

REVIEW ARTICLE

THE IMPLEMENTATION OF CAPITAL PUNISHMENT IN INDONESIA: THE HUMAN RIGHTS DISCOURSE

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ABSTRACT

Human rights are the most basic rights possessed by humans and this right is considered a gift given from God Almighty. Human rights are also protected by the State because the state also highly respects the human rights of a person by providing strict and binding rules for its citizens so that they do not perceive the human rights possessed by others. Capital punishment is one of the means to protect public interests of a social nature which are endangered by irreparable crimes. This paper is intended to analyze the capital punishment or death penalty in Indonesia in the context of human rights. The research method used in this paper is using the normative method. The results of this study indicated that the execution of the death penalty can be carried out for perpetrators of criminal acts who have crossed the human limit, endanger, and threaten many people.

Keywords: *Human Rights; Capital Punishment; Death Penalty; Human Rights*

INTRODUCTION

The 1945 Constitution explains that the State of Indonesia is a constitutional state, where in a constitutional state there is always recognition and protection of human rights. Humans will receive the same treatment and protection before the law, including in the social, cultural, and economic spheres. Included as a basic principle in Law Number 39 of 1999 concerning Human Rights Article 2 states that "The Republic of Indonesia recognizes and upholds human rights and basic human freedoms as rights inherently inherent in and inseparable from humans, which must be protected, respected, upheld for the sake of commemoration of human dignity, welfare, happiness, intelligence and justice." So, in the Republic of Indonesia has guaranteed the protection of human rights, based on legal provisions and not the will of a person or group that is the basis of power. (Nazmi, 1992, p. 50).

The basic rights that a person has from birth are the definition of Human Rights, this right is considered a gift from God Almighty. All human beings should uphold human rights because they are owned by every human being. Apart from humans, the state also protects the existence of human rights, because the State also highly respects the human rights of a person by giving strict and binding rules for its citizens so that they do not consider the human rights of others. The purpose of enforcing the rules that have been set to protect every human right of every citizen himself.

The number of criminal offenses that often occur in Indonesia, for example in cases of narcotics and terrorism crimes, are prosecuted with very burdensome criminal threats and can be subject to the threat of a death penalty. So that it is clear that it has violated human rights, especially the right to life. However, in reality in the field it is still used because it still uses the Criminal Code (KUHP) which is still valid today.

Capital punishment is one of the types of crimes contained in article 10 (Criminal Code) is the heaviest criminal. Bambang Poernomo said that capital punishment is one of the oldest forms of punishment, so it can be said with the will of the times, but until now no other alternative has been found as a substitute (Poernomo, 1982, p. 9).

According to Soedarto (Sakidjo & Poernomo, 1990, pp. 78-79), do not agree with the existence of the death penalty in Indonesia because humans have no right to take the lives of others, but also remember that judges can also be wrong in imposing sentences and it is not true that the death penalty is to frighten people so that people do not do evil, because lust cannot be stopped with threats.

However, in practice, Indonesia still uses the Criminal Code, which regulates the death penalty, for example (Waluyo, 2000, p. 13):

- a. Plot to kill the head of state, art. 104.
- b. Inviting foreign countries to attack Indonesia, article 111 paragraph (2).

- c. Giving help to the enemy when Indonesia was in war, article 124 paragraph (3).
- d. Killing the head of a friendly state, article 140 paragraph (1).
- e. Pre-planned killings in articles 140 paragraph (3) and 340.
- f. Violent theft by two or more people, at night or by dismantling and so on, which causes people to mourn or die, article 365 paragraph (4).
- g. Piracy at sea, on the coast, on the coast, and at times so that people die, article 444.
- h. In times of war, it encourages riots, rebellion, etc. between workers in state defense companies, article 124 paragraph (3).
- i. In war, he deceived when he conveyed the needs of the army, articles 127 and 129.
- j. Extortion by weighting article 368 paragraph (2).
- k. And outside of the Criminal Code, the death penalty is also regulated in the criminal act of narcotics, subversion law, corruption, terrorism and so on.

In accordance with the current development of criminal law, criminal law has the aim of protecting the interests of society and the interests of individuals who are victims of crime and criminals. Capital punishment is one of the means to protect public interests of a social nature which are endangered by irreparable crimes. However, the death penalty is currently inviting polemic from various parties, and human rights activists or activists from various groups strongly oppose the implementation of the death penalty. And how do the states think that they are considered to have violated human rights by carrying out the death penalty or execution of prisoners?

In this case the 1945 Constitution has regulated human rights which have been outlined and translated into articles 28 A, 28 B, 28 C, 28 D, 28 E, 28 F, 28 G, 28 H, 28 I, 28 J. in this article it can be linked to Law No.39 of 1999 concerning Human Rights which explains that,

"Everyone has the right to live in a peaceful, safe and secure society and state order that respects, protects, and fully implements human rights and basic human obligations as regulated in this law" (Article 35 of Law Number 39 of 1999).

Based on the above background, the issues to be discussed will be formulated, namely: 1) how is the execution of the death penalty according to human rights?, 2) can narcotics crime be punishable by death penalty?. The purpose of this research is to find out about 1) to determine the implementation of the death penalty according to human rights. 2) to describe the execution of the death penalty for narcotics crime.

METHOD

The research method used in this paper is to use the normative method, namely, by examining the problems that arise from the legal side based on the prevailing laws and regulations (Ammiruddin, 2003, p. 118). With research on the implementation of the death penalty according to human rights for narcotics crime.

IMPLEMENTATION OF THE DEATH PENALTY ACCORDING TO HUMAN RIGHTS

Capital punishment is one of the means by means of penal means in controlling criminal acts. In preventing a repeat offense and/or providing a deterrent effect on the community and against the convict himself from committing another criminal offense, the choice of the death penalty can be used. In repressive efforts against criminals, the imposition of capital punishment, general prevention in the form of a deterrent effect, are expected to reduce the number of crimes. In reality, there is no relationship between the imposition of capital punishment and a decrease in the crime rate. The placement of the death penalty as the first principal punishment in Article 10 of the Criminal Code (KUHP), does not psychologically trigger a deterrent effect on society.

The imposition of the death penalty can present various controversies. based on the theory of human rights, that the right to life is a right that cannot be reduced (non-derogable rights). International instruments support the existence of the right to life as stated in the Declaration of Human Rights and the ICCPR (McRae, 2017; Zimring & Johnson, 2008; Leechaianan & Longmire, 2013). Likewise in Article 28A of the 1945 Constitution which emphasizes that everyone has the right to live and has the right to defend life and life (Anjari, 2015, p. 112). Meanwhile, article 28I states "the right to life is a human right that cannot be reduced under any circumstances". Article 28I explains "that requires people to pay attention to the right to life". However, Article 28J states "every person is obliged to respect the human rights of others and is obliged to comply with the restrictions established by law to ensure recognition and respect for the rights and freedoms of others". Meanwhile, in this article, there is responsibility for human rights violations, and the application of the death penalty is still used in accordance with the criminal law system in Indonesia.

The implementation of the death penalty in narcotics crime cases in Indonesia has caused quite a lot of controversy (Ahmad, 2021; Hood, 2001). Like several years ago, there were many prisoners related to narcotics cases who had to carry out the death penalty. According to the Minister of Religion for the 2014-2019 period, Lukman Hakim Saifuddin explained that the implementation of the death penalty in Indonesia is positive law that are still being applied today.

According to Lukman Hakim Saifudin, stated that the death penalty in Indonesia is not a type of violation that violates human rights. Human rights in law can be defined as limitation, solely for the respect of the human rights of others as victims of the perpetrators' crimes. "Indonesia adheres to human rights that can be limited by law, not unlimited human rights or unlimited liberal human rights. Where restrictions are imposed solely to protect the human rights of others and to respect others." Then this statement can be exemplified as a form of accountability for the perpetrator of a criminal act against victims who have human rights.

Meanwhile, according to Poengky, as the Executive Director of a human rights monitoring agency, said "the institution will be consistent in its attitude against the death penalty and will continue to fight for its abolition". Because it has violated the right to life of humans, which can threaten the death penalty or execution. Poengky also said that "*the death penalty is a form of violation of human rights (HAM) because it does not respect the right to life. That no one can take the life of another person, even the state.*"

Asep Warlan Yusuf also argued from the perspective of legal observers that, "the implementation of the death penalty in Indonesia does not mean violating human rights and is considered cruel. Because the punishment is to punish an act that is considered an extraordinary crime, then this is the final punishment. It is important that there is a death penalty. However, there are several things, the death penalty is not very easy to impose," however, the implementation of the death penalty needs rules as a limitation so that not many prisoners are subject to the death penalty.

From these cases, the death penalty in its implementation in Indonesia needs to be regulated in its application and implementation so that its objectives are clear and effective so that it does not harm the parties involved. In the application of the death penalty, it is also necessary to look at the types of crimes committed so that they are appropriate and fair, both to the perpetrator and the victim and the victim's family.

Thus, the threat of death penalty is given because someone has lost someone's life deliberately and is considered to have violated someone's human rights. However, in some countries there are quite different opinions. They view that the death penalty does not violate applicable human rights, because this punishment is not only intended to eliminate a person's life but also to protect the next generation of the nation from extraordinary crimes. One of the countries that apply the death penalty is the United States which also has the sovereignty to carry out a sentence. The death penalty is imposed by using the electric chair.

THE IMPLEMENTATION OF DEATH CRIMINAL EXECUTION FOR NARCOTICS CRIME IN INDONESIA

In the formulation of criminal sanctions that there are criminal sanctions in the Anti-Narcotics Law that have been formulated cumulatively, especially the death penalty or life imprisonment which has been added with a fine. Then this can lead to various polemics because the cumulative formulation is rigid and imperative (Arief, 2010, p. 197).

Meanwhile, the formulation of the highest amount of accumulation between imprisonment and fines is large enough to amount to hundreds or even billions of rupiah. It is feared that this will not be effective and could cause a problem, because if there is a fine that is not paid then it must be replaced by imprisonment in lieu of fines in accordance with the applicable regulations Article 148 of Law No.35 of 2009 on Narcotics that "if the criminal verdict is a fine as regulated in This law is not paid for by the offender of narcotics crime and narcotics precursor crime, the perpetrator is sentenced to imprisonment of 2 (two) years as a substitute for unpaid fines" (Article 148 of Law No. 35 of 2009 on Narcotics).

However, the implementation of the death penalty in Indonesia has been regulated in Law Number 35 of 2009 concerning Narcotics contained in Article 133 paragraph (1) which states that Every person who orders, gives or promises something, gives an opportunity, recommends giving convenience, forces with threats, forces by force, practices tricks, or induces children who are not yet old enough to commit a crime as referred to in article 111, article 112, article 113, article 114, article 115, article 116, article 117, article 118, article 119, article 120, article 121, article 122, article 123, article 124, article 125, article 126, and article 129 shall be punished with death penalty or criminal punishment. life imprisonment, or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least Rp. 2,000,000,000.00 (two billion rupiah) and a maximum of Rp. 20,000,000,000.00 (twenty billion rupiah).

Based on this article, under certain circumstances the perpetrator in accordance with the provisions has received a narcotics crime and if the crime is committed at a certain time or the state is in an emergency, it can be enforced in accordance with the applicable regulations.

In the explanation of Law Number 35 of 2009 concerning Narcotics in the general section, it explains that law number 22 of 1997 concerning Narcotics has regulated the eradication of narcotics crimes through the threat of fines, imprisonment, life imprisonment and death penalty. Meanwhile, law number 22 of 1997 also regulates the use of Narcotics for medicinal and health purposes as well as regulates medical and social rehabilitation. However, in reality, the crime of narcotics has shown negative results for the community which are increasing

both qualitatively and quantitatively, causing victims in various circles, especially among the younger generation such as adolescents and even children.

Effectiveness in the implementation of the death penalty for narcotics criminal offenders is also guided by other laws and regulations that have been regulated in Law No. 2/PNPS/1964 concerning Procedures for the Implementation of the Death Penalty Imposed by Courts within the General and Military Courts, which has been mentioned in article 1 of Law No. 2/PNPS/1964 that "among other things, the execution of the death penalty, which is imposed by a court within the domain of general justice or military court, is carried out by being shot to death"

The execution of the death penalty is also regulated in the National Police Chief Regulation No. 12 of 2010 concerning Procedures for the Implementation of Death Penalty. There is in article 1 number 3 Perkapolri Number 12 of 2010 mentions in Article 1 number 3 Perkapolri No.12 of 2010 concerning Procedures for the Implementation of Death Penalty, emphasized that the death penalty or death penalty is one of the main sentences imposed by a judge on a convict who has obtained permanent legal force. Regarding the process or procedure for the execution of the death penalty, it consists of several stages including: preparation, organizing, implementing, and ending.

Thus, the implementation of the execution of the death penalty in Indonesia has a clear objective of providing a deterrent effect on criminals, including narcotics crimes. The imposition of the death penalty by a judge has sparked debate between human rights activists and criminal law experts. This has also been tested in the Constitutional Court in 2007 on the old narcotics law, namely Law No. 22 of 1997. However, the result of the case verdict, the Constitutional Court still maintains the death penalty on the grounds that narcotics crimes are considered a serious crime. or extraordinary crimes (extra ordinary) against humans, so that special treatment is required by way of the harshest punishment, namely the death penalty.

CONCLUSION

The execution of the death penalty can be carried out for perpetrators of criminal acts who have crossed the human limit, endanger and threaten many people, destroy the order of life and human civilization, and damage the country's economy. Criminal acts that are subject to the death penalty include: corruption, narcotics, premeditated murder and criminal acts of terrorism. Meanwhile, the process of implementing the death penalty has been regulated through the applicable regulations, with methods or procedures for the execution of the death penalty which have permanent legal force.

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