

The Dead Penalty for Corruptors in the Perspective of Positive Law and Islamic Criminal Law in Indonesia

Mahzaniar¹, Nufaris Elisa²

¹Kopertis Wil-1 Dpk Faculty of Law, Muslim Nusantara University, Medan, Indonesia

²Kopertis Wil-1 Dpk Faculty of Law, Amir Hamzah University, Medan, Indonesia

ABSTRACT: Related to corruption crime In Indonesia, it is regulated according to Article 2 and 3 of Law no. 31 Year 1999 Jo. UU no. 20 of 2001, which according to the provision determines the threat of death penalty for the corruptors who conduct the corruption "in certain cases" that is if the state is in an economic crisis, it means not all acts of corruption are threatened with the death penalty, even though the death penalty in positive law is allowed. Similarly, according to the provisions of Islamic criminal law, where the act of corruption is identical with Sariqah (stealing) so that according to Alqur'an and hadith, the act can be put to death because Sariqah has made the destruction of the earth. So whether by positive law or Islamic criminal law, the death penalty can apply to corruptors, but in reality the death penalty is never decided by the Judge in court.

Keywords: death penalty; corruptor; positive law; Islamic criminal

Date of Submission: 17-09-2017

Date of acceptance: 04-11-2017

I. INTRODUCTION

The problem of the death penalty is not a new issue, if it is viewed from history, the death penalty is the oldest possible punishment in the world, various ways have been done in its execution by head-scarf or beaten to death in Saudi Arabia, through high-voltage electric shock to death and with dead injection made by the United States, hung with hanging rope in Iraq, Egypt and Malaysia, then shot the chest (heart) and head in Indonesia in the case of murder, terrorist, drugs and treason.¹

Indonesia which has a population of about 240 million people has a diversity of religions, while the largest religion is Islam that ranges 80% or about 200 million inhabitants. With such a large population of Muslims there is no doubt that the implementation of Islamic criminal law is not strange and difficult, although from all 35 provinces, only the Special Province of Aceh has implemented the Islamic *sharia* for certain cases, while the death penalty, especially in the case of corruption has never been terminated even though there are positive laws governing it.

The death penalty for corruptors is considered necessary to be applied in Indonesia as a manifestation of justice in the midst of society. Besides that the application of the death penalty as a law enforcement effort can be warnings to the corruptors who are planning to commit the acts of corruption feel fear and deterrent to do so. The necessity of the death penalty is due to the problem that corruption can no longer be classified as a common crime, but has become an extraordinary crime.² It is said as an extraordinary crime according to Romli Atmasmita³ because the impact of this crime is very broad and complex with regard to the welfare of the nation and the state due to the loss of public assets.⁴ Recalling that the act of corruption is an extra-ordinary crime, then in an effort to overcome it, an extra-ordinary enforcement is also needed by performing extra-ordinary measures. It is said that corruption as an extraordinary crime is due to its impact will undermine not only the civilization of a State but the civilization of the world because of the linkage of corruption not only concerns the territory of a country, but can spread to other countries. Although the Corruption Law allows for the death penalty for corruptors, the fact that the Corruption Court has never terminated the death penalty, except only to a life sentence which, according to Andi Hamzah, is considered the most severe punishment,

¹ Nurwahidah, *Eksekusi Hukuman Mati Di Indonesia (Tinjauan Hukum Pidana Islam)*, Jurnal Hukum, Fakultas Syariah dan Ekonomi Islam, Banjarmasin, 2009, p. 3.

² See general explanation of Law No. 30 Year 2002 about the Corruption Eradication Commission.

³ Romli Atmasmita, *Pengkajian Mengenai Implikasi Konvensi Menentang Korupsi 2003 ke Dalam Sistem Hukum Nasional*, Proposal, Departemen Kehakiman dan HAM-RI, Badan Pembinaan Hukum Nasional, Jakarta, 2004, p. 4.

⁴ Purwaning M. Yanuar, *Pengembalian Aset Hasil Korupsi*, Alumni, Bandung, 2007, p. 20.

even ironically it related to the discussion of the Corruption Draft Law (RUU-TPK) which will be enacted, the normative rules contained in the RUU-TPK has no threat of death penalty.⁵

The Corruption Court has never sentenced the death penalty to the corruptors is due to an assumption that human beings should not be or be entitled to deprive other human life so that when it is conducted as a violation of human rights or other assumption, eventhough he is guilty for corruption, but there is still a chance to repent so if he is sentenced to death, then when will humans change their actions in order to ask forgiveness from Allah SWT, and the most extreme is what if the Judge makes a mistake in deciding a case. Then the result of the mistake for death sentenced to a person, and then if the execution has been executed for the person, can the person be revived, of course not.

Death penalty can not only be in effect in Indonesia, even other countries have imposed the death penalty for corruptors in order to reduce the crimes that could destroy the economy of this country, such as China, America, Malaysia, Saudi Arabia which enforce Islamic law also give the death penalty for corruptors by beheaded. From the countries that apply the death penalty for the corruptors, it does not bring any result. It is proved that corruption crime in each country is drastically reduced and the country can improve the economy and welfare of the society.⁶ The implementation of death penalty in several countries is in line with the wishes of the international community under the auspices of the United Nations. In the United Nations Convention Against Corruption, 2003, the preamble states that "The prevention and eradication of corruption is a responsibility of all states and that they must cooperate with one another" prevention and eradication of corruption is the responsibility of all countries and that they must cooperate with one another).

In Islamic law, criminal sanctions that can cause perpetrators to be executed occur in three cases.

ثلاث بآحدى إلا مسلم امرئ دم يحل لا نفس بغير نفس وقتل حصان :

"It is unlawful blood (soul) of a Muslim except for one of the three things that *kufir* after faith, adultery after *ihsan* (marriage) and murder. Meanwhile, according to *Fuqaha* (jurisprudence) mentions that a deed can be executed there are 7 kinds, namely: *Sariqah* (stealing), adultery *qadzaf* (slandering adultery), *hirabah* (rob), *khamar* (drunk), *riddah* (murtad) and *bughah* (rebel). While the perpetrators of corruption included in the scope of *Sariqah*.⁷

The act of corruption which included in the scope of this *Sariqah*, Islam does not limit the number of how much the corruptors take the state's money, but what is judged is the impact of corruption that is damaging the lives of the people as the words of Allah SWT in Surah Ar-Rum verse 41 and Surah Almaidah verse 32. So both positive and Islamic law allow the implementation of death penalty to the corruptors, but in practice none of the judges gives any death penalty.

Besides the abolition of death threats in the new RUU-TPK and not all corruption crimes are threatened with the death penalty and there is never a sentence of death penalty in this country is a fact that can encourage and stimulate for the corruptors for not having any fear to do the corruption, so it is appropriate for almost all the government agencies, whether executives, legislatives and judiciary or private institutions that use state finances to engage with corruption committed by those who have authority in using the country's finances. This is the motivation for the author.

II. REVIEW OF LITERATURE

2.1 Death Penalty for Corruptors in Positive Law Not Maximally

The meaning of corruption can be seen either from *Kamus Umum Bahasa Indonesia*, the law or the doctrine of the legal expert. Corruption is derived from the Latin language *corruptio* or *corruptus* which literally means rottenness, depravity, dishonesty, bribe, immorality, deviation from sanctity, and so forth. But from all the meanings of corruption, it can be seen based on public opinion which says as an act of state officials (government) that mislead the authority for personal interests, family, cronies, and groups that resulted in losses

⁵ Andi Hamzah as Chairman of the Formulating Team of the Draft Law on Corruption (RUU-TPK) stating that the life sentence for corruptor Andrian Waworuntu as a suspect in a crime fraud Bank BNI of Rp. 1.3 trillion is the single most severe punishment. See <http://www.antikorupsi.org/en/contenti>. accessed on September 23, 2017..

⁶ See <http://www.sukaon.id/2015/03/inilah-alasan-kenapa-koruptor-wajib.html>. accessed on 26 September 2017.

⁷ <http://www.islamcendekia.com/2014/02/hukuman-mati-menurut-islam-dan-ham.html>, accessed on September 23, 2017. *Sariqah* means stealing, taken from the Arabic word *sariqah* which etymologically means doing something action against others in secret. For example *istiraqqa al-sam'a* (eavesdropping) and *musaraqat al-nazhara* (stealing perspective). Related to the limits of the concept, Abd al-Qadir has defined *sariqah* as the act of taking other people's treasures in a clandestine state. What is meant by taking another person's treasure secretly is to take it away without the knowledge and willingness of the owner.

of the State.⁸ Meanwhile, according to Article 2 and 3 of Law no. 31 Year 1999 Jo. UU no. 20 Year 2001, states that corruption is:

1. Any person who deliberately violates the laws, commits enrichment of himself or another person or a corporation that may harm the state's finances or the economy of the state,
2. Any person who, for the purpose of profiting himself or others or a corporation, misuses the authority, opportunity or means available to him because of a position which may harm the state's finances or the economy of the state.

If it is viewed from the definition of corruption, then there are elements of corruption, namely:

- Acts of against the law
- Abusing the Power
- Aiming to enrich oneself
- Resulting adverse to the state's finance.

According to Law No. 20 Year 2001 about eradication of corruption, there are several types of actions that categorized as acts of corruption, namely:

1. Losses of state's profits
2. Bribery (installments)
3. Embezzlement in office
4. Extortion
5. Fraud
6. Assistance of interest in procurement
7. Gratuities (gift giving)

For the corruptors, they are threatened with severe punishment, even with the death penalty. Meanwhile the provision about the death penalty is not without basis which is previously in Article 10 point 1 letter e of the Criminal Code (KUHP). Among all types of punishment as managed by the Criminal Code, the death penalty is the most severe and maximum punishment, as well as it is as a form of law enforcement in the effort to prevent and eradicate corruption in Indonesia. Law no. 31 of 1999 which amended by Law no. 20 Year 2001 about the Eradication of Corruption allows the corruptors to be sentenced to death by the Judge of Corruption Court even though not all acts of corruption can be put to death, only certain acts of corruption are threatened with death penalty.⁹

The threat of death penalty is regulated in Article 2 paragraph 2 of Law no. 31 Year 1999 which amended by Law No. 20 Year 2001 about the Eradication of Corruption, where it states: "In the criminal act of corruption as referred to in paragraph (1) is done under certain circumstances, death penalty may be imposed", while paragraph 1 states: "Any person who is unlawful conducting the self enrichment or others or a corporation which may harm the state's finance or the state's economy, shall be sentenced to life imprisonment or at least 4 (four) years imprisonment and maximum of 20 (twenty) years imprisonment and a fine of at least two hundred rupiah and at most one billion rupiah".

The existence of the word "In Certain Circumstances" as mentioned in paragraph 2, it can be seen from the explanation of the law which is meant when the act of corruption is conducted when the country is in a state of danger that is in the event of a national natural disaster or when the country is in a state of economic and monetary crisis, it may be said that when the death penalty is given for the corruptors, it must meet the requirements while the requirement is if the corruptor committed a criminal act of corruption when the state is really in a state of danger and economic crisis, otherwise the death penalty will never apply.¹⁰

Corruption is an act that relates to the disappearance of the state's finances as an instrument for development so that the act brings a very wide-ranging impact that can be seen from various dimensions, including economic, social, governmental, political and democratic dimensions, law enforcement, security

⁸ Robert Klitgaard, *Penuntut Pemberantasan Korupsi Dalam Pemerintahan Daerah, Alih Bahasa Masri Maris*, Yayasan Obor Indonesia, Jakarta, 2005, p. 3.

⁹ Article 2 paragraph (2) of Law no. 31 Year 1999 Jo. UU no. 20 In 2001 on the Eradication of Criminal Acts of Corruption states "In the event that the criminal act of corruption as referred to in paragraph (1) is carried out under certain circumstances, capital punishment may be imposed", whereas according to the explanation of this law the meaning of "under certain circumstances" the circumstances which can be used as a reason for criminal liability for the perpetrators of corruption, ie if the crime is committed against funds intended for the prevention of hazards, natural disasters, the prevention of widespread social unrest, the prevention of economic and monetary crises, and the prevention of crime corruption.

¹⁰ See the explanation of Article 2 paragraph (2) of Law no. 31 Year 1999 Jo. UU no. 20 Year 2001 on the Eradication of Corruption.

defense, and the environment. If it is viewed from the economic dimension, it will hamper the growth and development of the state. When it is viewed from the social, it will have difficulty in alleviating poverty. When it is viewed from the government, it will turn off the political ethics. When it is viewed from politics and democracy, it will give birth to corrupt leaders. When it is viewed from law enforcement, it will eliminate the public confidence in the government. When it is viewed from the defense and security, it will weaken the borders of the state. When it is viewed from the environment, it will degrade the quality of the environment, and so on.¹¹

The multi dimension impacts that resulted does not cause the possibility that this corruption will inhibit the progress and damage the joints of the country's economy, so it can be said that corruption acts are serious mistakes that cause extensive effect. Thus the death penalty for the perpetrators of corruption is a necessity without the need for a requirement. The existence of certain requirements for the perpetrators of corruption according to Article 2 paragraph 2 of Law no. 31 of 1999 which amended by Law no. 20 Year 2001 about the Eradication of Corruption is precisely the proof that the use of the law for illicit acts has not been conducted maximally.

The difficulty of applying the death penalty in corruption cases is without any reason, various reasons put forward by various parties by mentioning the death penalty is contrary to human rights, the death penalty is considered inconsistent with the 1945 Constitution, Pancasila and humanitarian values that serve as the constitution and the legal basis of the Indonesian state. The death penalty for corruptors in Indonesia should be able to follow the Chinese state that has applied the law to convict the corruption cases. Since 1999 China has taken a firm action against corruption. In 2000 China has given the death penalty for Chinese officials who have been convicted of corruption of 11 people and on March 9, 2001, Vice Governor Hu Changqing who was executed in just 24 hours for being found guilty of taking a bribe of US \$ 660,000 and property worth US \$ 200,000.¹²

The absence of the implementation of death penalty proves insufficient use of the law on corruption, thus making it difficult for the government to prevent and combat the corruption. The consequence would make the development of corruption in Indonesia, so it is not surprising that Indonesia includes the country that ranked 90 as the most corrupt country of 176 countries.¹³ While the institutions that handle the corruption cases in Indonesia quite a lot, ranging from the Police, the Attorney to the Corruption Eradication Commission (KPK), then supervision is also done by state agencies such as the Financial Supervisory Agency (BPK), BPKP (Supervisory Agency for Finance and Development), Inspector General (Inspector General) and so on, but corruption still shows a significant increase.¹⁴

The ineffectiveness of the implementation of the death penalty as stipulated in the corruption law makes the Judge who decides the case does not have the courage to execute, although the matter he handles can shake the country's economy with fantastic value, for example in the case of the current public concern about E-ID card that has harmed state finances of Rp. 2.3 trillion, whereas previously since 2001 until the year 2015 countries harmed from the corruption of Rp. 203.9 trillion.¹⁵ Is not the great value of the state losses under the category of "under certain circumstances" given the current state of the economy in a downturn?

2.2 Death Penalty in the Perspective of Islamic Criminal

The death penalty in Islamic Criminal is not a new thing. In many cases, Islam certainly justifies the death penalty especially in the *qishas* case.¹⁶ Although Islam recognizes and justifies the death penalty, but in Islamic law there are some provisions that are not easy to impose a death sentence as specified in Surah Al-Isra 'verse 33, mentioning:

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لَوْلِيهِ سُلْطَانًا فَلَا يَسْرِفُ فِي الْقَتْلِ إِنَّهُ كَانَ مَنْصُورًا

¹¹ <http://www.kompasiana.com>. Accessed on 20 September 2017.

¹² Lihat <http://www.kompasiana.com>, accessed on 26 September 2017.

¹³ According to data from the World Anti-corruption Agency based in Berlin Transparency International on Wednesday (25/1/2017), by issuing an annual report on the results of corruption eradication efforts conducted 176 countries this past year in Trans News dated January 26, 2017.

¹⁴ Laden Marpaung, *Tindak Pidana Korupsi, Pemberantasan dan Pencegahan*, Djambatan, Jakarta, 2007, p. 84.

¹⁵ Berita Gar Indonesia on 5 April 2016, accessed on 26 September 2017.

¹⁶ Qishas is a retaliation (giving a fair sentence)

Meaning: "And do not kill the soul that Allah forbids (killing him), but with a right (reason). And whoever is killed in unrighteousness, indeed We have given power to his heirs, but let the heir not exceed the limits of the killing. Surely he is the one who gets help"

So the death penalty must be conducted for the right reason, the right thing to say is that the death penalty is governed by the Alqur'an and the Sunnah against the corruption cases included in the same group by stealing, the words of corruption are not the qur'an mentioned firmly, just analogically in the Qur'an there is a similar act of corruption, that is, if an act can damage the earth, as defined in Surah Ar-Rum verse 4 and Surah Al-Maidah verse 32, namely:

ظَهَرَ الْفَسَادُ فِي الْبَرِّ وَالْبَحْرِ بِمَا كَسَبَتْ أَيْدِي النَّاسِ لِيُذِيقَهُمْ بَعْضَ الَّذِي عَمِلُوا لَعَلَّهُمْ يَرْجِعُونَ

Meaning: "It has been seen that the damage on the land and the sea is due to the human hand, so that Allah may make them feel some of their deeds, in order that they may return (to the right path)" (Ar-Rum 4).

مَنْ آجَلَ ذَلِكَ كَتَبْنَا عَلَى بَنِي إِسْرَائِيلَ أَنَّهُ مَنْ قَتَلَ نَفْسًا
يَعْتَدِ نَفْسًا أَوْ فَسَادًا فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ
جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا وَلَقَدْ
جَاءَهُمْ رَسُولُنَا بِالْبَيِّنَاتِ ثُمَّ إِنَّ كَثِيرًا مِّنْهُمْ بَعَدَ ذَلِكَ فِي
الْأَرْضِ لَمُسْرِفُونَ ﴿٣٢﴾

Meaning: "We therefore set a law for the Children of Israel that: Whoever kills a human, not because of that person (killing) another, or not by causing damage to the earth, it is as if he has killed all mankind. And whoever cares for the life of a human, it is as though he has preserved human life all. And verily Our Messengers came unto them with Clear Signs, and many of them afterward were exceedingly transgressing in the earth" (Almaidah 32)

So making the damage on the earth according to surah Ar-Rum verse 41 and Almaidah verse 32 can be equated or identical to the murder of mankind, whereas the corruption acts are the acts that clearly damage the order of the nation's life and the earth. The impacts of corruption acts are in some areas where floods, landslides, destroyed infrastructure, disrupted transportations, distribution of goods are stalled because of the effects of corruption, so that people will suffer and poverty, eventually the welfare of the people as expected is not realized.¹⁷

Recalling the magnitude of the damage caused by this corruption act, it is reasonable that Islamic *Shari'ah* justifies the perpetrators of this corruption to be executed, as the Messenger of Allah (SAW) warns those who dare to devour illegitimate wealth the following:

Meaning: "Every meat that is grown from an unclean thing, then a viable place for him is hell" (Hadith narrated by Turmudzi)

And the Words of Allah SWT in Surah An-Nisa 'verse 29, mentions:

اَلَّذِينَ آمَنُوا لَا تَأْكُلُوا اَمْوَالِكُمْ بَيْنَكُمْ بِالْبَاطِلِ اِلَّا اَنْ تَكُوْنَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا اَنْفُسَكُمْ اِنَّ اللّٰهَ كَانَ بِكُمْ رَحِيْمًا

Meaning: "O ye who believe! Take not your neighbor's possessions with falsehood, except by way of business that is acting with love among you. And do not kill yourself; surely Allah is Most Merciful to you"

Corruption is a series of acts that consume property belonging to another person who in this case belongs to the state by means of false means that are unjustified by law, thereby for the perpetrators of corruption that have taken the property of others is considered to kill himself, so the corruptor shall kill himself, then it must be executed by the state through the Court in order to create a deterrent effect for those who will do the corruption acts.

III. DISCUSSION

Indonesia as a legal state that has the values of Pancasila in accordance with the culture of the nation (one of the original paradigmatic values of Indonesian culture and society), one of which is based on Belief in God Almighty certainly reasonable to not exclude religious teachings, especially Islam as a solution to make the corruption perpetrators and at the same time eradicate the root of corruption. The linkage of Islam as a law enforcement effort against corruption in Indonesia is quite clear, considering that the majority of Indonesian people are Muslim, so the application of Islamic law in national law is a necessity.

For Moslems, the command of Allah (The owners of the heavens, the earth and the whole universe) is an obligation, so that when there is the Word of God that is contrary to the rule of national law, then in the Islamic concept of the rule of national law must be set aside, but when appropriate the rule of law made by man is obliged to be preserved and must be supported, as Allah says in Surah An-Nisa "verse 59:

¹⁷ Jawade Hafidz Arsyad, *Korupsi Dalam Perspektif HAN*, Sinar Grafika, Jakarta, 2013, p. 20.

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِن تَنَزَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِن كُنتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ
الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا ﴿٥٩﴾

Meaning: "O you who believe, obey Allah and obey His Messenger and Amil Ulil among you. Then if you differ on the opinion of something, then return it to Allah and his apostle, if you really believe in Allah and the Last Day. That is better for you and better consequences"

The linkage among the three (Allah SWT, Rasulullah SAW, and *umara*) is also mentioned in the hadith of the Prophet (s) as follows:

مَنْ أَطَاعَنِي فَقَدْ أَطَاعَ اللَّهَ، وَمَنْ عَصَانِي فَقَدْ عَصَى اللَّهَ، مَنْ أَطَاعَ الْأَمِيرَ فَقَدْ أَطَاعَنِي، وَمَنْ عَصَانِي فَقَدْ عَصَى اللَّهَ

Meaning: "Whoever obeys me, indeed he has obeyed God. Anyone who commiserates with me, indeed he has been a witness to God. Whoever obeys the leader, indeed he has obeyed me. Anyone who commiserates to the leader, indeed he has been mating to me" (Narrated by Ibn Abi Hatim from Abu Hurairah).

The hadiths above show that Moslems are required to obey their leaders through the rules they make. However, as confirmed in the above hadith, the case ordered by the leader should not violate sharia. If it violates sharia then it should not be obeyed. Rasulullah SAW said:

لَا طَاعَةَ لِمَخْلُوقٍ فِي مَعْصِيَةِ اللَّهِ عَزَّ وَجَلَّ

Meaning: "There can be no obedience to the creature in a vow to Allah 'Azza wa Jalla" (HR Ahmad from Ali ra).

Corruption in Islam is a violation of Islamic law. The Islamic law seeks to realize the benefits of humanity by what is called *maqashidussy syaria'ah*. Among the benefits to be sought is the preserved property (*hifdzul maal*) of various forms of infringement and malpractice. Islam regulates and assesses property since its acquisition until its expense, Islam gives guidance in getting wealth done in a manner that is moral and in accordance with Islamic law that is non-deceitful, does not eat usury, does not betray, does not embezzle the property of others, does not steal, not fraudulent in scales and scales, not corruption, and so forth.¹⁸

In general the teachings of Islam are divided into 3 (three) parts, namely the *aqidah* which contains the beliefs of Muslims in a vertical, then the *Shariah* which contains the rules and sanctions for those who violate those rules, and *akhlak* which is about the guidance of the behavior and adab courtesy, both to Allah SWT and to fellow human beings. Against this syariah the Qur'an explains in Surah An-Nisa 'verse 58-59 Allah SWT says:

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ ۚ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ ۗ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

Meaning: "Allah commands you to convey the message to the one who deserves it, and when you judge between mankind so that you may judge justly. Allah is the Best of you. Allah is the Hearer, the Seer" (An-Nisa '58)

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِن تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِن كُنتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ۚ
لِٰذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا

Meaning: "O ye who believe! Obey Allah and obey the messenger, and the elbows among you. Then if you are different about something, then return it to Allah (Al Quran) and the Messenger (*sunnahnya*), if you have faith in Allah and the Last Day. That is more important (for you) and better for it"

In Islam the behavior of corruption has been strictly prohibited, as hadith of the Prophet (peace and blessings of Allaah be upon him) narrated by Ibn Abbas ra Rasulullah saw said, "It will not enter the body of the fasting body with the haram".¹⁹ Similarly, the words of Allah SWT also mentions in Surah Al-Baqarah verse 188:

وَلَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنتُمْ تَعْلَمُونَ

Meaning: "And let not some of you eat some of the folk among you in a falsehood and do not bring the matter to the judge, lest ye may eat of the property of another with sin, when you know"

Various good rules contained in Alqur'an and Hadist that prohibit and do not justify the act of corruption with extremely severe sanctions in the form of a death sentence, but in fact in Indonesia that the majority of Islam does not execute the rule, but Allah threatens those who do not run the laws that come from God, they include unbelievers, *zolim*, and wicked people.²⁰

¹⁸ Sabri Samin, *Pidana Islam dalam Politik Hukum Indonesia*, Kholam, Jakarta, 2008, p. 77.

¹⁹ Abu Fida' Abdur Rafi', *Terapi Penyakit Korupsi*, Republika, Jakarta, 2006. p. xxvi.

²⁰ See Surah Almaidah verses 44, 45 and 47 that mention "..... Whoever does not decide according to what Allah has revealed, then they are the infidels, the *zolim* and the wicked."

IV. CONCLUSION

1. The death penalty for corruptors is one of THE law enforcement efforts as regulated by Positive Law and Islamic Criminal. This punishment is not contradictory to Law No. 31 Year 1999 Jo. Law No. 20 Year 2001 about the Eradication of Corruption in Indonesia. The implementation of the death penalty in corruption cases is a necessity that needs to be maintained for the realization of the values of justice, given the act of corruption is an extraordinary crime that can destroy the joints of the country's economy. The execution of the death penalty for corruptors will make corrupt perpetrators fearful and deterrent to do so that the state's finances can be saved, and eventually the state through its government will be able to increase development, thereby creating a just and prosperous and prosperous society.
2. Law No. 31 Year 1999 Jo. Law No. 20 Year 2001 about the Eradication of Corruption allows the death penalty for perpetrators of corruption on certain cases only if the act of corrupt is done "under certain circumstances". The possibility of committing the death penalty is not contrary to the prevailing criminal system, where according to Article 10 letter a point 1e determines that the sentences consist of 2 (two) groups, namely the Principal Sentence consisting of the death penalty, imprisonment, imprisonment and penalty of fine, then Additional Punishment which consists of the revocation of certain rights, the appropriation of certain goods and the announcement of the judge's decision. So the death penalty in the criminal system is the ultimate and the most severe punishment because the punishment punishment is most important.
3. Islam which is sourced from Alqur'an and Hadith as a rule that regulates all human life not only for Moslems, but also for other people, because Islam is a religion of *rahmatan lil 'alamin* is giving goodness to the universe. Islam considers that for the corrupt who is an act has done damage on the surface of the earth in the territory of this Republic of Indonesia, the death penalty is justified and allowed according to the teachings of Islam, so that against other corrupt perpetrators will be afraid and deterred to corrupt, thus will be created peace, security, tranquility and prosperity for mankind especially in Indonesia. So that when changes to Law No. 31 Year 1999 Jo. Law No. 20 Year 2001 about the Eradication of Corruption which currently is included in the *prolegnas* as a Draft Law on Corruption, the death penalty must be maintained not only against certain acts alone, will still all corrupt acts that damage the lives of the people should be sentenced to death.

REFERENCES

- [1] Arsyad, Jawade Hafidz, *Korupsi Dalam Perspektif HAN*, 2013, Sinar Grafika, Jakarta.
- [2] Atmasasmita, Romli, *Pengkajian Mengenai Implikasi Konvensi Menentang Korupsi 2003 ke Dalam Sistem Hukum Nasional*, 2004, Proposal, Departemen Kehakiman dan HAM-RI, Badan Pembinaan Hukum Nasional, Jakarta.
- [3] Klitgaard, Robert, *Penuntut Pemberantasan Korupsi Dalam Pemerintahan Daerah, Alih Bahasa Masri Maris*, 2005, Yayasan Obor Indonesia, Jakarta.
- [4] Marpaung, Laden, *Tindak Pidana Korupsi, Pemberantasan dan Pencegahan*, 2007, Djambatan, Jakarta.
- [5] Nurwahidah, *Eksekusi Hukuman Mati Di Indonesia (Tinjauan Hukum Pidana Islam)*, *Jurnal Hukum*, 2009, Fakultas Syariah dan Ekonomi Islam, Banjarmasin.
- [6] Rafi', Abu Fida' Abdur, *Terapi Penyakit Korupsi*, 2006, Republika, Jakarta.
- [7] Samin, Sabri, *Pidana Islam dalam Politik Hukum Indonesia*, 2008, Kholam, Jakarta.
- [8] Yanuar, Purwaning. M, *Pengembalian Aset Hasil Korupsi*, 2007, Alumni, Bandung.
- [9] <http://www.antikorupsi.org/id/content>. diakses pada tanggal 24 September 2017.
- [10] <http://www.sukaon.id/2015/03/inilah-alasan-kenapa-koruptor-wajib.html>. di akses pada tanggal 26 September 2017.
- [11] <http://www.islamcendekia.com/2014/02/hukuman-mati-menurut-islam-dan-ham.html>, diakses pada tanggal 23 September 2017.
- [12] <http://www.kompasiana.com>. Diakses tanggal 20 September 2017.
- [13] <http://www.kompasiana.com>, di akses pada tanggal 26 September 2017
- [14] Alqur'an dan Hadist.
- [15] Undang-Undang Nomor 31 Tahun 1999 Jo Undang-Undang No. 20 Tahun 2001 tentang Pemberantasan Tindak Pidana Korupsi.
- [16] Kitab Undang-Undang Hukum Pidana.

Mahzaniar The Dead Penalty for Corruptors in the Perspective of Positive Law and Islamic Criminal Law in Indonesia." *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)* , vol. 22, no. 11, 2017, pp. 76-82.