



## Human Rights and Corruption in the Perspective of Law Number 39 of 1999, Jo Law Number 21 of 2001 concerning the Eradication of Corruption

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### Abstract

**Background.** Corruption is a crime that has a multidimensional impact and hinders national development. As a crime that has caused leakage of state finances, corruption threatens the fulfillment of citizens' basic rights, especially economic, social, and cultural rights.

**Purpose.** This study aims to understand the basis of judges' considerations in imposing a penalty, including the death penalty, and to analyze whether corruption can be categorized as a violation of Human Rights (HAM).

**Method.** With a juridical-normative method through the analysis of laws and regulations, doctrines, and literature

**Result.** This study found that corruption has the characteristics of extra-ordinary crimes and substantially impacts human rights violations, especially when corruption causes a loss of people's access to welfare.

**Conclusion.** This research confirms that national legal mechanisms need to recognize corruption as a serious human rights violation.

**Keywords:** Human Rights, Corruption, Law and Crime



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### INTRODUCTION

Corruption today has grown in terms of types, perpetrators, and modus operandi. The problem of corruption is not only a national problem but has become international. Even in its current form and scope, corruption can bring down a regime, cause misery, and destroy a country.

The effects of corruption in nations with corruption instances differ in nature, magnitude, and repercussions, ultimately resulting in the suffering of the populace. In impoverished nations, corruption can impede economic progress, obstruct development, and erode political legitimacy, thereby intensifying poverty and political instability. In wealthy nations, corruption may have a limited impact on the economy; but, it can nonetheless erode democratic legitimacy in industrially advanced democracies, similar to its effects in developing countries. Corruption exerts a profoundly detrimental effect in transitional nations like Indonesia and, if unaddressed, can undermine support for democracy and a market economy. The phenomena of corruption has persisted since the inception of human institutional organization. The prevalence of corruption fluctuates throughout different times and locations; similar to other societal issues, it is predominantly influenced by external forces. The corruption record initially indicated bribery of judges and misconduct by government officials, both deemed crimes of corruption.

As societal and governmental institutions advance, corruption has similarly progressed through several stages of existence. Corruption exists in nearly all nations, albeit with differing degrees, leading some to assert that a government will fail if corruption is not eliminated. Corrupt behavior is prevalent not only in democratic nations but also under military dictatorships, where corruption similarly thrives. Throughout each phase of the evolution of various economic systems, ranging from an open capitalist state like the United States to a centrally planned economy exemplified by the former Soviet Union. In Indonesia, corruption has permeated the government structure, exemplifying the pervasive nature of this issue in the country. This issue has led to poverty, inadequate education and health, and substandard public services. The repercussions of corruption are perpetually experienced by the community, particularly by impoverished local villages. Currently, reports from print and electronic media indicate that floods, landslides, and infrastructure destruction have led to disrupted transportation, hindered distribution of goods, and declining public health. These consequences are manifestations of corruption, which adversely affect small, innocent communities.

The correlation between corruption and human rights is not extensively examined by scholars and practitioners, nor is there a substantial body of literature or textbooks addressing the topic. This may be due to the fact that the essence of corruption, or the criminal act of corruption, does not explicitly address the substantive connection between corruption and

human rights. The correlation between the two is evident: in nearly all instances of corruption, human rights breaches occur either directly or indirectly thereafter. Bribery typically originates from the misuse of authority, indicating that the offenders are often individuals in positions of power. The corrupt actions perpetrated by the bureaucratic machinery can inflict suffering on the populace of a nation. Acts of bribery have infringed upon individuals' economic, social, and cultural rights, hence constituting violations of human rights.

Corruption is a global phenomenon experienced by almost all countries. The degree, form, and impact of corruption vary greatly, but basically, corruption has always been about the abuse of power for personal gain. International studies show that corruption can undermine political legitimacy, exacerbate poverty, and degrade the quality of democracy.

In Indonesia, corruption has taken root in various state institutions. It has a direct impact on public service disruptions, infrastructure damage, poor quality of health and education, and the denial of fundamental rights to citizens. This condition shows a strong link between corruption and human rights violations.

The scholarly literature on the correlation between corruption and human rights remains insufficiently developed. Substantial corruption entails the misuse of authority and can deprive the community of economic, social, and cultural rights. Corruption can lead to the state's inability to meet its human rights commitments regarding respect, protection, and fulfillment. This study investigates two primary issues:

1. What factors does the court use when deciding whether to impose the death punishment in a corruption case?
2. Can corruption be classified as a violation of human rights, particularly concerning economic, social, and cultural rights?

### **Objectives of the Research**

This research aims to comprehend:

1. The Foundation of the Judge's Deliberation in Imposing or Refraining from Imposing the Death Penalty on Offenders of Corruption Crimes?
2. Is corruption a type of human rights violation, particularly concerning economic, social, and cultural rights?

## LITERATURE REVIEW

### Corruption

The term corruption is etymologically sourced from the Latin "koruptio," signifying "bribery," or "corrumpere," meaning "to destroy." This occurs when state agency officials exploit their authority, resulting in bribery, forgery, and other malfeasances. From this Latin origin, it disseminated to various languages, including English, where it appears as "corruption" and "corrupt"; French, where it is rendered as "corruption"; and Dutch, where it is expressed as "corruptive". In the Iatilah Dictionary of Law by Fockema Andreae, the term 'corruptie' mostly refers to public personnel who accept bribes, including gifts and similar inducements. Simultaneously, they are aware that the present is meant to contravene the responsibilities of their role. Poerwadarminta was the first to employ the term "corruption" in the Indonesian Dictionary, translating it from the Dutch word "corruptive". Corruption, as defined in the Great Dictionary of the Indonesian Language, refers to the misappropriation of state or corporate funds for personal or others' benefit.

Minister Oemar Seno Adji The term "corruption" literally denotes "rottenness, depravity, dishonesty, bribery, immorality, deviation from purity, and expressions that insult or slander." The core of corruption is the exploitation of public trust for individual benefit. Brooks presents an alternative definition of corruption as "the intentional commission of an error or the neglect of a duty recognized as an obligation, or the unauthorized exercise of power, to achieve personal gain." Pitlo et al. cite Schroder's assertion that it is essential to recognize the absence of a universally binding definition of corruption, which varies from one community to another. Pitlo et al. attempt to delineate the parameters of corruption comprehension through scientific ideas, including:

1. In political science, "corruption" is defined as the misuse of office and administration, whether economic or political, perpetrated by oneself or others for personal benefit, resulting in detriment to the public, businesses, or other individuals.
2. Economists provide a precise definition of corruption: "For the parties involved, corruption constitutes a lucrative exchange (between achievements and counter-achievements in return for material or non-material rewards) that transpires clandestinely and voluntarily, contravening established norms, and represents at minimum an abuse of office or authority by one of the parties engaged in the public or private sector."

## **Human Rights (HAM)**

In diverse literature on Human Rights, the concept is referred to by numerous labels, including Human Rights, Dassar Rights, or Fundamental Rights. Among these several words, "Human Rights and Human Rights" is the most prevalent, serving as a translation for "human rights" (English), "mensenrechten" (Dutch), and "droit de l'homme" (French). Nevertheless, some entities reject the name "Human Rights" in favor of alternatives like "basic rights" or "fiduciary rights."

In contemporary history, human rights have evolved swiftly to become a subject of worldwide discourse following the conclusion of World War II in the mid-20th century. Since that time, human rights have garnered significant global discourse and scrutiny, both in theory and in the proliferation of regulatory frameworks that control them. Human rights were initially referred to as "fundamental human rights," now commonly termed "Human Rights." This right has existed since the 18th century and is referred to as "The Right of Man". By the conclusion of the 20th century, human rights issues emerged globally as significant subjects for discourse, particularly in nations that champion democracy. Human rights are regarded as a contemporary political ethical notion centered on the principle that there exist significant moral obligations to safeguard vulnerable individuals and groups from the overpowering sexual practices of others, irrespective of factors such as position, age, status, or gender.

Human rights are essential rights. The term "right" is intricately linked to "obligation," as individuals possess both rights and obligations. This implies that any discourse on rights necessitates a concurrent examination of obligations, as they are intrinsically linked to human nature, dignity, or status. Individuals occasionally seek attention to assert their rights, neglecting the fact that they may be infringing upon the rights of others to whom they have obligations (for instance, protesters occupying a portion of the highway, thereby obstructing others' rights to utilize that road). The definition of human rights, derived from several international and national documents, can be articulated as follows:

As previously mentioned, following WWII, human rights garnered global attention, culminating in a declaration ratified by all Member States of the United Nations (UN). Consequently, during the UN Session in 1948, the "Universal Declaration of Human Rights" was proclaimed (abbreviated as UDHR). Articles 1, 2, and 3 contain a definition of human rights, specifically a formula on their nature.

Article 1: "Everyone is born free and has equal dignity and rights. They are endowed with reason and conscience, and should associate with one another in a spirit of brotherhood."

Article 2: "Everyone has the right to every right and freedom outlined in this declaration, with exceptions such as differences in race, color, sex, language, religion, and politics".

Article 3: "Everyone has the right to life, liberty, and safety as an individual".

The aforementioned agreement was ratified and endorsed by the 175 member states of the United Nations at the time of its declaration. Nevertheless, the legal instruments in each country will be crafted in line with the language and stipulations of their individual jurisdictions. The Universal Declaration of Human Rights (UDHR), issued in 1948, is not legally binding as it is only a declaration or "statement". In 1951, the UN General Assembly requested the UN Human Rights Commission to develop a mechanism with enforceable authority, in support of the UN Human Rights Council. On December 16, 1966, two Draft Covenants were ratified by Resolution 2200A (XXI) of the UN General Assembly, which came into effect in 1976 after a 10-year dissemination period among all UN member states, specifically the International Covenant on Civil and Political Rights. The Government of Indonesia has ratified the Covenant through Law No. 12 of 2005, Statute Book of the Republic of Indonesia No. 119 of 2005, Supplement to Statute Book of the Republic of Indonesia No. 4558. Additionally, the International Covenant on Economic, Social and Cultural Rights has been ratified by Law No. 11 of 2005, Statute Book of the Republic of Indonesia No. 117 of 2005, Supplement to Statute Book of the Republic of Indonesia No. 4557.

In Indonesia, in the Human Rights Charter, which is an integral part of the Decree of the People's Consultative Assembly of the Republic of Indonesia Number XVII/MPR/1998 concerning Human Rights, it is formulated that human rights are:

"Fundamental rights inherent to human beings, universal and eternal as a divine endowment, encompass the right to life, familial rights, the right to self-development, the right to justice, the right to autonomy, the right to communication, and the right to security and welfare, which must not be overlooked or denied by anyone."

Law Number 39 of 1999 regarding Human Rights, in Chapter I Article 1 Number 1, defines Human Rights as "a collection of rights inherent to human existence as creations of God Almighty, which must be respected, upheld, and protected by the State, Law, Government, and every individual for the honor and safeguarding of human dignity." The rights delineated in Law Number 39 of 1999 are: 1) the right to life; 2) the right to family and procreation; 3)

the right to self-development; 4) the right to justice; 5) the right to personal freedom; 6) the right to security; 7) the right to welfare; 8) the right to participate in governance; 9) the rights of women; 10) the rights of children.

Human Rights (HAM) are essential for the Nation and State of Indonesia, as evidenced by its inclusion in the Constitution of the Republic of Indonesia of 1945, specifically articulated in Articles 28A to 28J. This arrangement signifies that the government and all strata of Indonesian society strongly defend human rights.

## **METHOD**

This research employs a juridical-normative methodology with the subsequent approach: The statutory method involves analyzing Law No. 31/1999 with Law No. 20/2001, Law No. 39/1999 concerning Human Rights, and Law Nos. 12/2005 and 11/2005 on the ratification of international human rights treaties.

1. A conceptual framework that analyzes the notion of corruption, human rights, and their interrelation.
2. The case method, particularly judicial rulings about capital punishment in corruption offenses.

Data is sourced from scientific research, legal papers, judicial rulings, and user-submitted materials.

## **DISCUSSION**

Studies on the relationship between corruption and human rights (HAM) have made significant advances over the last two decades, both in the international and national literature. The legal literature in Indonesia characterizes corruption as an extraordinary crime due to its systemic impact on the state and society. This view is strengthened by the thoughts of Oemar Seno Adji, Alatas, and the study of the Corruption Eradication Commission, which places corruption as a threat to development, democracy, and public welfare. This article follows this trend of thinking by emphasizing that corruption is not only a financial crime but a structural crime that undermines the foundations of public life.

Corruption is etymologically derived from the Latin *corruptio* and *corrumpere*, which mean "to destroy" or "to bribe." The legal literature confirms that the essence of corruption is the abuse of public trust for personal gain. Some experts, such as Oemar Seno Adji and S.H. Alatas, see corruption as an immoral act carried out by power holders in a systematic manner.

From an economic perspective, corruption is the exchange of profits that violate legal norms and harm the public.

### **The Basis of Judges' Considerations in Imposing Criminal Sentences, Including the Death Penalty**

Previous research has chiefly discussed judges' considerations from the aspects of state losses, evidence, and penal objectives. However, studies on how human rights considerations affect judges' beliefs remain limited. This article adds a new perspective by linking judges' considerations to the impact of corruption on the fulfillment of people's human rights.

Law No. 31/1999 jo. Law No. 20/2001 does not explicitly regulate the death penalty. Still, it can arise in the context of corruption crimes committed under certain circumstances, for example, when corruption causes significant damage to the country's economy or is committed during a national disaster.

The judge's considerations in imposing a sentence—including the death penalty—include:

1. The principle of justice and proportionality. The judge considers the impact of state losses, social consequences, and the level of public misery.
2. Aggravating circumstances. For example, carried out by state officials, large-scale corruption, resulting in the loss of fundamental rights of the community (education, health, food)
3. Purpose of criminalization. The death penalty is seen as the last resort (*ultimum remedium*) for truly extraordinary cases.
4. Precedent of court rulings. Some cases show that public opinion, state losses, and national emergency conditions influence the imposition of severe penalties.

### **Corruption as a Human Rights Violation**

Corruption has both direct and indirect impacts on the fulfillment of human rights. The correlation is as follows:

1. Violation of Economic Rights. Corruption causes a loss of public access to public resources. Public funds that should be used for economic development are diverted for private interests.

2. Violation of Social Rights. Health, education, and social security services are disrupted because budgets are misplaced. This is contrary to ICESCR 1966 and Articles 28C–28H of the 1945 Constitution.
3. Violation of Cultural Rights. Corruption hinders cultural development and human resource development. When cultural funds are corrupted, people lose their right to preserve cultural values.

Human rights studies have focused heavily on civil and political rights. In contrast, the relationship with economic, social, and cultural rights (Ekosob) began to develop with Indonesia's ratification of ICESCR and ICCPR in 2005. However, the literature explicitly discussing corruption as a human rights violation remains limited. This article fills that gap by demonstrating that corruption can affect the right to health, education, social security, welfare, and public services.

According to Law No. 26 of 2000, serious human rights abuses are limited to genocide and crimes against humanity. Discussions regarding the potential classification of grand corruption as severe human rights breaches have commenced in numerous nations, particularly concerning governance and systemic poverty. This article asserts that corruption obstructing the realization of fundamental rights can be classified as structural violence and represents egregious human rights breaches, despite the absence of regulation in positive legislation.

### **Corruption as "Systemic Violence."**

Corruption frequently results in hunger, poverty, infrastructure deterioration, and fatalities due to inadequate public services. Corruption can be seen as a manifestation of institutional violence that infringes on human rights. Law No. 26 of 2000 defines gross human rights violations to encompass genocide and crimes against humanity. Corruption has not yet been incorporated into the formal definition. Corruption can be identified as a significant human rights violation due to its consequences, as it jeopardizes the survival of numerous individuals and undermines the well-being of both present and future generations.

In reaction to the infringement of fundamental rights for all citizens, certain nations have commenced categorizing significant corruption as a crime against humanity. Corruption in Indonesia constitutes an exceptionally grave offense. If it pertains to Human Rights, particularly the realization of Economic, Social, and Cultural Rights, then an act of Corruption can be deemed a violation of Human Rights. The financial resources allocated by the Government for the realization of these rights have been misappropriated. Consequently,

exceptional provisions are required in the legislation governing the Crime of Corruption as a severe infringement of human rights. Corruption inflicts misery on several individuals across Indonesia; therefore, it is imperative to develop robust institutions and rules, alongside a corruption-free human resource framework, with support from all societal strata.

The human rights literature in Indonesia is still dominated by civil-political issues, while the structural impact of corruption on Ekosob's rights has not been discussed in depth. This article fills this gap by analyzing how corruption deprives people of access to education, health, welfare, and public services. Most studies treat corruption as an extraordinary crime, but do not consider including it within the realm of gross human rights violations. This article provides normative and conceptual arguments to open the discourse. Previous legal research has highlighted only aspects of state losses and penal objectives, without assessing the impact of corruption on public human rights. This article fills the void by linking the human rights aspect to the justification for severe punishment. This view has not been widely used in Indonesian literature. This article incorporates these perspectives to strengthen the argument that corruption deprives people of fundamental rights through indirect mechanisms.

This article not only argues that corruption harms the state but also shows that it hinders the fulfillment of people's economic, social, and cultural rights, thereby providing a conceptual basis for categorizing it as a violation. HAM is a progressive idea in the context of the Indonesian legal system, and has not been widely developed in previous research. This article offers a framework for expanding the scope of gross human rights crimes by focusing on their impact on people's lives. This article links the judge's consideration not only to the principles of justice and state losses, but also to the impact of human rights violations caused by corruption. By positioning corruption as structural violence, this article provides a new perspective to understand the correlation between acts of bribery and societal systemic suffering, including poverty, damage to public services, and loss of access to basic rights

## **CONCLUSION**

1. The judge's consideration in imposing a penalty, including the death penalty, is based on the impact of state losses, the level of public misery, the scale and mode of crime, and the purpose of the sentence. Corruption under certain circumstances can be considered an extraordinary crime that deserves the heaviest penalty.
2. Corruption can be categorized as a violation of human rights, especially economic, social, and cultural rights, because it clearly hinders the fulfillment of basic rights of the

community. Corruption eliminates people's rights to education, health, clean water, infrastructure, and public services.

3. Indonesia needs to consider the establishment of regulations that place major corruption as a serious human rights violation, strengthen anti-corruption institutions, and strengthen the integrity of the state apparatus.

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