

INDONESIA VS CHINA: A COMPARATIVE OF THE EXECUTION OF DEATH PENALTY IN CORRUPTION

ONY RAFSANJANI

Master of Law in Faculty of Law and International Relation, Universiti Sultan Zainal Abidin, Kuala Terengganu, Malaysia

Email: onyrafsanjani99@gmail.com

Abstract

Indonesia and China are some of the countries that still adhere to the death penalty in their Criminal Code. One of the crimes punishable by death is the Corruption Crime because it is considered an extraordinary crime and is believed to reduce crime rates. This research examines material differences regarding the death penalty law, especially in cases of corruption in Indonesia and China. The type of research used in this research is normative or doctrinal research with statutory, conceptual, and legal comparative approaches. Sources and types of legal materials consist of primary, secondary, and tertiary legal materials. Primary legal materials are in the form of legislation, secondary legal materials in the form of expert opinions, previous research, text books, scientific journals, and news on the internet, while tertiary legal materials include Indonesian language dictionaries, English dictionaries, and legal dictionaries. The results of this study reveal that there are differences and similarities in determining the death penalty for the crime of corruption for corruptors between Indonesia and China. The similarities are that they both assume that corruption is a crime that can be sentenced to death and has a special institution in handling it. The difference lies in the regulation, if in Indonesia the crime of corruption is regulated in a special law (outside the Criminal Code) while in China it is regulated in their Criminal Code. A further difference lies in the additional penalties where China has a political disenfranchisement. Regarding the implementation of the death penalty for corruptors, in Indonesia it applies if certain things occur (disasters and monetary crises) in China, calculated based on the amount of corruption. Meanwhile, according to the method of execution, in Indonesia it uses shooting to death, in China it uses shooting and death injections.

Keywords: *Death Penalty; Criminal Code; Execution; Corruption; Indonesia; China.*

A. INTRODUCTION

Every action that result from human activities has consequences in both positive and negative connotations. In the social order, human activities that have a negative direction are usually called crimes or violations. Crime is a masfestation of deviant behaviour that can disrupt social order and become a threat in society¹. Martiman Prodjohamidjojo in his book explained that crime is a social reality triggered by human problems that can happen anywhere, and anytime². Crimes that result from a person's behaviour should deserve punishment, in this case what is meant is punishment. Ethically, the term "*Hukum*" has become the national language of Indonesia, as a reference to the term law in other languages "*Recht*" (Dutch) and "*Law*" (English). Law itself is defined by rules or norms made by authorized officials that are coercive and binding with the intention of creating order and security in society³. In terms of understanding, Barda Nawawi Arief in his book entitled "*Bunga Rampai Kebijakan Hukum Pidana*" opined that punishment (Criminal) is "an unpleasant feeling (miserable) imposed

¹Ni Komang Ratih Kumala Dewi, (2020) Keberadaan Hukuman Mati Dalam Kitab Undang-Undang Hukum Pidana (KUHP). Universitas Mahasarawati, Denpasar. ISSN : 2407-4276 (Online). Hlm. 104-105.

²Martiman Prodjohamidjojo (1997) dalam Ni Komang Ratih Kumala Dewi, (2020) Keberadaan Hukuman Mati Dalam Kitab Undang-Undang Hukum Pidana (KUHP). Universitas Mahasarawati, Denpasar. ISSN : 2407-4276 (Online). Hlm. 105.

³Soedjono Dirdjosisworo, (2002). Pengadilan Hak Asasi Manusia Indonesia, Bandung: Citra Aditya Bakti.

by a judge in verdict on a person who has violated the criminal law”⁴. Further, he explained that the increase in the number of crimes was due to the inaccuracy of criminal sanctions given for policies that determined⁵, therefore, the imposition of punishment is a criminal law enforcement mechanism that has an impact on policies to prevent criminal acts⁶. According to the theory of punishment there are two classifications: namely “Utilitarian and Retributive”. Utilitarian theory explained that, Punishment is intended to punish offenders⁷. Meanwhile, from the perspective of the retributive theory put forward by “Immanuel Kant”, the punishment for those who commit crimes is appropriate, and has a de facto universal deterrent effect, with the aim of keeping people from taking wrong actions⁸. In law, a person who commits a crime will be subject to punishment which is divided into several categories which are adjusted to the level of error made by the perpetrator.

One of the punishments that is currently the heaviest punishment to punish is the death penalty. According to the Big Indonesian Dictionary (KBBI) the death penalty has the meaning as “criminal in the form of taking the life of the convict”⁹. Meanwhile, according to the Cambridge Dictionary the death penalty “Death Penalty” means “The legal punishment of particular crimes by death¹⁰”. Djoko Prakoso in his book entitled “Renewal of the Indonesian Criminal Law” explains that the existence of the death penalty has even been born since the existence of humans themselves. Furthermore, his opinion regarding the death penalty is that this is the most cruel punishment and there is no attempt or way to fix it when it is wrong¹¹. In its execution, the death penalty has the characteristics of various “*retentionist*” countries such as being crucified; burned; beheaded; hanged; shot; locked in the gas chamber; use the electric chair; to using lethal injection. From the statement above, it can be concluded that every activity carried out by someone in the form of a negative will be subject to a retribution in the form of punishment, the death penalty is a one of several types of punishment that can be given and is the heaviest punishment given by the state for the wrongdoing of the perpetrator by taking the life of the perpetrator instead, the execution procedure is different in each country.

According to a report from Amnesty International¹², several countries that still provide the death penalty as the harshest punishment include Indonesia and China. In Indonesian criminal law, the types of punishment are contained in the Criminal Code (KUHP). In Article 10 of the Criminal Code which is divided into two, namely the main punishment and additional punishment. The types of punishment are as follows: the main punishment consists of; death penalty; Prison sentence; confinement; and fines. While the additional penalties include: revocation of certain rights; confiscation of certain goods; and the announcement of the judge’s decision¹³. Whereas in Chinese criminal law, the death penalty is contained in the Chinese Criminal Code in chapter 3 to be precise in section 5, concerning the death penalty. From the number of executions quoted from Amnesty International’s report in 2020, the highest number of death sentences was achieved by China with more than 1,000 cases, while

⁴Barda Nawawi Arief (2005). Bunga Rampai Hukum Pidana di Indonesia. Cetakan ke III. Bandung. PT. Citra Bakti

⁵ Barda Nawawi Arief (2000). Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara. Semarang. Badan Penerbit Universitas Diponegoro, hlm. 4.

⁶Rizqi Nurul Awaliyah, Rehnalemken Ginting (2015). Perbandingan Pengaturan Sanksi Pidana Dalam Tindak Pidana Korupsi Berdasarkan Perundang-Undangan Indonesia dan Cina. Fakultas Hukum Universitas Sebelas Maret. Vol. 4 No. 1. Hlm. 74

⁷Sourabh Batar (2021) *Review of Capital Punishment*. Vol 10, Issue 12, December 2021. DOI: 10.5958/2278-4853.2021.01142.3. hlm. 423

⁸Ibid., hlm. 423

⁹Kamus Besar Bahasa Indonesia versi online (KBBI). Lihar di [https://kbbi.kemdikbud.go.id/entri/pidana%20mati]

¹⁰Cambridge Dictionary versi online. Lihar di [https://dictionary.cambridge.org/dictionary/english/death-penalty]

¹¹Prakoso, Djoko. (1997). *Pembaruan Hukum Pidana Indonesia*. Yogyakarta, Liberty, Page 32

¹²Laporan Internasional Amnesti (2020). Hukuman dan Eksekusi Mati 2020, hlm. 26

¹³Kitab Undang-Undang Hukum Pidana Indonesia (Article 10).

in Indonesia there were more than 117 cases¹⁴. From the description above, it can be concluded that Indonesia and China have agreed to still regulate the death penalty in their Criminal Code. The death penalty occupies the top position, this is because the death penalty is the toughest punishment that can be given to criminals in Indonesia and China. In terms of the number of executions, China has the highest number of executions worldwide.

Indonesia and China in their Criminal Code agree that one of the crimes that can be subject to the death penalty is the crime of corruption. Because corruption is one of the inhibiting instruments in economic development. According to the term put forward by Poerwadarminta in the Indonesian dictionary, corruption means “bad actions such as embezzlement of bribes and so on¹⁵”. This type of crime is included in the “*White Collar Crime*¹⁶” category, where the perpetrator acts as an *abuse of power*¹⁷ that has grown and developed in the body of people’s lives both in terms of cases, the number of losses and, in terms of the quality of the crime. Alatas explained that there are several characteristics of corruption, namely: the perpetrator must be more than one person; the orientation is confidential; there is a reciprocal relationship (mutual benefit); every step always contains deception; perpetrators always seek refuge from legal justifications; always support firm decisions, but influence those decisions; not comply with duties and responsibilities; the form is in the form of betrayal of trust; and participate in a contradictory dual form¹⁸. One of the most heinous corruption cases was the corruption of the Landslide natural disaster fund in Manjalengka in 2014, the corruption of the tornado prevention fund in Serang in 2012¹⁹, which is still ringing in our minds regarding the corruption of Covid 19 disaster aid. Corruption doesn’t just stop there. Corruption has also spread to the realm of religion, such as corruption in public funds, hajj funds, and corruption in the procurement of the Koran. And there are many other acts of corruption. Because corruption is one of the many crimes, which can only be committed by people who have positions whose pockets should be thicker than others, but they seem dissatisfied with what they have, which hurts the corruptors even more without fear. they dare to corrupt funds for natural disasters, Covid 19, even in religious matters. Therefore, corruption can damage the foundations of the country by eating away at people’s money which hinders economic growth, therefore it is appropriate for the perpetrators of corruption to be given severe punishment.

In its development, Indonesia and China regulated the death penalty as one of the threats to the crime of corruption. Indonesia regulates the death penalty for corruption contained in Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption which was updated to Law no. 20 of 2001 (the Corruption Crime Act), hereinafter referred to as UUTPK. Article 2 of the UUTPK stipulates that criminal acts of corruption can be subject to the death penalty when the state is under certain conditions. The conditions referred to are dangerous conditions, for example when a national natural disaster occurs or when the country experiences an economic and monetary crisis²⁰. In line with Indonesia, China regulates the type of punishment imposed which is divided into two, namely principal and additional penalties. The formulation in this article is contained in the Chinese Criminal Code which is called the “*Criminal Law of the People’s Republic of China*²¹”. In contrast to Indonesia which regulates Corruption Crimes with

¹⁴Op. Cit., Laporan Internasional Amnesti, hlm. 26

¹⁵Andi Hamzah (2007) Pemberantasan Korupsi. Jakarta. Rajagrafindo Persada, hlm. 6.

¹⁶Rizqi Nurul Awalayah, Rehnalemken Ginting (2015). Perbandingan Pengaturan Sanksi Pidana Dalam Tindak Pidana Korupsi Berdasarkan Perundang-Undangan Indonesia dan Cina. Fakultas Hukum Universitas Sebelas Maret. Vol. 4 No. 1. hlm. 73.

¹⁷Ririn Darini (2011). Korupsi di China: Perspektif Sejarah, hlm. 72.

¹⁸Ibid hlm.72-73.

¹⁹Herman Katimin (2019). Kerugian Keuangan Negara atau Perekonomian Negara Dalam Menentukan Hukuman Mati Pada Tindak Pidana Korupsi. Vol. 26 No. 1. Januari-Maret 2020, hlm. 40.

²⁰Waris Anjari (2020) Penerapan Pidana Mati Terhadap Terpidana Kasus Korupsi. Fakultas Hukum Universitas 17 Agustus 1945 Jakarta. eISSN: 2527-4716, hlm. 433

²¹Read Criminal Law of The People’s Republic of China (KUHP) Cina Article 33 dan 34.

different laws, in the Chinese Criminal Code, the crime of corruption lies in being integrated with the Chinese Criminal Code, to be precise in Articles 383, 387, 388A, 390, 390-1, 391, 392, 393, 395 and Article 396.

From the description above, this research will examine the comparison of the differences in the death penalty from the aspects of Indonesian and Chinese criminal law, especially in cases of corruption and execution (criminal execution) for the two countries. The purpose of this study is to identify and analyze the death penalty in Indonesia and China, especially in cases of corruption and the implementation of the death penalty in both countries.

B. RESEARCH METHODS

The type of research used in completing this research is normative or doctrinal legal research. In this study, law is conceptualized as what is written in legislation (law in books) or law is conceptualized as a rule, or norm which is a benchmark for human behavior that is considered appropriate. So that this research is able to produce theories, concepts, or arguments in solving the problems at hand²². The approach method used in this research is ²³a statutory, conceptual, and comparative approach. The sources and types of legal materials consist of primary, secondary, and tertiary legal materials²⁴. Primary legal materials consist of legislation, secondary legal materials consist of expert opinions, research, text books, scientific journals, and internet news, and tertiary legal materials include Indonesian language dictionaries, English dictionaries, and Law Dictionary²⁵.

C. RESEARCH RESULT

1. Corruption Crime Regulations:

a) Indonesian Corruption Crime Regulations:

Indonesia has an independent institution that is specialized in resolving criminal acts of corruption, called the Corruption Eradication Commission (KPK). From the Indonesian legal aspect, the crime of corruption is called “*white collar crime*²⁶” which is included in the category of extraordinary crime which eats up people’s money which is detrimental to the state. Therefore, the regulations are made separately outside the Criminal Code. Law No. 20 of 2002 concerning the Corruption Eradication Commission. Law No. 20 of 2001 concerning amendments to Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. Specifically, this Law also explains the regulation of minimum and maximum sanctions in the following Articles: Article 2, Article 3, Article 5, Article 6, Article 7, Article 8, Article 9, Article 10, Article 11, Article 12, Article 12A-B-C, and Article 13.

b) China Corruption Crime Regulation:

In practice, China has a special institution called the National Supervision Commission (KPN) and the Central Commission for Discipline Inspection (CCDI). Besides that, China in its legal system regulates corruption in the Criminal Law of the People’s Republic of China or it can be called the Chinese Criminal Code. The crime of corruption lies in Article 383, Article 387, Article 388A, Article 390, Article 390-1, Article 392, Article 393, Article 395, and Article

²² Peter Mahmud Marzuki (2014) *Penelitian Hukum*. Edisi Revisi. Jakarta. Kencana, hlm.55-56.

²³ Amiruddin, & Asikin, Z. (2016). *Pengantar Metode Penelitian Hukum*. Jakarta: Rajawali Pers, hlm. 155-156

²⁴ Marzuki, P. M. (2016). *Penelitian Hukum*. Jakarta: Prenanda Media Group, hlm. 181

²⁵ Fajar, M., & Ahcmad, Y. (2015). *Dualism Penelitian Hukum Normatif dan Empiris*. Yogyakarta: Pustaka Pelajar, hlm. 157

²⁶ Linguistically, the meaning of “white collar crime” means white-collar crime, meaning a crime that can only be committed by people who have certain positions.

396²⁷. Regulations regarding the minimum and maximum sanctions are also regulated in the following articles: Article 383, Article 387, Article 388A, Article 390, Article 390-1, Article 391, Article 392, Article 393, Article 395, and Article 396²⁸.

DISCUSSION

From the two descriptions above regarding the penalties for criminal acts of corruption between Indonesia and China, there are differences and similarities. The first similarity is that the two countries both have a special institution tasked with overseeing and resolving corruption cases. While China divides it into two, namely KPN (National Supervision Commission) and CCDI (Central Commission for Discipline). The KPN is in charge of supervising government employees, while the CCDI is in charge of the Party aspect²⁹. The next similarity lies in both regulating corruption in the legal system. The difference lies only in the position of the law itself, if in Indonesia the Corruption Law is regulated separately from the Criminal Code, in China the Corruption Crime is included in their Criminal Code. Finally, in the regulations of the two countries there are differences and similarities, namely regarding the minimum and maximum sanctions for criminal acts of corruption. In the PTPK because there are several articles that are not emphasized regarding the minimum sentence, it can be assumed to return to the basic provisions (KUHP) contained in Article 12 paragraph 2 which is calculated as “at least one day”. Meanwhile, according to the Chinese Criminal Code, the minimum rule is 6 months in accordance with Article 44³⁰.

2. Regulation of the death penalty

a) The death penalty in the Indonesian Criminal Code:

Indonesia is included in one of the countries that choose to be a *retentionist*. Quoted from the opinion of ST. Burhanuddin (Head of the Attorney General’s Office of the Republic of Indonesia) the reason why the death penalty is still being carried out is because there are no signs of a reduction in corruption cases, which are even increasing in number, therefore this is a breakthrough step in alleviating crime, especially corruption cases³¹. Firli Bahuri (Chairman of the Indonesian Corruption Eradication Commission) commented “All KPK personnel and all children of the nation may agree that the perpetrators of corruption should be sentenced to death. However, in the Corruption Law (31/1999) of the 20 types of corruption, only one: only corruption can be punished by death³². “The death penalty for the accused of corruption”. This aims to create a deterrent effect and as a preventive effort in law enforcement from the aspect of corruption,” said ST. Burhanuddin (Chairman of the Attorney General’s Office). From the opinions of the government figures above, it can be concluded that the reason Indonesia is one of the countries that chooses to adopt a retentionist attitude is because it is considered a last resort in punishing the public in order to crush crimes, especially corruption cases. In the legal system, the regulation regarding the death penalty is contained in the Indonesian Criminal Code, precisely in Article 10. Article 10 regulates the types of punishment given which are divided into basic and additional penalties. The classification and types are as follows: (a) the main punishments are divided into: Death Penalty, Imprisonment, Confinement, Fines, and

²⁷Rizqi Nurul Awaliyah, Rehnalemken Ginting (2015). Perbandingan Pengaturan Sanksi Pidana Dalam Tindak Pidana Korupsi Berdasarkan Perundang-Undangan Indonesia dan Cina. Fakultas Hukum Universitas Sebelas Maret. Vol. 4 No. 1, hlm. 75.

²⁸ Ibid., hlm. 75.

²⁹BBC News. (21 Maret 2018) Pergencar Melawan Korupsi, Cina Membentuk Lembaga Super Baru. di akses pada 23 April 2022. Dapat di akses di <https://www.bbc.com/indonesia/dunia-43471302>

³⁰Op-cit., hlm. 75-76.

³¹ICJR Report. (2021). Laporan Situasi Kebijakan Pidana Mati di Indonesia 2021. Ketidakpastian Berlapis: Menanti Jaminan Komutasi Pidana Mati Sekarang!, hlm. 6.

³² Ibid., hlm. 7.

Closed Penalties. Meanwhile, in (b) Additional Crimes are divided into: Revocation of certain rights, confiscation of certain goods, and announcement of judge's decision.

b) The death penalty in the Indonesian Criminal Code:

China is one of the countries in the world which in its attitude chooses to be a retentionist. In the legal system, especially the criminal law, which is better known as the "Criminal Law of the People's Republic of China" or it can also be referred to as the Chinese Criminal Code, it regulates the types of capital punishment. Romli Atmaja is of the opinion that in China, the death penalty for corruption is proven to reduce crime rates³³. Article 32 states that the punishment in the Chinese Criminal Code is divided into the Basic Punishment and Additional Punishment. Regulations regarding the basic criminal penalties are contained in Article 33 which consists of: Public Supervision, Criminal Detention, Imprisonment for a certain period of time, and the death penalty. Meanwhile, the regulation regarding additional punishment is regulated in the next article, namely Article 34 which consists of: fines, confiscation of political rights, and property confiscation.

DISCUSSION

From the description of the death penalty regulations of the two countries (Indonesia and China) which have differences and similarities. The first, from the regulatory aspect. The two countries agreed to regulate the criminal category into two, namely the main crime and the additional punishment. The difference lies in the principle of dropping. In the Indonesian Criminal Code, there are differences between the basic and additional penalties, namely that the main punishment can be imposed individually or jointly with additional penalties, while additional penalties cannot be imposed separately from the main punishment, but must be imposed together with the main punishment. Meanwhile, in the Chinese Criminal Code, additional penalties can be imposed individually. The second difference is found in the order of articles in the regulation regarding the type of principal crime. In the Indonesian Criminal Code the Death Penalty occupies the top row, this indicates that the Indonesian Criminal Code regulates that the sequence starts with the heaviest punishment and ends with the lightest punishment, followed by additional penalties. While the Chinese Criminal Code in its regulations considers that the criminal threat starts from the lightest first, namely "public supervision" and ends with the heaviest punishment, namely the death penalty, which is then followed by additional penalties. The third, regarding additional penalties. In the Indonesian Criminal Code, additional penalties are included in Article 10 along with the main punishment. Meanwhile, in the Chinese Criminal Code, the provisions regarding the basic and additional criminal penalties are regulated separately, the main crime is regulated in Article 33, while the additional punishment is regulated in Article 34. Other differentiating matters from additional penalties from the Chinese Criminal Code add to the revocation of political rights. Meanwhile, the Indonesian Criminal Code only deals with the deprivation of certain rights, confiscation of goods, and the announcement of the judge's decision.

3. Threat of death penalty for corruptors

a) Regulations regarding the death penalty for Indonesian corruptors

Indonesia is one of the countries that regulates the death penalty for corruptors. However, the death penalty for corruptors in Indonesia applies if certain conditions are met. Certain things referred to here are when the country is in a state of crisis and natural disaster. In Article 2 paragraph (2) of Law No. 20 of 2001 concerning amendments to Law no. 31 of 1999

³³Indriyanto Seno Adji. (2001) Pidana Mati Bagi Koruptor Sebagai Upaya Pemberantasan Korupsi. Jakarta. Jurnal Keadilan, hlm. 3.

concerning the Eradication of Corruption Crimes³⁴. This article does not only regulate the threat of capital punishment, but also the threat of life imprisonment, or a minimum imprisonment of 4 years and a maximum of 20 years. And a minimum fine of Rp. 200,000,000 (Two Hundred Million Rupiah) and a maximum of Rp. 1,000,000,000 (One Billion Rupiah).

b) Regulations regarding the death penalty for Chinese corruptors

In its development in eradicating corruption, the Chinese government regulates the death penalty for corruptors. The threat of capital punishment for corruptors is contained in the Criminal Law of the People's Republic of China (KUHP China) precisely in Articles 383, 386, and Article 394. In Article 383 the maximum penalty is the death penalty, and the minimum is administrative sanctions in addition to confiscation of property assets also applies to this article. This is due to the large number of losses for his actions³⁵. Meanwhile, according to Article 386, the focus is on people receiving bribes who can be punished in accordance with Article 383. In Article 394 the focus is on state officials who receive bribes from activities related to inside and outside the country (foreigners) and can be subject to criminal charges. punishment in accordance with the provisions of Articles 382 and 383.

DISCUSSION

From the description of the death penalty regulation for Indonesian and Chinese corruptors, there are similarities and differences in each country in taking into account the imposition of the death penalty. The similarity lies in the use of the death penalty as a last resort (heaviest threat) especially in corruption cases. The difference lies in the minimum threat of sentencing. In Indonesia, the minimum prison term is 4 years, while in China it is imposed only in the form of administrative sanctions. Another difference is the state's consideration in imposing the death penalty for corruptors. If in Indonesia the death penalty for corruptors is imposed in certain cases in the form of a natural disaster or during a crisis and monetary period, it is different from China, which considers the death penalty to be imposed if the results of corruption are relatively high and property is confiscated.

4. Dead execution

Corruption is one of the crimes that fall into the category of *extraordinary crime*³⁶. Because this crime is an extraordinary crime, the perpetrators should be punished with severe punishments, one of which is the death penalty. It should be borne in mind that the death penalty has been condemned by both the country itself and from other countries. One of those who strongly oppose the death penalty is Human Rights (HAM). Not only that, the death penalty has also received criticism from national organizations to international organizations. At least the death penalty in Indonesia still exists which is even supported by the decision of the Constitutional Court (MK) number 2-3/PUU-V/2007³⁷. Execution is a tangible form of an act done by humans who have passed the trial period in a court whose decision has been determined and is inkrah. As has been stipulated by the Corruption Crime Law in Article 2 paragraph (2) which states that "in the event that the crime as referred to in paragraph (1) is committed under certain circumstances the death penalty can be carried out".

³⁴Read Law No. 20 of 2001 concerning amendments to Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

³⁵The loss for his actions in question is the result of his corruption, the greater the nominal, the greater the punishment and vice versa.

³⁶Warih Anjari (2020) Penerapan Pidana Mati Terhadap Terpidana Kasus Korupsi. Fakultas Hukum Universitas 17 Agustus 1945 Jakarta. eISSN: 2527-4716, hlm. 432.

³⁷Read Constitutional Court Decision No. 2-3/PUU-V/2007.

a) Execution in Indonesia

Execution is born when the court has decided a legal decision that is inkrah against the perpetrator. The party authorized by the law is the public prosecutor other than acting as a public prosecutor³⁸. Meanwhile, Article 11 of the Criminal Code explains that the death penalty is carried out by the executioner at the hanging place, by using a noose around the neck of the convicted person and tying the noose to the hanging pole and dropping the board on which the person was standing³⁹. With the issuance of Presidential Decree (PenPres) No. 2/1964 the execution was changed by being shot to death⁴⁰. The location of the execution was determined by the Head of the local Police Commissariat and received input and advice from the High Prosecutor or the Prosecutor in charge. The procedure in its execution by taking into account Law no. 2/PNPS/1964 as follows: High Prosecutor/Prosecutor who is the leader; The convict's escorts are required to distance themselves from the convict, the Shooting Squad Commander signals preparation by shooting the heart as a target, with a swing of the commander's sword giving the squad direction to fire. But if something untoward happens, for example the convict has not died, then the squad commander orders him to immediately shoot at his head right above his ear. The reason why the heart becomes the target of shooting is to reduce pain to the convict so that his death is faster⁴¹.

b) Execution in China

In its regulation regarding executions, the Chinese government regulates the procedures for executions for convicts contained in the Criminal Procedure Law of the People's Republic of China. In Indonesian which means the Chinese Criminal Procedure Code (KUHAP). In Article 212 of the Chinese Criminal Procedure Code of 1979 as amended on March 14, 2012, it is stipulated that there are two ways to execute the death penalty. The method is by injection and shot, for the location of execution can be carried out at the place of execution or at places designated by the convict. Quoted from Ayu Eza Tiara in his writings, the procedure for execution is as follows: it is mandatory to verify identity and ask for the last messages before being executed, if any errors or new facts are found before execution, then the execution must be suspended, and the execution procession is carried out in a closed manner. implementation is made public⁴².

DICUSSION

From the description above, there are differences and similarities regarding executions. As for the first similarity in execution, the two countries agreed that shooting was the method of execution. The difference is that in China, executions are carried out in two ways, namely lethal injection and shoot-out, while in Indonesia only shooting is applied. While the second difference regarding the location of execution, if in Indonesia the execution is determined by the location of the judiciary itself, it is different in China in addition to being carried out with the location of execution but can also be carried out at the request of the convict regarding the location of the execution. The third difference is ahead of the execution process. If in Indonesia, when the court's decision is inkrah, then only execution is carried out. It is different with China, if before the execution there are facts or possibilities that lead to errors, then the execution must be suspended and reported to the Supreme People's Court for a decision.

³⁸Indonesian Criminal Procedure Code Article 6a.

³⁹Indonesian Criminal Code Article 11.

⁴⁰R. Soesilo. (1995) Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal demi Pasal. Bogor. Politeia, hlm. 37.

⁴¹Gina Olivia (2021) Perbandingan Pelaksanaan Pidana Mati Berdasarkan KUHP dan Peraturan Perundang-Undangan Indonesia dan Cina. Vol. 3. No. 1 2021, hlm. 28.

⁴²Ayu Eza Tiara (2016) Pengaturan Hukuman Mati Di beberapa Negara (Studi Kasus di Negara Islam dan Non- Islam). Skripsi. Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah. Jakarta, hlm. 63-64.

D. CONCLUTION

From the description that has been carried out above, it can be concluded that the death penalty for convicts according to Indonesian and Chinese laws has differences and similarities. The first similarity is regarding corruption itself, in Indonesia it is seen as one of the extraordinary crimes as well as in China where one of the punishments is the death penalty, in both countries also have independent institutions that monitor and resolve corruption issues. The body lies in the position of the criminal regulation of corruption, if in Indonesia it is specifically regulated (outside the Criminal Code), in China the regulation of corruption is regulated in their Criminal Code. In terms of punishment, Indonesia admits to a minimum of 1 day in prison, while in China it is at least 6 months in prison, or even just administrative sanctions.

The death penalty for corruptors in Indonesia can be imposed if it occurs when the country is in a state of emergency, for example natural disasters and monetary crises. Whereas in China the death penalty is carried out based on the nominal corruption plus other aggravating circumstances.

Judging from the method of execution, both countries agreed that shooting to death was the method of execution, but in China there was another method besides shooting to death, namely by lethal injection. While the second difference regarding the location of execution, if in Indonesia the execution is determined by the location of the judiciary itself, it is different in China in addition to being carried out with the location of execution but can also be carried out at the request of the convict regarding the location of the execution. The third difference is ahead of the execution process. If in Indonesia, when the court's decision is inkrah, then only execution is carried out. It is different with China, if before the execution there are facts or possibilities that lead to errors, then the execution must be suspended and reported to the Supreme People's Court for a decision.

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