

The Death Penalty in Indonesian Corruption: An Analysis of Normative Constructions and Gaps in Law Enforcement Practices through a Literature Review

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Abstract

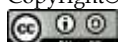
This study analyzes the normative construction of the death penalty for corruption in Indonesia and identifies the gap between legal norms and law enforcement practice. The research focuses on how criminal law literature constructs the legitimacy of capital punishment, why the sanction has never been applied in practice, and how the death penalty is positioned within the criminal law system. Using a non-Systematic Literature Review method, this study adopts qualitative doctrinal and socio-legal approaches to relevant indexed journal articles. The collected data are examined through thematic synthesis to map patterns of normative argumentation, judicial reasoning, and orientations of criminal law policy reflected in the literature. The findings demonstrate that scholarly works consistently acknowledge the normative legitimacy of the death penalty for corruption based on juridical, philosophical, and theoretical considerations. Nevertheless, the literature simultaneously reveals the complete absence of its application in judicial decisions. This gap is explained by judicial discretion, weaknesses in norm formulation, and the pragmatic orientation of criminal law policies that prioritize flexibility over severity. The study further finds that the death penalty operates primarily as a symbolic norm rather than as an effective operational sanction. Consequently, the persistent divergence between normative recognition and practical non-application reflects a broader normative dysfunction within Indonesia's corruption criminal law regime. This research contributes conceptually to debates on criminal law effectiveness globally.

Keywords: Death Penalty, Corruption Crimes, Norm and Practice Gap, Criminal Law, Literature Review

Abstrak

Studi ini menganalisis konstruksi normatif hukuman mati untuk korupsi di Indonesia dan mengidentifikasi kesenjangan antara norma hukum dan praktik penegakan hukum. Penelitian ini berfokus pada bagaimana literatur hukum pidana membangun legitimasi hukuman mati, mengapa sanksi tersebut tidak pernah diterapkan dalam praktik, dan bagaimana hukuman mati diposisikan dalam sistem hukum pidana. Dengan menggunakan metode non-Tinjauan Literatur Sistematis, studi ini mengadopsi pendekatan doktrinal dan sosio-hukum kualitatif terhadap artikel jurnal terindeks yang relevan. Data yang dikumpulkan diperiksa melalui sintesis tematik untuk memetakan pola argumentasi normatif, penalaran yudisial, dan orientasi kebijakan hukum pidana yang tercermin dalam literatur. Temuan menunjukkan bahwa karya ilmiah secara konsisten mengakui legitimasi normatif hukuman mati untuk korupsi berdasarkan pertimbangan yuridis, filosofis, dan teoritis. Namun demikian, literatur secara bersamaan mengungkapkan ketiadaan penerapannya dalam keputusan yudisial. Kesenjangan ini dijelaskan oleh diskresi yudisial, kelemahan dalam formulasi norma, dan orientasi pragmatis kebijakan hukum pidana yang

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memprioritaskan fleksibilitas daripada kekerasan. Studi ini lebih lanjut menemukan bahwa hukuman mati beroperasi terutama sebagai norma simbolis daripada sebagai sanksi operasional yang efektif. Oleh karena itu, perbedaan yang terus-menerus antara pengakuan normatif dan non-aplikasi praktis mencerminkan disfungsi normatif yang lebih luas dalam rezim hukum pidana korupsi di Indonesia. Penelitian ini memberikan kontribusi konseptual terhadap perdebatan tentang efektivitas hukum pidana secara global.

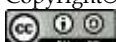
Kata kunci: Hukuman Mati, Kejahatan Korupsi, Kesenjangan Norma dan Praktik, Hukum Pidana, Tinjauan Pustaka

Introduction

Corruption in the context of Indonesian criminal law is consistently qualified as an extraordinary crime because of its systemic impact on state finances, social justice, and the legitimacy of legal institutions and government. The criminal law literature shows that this extraordinary character demands a legal response that is also extraordinary, both in terms of the formulation of norms and the type of criminal sanctions provided by the state; Sambas, 2010). It is within this framework that the death penalty is included in the legal regime for the eradication of corruption through Article 2 paragraph (2) of the Law on the Eradication of Corruption Crimes, as the highest form of sanction that can be imposed in "certain circumstances". Normatively, the existence of these provisions marks the state's firm stance in positioning corruption as a serious threat to the public interest and the sustainability of the state. However, although the death penalty has been regulated for a long time and has explicit juridical legitimacy, the practice of law enforcement in Indonesia shows a paradoxical reality, namely that the death penalty has never been imposed in a single corruption case. This phenomenon indicates a fundamental tension between the law in the books and the law in action. These tensions are not only technical-juridical, but also reflect structural problems in the way criminal law works as a normative system. Therefore, the death penalty in corruption crimes is an important locus to examine the effectiveness of Indonesian criminal law more critically. (Adam & Son, 2015) (Fauzi Batubara et al., n.d.)

Several previous studies have consistently emphasized that the main problem of the death penalty in corruption cases does not lie in the absence of a legal basis or the problem of unconstitutionality, but in the failure to implement norms by law enforcement officials. and shows that although prosecutors and judges have the normative legitimacy to prosecute and impose the death penalty, such authority has never been used in practice. These findings are reinforced by various studies that highlight the tendency of judges to avoid maximum sanctions through the use of broad discretion, particularly as a result of the vagueness of the phrase "certain circumstances" in the statute; On the other hand, research as well as Asphianto (2023) shows that even in the context of a national crisis, such as the Covid-19 pandemic, which can normatively qualify as a specific circumstance, the death penalty remains not applied. This pattern shows that the norm of the death penalty experiences what can be called a normative freeze, namely a norm that lives textually but does not function practically. Thus, the problem of the death penalty cannot be explained only through a dogmatic approach to law, but rather requires an analysis that links norms, judicial practices, and the orientation of criminal law policy simultaneously. (Romli, 2022) (Asa'ari et al., 2023) (Fauzi Batubara et al., n.d.) (Halu Oleo Kamaruddin et al., 2022) (Khairul Muqorobin & Arief, n.d.)

From a theoretical and philosophical perspective, criminal law literature builds the legitimacy of the death penalty through various complementary approaches. Through the perspective of Maqā (Adam & Son, 2015) *ṣid al-Syarī'ah* affirms that corruption that threatens



Hifz al-Māl, Hifz al-Nafs, and Hifz Al-Daulah can be justified to impose the heaviest sanctions as a form of ta'zir. Meanwhile, placing the death penalty as part of a substantive justice-based criminal policy aimed at protecting the interests of the wider community from the destructive effects of corruption. From the point of view of criminal law policy, the death penalty is also understood as an instrument of deterrence and *zawajir* that functions to create a maximum deterrent effect against the perpetrators of extraordinary crimes. However, such normative and philosophical legitimacy is confronted with the reality that Indonesian criminal law tends to operate a pragmatic approach that prioritizes the recovery of state losses and system stability over the application of the most severe sanctions. This tension between theoretical justification and criminal practice raises fundamental questions about the function of the death penalty in the architecture of criminal law. (Fauzi Batubara et al., n.d.) (Yuhermansyah & Fariza, 2017) (Sukmareni, 2018) (Kusyandi, 2020) (Suhartono & Jiwantara, 2023)

Furthermore, several literatures implicitly and explicitly position the death penalty in corruption as a symbolic punishment, not as an operational criminal instrument. suggests that the facultative nature of the death penalty, characterized using the phrase "could", makes this sanction more of a normative threat than a realistic punishment option. Similar findings also emerged in a study that confirmed that the existence of the death penalty reflects the ambiguity of Indonesia's criminal law policy: the state maintains the death penalty as a symbol of firmness but is reluctant to use it in practice. The literature on criminal inconsistencies and judges' discretion also shows that the absence of operational penal guidelines reinforces the symbolic character of the death penalty, as judges do not have a clear framework to actualize the sanction; As a result, the death penalty loses its performative dimension as a legal instrument and is reduced to a mere legal political declaration. This condition has serious implications for the effectiveness of criminal law as a normative system that should be able to integrate norms, institutions, and practices consistently. (Yuhermansyah & Fariza, 2017) Aliyan & Gultom, 2023) (Palyama et al, 2019) (Mahfudz Harahap & Anwar, n.d.)

Based on the overall literature that has been reviewed, it can be identified that there is a significant research gap, namely the absence of studies that explicitly and systematically make the gap between the norms of the death penalty law and law enforcement practices the main focus of the analysis. Most previous research tends to be fragmented between the study of normative legitimacy, human rights debates, weaknesses in norm formulation, or criminal inconsistencies, without integrating all of these dimensions into a single complete framework of analysis; ; As a result, the phenomenon of the non-application of the death penalty is often treated as an empirical fact that is taken for granted, not as a legal problem that demands a conceptual explanation. In fact, as various studies have shown, the failure to operationalize the death penalty has far-reaching implications for the legitimacy of criminal law and public trust in the justice system; Therefore, research that is able to conduct a critical synthesis of the existing literature is needed to comprehensively explain why legally valid death penalty norms have never been implemented. (Law & Law, 2022) (Fauzi Batubara et al., n.d.) (Manik & Sunarso, 2020) (Id Jurnal et al., n.d.) (Alam, 2017) (Sukmareni, 2018)

With this background, this study aims to systematically analyze the normative construction of the death penalty in corruption crimes and examine the gap between legal norms and law enforcement practices in Indonesia through a literature review approach. In particular, this research is directed to answer three main problem formulations. First, how contemporary criminal law literature constructs the normative legitimacy of the death penalty in corruption crimes along with the juridical, philosophical, and theoretical foundations used



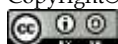
to justify it. Second, what conceptual tensions are identified in the literature between the existence of the death penalty as a written legal norm and its tendency not to be applied in criminal practice, especially in relation to judges' discretion, norm formulation, and criminal law policy orientation. Third, the extent to which the literature positions the death penalty as a symbolic norm rather than as an operational criminal instrument, and what are its conceptual implications for the effectiveness of criminal law as a normative system. Thus, this research is expected to make a theoretical and critical contribution in understanding the death penalty not solely as a sanction, but as an indicator of the functioning or failure of the corruption criminal law in Indonesia.

Methods Research

This study uses a Non-Systematic Literature Review (non-SLR) design with qualitative-doctrinal and socio-legal approaches to analyze the normative construction of the death penalty in corruption crimes as well as the gap between legal norms and law enforcement practices in Indonesia. This design was chosen because the purpose of the research is not to measure the quantity of empirical findings, but to conduct a critical synthesis of the legal discourse that is developing in the academic literature, especially related to normative legitimacy, judicial discretion, and the symbolic function of the death penalty. Non-SLR literature review allows researchers to explore theoretical, conceptual, and policy arguments of criminal law in depth, as implicitly used in various previous studies on the death penalty, corruption, judicial discretion, and criminal policy; Asa'ari et al., 2023). The main focus of this research is on scientific journal articles that have been published and discuss the death penalty, corruption, criminal law policy, and penal practices in Indonesia. Thus, this study places literature as the primary source of data (secondary data), not as a complement to empirical analysis. (Adam & Son, 2015) (Law & Law, 2022)

The subjects of this research are **academic journal articles** that have been used in previous research reviews and state of the art synthesis, which substantially discusses the death penalty in corruption crimes, both from normative, philosophical, judicial, and criminal law policy perspectives. The inclusion criteria are set purposively, namely: (1) articles that explicitly discuss the death penalty or maximum punishment in corruption crimes; (2) articles that analyze the gap between legal norms and law enforcement practices; and (3) articles relevant to the Indonesian legal context. The research instruments used are conceptual **data extraction sheets**, which are designed to identify and group the main arguments of each article, including: the basis of the normative legitimacy of the death penalty, the position of the death penalty in criminal law policy, the role of judges' discretion, and the symbolic or operational character of the sanction. The data collection procedure is carried out through searching and in-depth reading of all articles that have been compiled in previous research reviews and literature review tables, then systematic recording of key themes relevant to the formulation of research problems.

The data analysis method is carried out through **thematic-critical analysis** with conceptual synthesis techniques. Each article was analyzed to identify argumentation patterns, common points, and differences of views on the death penalty in corruption crimes. The analysis was carried out in stages, starting from mapping the construction of the normative legitimacy of the death penalty, followed by an analysis of the tension between written legal norms and criminal practices, and ending with an evaluation of the position of the death penalty as a symbolic norm in the criminal law system. The results of the analysis were then synthesized to explain how the literature collectively constructs a narrative about



the death penalty as a legitimate but non-operationalized norm. This approach allows research to place the death penalty as an indicator of the effectiveness of criminal law, rather than simply as an individual criminal sanction. With this method, research can be replicated by other researchers using similar corpus of literature and the same conceptual analysis procedures, thus maintaining transparency and methodological accountability.

Results and Discussion

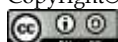
The Construction of the Normative Legitimacy of the Death Penalty in the Criminal Law Literature of Corruption

The findings of the study show that contemporary criminal law literature relatively consistently constructs the normative legitimacy of the death penalty in corruption crimes as a logical consequence of the classification of corruption as an extraordinary crime. This result is in line with various previous studies that confirm that the existence of the death penalty in Article 2 paragraph (2) of the Law on the Eradication of Corruption is not an anomaly in the Indonesian criminal law system, but part of a criminal policy design that places the protection of the public interest and the sustainability of the state as the main goal of criminalization; The literature collectively shows that legitimacy is built on three main pillars, namely juridical basis in the form of positive legal norms, philosophical basis in the form of substantive justice and public good, and theoretical basis in the form of criminal policy theory and deterrence. The findings of this study confirm that in academic discourse, the death penalty is not positioned as a sanction that is contrary to the principles of legality or constitutional principles, but as a valid sanction, even though it is exceptional. Thus, this study strengthens the position of the literature that rejects the notion that the problem of the death penalty of corruption lies in its normative legitimacy aspect. (Adam & Son, 2015) (Fauzi Batubara et al., n.d.) (Sambas, n.d.)

Furthermore, the results of the study show that the literature tends to adopt a protective and utilitarian approach in justifying the death penalty, especially when corruption is understood as a crime that damages the social, economic, and political structure of the country. Through the approach of Maqā (Adam & Son, 2015) šid al-Syari'ah affirms that the death penalty can be justified as ta'zir when corruption threatens the public welfare, while (Fauzi Batubara et al., n.d.) positioning the death penalty as an expression of substantive justice in criminal policy. The findings of this study show that these arguments do not stand alone, but are intertwined with the theory of deterrence and the symbolic function of criminal law that places the death penalty as an extreme deterrent; Thus, the construction of the normative legitimacy of the death penalty in the literature is multidimensional and relatively established. The significance of these findings lies in the affirmation that the debate on the death penalty for corruption in the Indonesian context has shifted from the question of "whether or not it is permissible" to a more fundamental question, namely how the norm is positioned and operated in the criminal law system. This shows that normative legitimacy is no longer the main issue that hinders the implementation of the death penalty. (Yuhermansyah & Fariza, 2017) (Sukmareni, 2018)

The Tension between Legal Norms and Criminal Practices

The findings of the study show that there is a strong conceptual tension between the existence of the death penalty as a written legal norm and its tendency not to be applied in criminal practice. These results are consistent with almost all of the literature analyzed, which uniformly notes that there has never been a court ruling imposing the death penalty in



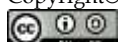
corruption cases, even though the normative conditions are considered to be met; This discussion shows that these tensions are not incidental, but structural and systemic. The literature shows that the facultative nature of the death penalty, characterized by the use of the phrase "may" and the vagueness of the indicator "certain circumstances", provides a very wide discretion room for judges; This discretion in practice is consistently used to avoid maximum sanctions. The findings of this study confirm that judges' discretion functions as a key mechanism in creating a gap between norms and practices. (Law & Law, 2022) (Asa'ari et al., 2023) (Asphianto, 2023) (Fauzi Batubara et al., n.d.) (Halu Oleo Kamaruddin et al., 2022)

In addition to the discretionary factor, the literature also links this tension to the orientation of criminal law policy which tends to be pragmatic and compromise. A number of studies have shown that the enforcement of corruption laws emphasizes more on the return of state losses and system stability than on the imposition of severe penalties; Within this framework, the death penalty is seen as a legitimate sanction but not practically productive. The findings of this study suggest that such policy orientation creates a paradoxical situation, where the state maintains the death penalty as a symbol of assertiveness, but does not provide an operational framework for implementing it. The significance of these findings lies in the understanding that the gap between norms and practices is not solely due to the individual weaknesses of law enforcement officials, but rather the result of a complex interaction between norm formulation, judicial discretion, and the orientation of criminal law policy. Thus, this research contributes to the literature by affirming that normative-practical tension is a structural phenomenon in the criminal law system of corruption in Indonesia. (*Return-Asset-and-Penalty-Death-On-Act-2brxz66k* , n.d.) (Suhartono & Jiwantara, 2023)

The Death Penalty as a Symbolic Norm and Its Implications

The findings of the study show that the literature implicitly and explicitly positions the death penalty in corruption as a symbolic norm (symbolic punishment) rather than as an operational criminal instrument. This result is in line with Yuhermansyah's findings and which affirms that the death penalty in the Corruption Law functions more as a *zawajir* or symbolic deterrent, as well as with those that show the ambiguity of Indonesia's criminal law policy in maintaining the death penalty without using it. The literature also suggests that the absence of clear penal guidelines reinforces such symbolic characters; The findings of this study confirm that the death penalty is not internalized as a realistic punishment option by law enforcement officials. On the contrary, the death penalty serves as a legal political declaration intended to build an image of state firmness. (Yuhermansyah & Fariza, 2017) (Aliyan & Gultom, 2023) (*Problematic-Juridical-Judgment-Court-Crime-2pkbkmw1eh* , n.d.) (Mahfudz Harahap & Anwar, n.d.)

The conceptual implications of these findings are significant for understanding the effectiveness of criminal law as a normative system. The literature suggests that norms that are not implemented have the potential to weaken the binding force of the law and create the illusion of assertiveness without changing practices; This research contributes by emphasizing that the death penalty for corruption can be understood as an indicator of normative dysfunction, namely a condition in which the written law is unable to direct the behavior of law enforcement officials. The significance of these findings lies in shifting the focus of analysis from the effectiveness of individual criminal sanctions to the effectiveness of criminal law as a system. By positioning the death penalty as a symbolic norm, this study opens up space for critical reflection on the role of criminal law in responding to extraordinary crimes



and the risk of using heavy sanctions as a mere tool of political legitimacy. (Alam, 2017) (Sukmareni, 2018)

Research Contribution to the Development of Law

This research makes an important contribution to the development of criminal law, especially in the study of criminal policy and corruption criminal law. First, this research contributes a critical synthesis of previously fragmented literature, by integrating the dimensions of normative legitimacy, judicial practice, and criminal law policy orientation in one coherent analytical framework. Second, this study introduces an analytical perspective that positions the death penalty as a dormant norm or symbolic norm, not just as a criminal sanction. This approach enriches the theoretical discourse regarding the relationship between written law and working law. Third, this research contributes to the understanding of the role of judges' discretion as a structural factor in creating a gap between norms and practices. Thus, this study not only expands the literature, but also offers a conceptual framework that can be used to analyze similar phenomena in the context of other criminal sanctions.

Research Implications

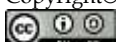
The theoretical implication of this study is the need to re-evaluate the concept of the effectiveness of criminal law which is not only measured by the existence of norms, but also by the consistency of their implementation. Policy implications that can be drawn from these findings are the importance of formulating clearer norms and providing operational penal guidelines if the state wants to maintain the death penalty as a meaningful sanction. The practical implication is the need for critical reflection in judicial practice regarding the use of judges' discretion and the consistency of punishment. This research also has normative implications, namely the risk of erosion of legal legitimacy if severe criminal norms continue to be maintained without real implementation. Thus, this research is relevant for policymakers, academics, and legal practitioners.

Research Limitations

This study has several limitations that need to be noted. First, this study uses a non-SLR literature review approach, so that the findings are entirely dependent on the quality and scope of the literature analyzed. Second, this study did not involve direct empirical analysis of court decisions or interviews with law enforcement officials. Third, the focus of the research is limited to the Indonesian context, so the generalization of findings to the context of other countries must be done carefully. Fourth, this study does not evaluate the effectiveness of the death penalty empirically in reducing the level of corruption. These limitations open up space for more empirical and comparative follow-up research.

Conclusion

This study concludes that the death penalty in corruption crimes in Indonesia normatively has strong legal legitimacy, both from juridical, philosophical, and theoretical aspects, as reflected consistently in the analyzed criminal law literature. The existence of the death penalty in the Law on the Eradication of Corruption is understood as part of an extraordinary criminal policy to respond to corruption as a crime that has a systemic impact and damages the joints of state life. However, the main findings of this study show that there is a persistent structural gap between the legal norms of the death penalty and law enforcement practices, where the death penalty has never been operationalized in court



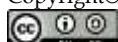
decisions. The literature consistently shows that judges' discretion, weaknesses in norm formulation, and pragmatic criminal law policy orientation contribute to the non-application of these sanctions. As a result, the death penalty functions more as a symbolic or declarative norm than as an operational criminal instrument. By positioning the death penalty as an indicator of normative dysfunction, this research makes an important contribution to the field of criminal law science, especially in expanding the understanding of the effectiveness of law as a normative system that is not only determined by the existence of rules, but also by the consistency of its implementation in law enforcement practice.

Suggestions for Future Research

Based on the findings and limitations of this study, future research is suggested to expand the methodological approach by combining literature review with empirical analysis of court decisions, especially to delve deeper into the practice of judges' reasoning in corruption cases that meet the normative requirements of the death penalty. Follow-up research can also explore how judges' discretion is shaped by institutional, legal politics, and judicial culture factors, so that the gap between norms and practices can be explained more contextually. In addition, a cross-border comparative study of legal regimes that still maintain the death penalty in economic crimes can provide a new perspective on the factors that allow or hinder the operationalization of severe criminal sanctions. Future research may also examine more specifically the policy implications of maintaining symbolic death penalty norms, including their impact on the legitimacy of criminal law and public trust in the justice system. On the other hand, further normative studies can focus on evaluating the formulation of "specific circumstances" norms and the need for more operational criminal guidelines. Thus, further research will not only enrich academic discourse, but also have the potential to make a real contribution to the reform of corruption criminal law policy in Indonesia.

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