standards or circumstances that are truly deemed to be “certain circumstances.” Therefore, the unequivocal formulation may make it more difficult to use and interpret the law consistently related to the death penalty in the context of corruption crimes. This is demonstrated by the fact that those who commit corruption are not subject to the death penalty.

The most severe judge’s verdict to date is the life sentence imposed on the former Chief Justice of the Constitutional Court, Akil Mochtar in the regional election dispute bribery case. Meanwhile, other cases such as corruption committed by former Indonesian Minister of Social Affairs Juliari P. Batubara, who was implicated in a corruption case of social assistance funds, were only sentenced to 11 years imprisonment, even though the corruption committed concerned funds intended for the social community interests. Next, the corruption case committed by Eddy Prabowo and cost the state finances of USD 77 thousand and 24 billion was also not sentenced to death. The corruption cases committed by Juliari P. Batubara and Eddy Prabowo were committed at a time when the country was focused on dealing with the COVID-19 outbreak. The spread of COVID-19 is designated as a national disaster through Presidential Decree Number 12 of 2020 concerning the Determination of the 2019 Corona Virus Disease (COVID-19) Non-Natural Disaster.

The prerequisites for perpetrators of corruption to be sentenced to death, as explained in the Elucidation of Article 2 paragraph (2) of Law Number 20 of 2001 Concerning the Amendment to Law Number 31 of 1999 Concerning the Eradication of the Criminal Acts of Corruption, is related to “certain circumstances”. This definition of “certain circumstances” is given in the context of violations of funds intended for overcoming certain situations. These particular circumstances include:

a. Fund for Countermeasures against Dangerous Circumstances:

Based on Article 12 of the 1945 Constitution, a state of danger is one that can be declared by the President and is governed by legislation. Based on this provision, the authority is attributive, meaning that no state institution may be given the power to decide the state’s status and conditions during an emergency or a dangerous situation.¹¹

The definition of ‘state of danger’ juridically has been mentioned through Article 1 paragraph (1) of Law Number 74 of 1957 concerning State of Danger which reads as follows: 1) security or legal order in the entire territory or part of the territory of Indonesia is threatened by rebellion, riots or due to natural disasters, making it unlikely

¹¹ “The 1945 Constitution of the Republic of Indonesia Has Been Amended 4 Times, but the Provisions in Article 12 Have Not Changed at All, Which Means That the Authority Is Reserved Only for the President,” n.d.

that standard equipment will be able to contain them; 2) there is war or danger of war or fear that Indonesian territory may be violated in some ways.

From these provisions, it is clear that there are only two levels of danger, namely a state of emergency and a state of war. The circumstances referred to as a state of emergency appear to encompass both civil emergencies and military emergencies as referred to in Government Regulation in Lieu of Law (Perpu) Number 23 of 1959 concerning the Revocation of Law Number 74 of 1957 and the Determination of a State of Danger. Thus, a state of emergency is equivalent to a state of danger, which consists of a state of war, military emergency, and civil emergency.

With the enactment of a state of emergency or a state of danger, whether at the level of civil emergency, military emergency, or war emergency, does the law of emergency (*abnormal recht voor abnormal tijd*) also apply?

In essence, in situations of emergency or danger, including the level of civil emergency, martial law, or war emergency, the question arises as to whether emergency law or “*noodrecht*” applies. This concept, as explained by Jimly Asshiddiqe, any act that is not against the law or “*onrecht*” can be made permissible during a time of emergency. Within the framework of criminal law, the elements of duress or *overmacht*, in conjunction with self-defense executed under duress, serve as the foundation for the authorization or justification of actions taken during emergency conditions. Civil law also recognizes the principle of “*overmacht*” or duress, which allows a person not to be obliged to perform an act that in normal circumstances would be required of him.

Thus, the Elucidation of the Law on Corruption that refers to “funds for countermeasures of a state of danger” refers to funds earmarked for countermeasures of war emergencies, military emergencies, and civil emergencies. In these emergencies, emergency law can apply, and actions taken to tackle corruption can be considered legitimate and have a legal basis.

b. National Natural Disaster Relief Fund

The Indonesian government has passed Law No. 24/2007 on Disaster Management, which defines disaster as an incident or set of events that endangers and disrupts people’s lives and livelihoods. Disasters can be caused by natural factors, non-natural factors, or a combination of both. The consequences might be causing death, environmental damage, property loss, and psychological effects.

Natural disasters, in the context of article 1 point 2 of this law include earthquakes, tsunamis, volcanic eruptions, floods, droughts, hurricanes, and landslides. However, further explanation on how a disaster is classified as a national disaster or regional disaster needs to be evaluated using specific metrics. These indicators include the number of casualties, the value of property losses, the damaged facilities and infrastructures, the size of the impacted area, and the socio-economic effects.

Determining the status of a national disaster is crucial in the framework of the Corruption Law because it affects the death penalty for perpetrators of corruption crimes that jeopardize money allocated for disaster management. The legislation offers a framework, but it is unclear exactly what number of casualties, losses, and damages are necessary to qualify as a national disaster status. This creates legal confusion and

could be interpreted as a subjective decision from the President, who is the ultimate authority.

As a result, perpetrators of corruption crimes are exempt from the death penalty if the disaster is not designated as a national natural disaster. It is challenging to apply the norm consistently because of this uncertainty.

c. Countermeasures for widespread social unrest

A riot is an event in which a mass/group of people commits disorder, destruction, and various other bad actions.¹² A riot is the action of a group of people who take out violent acts in an attempt to protest something with the common purpose of creating a situation or atmosphere of disturbance of public order. Riot comes from the Greek word *violentia*, meaning ferocity, ferocity, ferocity, ferocity, rape, and persecution.¹³

Therefore, in the context of criminal acts of corruption related to countermeasures due to widespread social unrest, the meaning refers to the deviation or misappropriation of the use of countermeasure funds to create favorable conditions for the state due to mass actions that cause chaos, resulting in social and economic impacts. However given that the circumstances fall under the category of emergencies and threats that are difficult to properly tie the field of corruption legislation, the author believes that this signal is truly a condition that is challenging to meet.

d. economic and monetary crisis management

A monetary crisis can literally be described as a condition in which the financial stability of a country is disrupted. This results from a sharp decline in asset values, the inability of businesses and consumers to pay their debts, and a lack of liquidity in financial institutions. Market panic during monetary crises is frequently linked to investors selling assets or taking money out of savings accounts out of concern that their value would decline or even vanish if they remained in banking institutions.¹⁴ Meanwhile, Frederich S Mishkin defines a monetary crisis as a crisis related to a country's finances.¹⁵

e. Repetition of corruption offenses

Recidivism is the term for a situation in which an individual has committed multiple crimes, each of which is considered a separate criminal offense, and among those acts, one or more have resulted in a conviction by a court. The basis for the aggravation of punishment in recidivist cases stems from the idea that if a convicted offender reoffends, it suggests that they may have a tendency or bad character that calls for harsher punishment.¹⁶

Recidivism by its nature can be divided into two types: 1. General recidivists include:

- a. A person has committed a crime; b. For which a sentence has been served; c. Then he repeats committing each crime; d. Then this repetition can be used as a basis for

¹² Bayu Eka Saputra, "Provokator Kerusuhan Dari Sudut Penghasutan Dan Penyertaan Dalam Kitab Undang-Undang Hukum Pidana," *Lex Crimen* 2, no. 4 (2013).p. 122.

¹³ Saputra.

¹⁴ Jeanny Aippassa, "What Is the Moeneter Crisis. I News.Co.Id.," 2022, <https://www.inews.id/finance/keuangan/apa-yang-dimaksud-dengan-krisis-moneter-simak-penyebabnya>. downloaded on January 27, 2022.

¹⁵ "Kompas.Com. Monetary Crisis Definition and Impact. <https://www.kompas.com/skola/read/2019/12/20/080000969/Krisis-Moneter-Pengertian-Dan-Dampaknya?Page=all> Downloaded on December 20, 2019," n.d.

¹⁶ Teguh Prasetyo, *Criminal Law* (Jakarta: Rajawali Pers, 2010)., p. 122

aggravation of punishment. 2. Special recidivism includes, among others: a. A person commits a crime; b. For which he has been sentenced; c. After serving the sentence he repeats the crime; d. Which crime is similar.¹⁷

Based on the nature of the repetition of the crime, the repetition of the crime of corruption is included in the special recidivist nature. It states that people who violate the law or commit crimes are subject to enhanced criminal punishments and meet the requirements outlined in Article 2 paragraph 1 of the Anti-Corruption Law, namely: 1. Every person; 2. Unlawfully enriching oneself or another person or a corporation; 3. May harm state finances or the state economy.¹⁸ The aggravation described in the provisions of Article 2 paragraph (2), systematically, this aggravation only applies to those who are proven guilty of committing acts of corruption as referred to in paragraph (1) and have been sentenced to serve a prison sentence by a court with permanent legal force. In other words, to be subject to aggravated sanctions in the form of the death penalty, perpetrators of corruption must qualify as recidivists.

Reformulation of Certain Circumstances Indicators As a Prerequisite For The Imposition of Death Penalty Sanctions for Perpetrators of Corruption Crimes

Indonesian policymakers must have the political will and capacity to initiate appropriate reforms to address the causes of corruption through criminal policies that support corruption eradication measures.¹⁹ Barda Nawari Arief stated that “certain circumstances” as a reason for aggravating punishment still have weaknesses both juridically and in its application. Thus, according to the author, to provide certainty that the death penalty sanction as stated in Article 2 paragraph (2) of the Anti-Corruption Law which regulates “certain circumstances” must at least be **reformulated** with the following description:

1) Country in Danger

As explained in the previous discussion, emergencies are divided into emergencies of war, military emergencies, and civil emergencies. Practically, the author contends that this circumstance especially a state of war emergency won't happen very often. It makes sense, though, because legal standards have to control hypothetical situations in order to guarantee legal certainty.

Anyone who uses money that has been designated for an emergency and commits irregularities could certainly face criminal charges. To ensure that there are no discrepancies in the application, it is still necessary to confirm the relationship between the amount of fund irregularities for which criminal liability exists and the imposition of the death penalty sanction.

In addition, the legal subject who can be held criminally liable in the concept of corruption in an emergency is of course the person who has the authority. Because, if you look at the type of emergency, it is practically directly tied to the military and

¹⁷ Prasetyo.

¹⁸ Prasetyo.

¹⁹ Jon Quah, “Anti-Corruption Agencies in Asia Pacific Countries: An Evaluation of Their Performance and Challenges,” *Transparency International*, 2017.p. 64-68.

security system, which means that the authority is close to the Police, the Indonesian National Army, and institutions related to defense and security.

If we look at the formulation in Article 2 of the Anti-Corruption Law and then attribute it to the Officials who have the authority to overcome the state of danger, the author argues that the death penalty cannot be applied to those who abused or misused their authority in carrying out their authority to overcome the emergency.

This is due to the extremely restrictive regulations that apply to officials who abuse their power and will be imposed under the provisions of Article 3 of the Anti-Corruption Law. Meanwhile, the provisions of Article 3 of the Anti-Corruption Law make no mention of the death penalty as a sanction for those who commit corruption-related offenses. Furthermore, the sanctions contained in Article 3 of the Anti-Corruption Law are at most life imprisonment and at least 1 year. The following will be quoted from the formulation of the provisions of Article 3 of the Anti-Corruption Law:

“every person who intending to benefit himself or herself or another person or a corporation, abuses the authority, opportunity or means available to him or her because of his or her position or position which may harm the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or with a minimum of Rp. 50,000,000 (fifty million rupiahs) and a maximum of Rp. 1,000,000,000 (one billion rupiahs)”

The provisions of Article 3 do not regulate the escalation of punishment as stipulated in Article 2. Therefore, it will be impossible to apply the death penalty sanctions for officials who have the authority to use funds to cope with emergencies or states of danger in Indonesia and commit irregularities against their authority.

Because of this, the author contends that future criminal law policies on the death penalty sanctions that apply to the state during a state of danger or emergency should govern and emphasize the provisions of Article 3 of the Anti-Corruption Law as well as the provisions regulating the aggravation of punishment regulated in Article 2 paragraph (2). So that the formulation of the article becomes as follows:

Article 3:

1. *“every person who intending to benefit himself or herself or another person or a corporation, abuses the authority, opportunity or means available to him or her because of his or her position or position which may harm the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or with a minimum of Rp. 50,000,000 (fifty million rupiahs) and a maximum of Rp. 1,000,000,000 (one billion rupiahs)”*
2. *If the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed.*

2) Disaster Occurrence

As explained in the previous discussion, one of the grounds for a person to be sentenced to the death penalty is when a national natural disaster occurs. Disasters in Law Number 24 of 2007 concerning Disaster Management implicitly stated that disasters consist of three types, namely: *first*, natural disasters, which are defined as events or a series of events brought on by nature, such as earthquakes, tsunamis,

volcanic eruptions, floods, droughts, hurricanes, and landslides; *second*, non-natural disasters, that is, catastrophes brought on by one or more non-natural events, such as technological failure, modernization failure, epidemics, and disease outbreaks; and *third*, social disasters, are defined as catastrophes brought on by human actions. These include social conflicts that arise between communities or groups and acts of terror.

Concerning the types of disasters above, the Corruption Law specifies that a national natural disaster serves as the basis for the aggravation of punishment. As explained earlier, the president has the right to decide on policy in the event of a national natural disaster. It is certainly very difficult to have to wait in advance for a presidential decision related to the status of a national natural disaster. Concerning the topic of criminal law in the management of natural disasters, officials who have the power to implement the budget or oversee budget politics fall under the same legal restrictions as the state in a state of danger above. As the author has explained in the debate above, this means that there is a great deal of flexibility in how Article 3 of the Anti-Corruption Law can be applied.

Therefore, the author contends that using the phrase “natural disaster” alone will suffice to achieve greater legal certainty and clarity regarding the terms of the disaster rather than referring to it as a “national natural disaster” which would necessitate a drawn-out process and the President’s *political will*. Considering that Indonesia is a disaster-prone country whose regions experience disasters every year, especially natural disasters, it should be possible to apply criminal aggravation to the perpetrators of corruption, regardless of whether the “funds” are connected to disaster management or not. This means that corruption does not only have to be limited to the money used to deal with natural disasters.

Thus, the formulation of the article that should be changed in this provision is Article 2 with the provisions of paragraph (1) and paragraph (2) remaining. However, in the explanation of Article 2 paragraph (2) in the future, it must be amended with the following formulation:

“What is meant by “certain circumstances” in this provision is a situation that can be used as an excuse for aggravation of punishment for perpetrators of criminal acts of corruption, namely if the criminal act is committed against funds intended for the mitigation of a state of danger, natural disasters, mitigation of the consequences of widespread social unrest, mitigation of economic and monetary crises, and repetition of criminal acts of corruption”.

3) When the country is in a state of economic and monetary crisis

According to Adami Chazwi, among the four (five-pen) indications of factors for aggravating the crime, the points of economic and monetary crises and widespread social unrest are nonmeasurable indicators. In addition, such conditions take a long time to occur depending on the global economy.

Similar to the provisions above, individuals with power and position to execute the state budget are also people who have the potential to commit corruption. However, it is improbable that they will be subject to Article 2. This means that what might be

applied is to use Article 3, namely abuse of authority. Therefore, the formulation of Article 3 in the future should be changed to the formulation that has been described in the state of emergency above. Thus, the application of the death penalty can be imposed on those who commit corruption crimes.

4) Repetition of Corruption

Likewise, the repetition of corruption crimes, where the elucidation of Article 2 paragraph (2) does not explicitly state how many times a person committing a corruption crime can be sentenced to the death penalty. Therefore, according to the author, the formulation of this provision must be clarified.

Thus, the following is how the provisions of the Explanation of Article 2 paragraph (2) are formulated, as follows; “What is meant by “certain circumstances” in this provision is a situation that can be used as an excuse for aggravation of punishment for perpetrators of criminal acts of corruption, namely if the criminal act is committed against funds intended for the mitigation of a state of danger, natural disasters, mitigation of the effects of widespread social unrest, mitigation of economic and monetary crises, and repetition of criminal acts of corruption that have been decided by a court that has obtained binding legal force committed more than once”.

3. CONCLUSION

The conclusions of this research can be summarized as follows: First, it is necessary to regulate the provisions regarding the aggravation of the death penalty in Article 3 of the Corruption Crime Law as well as the existing arrangements in Article 2 paragraph (2) regarding certain circumstances that can be the basis for imposing the death penalty. These certain circumstances include war emergencies, military emergencies, civil emergencies, corruption in a state of natural disaster, corruption during a period of an economic and monetary crisis, and repetition of corruption crimes.

Second, certain circumstances as a condition for the imposition of punishment, need to be reformulated to create legal certainty. The phrase “national natural disaster” should be changed to the phrase “natural disaster” so that the stipulation process does not wait for the President’s *political will*. In addition, the death penalty is not only imposed on corruption during natural disasters but can be imposed on perpetrators as long as the funds are earmarked for disaster management. The condition of certain circumstances also applies if Article 3 of the law on non-corruption is threatened with criminal aggravation.

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