

# The Death Penalty for Drug Offences in Indonesia

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**ABSTRACT**--*The rampant drug abuse that occurs lately is not only done by Indonesian citizens (WNI), but also by foreign citizens (foreigners). Narcotics Law No. 35 of 2009 concerning narcotics regulates capital punishment sanctions resulting in a polemic that says that the death penalty is contrary to the 1945 Constitution and is against Human Rights (HAM). The purpose of this study is the death sentence against narcotics criminals in Indonesia in the perspective of positive law in Indonesia. The formulation in this research is how the death penalty can be seen from positive law in Indonesia? and what causes the death penalty to still be applied in Indonesia?. This research method uses a normative juridical approach carried out by tuning the sources of literature or legal literature. The results obtained in this study are in his position as guardian of the constitution, the Constitutional Court through its decision Number 2-3 / PUU-V / 2007 provides an end point for the death penalty debate so far because the constitutionality of the death penalty is increasingly confirmed. Even though the verdict is in the context of narcotics crime, however, this ruling becomes the basis of genuine thinking about the position of the death penalty and its constitutionality in Indonesia. As a sovereign country Indonesia is a country that still applies capital punishment in the criminal law system. The existence of capital punishment is because capital punishment is still very much needed in order to achieve material truth. In addition, capital punishment as an effort to respect human rights, because capital punishment will not be handed down but because the convicted person has committed a crime that has first violated the rights of others, so it is deemed necessary to be sentenced to death.*

**Keywords:** death penalty, narcotics crimes, positive law

## I. INTRODUCTION

In an effort to realize Indonesian society as a state of law based on Pancasila and the 1945 Constitution, President of the Republic of Indonesia Jokowi firmly stated and supported the imposition of capital punishment sanctions against drug traffickers. This is because the effects that occur when routinely consuming narcotics is certainly damaging to one's physical condition, and this can have bad consequences for the younger generation of the Indonesian people.

According to Parasian Simanungkalit, drug abuse is extraordinary crime and transnational crime. Because the effect of drug abuse is not only self-destructing drug users, but also can damage the life structure of society, nation and state. The same perspective was said by Lickona that one of the

characteristics of the destruction of a country is the existence of self-destructive behavior such as drug abuse that is increasing in a country [1].

The pros and cons of the existence of the death penalty for drug offenders are quite serious among legal experts, criminologists, religious leaders, and human rights activists. Amid the trend and global trends in a moratorium on the death penalty, this practice has become increasingly common in Indonesia. Although often causing controversy and controversy, the death penalty in Indonesia increasingly exists and is formally justified[2].

The threat of capital punishment is as a social defense. According to Hartawi A.M "Death penalty is a social defense tool to prevent the general public from disasters and the dangers or threats of great danger that may occur and which will befall the people who have, or lead to misery and disrupt social, religious, and state life [3]."

It has been recognized that the right to life is the most basic human right. It can even be said that the right to life is a source of other human rights, and as such it should be the most respected right. Related to the issue of respect for human rights, it can be seen by the increasing number of criminal acts covering most aspects of life, ranging from theft, embezzlement of funds, persecution, and one of them is narcotics crime which can damage the generation of the nation to deprivation of one's life rights or murder. Therefore it is necessary, the need for clear and firm laws to overcome the problem. Even so, still sometimes strict laws are actually opposed because they are deemed inhumane and against human rights, for example, the death penalty [4].

Narcotics abuse is an extraordinary crime. That needs serious attention. Several articles in Law Number 35 Year 2009 which outline criminal sanctions that can be given to narcotics offenders, including Article 111 to 127.

From the description above, the researchers took the initiative to write further and would write in a scientific paper entitled " Criminal Falling Off To The Actor Narcotics Criminal Acts Ini Indonesia Positive Legal Perspective".

The formulation in this research is how is the death sentence viewed from positive law in Indonesia?

and what causes the death penalty to still be applied in Indonesia?

## II. RESEARCH METHOD

In this study in accordance with the issues raised, the authors use the type of normative juridical research. Because in the execution of the death penalty, besides studying the applicable laws and regulations, there are also legal facts that must be developed, researched, and observed the statutory regulations that apply positively in the death penalty.

Normative legal research methods, namely legal research conducted by examining library materials or secondary data. Normative legal research is also called doctrinal law research, because this research is carried out or is aimed only at written regulations or other legal materials [5].

## III. FINDINGS AND DISCUSSION

### A. Sentencing of Death Penalty in Terms of Positive Law in Indonesia

The death sentence was listed in the criminal code (KUHP) which was inherited by the Dutch colonial government, and remained nationalized with Law Number 1 of 1946 even after Indonesia's independence. Some of the laws that were issued turned out to also include the threat of capital punishment in it. Thus, the reason that the death penalty was listed in the Criminal Code when it was enacted by the colonial government, was based among other things on racial factors [6].

The acts or criminal acts that are threatened with capital punishment in the Criminal Code, namely: [7]

- a. Makar by killing the head of state in this case the President and Vice President. Article 104 mentions treason for the purpose of killing the president or vice president or for the purpose of depriving them of their independence or rendering them incapable of governing, with the threat of capital punishment or life imprisonment or for a specified period of time, even twenty years in prison.
- b. Article 111 paragraph 2 states that inciting or inviting other countries in the world to attack the sovereignty of the Republic of Indonesia.
- c. Protect or help the enemy who fights against Indonesia (Article 124 paragraph 3).
- d. Kill the head of a friendly state (Article 140 paragraph 3).
- e. Pre-planned killings (Article 140 paragraph 3 and Article 340).
- f. Violent theft by two or more friends at night, by destroying homes resulting in serious injury or death (Article 365 paragraph 4).

- g. Piracy at sea, by the sea, on the beach, in the river so that there are people who die (Article 444).
- h. Encourage workers' revolts or riots against state defense companies in the light of time (Article 124 bis).
- i. At the time of war commit fraud in the supply of goods needed by the army (Article 127 and Article 129),
- j. Extortion with violence (Article 368 paragraph 2).

In addition to the Criminal Code, (KUHP) there are still criminal acts that are threatened with the death penalty, namely legislation outside the Criminal Code. These laws and regulations include:

1. Emergency Law No. 12 of 1951 concerning Firearms promulgated on September 4, 1951 Article 1 paragraph 1.
2. Law No. 7 / Drt / 1955 Concerning Economic Crimes "Whoever commits a criminal offense as referred to in Emergency Law No. 7 of 1955 (State Gazette of 1955 No. 27), criminal acts as referred to in the Corruption Eradication Regulation (Central War Ruling Regulation No. Prt / Perpu / 013/1958) and the criminal acts contained in titles I and II of the Criminal Code.
3. Law No. 11 (PNPS) of 1963 Article 13 concerning Eradication of Subversion Activities
4. Law No. 31 of 1964 Article 23 concerning the Basic Provisions for Atomic Energy.
5. Law No. 4 of 1976 concerning Amendments and Additions to several Articles in the Criminal Code relating to the expansion of the enactment of the provisions of criminal legislation, aviation crime, and crimes against aviation facilities / infrastructure. Promulgated on April 27, 1976 in Statute Book No. 1976 26.
6. Law No. 5 of 1997 Article 59 paragraph (1) and paragraph (2) concerning Psychotropic
7. Law No. 20 of 2001 Article 2 paragraph (1) and paragraph (2) Concerning Eradication of Corruption.
8. Law of the Republic of Indonesia Number 1 of 2002 concerning Eradication of the Criminal Acts of Terrorism.
9. Law No. 35 of 2009 concerning Narcotics.

### B. Causes of the Death Penalty Still Applied in Indonesia

The basic idea of the application of the death penalty in the Indonesian legal system is contained in Article 10 of the Criminal Code which contains two types of punishment, namely the main criminal and additional criminal. The main criminal law consists of: (1) capital punishment; (2) imprisonment; (3) imprisonment; and (4) criminal fines. While additional crimes include: (1) revocation of certain rights; (2) confiscation of certain goods; and (3) announcement of the judge's decision. From that basic crime the idea of the death penalty originated. Meanwhile, in practice, the

implementation of the death penalty is regulated in Law No. 2 / PNPS / 1964 concerning Procedures for the Implementation of the Dead Laws that are Enacted by Courts in the General Courts and Military Courts, which still apply today.

In Law No. 35 of 2009 concerning Narcotics, the death penalty is applied as part of efforts to put a deterrent effect on the perpetrators of illicit abuse and illicit trafficking of Narcotics and Narcotics Precursors. In line with Law No. 22/1997 on Narcotics, criminal offenses, especially the inclusion of capital punishment due to narcotics distribution, will pose a greater danger to the life and cultural values of the nation which will ultimately weaken national resilience [8]. Related to the inclusion of capital punishment in narcotics crime, the government has confirmed its opinion that capital punishment is needed. Because narcotics is considered as a crime against humanity that aims to destroy humanity slowly but surely. The entire potential of human reason and mind is massively damaged for personal and group interests [9].

Thus, the death penalty is a means of punishment in overcoming crime. The choice of a means of dealing with crime in order to obtain a deterrent effect on the community and on the convicted person in order not to commit a crime again (prevent the repetition of the crime). The emphasis is on repressive efforts towards perpetrators of crime. In addition to the means of punishment, another way to deal with crime is through non-penal means. This facility is carried out in continuity so it requires a long time, and is more sociologically appealing. Implementation emphasizes the preventive aspects (prevention) of crime.

#### IV. CONCLUSION

The death penalty was listed in the Penal Code which was inherited by the Dutch colonial government, and remained nationalized with Law Number 1 of 1946 even after Indonesia's independence. Some of the laws issued later turned out to also include the threat of capital

punishment in it, including treason, premeditated murder, crimes against state security, or inviting foreign countries to attack Indonesia. Likewise, the regulation of capital punishment outside the Criminal Code such as economic crimes, the basic provisions of atomic energy, as well as in the Draft of the Criminal Code and in the regulation of human rights law also includes the regulation of capital punishment. The existence of capital punishment is because capital punishment is still very much needed in order to achieve material truth. In addition, capital punishment as an effort to respect human rights, because capital punishment will not be handed down but because the convicted person has committed a crime that has first violated the rights of others, so it is deemed necessary to be sentenced to death.

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