

Comparative Legal Study on the Death Penalty for Corruption Crimes in China and Indonesia

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Article History

Received: 23/01/2026; Reviewed: 02/06/2026; Accepted: 20/07/2026

Abstract: This study aims to explore research focused on a comparison between the legal systems of China and Indonesia and to assess the effectiveness of the death penalty as a deterrent against corruption, with the goal of improving the legal system in Indonesia. **The method used** in this study is quantitative analysis. **The novelty** of this research lies in the reformulation of indicators for the application of the death penalty, which are no longer general in nature but must be based on a classification of the severity of corruption, integrated through a comprehensive analysis of actus reus and mens rea. This is reinforced by Article 28J of the 1945 Constitution, which states that an individual's human rights may be limited by the obligation to respect the rights of others in order to maintain public order. Although Indonesia has taken an abstentionary stance in international forums such as Amnesty International, domestic law still permits the imposition of the death penalty. **The results** of the study indicate that Article 2, paragraph (2) of the Anti-Corruption Law does not provide legal certainty regarding the application of the death penalty for perpetrators of corruption. Based on data from ICJR and Amnesty International for 2024, it is evident that no corruption offenders have been sentenced to death in Indonesia; conversely, the death penalty is more frequently imposed in drug-related and murder cases. This lack of law enforcement has allowed a culture of corruption to flourish, necessitating a more progressive theoretical approach so that the law can become more flexible and responsive in achieving substantive justice. **The conclusion** is that, as an alternative to addressing human rights issues, the National Criminal Code (Law No. 1/2023) offers a compromise by establishing the death penalty as a sanction subject to a 10-year probationary period and a clemency procedure. This approach is considered a fair means of upholding the principle of "fiat justitia ruat coelum" (let justice be done though the heavens fall) while still taking humanitarian values into account.

Keywords: Death Penalty; Comparative Law; Legal System

Abstrak: Penelitian ini bertujuan untuk menggali studi yang berfokus pada perbandingan antara sistem hukum di China dan Indonesia, menilai efektivitas hukuman mati sebagai tindakan pencegahan terhadap korupsi, dengan tujuan untuk memperbaiki sistem hukum di Indonesia. **Metode** penelitian yang diterapkan dalam analisis penelitian ini dilakukan dengan analisis kuantitatif. **Kebaruan** penulis yakni, reformulasi indikator-indikator untuk penerapan hukuman mati, yang tidak lagi bersifat umum, melainkan harus didasarkan pada klasifikasi tingkat keparahan korupsi, yang diintegrasikan melalui analisis komprehensif terhadap actus

*reus dan mens rea. Hal ini diperkuat oleh Pasal 28 J dari UUD 1945, yang menyatakan bahwa hak asasi seseorang bisa dibatasi oleh kewajiban untuk menghormati hak orang lain demi menjaga ketertiban umum. Meskipun Indonesia mengambil sikap abstain dalam forum internasional seperti Amnesty International, hukum domestik masih memungkinkan diterapkannya hukuman mati. **Hasil penelitian** memberikan gambaran apabila Pasal 2 ayat (2) UU Tipikor tidak memberikan kepastian hukum mengenai penerapan hukuman mati bagi pelaku korupsi. Berdasarkan data dari ICJR dan Amnesty International 2024, terlihat bahwa tidak ada pelaku korupsi yang dijatuhi hukuman mati di Indonesia; sebaliknya, penghukuman mati lebih banyak diberikan pada kasus narkoba dan pembunuhan. Kurangnya penegakan hukum ini menyebabkan budaya korupsi berkembang, sehingga dibutuhkan pendekatan teori yang lebih progresif agar hukum bisa menjadi lebih fleksibel dan responsif dalam mencapai keadilan yang substansial. **Kesimpulannya**, sebagai alternatif untuk menangani masalah hak asasi manusia, KUHP Nasional (UU No. 1/2023) menawarkan opsi kompromi dengan menempatkan hukuman mati sebagai sanksi yang memiliki masa percobaan selama 10 tahun dan prosedur grasi. Pendekatan ini dianggap sebagai sarana yang adil untuk menegakkan prinsip fiat justitia ruat coelum (aturan harus dilaksanakan meskipun segala sesuatu di sekelilingnya hancur) sambil tetap mempertimbangkan nilai-nilai kemanusiaan.*

Kata Kunci: Pidana Mati; Perbandingan; Sistem Hukum

1. INTRODUCTION

The concept of corruption is derived from the term corruption or corruptus, which is derived from the word corrumpere, meaning immoral, damage, slander. The word corruption itself has a very broad meaning.¹ Corruption constitutes a criminal offense that inflicts damage on the state through acts such as bribery, embezzlement, and others.² Corruption is a serious crime that can undermine the moral, political, and economic foundations of a country.³ According to Suhartono, an academic (professor of history at Gadjah Mada University) in a discussion on Cross-Cluster Research in the Humanities.⁴ Public trust in the government sector, especially among public stakeholders, namely law enforcement authorities. The correlation in collaboration with law enforcement officials, who are a profession with dedication and professionalism in order to apply justice for the entire community, will be tarnished, especially given the large number of corruption cases that often occur but lack appropriate punishment for perpetrators of corruption.⁵

¹ Adithiya Diar, *Perbandingan Penyelesaian Perkara Korupsi Delik Suap Antara Indonesia Dan Belanda*, ed. Safrinal, Pertama (Pasaman Barat, Sumatera Barat: CV Azka Pustaka, 2021).

² DM Listaningsih CD Rosikah, *Pendidikan Antikorupsi: Kajian Antikorupsi Teori Dan Praktik*, ed. Tarmizi, Pertama (Rawamangun, Jakarta Timur: Sinar Grafika, 2022).

³ Rudy Alfianda et al., "Tindak Pidana Korupsi Dan Pertanggungjawaban Korporasi," *Wathan: Jurnal Ilmu Sosial Dan Humaniora* 1, no. 1 (2024): 64–75, <https://doi.org/10.71153/wathan.v1i1.23>.

⁴ Ni Ketut, Dessy Fitri, and Yanti Dewi, "Pentingnya Pendidikan Anti Korupsi Dalam Menumbuhkan Budaya Anti Korupsi," *Jurnal Ilmu Hukum Sui Generis* 3, no. 1 (2023): 26–32, <https://ejournal2.undiksha.ac.id/index.php/JIH/article/view/1789>.

⁵ Susi Amalia, "Analisis Dampak Korupsi Pada Masyarakat (Studi Kasus Korupsi Pembangunan Shelter Tsunami Di Kecamatan Labuan Kabupaten Pandeglang)," *Epistemik: Indonesian Journal of Social and Political Science* 3, no. 1 (2022): 54–76, <https://doi.org/10.57266/epistemik.v3i1.77>.

Corruption is a criminal act that is very detrimental to the state, as stated in Articles 603 and 604 of Law Number 1 of 2023, which reads "Any person who unlawfully enriches themselves, others, or a corporation to the detriment of the state finances or economy shall be punished with life imprisonment or imprisonment for a minimum of 2 (two) years and a maximum of 20 (twenty) years and a fine of at least category II and at most category VI." Article 604 states: "Any person who, with the intention of benefiting themselves, others, or a corporation, abuses their authority, opportunity, or means available to them due to their position or status to the detriment of state finances or the national economy shall be punished with life imprisonment or imprisonment for a minimum of 2 (two) years and a maximum of 20 (twenty) years and a fine of at least category II and at most category VI." Corruption itself remains an urgent issue for several nations, such as China and Indonesia. This crime not only has a significant effect on the nation's economy but also affects the government's image, as public confidence in governmental organizations deteriorates. Data showing the corruption index between China and Indonesia was released by Transparency International The Global Coalition Against Corruption from 2022 to 2024. Previous research has focused solely on emphasizing that the level of corruption must be a determining factor, coupled with the reinforcement of Article 28J of the of the Constitution and ICJR data without providing an argument based on an analysis of the principles of certainty, justice, and utility, along with an assessment of how effective the death penalty is in combating acts of corruption, as well as the promotion of new solutions through an approach addressing the urgency of weak law enforcement-which leads individuals individuals fear the law and normalizes corruption as part of Indonesian culture. Indonesia must address the urgency of corruption by demonstrating adaptability and flexibility within the legal system to achieve substantive justice through the application of the death penalty.

Furthermore, previous studies have argued that the preventive aspect of the death penalty is merely general in nature, while specific preventive measures within the context of the death penalty are ineffective because educational and rehabilitative elements are not fulfilled; consequently, previous research has prioritized the aspect of economic restitution. For this reason, the research gap addressed by this study is the reformulation of indicators for the application of the death penalty, which should no longer be general in nature but must be based on a classification of the severity of corruption, integrated through a comprehensive analysis of *actus reus* and *mens rea*. In this study, as an alternative to addressing human rights issues, the National Criminal Code (Law No. 1/2023) offers a compromise by establishing the death penalty as a punishment accompanied by a 10-year probationary period and a pardon procedure. This approach is considered a fair way to uphold the principle of "*fiat justitia ruat coelum*" (let justice be done though the heavens fall) while still taking humanitarian values into account.

In previous research emphasizing solutions for state compensation, progress has been hindered by the distinct nature of Indonesia's legal system, which adheres to the Civil Law

system-one that emphasizes strict criminal proof and focuses on sanctions against the perpetrator (in personam). On the other hand, Non-Conviction Based Asset Forfeiture (NCBAF), or the seizure of assets without a criminal conviction, is a legal tool for seizing assets suspected of being derived from criminal activities. At the same time, NCBAF originates from the Common Law system, which is more adaptive and places greater emphasis on the assets themselves (in rem). This paradigm shift is difficult for many legal practitioners in Indonesia to accept. As to why comparative research between China and Indonesia is necessary, we can see that the implementation of the death penalty in Indonesia in 2024 still shows significant differences: drug-related crimes dominate overwhelmingly, accounting for 85.81%, while corruption cases do not appear in the data on maximum sentences; furthermore, data from Amnesty International's 2024 global report indicates that Indonesia lacks clarity on the matter, as evidenced by its abstention in the vote on the abolition of the death penalty; however, regarding death penalty regulations, Article 2 (2) of the Corruption Eradication Law-which governs the death penalty under "certain conditions"-remains a dormant provision or merely a theoretical concept that has not been practically implemented. In addition, China's firm stance in opposing the vote to abolish the death penalty has contributed to a decline in the death penalty figures reported by Transparency International's Global Coalition Against Corruption from 2022 to 2024.

First, in 2022, China scored 45 with a ranking of 65, while Indonesia scored 34 with a ranking of 110. Second, in 2023, China scored 42 with a ranking of 76, while Indonesia scored 34 with a ranking of 115. Third, in 2024, Indonesia scored 37 with a ranking of 99, while China scored 43 out of a total of 90 with a ranking of 76 among 180 countries. The data shows that China's score decreased by 2 points from 2022 to 2024, while Indonesia's score increased by a total of 3 points from 2022 to 2024. A lower score on the Corruption Perception Index reflects a higher perception of corruption. Analysis of the data shows that both Indonesia and China have relatively high levels of corruption. However, China has experienced a decline, unlike Indonesia, which has seen a 3-point increase. This assessment is based on the lower score on the Corruption Perception Index (CPI), which reflects a higher perception of corruption in a country. Indonesia achieved a score of 34, which is higher than China's corruption score of 42. These two figures show that Indonesia is considered to have a higher level of corruption than China. This indicates that China's system for addressing corruption is quite effective, given the imposition of the death penalty for corrupt officials, in contrast to Indonesia, which continues to prioritize human rights. This comparison illustrates that in China, social and cultural factors underpin the application of the death penalty to individuals found guilty of corruption-specifically cases involving large sums of money and causing significant losses to the state. Unlike Indonesia, although the law includes the death penalty, its application to individuals proven guilty of corruption is extremely rare because several factors are still considered, including human rights. Analysis of corruption cases in Indonesia reveals a disparity between the extent of state losses and the penalties imposed on perpetrators. Therefore, this study is

designed to address the gap between regulatory ambitions and the reality of law enforcement in Indonesia. The relationship between the research objectives and the problems of corruption cases in Indonesia, which stem from weak law enforcement, necessitates that the state adapt by taking innovative steps to address legal loopholes through the synchronization of judicial reviews of the Anti-Corruption Law. we can observe a particularly heart-wrenching corruption case

The case of Setya Novanto, previous Speaker of the Indonesian House of Representatives for the 2014-2019 term from the Golkar Party, is a clear example of this problem. In the e-KTP corruption scandal, which resulted in losses for the state of Rp 2.3 trillion, the funds should have been used for important programs such as the electrification of Papua-Maluku, the construction of 138 schools, the procurement of 300 Transjakarta buses, the construction of 4,464 houses, and financing for the departure of 65,789 people who had registered for the hajj pilgrimage. However, the Central Jakarta Corruption Court, in accordance with Decision Identifier 130/Pid. Sus-TPK/2017/PN. Jkt. Pst on April 24, 2018, only imposed a a prison term of 15 years accompanied by a penalty of Rp 500 million. Ironically, in a review of case number 32 PK/Pid. Sus/2020, the sentence was reduced to 12.5 years and an additional US\$7.3 million in compensation, with the remaining Rp 49 billion still unpaid. A similar problem can be seen in the case of Harvey Moeis, a businessman involved in corruption in the management of tin in Bangka Belitung. Despite causing significant losses to the state, the court only of 6.5 a prison sentence of several years, along with a monetary penalty of Rp 1 billion, and compensation of Rp 210 billion based on Decision Identifier 70/Pid. Sus-TPK/2024/PN. Jkt. Both cases reveal fundamental weaknesses in the Indonesian judicial system, where Section 2, paragraph (2) of Law Number 20 of 2001 regarding the Elimination of Corruption Offenses actually allows for the death sanction for corrupt practices "under certain circumstances," but the phrase lacks clarity in its actual application. Unlike Indonesia, countries such as China take a much tougher approach to dealing with serious corruption cases, with a higher rate of consistent implementation of capital punishment. This situation highlights the need to reform the judicial system in Indonesia in order to achieve fair and impartial justice. This is in line with Hans Kelsen's thinking, which states that the implementation of the law must be able to provide sanctions that are commensurate with the degree of loss endured by the state and society. The case study illustrates the difficulties that exist in the Indonesian legal system, where the penalties imposed often do not demonstrate decisive action in prosecuting corruption cases.

For this reason, it is important to develop the judicial framework in Indonesia, where law implementation should be able to deliver fairness in alignment with Hans Kelsen's view, namely that justice itself is clarity when applied to every individual and carried out equally, without discriminating against anyone.⁶ Based on several issues regarding the increase in corruption

⁶ Purwanto Laila Aturkian, *Kesengsaraan Menanti Pelaksanaan Eksekusi Hukuman Pidana Mati*, ed. Lis Agustin Tentia, Pertama (Sukabumi, Jawa Barat: CV Jejak, anggota IKAPI, 2023).

cases, the author conducted an analysis through a comparative study between China and Indonesia. One of the proposals is to conduct a judicial review of Article 2 paragraph (2) (UUTPK) to change the phrase “may” to “must or shall” to ensure that the implementation of capital punishment as a means of dealing with corruption cases is founded upon the status quo of corruption cases that often occur in certain situations. However, the management of corruption cases is not commensurate with the penalties imposed on the perpetrators. For this reason, the capital punishment must still be derived from Article 99 Paragraph 1 of Law Number 1 of 2023, which explains that the capital punishment can to be conducted following the President rejects the inmate's appeal for mercy.

2. METHOD

This study employs a normative-comparative legal research method, utilizing a statutory approach, a comparative approach, and a conceptual approach. The primary legal sources used include Law No. 20/2001, Law No. 1/2023, and the Criminal Law of the People's Republic of China (Articles 383, 384, 386), while secondary legal sources consist of court rulings related to the cases of Setya Novanto and Harvey Moeis, reports from the ICJR, and Amnesty International. The focus of the analysis in this study is oriented toward legal norms and criminal policy, where data from the Corruption Perceptions Index (CPI) for the years 2022–2024 is used descriptively as a measure of the gap to strengthen the normative argument regarding the relationship between the death penalty and corruption levels. Using a deductive analysis method, this study examines the urgency of changing the term “may” to “must” in Article 2, paragraph (2) of the PTPK Law to achieve legal certainty in accordance with Article 28J of the 1945 Constitution, as well as rethinking the mechanism for carrying out the death penalty following the rejection of a pardon, referencing Article 99 (1) of Law No. 1/2023 as the basis for filing a judicial review.

3. DISCUSSION

Historically, the implementation of the death penalty in Indonesia has been based on the Criminal Code (KUHP), most of which originated from Dutch law, namely the *Wetboek van Strafrecht* (WvS). In the Netherlands, the death penalty was abolished in 1870, with the exception of wartime.⁷ We can see in positive law itself that the death penalty is enforced in cases of crimes that harm the state and even the state economy. Not only that, the death penalty can be implemented through various aspects of criminal law regarding certain circumstances, particularly serious crimes, including corruption, drug abuse, terrorism, and other serious crimes. According to Article 10 of the old Criminal Code, Moeljatno (1999)⁸, also provides an explanation. The death penalty is the main form of punishment and other

⁷ Agus Sugiyatmo and Listyowati Sumanto, “Perbandingan Hukum Tentang Hukuman Pidana Mati Di Indonesia Dengan Republik Rakyat China (Tiongkok),” *Innovative: Journal Of Social Science Research* 4, no. 2 (2024): 8042–57, <https://j-innovative.org/index.php/Innovative>.

⁸ Parhan Muntafa and Ade Mahmud, “Penerapan Hukum Pidana Mati Bersyarat Dalam KUHP Baru Di Hubungkan Dengan Asas Kepastian Hukum,” *Jurnal Preferensi Hukum* 4, no. 2 (2023): 130–136, <https://www.ejournal.warmadewa.ac.id/index.php/juprehum/article/view/6918>.

punishments, which are the most severe sanctions. The process for executing the capital punishment is contained in Article 11 of the old Criminal Code, which reads: "The death penalty shall be carried out by an executioner at the place of hanging by placing a noose around the neck of the convicted person and tying the noose to the gallows, then dropping the board on which the convicted person is standing." The capital punishment is executed by means of a firing squad or through other methods as outlined in the law. Previously, the Criminal Code regulated the rules for carrying out the death penalty in Indonesia, which was amended several times, namely from WvS 1915 using hanging, according to Oasamu Gunrei Number 1 dated March 2, 1942, using shooting to death, and according to WvS 1915 juncto Staatsblad 1945 Number 123, it was conducted by shooting to demise.

The regulations covered by Article 11 of the old Criminal Code underwent changes through judicial review and adjustments to Law No. 02/Pnps/1964 as well as Law No. 5 of 1969 regarding the procedures for carrying out the death penalty, which were determined by the courts, namely the General and Military Courts.⁹ Over time, this was further refined through National Police Chief Regulation No. 12 of 2010 concerning the procedures for carrying out the death penalty for perpetrators of criminal acts. Thus, the regulation of the death penalty in the old Criminal Code is based on Article 10 of the old Criminal Code, which is a basic punishment without a probationary period, no party can change the punishment, then in terms of execution after the decision has permanent legal force, and the request for clemency is rejected by the President, and there is no protection for vulnerable groups. Article 99 Paragraph 3 of Law Number 1 of 2023 (the new Criminal Code) explains that The execution of the death penalty shall be conducted by shooting the condemned individual to death via a firing squad or through other methods as specified in the provisions of the Law. Furthermore, Article 99 Paragraphs 1, 2, and 3 of the new Criminal Code explain that the execution of the death penalty may proceed following the President's denial of the convict's plea for clemency, and that the execution must not be conducted in public. The following are the details from Article 98 to Article 102 of the New Criminal Code:

a) Article 98

"The death penalty shall be imposed as a last resort to prevent criminal acts and protect society."

b) Article 99

Paragraph (1) The execution of the death penalty may proceed following the President's denial of the convict's plea for clemency.

Paragraph (2), The capital punishment mentioned in paragraph (1) must not be conducted in public.

Paragraph (3), The execution of the death penalty shall be conducted through the

⁹ Melisa Dewi Nur Aeni and Bambang Tri Bawono, "Penjatuhan Pidana Mati Dalam Persepektif Hak Asasi Manusia (The Death Penalty in the Perspective of Human Rights)," *Konfrensi Ilmiah Mahasiswa UNISSULA (KIMU)* 2, no. 8 (2020): 448–462, <https://jurnal.unissula.ac.id/index.php/kimuh/article/viewFile/11643/4789>.

shooting of the convicted individual by a firing squad or by alternative methods as outlined in the Law.

Paragraph (4), The implementation of capital punishment for expectant mothers, women who are nursing their infants, or individuals who are mentally ill shall be delayed until the female has given after giving birth, the woman has ceased breastfeeding her infant, or the individual with mental illness has recovered.

c) Article 100

Paragraph (1), The magistrate shall implement the death penalty with a probationary period of ten (10) years, considering: a. the defendant expresses remorse and a sense of hope for rehabilitation; or b. the involvement of the defendant in the criminal act.

Paragraph (2), The death penalty with a probation period as referred to in paragraph (1) must be stated in the court decision.

Paragraph (3), The 10 (ten) year the probation period will begin. 1 (one) day following the court's decision becomes final and binding.

Paragraph (4), Should the convict exhibit exemplary conduct and demeanor during the probation period mentioned in paragraph (1), the death penalty may be converted to life imprisonment through a Presidential Decree, following a review by the Supreme Court.

Paragraph (5), Life imprisonment as referred to in paragraph (4) shall be calculated from the date the Presidential Decree is issued.

Paragraph (6), If during the probation period as referred to in paragraph (1) the convicted person does not demonstrate commendable attitude and behavior and there is no hope for improvement, the death penalty may be carried out on the orders of the Attorney General.

d) Article 101

"If the death row inmate's clemency petition is rejected and the death penalty is not carried out within 10 (ten) years since the clemency was rejected, not because the inmate escaped, the death penalty may be commuted to life imprisonment by Presidential Decree."

e) Article 102

"Further provisions regarding the procedure for carrying out the death penalty are regulated by law."

Thus, the provisions on the death penalty in the new Criminal Code are based on Articles 98 to 101, which provide for alternative and conditional penalties through a 10- duration of probationary period, with the President as the party who can change the punishment derived from the recommendation of the Minister of Law and Human Rights and the consideration of the Supreme Court. then in terms of execution, it adjusts Article 99 paragraph 1 regarding clemency, as well as protection for at-risk populations such as pregnant women, people with disabilities, and children under 18 years of age.

3.1. The Framework of the Death Penalty within the Corruption Eradication Legislation

The provisions regarding the capital punishment for corruption crimes are explained in Article 2 Paragraph 2 of Law Number 31 of 1999, an amendment to Law Number 20 of 2001 concerning Eradication of Corruption Crimes (Tipikor Law). The article reads, "In the event that a corruption crime as referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed." Under this regulation, judges have the authority to enforce the capital punishment on individuals guilty of corruption if the act is committed under "certain circumstances." These specific circumstances are explained in detail in point II of the article-by-article explanation of Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Corruption Crimes, and what is meant by specific circumstances as aggravating factors for perpetrators of these crimes is when they are committed at a time when the nation is experiencing a condition of emergency in compliance with relevant regulations laws, when a national natural disaster takes place as a result of repeated corruption, or when the nation is experiencing an economic and monetary crisis.¹⁰

Nevertheless, from a normative standpoint, the language of Article 2(2) continues to present challenges concerning legal certainty, as the term "may be imposed" implies that the penalty is discretionary rather than obligatory. This wording allows judges considerable leeway, resulting in varied applications within judicial practice. As a result, even though the death penalty is officially addressed in the Anti-Corruption Law, its enforcement remains largely symbolic and has never been enacted in a court decision in Indonesia, which necessitates the state's endorsement. This situation stands in contrast to China, which demonstrates consistency in its enforcement, thereby providing clear certainty at the UN forum and opposing votes against the abolition of the death penalty. To transform this regulation from a mere symbolic gesture into a rigid law enforcement instrument, there arises an urgency to restructure the norms by changing the phrase "may" (can be imposed) to "shall" (must be imposed) within the death penalty clause. However, the application of the death penalty in Indonesia consistently ignites debate among the public. Therefore, this judicial review can be analyzed through the following aspects:

3.1.1 Implications of the Constitutional Framework

The constitution is the legal foundation of a nation, and it plays a central role in strengthening national unity. As a country rich in ethnic, cultural religious, and linguistic diversity, Indonesia requires a legal framework capable of uniting all elements of society into a single entity. In this context, the constitution namely the 1945 Constitution serves as the primary foundation for maintaining the unity and integrity of the nation.¹¹ There have been

¹⁰ Arianus Harefa, "Problematisasi Penegakan Hukum Pidana Mati Pada Tindak Pidana Korupsi Dalam Perspektif Perlindungan HAM," *Panah Keadilan* 1, no. 2 (2022): 99–116, <https://mail.jurnal.uniraya.ac.id/index.php/PanahKeadilan/article/view/456>.

¹¹ Marisi Inrina Siahaan, "Peran Konstitusi Dalam Memperkuat Integrasi Di Indonesia," *Journal Sains Student Reasearch* 2, no. 5 (2024): 163–170, <https://ejurnal.kampusakademik.co.id/index.php/jssr/article/view/2629>.

many response regarding the death penalty, which is considered inconsistent with the Constitution, however Article 28 I of the 1945 Constitution states that human rights cannot be diminished as a stipulated, yet Article 28 J everyone is obligated to respect the human rights of others and must adhere to the restrictions established by law to ensure the recognition and respect of the rights and freedom of others. The restrictions established by law serve as benchmark in accordance either the legal correlation of specific circumstances under Article 2, Paragraph 2 of the UUPTK, which mandates the death penalty for corrupt officials to create a deterrent effect and as an alternative punishment in accordance with the new Criminal Code. This is supported by Constitutional Court Decision No 2-3/PUU-V/2007, which asserts that the application of the death penalty in Indonesia does not contravene the 1945 Contitution. The right to life, as outlined in Article 28 A and Article 28 I (1), is deemed not absolute and may be limited by Article 28 J (2) to honor the rights of others, while also considering moral standarts, religious beliefs, and public order. The Constitution Court determined that the death penalty, especially in cases of drug related offenses, does not infringe upon human rights but serves as a valid legal measure to safeguard society from the threats posed by severe crimes, and it does not violate international law (ICCPR) as long as it is applied to the most serious offenses. Nevertheless, this ruling was accompanied by dissenting opinions from four constitutional judges who argued that the right to life is an unconditional right that should not be compromised under any circumstances.

3.1.2 Impact on Human Rights

In Indonesia, the implementation of the death penalty remains a hotly debated issue, particularly among human rights activities. However, amid these differing views, many believe that if the death penalty were abolished, it would eliminate an important mechanism that contributes to the better enforcement of criminal law. Some opponents of the death penalty argue that it contradicts constitutional ideas, particularly the fourth paragraph of the Preamble to the 1945 Constitution, which is intended to protect every individual's right to life. Philosophically, the right to life is a right that must be protected and is a right that exists from birth as a gift from God. Therefore, a number of legal experts oppose the application of the death penalty because it is considered inconsistent with human right principles. This is stipulated in the 1945 Constitution, specifically Article 28 I, paragraph 1, as well as in Law No. 39 of 1999 on human rights, which defines the right to life. However, in this context, there are certain limitations.¹² The application of the death penalty for those guilty of corruption in Indonesia continues to be a contentious issue, largely due to the tension between upholding human rights and the necessity of creating a deterrent effect. On one side, the death penalty is still included in the Criminal Code (KUHP) as a severe preventive action. On the other hand, its application is frequently annulled or substituted with lesser penalties because of

¹² Abdul Halim Lubis and Ania Margaini, "Relevansi Pidana Mati Terhadap Tindak Pidana Narkotika Dalam Prespektif Pembaharuan Hukum Pidana," *Sanskara Hukum Dan HAM* 1, no. 2 (2022): 13–24, <https://doi.org/10.58812/shh.v1i02.54>.

considerable human rights apprehensions. This situation resonates with the historical viewpoint of Ir. Soekarno, who voiced his worry that an overemphasis on human right originating from liberal-individualist ideology might lead to extended discussions and neglect of sovereignty and collective interests.¹³ If the enforcement of anti-corruption legislation is solely concentrated on safeguarding the human rights of offenders, without taking into account the harmful social repercussions on the wider community, then public justice will remain unattainable. Therefore, the criminal justice system must operate with fairness and integrity; achieving a balance between safeguarding human rights and decisively tackling the pressing challenges confronting the nation, in order to reinforce genuine justice. Textually, the restriction of the right to life in Indonesia is legitimized through Article 28 J of the 1945 Constitution for the sake of public order.

However, the introduction of an imperative death penalty ("shall") violates the principle of proportional justice recognized internationally. The modern concept of human rights in Indonesia-including the spirit of the New Criminal Code (Law No. 1/2023)-views the death penalty as an ultimum remedium (last resort) with a probationary period, rather than as an absolute obligation without room for repentance. Transnational Comparison with China, unlike Indonesia, which remains trapped in a constitutional dualism between Article 28 I (right to life) and Article 28J (restriction of rights), China adopts pure socialist legal positivism. In Chapter VIII of the Criminal Law of the People's Republic of China, bribery and embezzlement of public funds are classified as serious crimes against the state, punishable by death, as specifically outlined in Articles 383, 384, and 386. Unlike Indonesia, which maintains a more symbolic approach, the Supreme People's Court and the Supreme People's Procuratorate of China establish a clear quantitative threshold, acts of corruption involving amounts of 3 million yuan (approximately Rp7.2 billion) or more are likely to incur the death penalty in order to preserve economic stability and social balance. Chinese law also recognizes a system of death penalty with a two-year reprieve, if the convicted individual demonstrates genuine repentance and refrains from intentional wrongdoing during the transition period, the sentence may be commuted to life imprisonment. However, in cases of massive corruption that severely harm national interests, immediate death sentences are imposed without compromise, especially if the offender shows no intention of reforming. This strictness is deeply rooted in a fundamental character of decisiveness. In the Chinese judicial doctrine, courts do not operate independently but serve as instruments for enforcing social discipline. There is a strong integration between criminal law and the creation of extreme law enforcement efficiency, where corruption is viewed not merely as a legal offense. According to Dr. Artdjo Alkostar, who serves as a Supreme Court Justice, he believes those who engage in corruption should to receive a death sentence. Legally, this is very complicated, because the hypothetical provisions in the law are

¹³ Fikri Hadi, "Negara Hukum dan Hak Asasi Manusia Di Indonesia," *Wijaya Putra Law Review* 1, no. 2 (2022): 170–188, <https://doi.org/10.38156/wplr.v1i2.79>.

related to other situations.

For example, the death penalty may be enforced if an act of corruption is perpetrated against the budget designed for handling emergency circumstances, national calamities, controlling the impact of extensive social turmoil, handling economic and financial crises, and preventing corruption and its recurrence. This opinion reflects the view that corruption committed under extraordinary circumstances must also be treated as an extraordinary crime because its impact directly harms public welfare and threatens national stability, public welfare, and public confidence in existing laws. In his perspective, similar to the situation in China, the regulation should specify that if the corruption value reaches one trillion, the death penalty may be automatically applied, disregarding any factors beyond the legal framework. The individual behaviors prevalent in Indonesian society significantly contribute to the escalation of corruption. Nevertheless, what is genuinely disheartening is that, in reality, the death penalty provision outlined in Article 2(2) has never been put into practice and exists merely as a “paper tiger”-enforced on paper yet ineffective in actual application. This situation underscores a disparity between normative regulations and the enforcement of laws in practice. The absence of implementation suggests that Indonesia’s anti-corruption strategies continue to favor cautious judicial interpretation and human rights considerations over the rigorous enforcement of penalties. The discussion regarding the death penalty is intricately connected to the safeguarding of human rights as outlined in the Constitution. Article 28I of the 1945 Constitution affirms the right to life as an inalienable human right.

Nevertheless, Article 28J indicates that the exercise of rights and freedoms may be legally restricted to honor the rights of others and uphold public order. As a result, this constitutional conflict leads to two opposing legal viewpoints. The abolitionist viewpoint contends that the death penalty fundamentally infringes upon the right to life and is at odds with international human rights standards. In contrast, the retentionist viewpoint maintains that restrictions on individual rights may be constitutionally warranted when necessary to safeguard broader public interests, particularly in instances of extraordinary crimes such as corruption during national emergencies. When examined through the lens of criminal law theory, corruption offenses must meet the criteria of *actus reus* and *mens rea*. *Actus reus* pertains to the physical act that constitutes the offense, while *mens rea* relates to the guilty intention or malicious intent of the offender. Criminal liability is established only when both elements are demonstrated. In the realm of corruption, the satisfaction of both *actus reus* and *mens rea* is crucial in justifying severe penalties, including the death penalty. Large-scale corruption perpetrated intentionally during emergencies illustrates not only unlawful behavior as indicated by the Corruption Perceptions Index (CPI), Indonesia holds a high position regarding public sector corruption on a global scale.

3.2. Comparison of the Death Penalty Between Indonesia and China

In the positive legal system, the death penalty is applied to crimes that endanger the stability of the state and the lives of the people. In addition, the capital punishment may be

imposed under a number of criminal laws covering certain crimes, especially those considered particularly brutal, including terrorism, drug trafficking, corruption, and other types of crimes.¹⁴ In practice, there are various methods used to carry out the death penalty in different countries.

3.2.1 The implementation of capital punishment in Indonesia

We must remember that Indonesia adheres to a civil law system, and in terms of its application, there is often debate about whether the death penalty is a conflict between universal human rights and the sovereignty of a country in applying the law to serious crimes. In Indonesia, the death penalty is regulated in the category of basic sanctions in Article 10 of the old Criminal Code concerning types of criminal acts. The method the implementation of the death penalty is governed by Article 11 of the Criminal Code, namely by securing the neck of the offender with a rope and hanging them on a gallows, then dropping the board that the offender is standing on. However, since the issuance of Presidential Decree 2/1964, the method of execution has changed to shooting the offender to death. The use of the death penalty in Indonesia has consistently generated public debate. Proponents of the death penalty contend that it remains a component of positive law as outlined in various legal statutes, thus its enforcement should be upheld. Conversely, opponents of the death penalty argue that it infringes upon human rights, as it violates the fundamental right to life, a right that must be upheld in all circumstances and by all individuals.¹⁵

The capital punishment is highly relevant to the new regulation that will come into effect on January 2, 2026, which guarantees that the death penalty is a special preventive measure in handling specific cases, such as corruption. In accordance with Law No. 1 of 2023, the death penalty for corruptors is now designated as a severe sanction with a ten-year probation period that must be included in the court's decision. This punishment can only be carried out after a request for clemency has been rejected by the President, taking into consideration the defendant's remorse, contribution, and hope for self-improvement during that period. This process makes the death penalty a legal tool that still provides an opportunity for the defendant to change their behavior before the final execution is carried out.¹⁶ Based on the provisions of Articles 98 to 102 of Law Number 1 of 2023 (New Criminal Code), the death penalty is now classified as a separate and alternative sanction, and is considered a last resort (*ultimum remedium*) to protect citizens. Although it still exists, regulations regarding this punishment have been separated from the main criminal law to emphasize that this sanction is an

¹⁴ Sugiyatmo and Sumanto, "Perbandingan Hukum Tentang Hukuman Pidana Mati Di Indonesia Dengan Republik Rakyat China (Tiongkok)," *Innovative: Journal Of Social Science Research* 4, no.2 (2024): 99-116, <https://j-innovative.org/index.php/Innovative>.

¹⁵ Gabrielle Aldy Manoppo, "Analisis Pidana Mati Berdasarkan Pasal 100 Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana," *Lex Administratum* 12, no. 1 (2023), <https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/51527>.

¹⁶ *Ibid.*, hlmn 1.

extraordinary measure that is only applied for very specific reasons within the criminal justice system.¹⁷

3.2.2 The implementation of capital punishment in China

Under certain conditions stipulated in Chapter VIII of the Criminal Law of the People's Republic of China on bribery, corruption is classified as a criminal act punishable by death. Provisions related to the death penalty are contained in Articles 383, 384, and 386. Unlike the capital punishment in Indonesia, the Criminal Code of the People's Republic of China (KUHP RRC) discusses the death penalty in more specific terms, stating that it is imposed on perpetrators of corruption, which is considered the most grave offense that exists highly harmful to the country, both in terms of China's economy and law enforcement system, as well as social balance. In this case, it is carried out for perpetrators of corruption crimes that are considered the most serious crimes that are very detrimental to the country, both in the Chinese economy with a threshold of 3 million yuan or the equivalent of Rp. 7,277,795. 193 In accordance with the provisions established by the Supreme Court and the Supreme Procuratorate in China, acts of bribery or embezzlement valued at 3 million yuan or more are subject to the death penalty and China's strict law enforcement system, as well as social balance. In the process, the death penalty in China is only suspended for two years, during which time the perpetrators will still be subject to strict supervision. However, in the context of large-scale corruption that is detrimental to the Chinese state, the death penalty will not be hesitated to be imposed on perpetrators of corruption, especially if they do not reform themselves. The implementation of capital punishment for individuals guilty of corruption in China is in line with existing regulations.

For example, data from China Daily on the corruption case involving Lai Xiaomin reflects the fairness of the Chinese criminal justice system's implementation of capital punishment in response to individuals involved in criminal offenses related to corruption that have a detrimental effect on the nation, especially on a large scale. The defendant, Lai Xiaomin, is a former high-ranking official at Huarong Asset Management Co. In his case, Lai Xiaomin was proven to have accepted bribes worth US\$260 million, equivalent to Rp 3.74 trillion, and the Chinese Supreme Court handed down a death sentence on January 5, 2021. This incident certainly has a significant effect on the nation's economy, but it also reduces public confidence in the state system, in this case the legal governance sector in a country. The judicial process carried out by Lai Xiaomin illustrates how responsive China is in reviewing cases of corruption that disrupt the social and economic development of the government. The punishment imposed is one of the measures designed by President Xi Jinping to prevent and minimize corruption,

¹⁷ Fitriani Fitriani, "Penjatuhan Pidana Mati Kepada Pelaku Tindak Pidana Ditinjau Dalam Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana," *SENTRI: Jurnal Riset Ilmiah* 2, no. 8 (2023): 3016–3024, <https://doi.org/10.55681/sentri.v2i8.1327>.

with the aim of auditing finances and strengthening the credibility of governance.

3.3 Theoretical Review

High-quality and, above all, fair law enforcement is an important foundation for achieving justice.¹⁸ The principle of fiat justitia ruat coelum emphasizes that law enforcement must remain a priority in order to achieve certainty, benefit, and real justice for those who seek justice. Law enforcement is not just a routine, but an important effort to ensure that the law functions as the main foundation in every situation.¹⁹

3.3.1 Legal Certainty

Legal certainty is very important for building discipline and clarifying the rights and obligations of citizens. Referring to the principle of *leges be fortior omnia posset*, the law exists to control power so that it does not exceed its limits (abuse of power).²⁰ However, the current situation shows that the law often functions only as a political tool and a mere formal document without real implementation. Therefore, there needs to be a relationship between strengthening regulations and courage in law enforcement so that regulations are not only valid on paper but also have coercive and binding power for all parties without exception. From the viewpoint of legal certainty theory, the law frequently functions merely as a political instrument rather than ensuring legal certainty. In this context, legal certainty seeks to uphold the principle of "*leges be fortior omnia posset*"-meaning that the law must be present, otherwise, those in positions of power would exercise unchecked authority.

Consequently, the disparity between written norms and the actual enforcement of criminal law concerning corruption illustrates a systemic inadequacy of legal mechanisms to generate predictability. The approach of rendering the death penalty optional within the anti-corruption legislation diminishes the law's coercive power; therefore, to assess the efficacy of the legal system, certainty must extend beyond mere formal legality and must be manifested through the consistent and equitable enforcement of penalties. Thus, a relationship is essential between the fortification of regulations and their enforcement, ensuring that they are not only stringent but also applicable by all involved parties.

3.3.2 Legal Benefits

Substantive Legal Benefits and Justice Based on Jeremy Bentham's principle of utilitarianism, the law must guarantee the welfare and efficiency of citizens and ensure

¹⁸ Hijriani, M.yusuf, and Winner A Siregar, "Perkembangan Teori Penegakan Hukum Dalam Perwujudan Fungsi Norma Di Masyarakat," *Sultra Research Of Law* 5, no. 2 (2023): 58–65, <https://doi.org/10.54297/surel.v5i2.62>.

¹⁹ Dino Rizka Afdhali and Taufiqurrohman Syahuri, "Idealitas Penegakan Hukum Ditinjau Dari Perspektif Teori Tujuan Hukum," *Collegium Studiosum Journal* 6, no. 2 (2023): 555–561, <https://doi.org/10.56301/csj.v6i2.1078>.

²⁰ Haerunisa Siska, "Dilema Keseimbangan Dalam Penegakan Hukum: Analisis Kritis Terhadap Penerapan Teori Tujuan Hukum (Keadilan, Kepastian, Dan Kemanfaatan)," *Manazir: Jurnal Ilmiah Universitas Ibnu Chaldun* 1, no. 2 (2025): 1–5, <https://jurnal.uic.ac.id/>.

equality before the law.²¹ Given that the law is never perfect, adaptive and flexible legal innovation is needed to ensure that the legal system remains relevant in providing solutions and achieving substantive justice for society. Social order and restriction of interests in line with Mochtar Kusumaatmadja's view, the law aims to create order as the basis for a structured society and to realize relevant justice. To achieve public happiness, the law serves as a clear guideline in limiting individual interests to avoid conflict and prevent the misuse of authority by the government. against the people.²² The success of the law is measured by its ability to ensure tangible benefits through legal consequences taken in emergency situations.

Through the analytical perspective of legal utility theory, the efficacy of the legal system in combating corruption is assessed by determining the public welfare preserved (the greatest happiness for the greatest number). The law must guarantee public benefit, which is a goal rooted in the efficiency of the legal system's operations for the citizenry as a whole. Consequently, the public benefit of the law is crucial to uphold the principle of "equality before the law"-meaning that all individuals are treated equally under the law-and to ensure the effectiveness of legal benefits that offer solutions. The policy of implementing the death penalty for corrupt officials is regarded as a rational utility assessment, taking into account various viewpoints and also adopting innovative strategies as a means of adaptability. The law must not be permitted to become stagnant in formalism when public welfare is jeopardized by corrupt exploitation.

3.3.3 Legal Justice

Legal justice is a key pillar in maintaining the stability of a country, which not only includes the mechanical application of law, but must also be based on ethical values and norms that apply in society.²³ The crisis in law enforcement and the critical need for the death penalty in cases of corruption, although the principle of fiat justitia ruat coelum is respected, the reality of law enforcement related to corruption in Indonesia is still considered weak and merely a "paper tiger." The challenges in implementation are evident in the difficulty of seizing assets, especially if they are hidden in countries with strict privacy laws without the support of Mutual Legal Assistance (MLA), compounded by the possibility of political intervention. To overcome the low corruption perception index score, it is necessary to strengthen regulations by revising Article 2 paragraph 2 of the Anti-Corruption Law; the optional phrase "may" should be replaced with "shall" to impose the death penalty in order to create legal

²¹ *Ibid.*, hlmn 3.

²² Warjiyanti Sri Afifah Fatma, "Tujuan, Fungsi Dan Kedudukan Hukum," *Jurnal Ilmu Hukum Wijaya Putra* 2, no. 2 (2024): 142–152, <https://jurnal.uwp.ac.id/fh/index.php/jurnalilmuhukum/article/view/206>.

²³ Budhiartie Arrie Salman Tiara, "Analisis Konsep Keadilan Dalam Pandangan Filsafat Hukum Aristoteles Dan Relevansinya Di Indonesia," *Jurnal Nalar Keadilan* 4, no. 2 (2024): 49–57, <https://jurnal.universitaskarta.ac.id/index.php/jurnal-fh-unija/article/view/110>.

certainty. Fears of human rights violations against defendants are considered unfounded because the legal system in Indonesia already provides protection of rights through the concept of the presumption of innocence, the opportunity to appeal, cassation, and the right to rehabilitation for those convicted.

By incorporating the concept of substantive legal justice, the application of the death penalty on individuals guilty of structural corruption transcends mere mechanical retribution; it serves as an ethical reaction to the infringement of the economic, social, and cultural rights of the populace. Concurrently, progressive legal theory posits that the legal system's failure to monitor cross-border assets (in the absence of a Mutual Legal Assistance agreement) necessitates that law enforcement officials exhibit the audacity to pursue legal innovations in criminal law that extend beyond strict adherence to the law (rule-breaking). Upon reviewing the current urgency surrounding the principle of justice, it becomes evident that substantial deficiencies persist in the enforcement of justice-as illustrated by corruption cases-thus confronting this challenge with the maxim "fiat justitia ruat caelum" encounters a dilemma that complicates the management of corruption cases. The undeniable truth is that Indonesia effectively protects offenders. Consequently, justice will remain elusive if criminal law enforcement continues to be rigid in the face of political interference and bureaucratic stagnation.

Various scholars have assessed the aspects of criminalization theories that will be achieved,²⁴ where by in imposing criminal penalties, these are never separated from normative and socio-cultural values, so theories in law enforcement need to adapt to changes in order to achieve the desired legal objectives.

3.4 The Correlation Between Progressive Theory and the Culture of Corruption as a Factor in Criminal Sentencing

The increase in corruption cases, which rank highest, is caused by weak law enforcement, which has resulted in individuals not fearing the law and making corruption a normal part of Indonesian culture. In essence, progressive theory emphasizes that the state needs to respond to the urgency of corruption as a form of adaptability and flexibility in the legal system in order to achieve substantial justice through the application regarding the capital punishment. In the realm of discretion, individuals involved in law enforcement must be able to make the right choices regarding the actions they should take. Based on applicable provisions, law enforcement officials have the authority to make wise decisions by prioritizing moral values over formal procedures. This discretion is used so that the performance of their duties is more focused on achieving true justice rather than merely complying with administrative rules.²⁵

²⁴ Syarif Saddam Rivanie et al., "Perkembangan Teori-Teori Tujuan Pemidanaan," *Halu Oleo Law Review* 6, no. 2 (2022): 176–188, <https://ojs.uho.ac.id/index.php/holrev/>.

²⁵ Mardona Siregar, "Teori Hukum Progresif Dalam Konsep Negara Hukum Indonesia," *Muhammadiyah Law Review* 8, no. 2 (2024): 1–15, <https://doi.org/10.24127/mlr.v8i2.3567>.

Based on Prof. Satjipto Rahardjo's progressive legal theory, the government must grant law enforcement officials the authority to make adaptive legal breakthroughs. This is crucial to address various current legal loopholes, requiring special judicial expertise to ensure that every perpetrator of crime can be effectively prosecuted in the interests of substantive justice.²⁶

The government must provide space for law enforcement officials to adapt to developments in crime in order to overcome legal stagnation. The absence of the death penalty in corruption cases throughout 2024 demonstrates the weakness of the legal system in responding to social conditions, resulting in corruption becoming a structured practice. As a preventive measure, strengthening law enforcement is essential, given that ICJR 2024 data records a significant burden of corruption cases at various levels: 128 first-instance verdicts, 130 appeals, 38 cassations, and 4 reviews.²⁷ The dominance of narcotics cases in death sentences, despite an increase in the number of defendants, in 2024, the death penalty in Indonesia is still clearly dominated by drug crimes, with a percentage of 85.81%. This is followed by premeditated murder at 10.23%, while cases of murder and fatal sexual violence against children only account for a small portion. This phenomenon shows that the application of the death penalty is still more focused on drug offenses than other types of crimes,²⁸ then there is the upward trend in global executions and Indonesia's contribution. A 2024 report from Amnesty International notes a 32% increase in the number of executions globally, with a total of 1,518 executions, the highest number since 2015. Indonesia contributed significantly to this figure by handing down 64 death sentences for drug-related crimes and 21 for murder in 2024, followed by an additional 21 death sentences in the first quarter of 2025.²⁹ This has led to a discrepancy between legal visions and inconsistency in international attitudes. There is a mismatch between the spirit of the "middle ground" on the death penalty in the new Criminal Code (KUHP) and the reality of weak law enforcement in corruption cases, which actually eliminates the deterrent effect. At the international level, Indonesia's ambition to abstain from UN General Assembly Resolution 79/179, in contrast to China's firm rejection of the abolition of the death penalty, demonstrates the country's unclear stance.

In fact, in accordance with Article 28 J of the 1945 Constitution, the application of the capital punishment is permitted as a respect for the rights of others and legal order to achieve substantial justice. The failure to enforce the death penalty for individuals convicted of corruption in Indonesia is not only a technical issue, but also a crisis of legal supremacy and certainty arising from a narrow interpretation of "certain circumstances" in the Corruption Crime Law. In fact, according to the constitution, Article 28J of the 1945 Constitution allows for the restriction of the right to life in order to protect the social rights of the wider community. Referring to progressive legal theory, judges are expected to have the courage to innovate in

²⁶ *Ibid*, hlmn 6.

²⁷ Asry M Alkazahfa, "Laporan Situasi Kebijakan Pidana Mati Di Indonesia," Institute For Criminal Justice Reform, 2024.

²⁸ *Ibid*, hlmn 14.

²⁹ Amnesty International, "Laporan Global Amnesty International Dan Eksekusi," 2025, 2024.

applying severe penalties as a way to free society from a culture of corruption, by demonstrating the compatibility between actus reus (the act) and mens rea (the malicious intent) of the perpetrator. In the current legal system, the application of the death penalty is a manifestation of the principle of fiat justitia ruat coelum in an effort to restore substantive justice for society. The existence of Law Number 1 of 2023 (National Criminal Code) reinforces this position by establishing the death penalty as a special alternative sanction. Through Article 100 paragraph (1), judges are given the opportunity to impose a death sentence with a 10-year probation period, which balances considerations of deterrence, humanitarian values, and the potential for rehabilitation of the defendant.

4 CONCLUSION

The enforcement topic of capital punishment in Indonesia in 2024 shows a striking imbalance, with drug-related cases accounting for 85.81% of executions, while there were no executions for corruption cases. This indicates that the stipulations outlined in Article 2, paragraph (2) of the Anti-Corruption Law have yet to be implemented and continue to fail to provide a comprehensive preventive impact. Although Law No. 1 of 2023 and Article 28 J of the Constitution of 1945 have presented a more moderate approach through the application regarding the death penalty as a special sanction with a 10-year probation period. Efforts to address legal loopholes in order to achieve legal justice in the prosecution of corruption a major issue in Indonesia are complex and influenced by various factors, including the country's judicial system, where public policy authority also plays a role in shaping the policies themselves; however, the success of Indonesia's legal system is hampered by various obstacles stemming from its organizational framework.³⁰ concrete actions are needed, such as the harmonization of regulations by the Government and the House of Representatives to change the word "may" to "shall" in the context of corruption that has systemic impacts to ensure legal certainty. This must be in line with the moral courage of judges to apply more progressive legal innovations, increased clarity of choices by the Supreme Court, and selective use of the right of clemency by the President, in order to maintain the state's consistency in upholding the principle of fiat justitia ruat coelum and eradicating corruption.

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³⁰ Alam Stevan Muhammad, *Ilmu Politik Dan Kebijakan Publik*, ed. Hakeu Febrianto, Pertama (Sumedang, Jawa Barat: CV. Mega Press Nusantara, 2024).

561. <https://doi.org/10.56301/csj.v6i2.1078>.
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