

POLITICS OF THE DEATH PENALTY IN CORRECTIONAL PERSPECTIVE

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ABSTRACT

The application of capital punishment is very much reaping the pros and cons, especially for countries that have a retention of understanding with abolitionist countries in viewing the sentence. In Indonesia, the death penalty has increased especially after the government's seriousness in combating drug crimes and terrorism. The research method used by researchers in this study is a normative legal research method by examining several scientific literatures such as scientific journals, books, government agency data reports combined with related news by trusted media. This study aims to provide an analysis of the rules of the death penalty in a human rights perspective by comparing it with the concept of correctional facilities, as well as providing more knowledge to the public and can be used as material that can be considered for policy makers in the application of criminal justice.

Keywords: death penalty, human rights, correctional, recidivism

INTRODUCTION

The death penalty is the highest method of punishment that is still carried out until now. The execution of the death sentence is also carried out in different ways namely, such as in a shot, in a whip, electric shock, lethal injection and so forth. The application of the death penalty itself was first carried out in Babylon around the 18th century BC which later influenced several countries to participate in the application of the death penalty in a variety of ways adjusted to the needs of the country. Presently, there are approximately 58 countries that still impose capital

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punishment in their countries. In 2014 international amnesty reported that 22 countries that had executed a total of 607 scattered throughout the world.

Death penalty is a problem that has long been debated, both at national and international forums (Gerry & Sherwill, 2016). On the one hand, abolitionist countries, in this case, the majority of EU countries that have agreed to oppose the death penalty are deemed irrelevant and assume that no one can take someone's right to live unless God gives him life. Conversely, some countries still maintain the existence of the death penalty in their legal system, the assumption that it is still important to apply the death penalty for several reasons to make the State continue to carry out the death penalty and regulate it in national law because the death penalty is considered as a punishment that has a high level for granting a deterrent effect it is also one of the reasons the state maintains this type of punishment (Mardenis, 2019)

Here are some data on the number of executions of the death penalty globally and in Indonesia (Tim ICJR, 2017).

Table 1. Number of death executions globally 2008-2015

NO	Year	Amount Executed
1	2008	2395
2	2009	722
3	2010	534
4	2011	680
5	2012	682
6	2013	778
7	2014	607
8	2015	1253

Source: Amnesty International (2016)

In the Americas alone, only in the United States were still sentenced to death in 2011, along with China, Iran, Saudi Arabia, Iraq, the United States gathered the world in the execution of the death penalty with 93% of the world in 2011 (Olivero, 2013).

Approximately 1000 people were executed every 33 periods with drug trafficking and/or drug possession cases which were divided into several countries, namely in the negotiating countries of China, Iran, Saudi Arabia, Vietnam, Malaysia, Singapore other than Indonesia, whereas according to international drug laws not including serious crimes must be tried with a death sentence (Gerry & Sherwill, 2016)

Table 2. Number of Death Execution in Indonesia 2007-2012

No	Year	Amount executed
1	2007	1
2	2008	10
3	2009	0
4	2010	0
5	2011	0
6	2012	0
7	2013	5
8	2014	0
9	2015	14
10	2016	4

Source: ICJR 2017

The data above illustrates that the trend of the execution of the death penalty both from various countries and in Indonesia itself is still relatively high. Seeing the understanding and facts outlined above how the correctional perspective in seeing the death penalty itself.

DISCUSSION

Death Penalty in Indonesia

- **History of the death penalty in Indonesia**

The death penalty in Indonesia was first imposed in the Daendels period which at that time was considered as a strategy to silence the resistance of the natives to defend the land of Java. The death sentence was then re-enacted and carried out in

the Criminal Code in 1873 until now with the assumption that at that time the colonizers or the natives liked to lie and could not be trusted even though in the Netherlands the death penalty itself was abolished in 1870 (icjr, 2017).

For approximately 40 years (1956-1998) the Indonesian state was led by two presidents with authoritarianism. Namely the first is President Soekarno Hatta with his "guided democracy" and the second is President Soeharto with his "New Order" that we know in his leadership imposed limitations on the rule of law in terms of serious violations and civil rights (Carole Berrih, 2019).

No	Laws and regulations	provisions
1	Penal code	Article 104, article 111 paragraph 2, article 124 paragraph 3, article 140, article 368 paragraph 2
2	Military penal code	Article 64, article 65, article 67, article 68, articles 73 1.2 and 4, articles 74 1 and 2, article 76 (1), article 82, articles 89 1 and 2, article 109 to -1 and 2, article 114 paragraph 1, article 133 verses 1 and 2, article 135 verses (1) 1st and 2, paragraph (2), article 137 verses (1) and (2), article 138 paragraph (1) and (2), and article 142 paragraph (2).
3	Law no.12 / Drt / 1951 concerning firearms	Article 1 paragraph (1)
4	Presidential Regulation number 5 of 1959 concerning the authority of the attorney general/attorney general of the army in terms of aggravating the threat of punishment for criminal acts in broadcasting food and clothing equipment	Article 2
5	Government regulations instead of law No. 21 of 1959 concerning aggravating the threat of punishment for economic crimes	Article 1 paragraph (1) and paragraph (2)
6	Law no.31 / PNPS / 1964 concerning the basic provisions of atomic energy	Article 23
7	Law no.26 of 2000 concerning human rights courts	Article 36, article 37, article 41, article 42 paragraph (3)

8	Law no. 15 of 2003 concerning the eradication of criminal acts of terrorism	Article 6, article 8, article 9, article 10, article 14, article 15, article 16
9	Law no.35 of 2009 concerning Narcotics	Article 74, 113 articles (2), 114 articles (2), 119 articles (2), 118 articles (2), 121 articles (2), 132 articles (3), 133 articles (1)), article 144 paragraph (2)
10	Government regulations instead of law no. 1 of 2016 concerning child protection	Article 81 paragraph (5)
11	Law no. 4 of 1976 concerning the crime of aviation crimes and crimes against aviation facilities/infrastructure	Article 479 letter k paragraph (2), article 479 letter o paragraph (2)
12	Law no. 5 of 1997 concerning psychotropic substances	Article 59 paragraph (2)
13	Law no. 31 of 1999 concerning corruption	Article 2 paragraph (2)

Table 3. Arrangements for the death penalty in Indonesia

- **The legal basis for the death penalty in Indonesia**

As for the country of Indonesia itself, it still has several legal products that still impose the death penalty so that the death penalty in the judiciary in Indonesia still often occurs.

Looking at the data above, it can be said that the death penalty is still a major crime in Indonesia, but if we look at the development of Indonesian law, it can be seen from the history of the codification of Dutch criminal law which is used as a role model for the Indonesian legal system which has not been used since 1860.

Imposing the death penalty in a human rights perspective

The death penalty also creates controversy on the concept of human rights where the right to life is a human right that cannot be reduced under any circumstances. Therefore the application of the death penalty in the legal system in Indonesia is considered to be contrary to human rights, namely the right to life that

has been listed in the values of Pancasila and guaranteed by the 1945 Constitution (Veive large hamenda, 2013).

Criminal decisions that have been considered by a judge basically defend the human rights of victims who have been taken by the convicted person. This matter has followed what is mandated by the 1945 Constitution where every human being is obliged to respect the human rights of other human beings and must obey the limits determined by law. The death penalty can also be said to be a chain of violence used for retaliation so that its application can be said to retreat from the concept of punishment in a country that still applies it.

Human rights are the essence of human existence, so any criminal imprisonment of a convicted criminal must always be oriented to the protection of human rights. Enforcement of a good punishment from a country is a punishment with a humanistic concept or punishment that is criminal individualization that has characteristics, namely: (a). the principle of culpability or which means "no criminal offense without error", (b). Modified (changes / adjustments) and the nature of flexibility or elastic punishment (Veive large hamenda, 2013).

So that a judge can provide a crime that is considered suitable in accordance with psychiatric behavior and physical condition which is expected to have a change in the convict or the offender so that it becomes better to return to the community and not repeat his mistakes (recidivist).

The relationship between the concept of capital punishment with correctional

Criminal imprisonment against the offender is the authority of every judge by judging both legally and sociologically so that the criminal that is later placed on the offender can benefit both the convicted person and the community, therefore the concept of punishment for deterrence has been modified in the implementation of the verdict. The criminal offense with the concept of guidance with due regard to the purpose of punishment (straf soort), mild criminal weight (straf maat), and how to impose a criminal (straf mode).

The death penalty for convicted people reaps the pros and cons both at national and international levels. This type of crime is controversial because it contradicts one of the contents of the declaration of human rights, namely violating the guarantee of the right to life of every person. In Indonesia, the capital punishment has been strived to no longer be a basic crime, but rather to be made as an alternative crime specifically carried out that has been proven in the draft of the new Criminal Code concept (Anjari, 2015).

If it is related to the concept of correcting in Indonesia, the death penalty is considered to be very ineffective in terms of providing punishment or prevention. If seen from the basic concept that correcting one's own view of a crime as a social fact that is not solely because a person has an evil nature but rather see from someone in a condition that is left behind or even abandoned in the complexity of life and livelihood or simply that the crime occurred because the failure of socialization, social disorganization, and the presence of structural pressures such as poverty (Sulhin, 2016). The Crime itself is a conflict that occurs between an individual/group or perpetrator with the existing community, following the purpose of punishing perpetrators in the penal law, namely by fostering prisoners who are expected to later be able to realize social reintegration.

Aside from the perspective of human rights, capital punishment is very much about the penal system. How not, correctional view has the view that every criminal has the right to be developed so that it can be better, if the death sentence is imposed on the perpetrators means that the possibility of improving themselves from them has been completely closed. Besides, if a death sentence convicted has been executed then there will be a mistake from the judge's decision, then everything can not be corrected or it can be said that if the death sentence is imposed, it is likely that it will not be able to review sentences that may be wrong.

The other problem is that death row inmates should not be placed in prison because the death penalty should not be returned to the community. Regarding the time limit for death row inmates awaiting execution is not regulated whereas article

28D the 1945 Constitution of the Republic of Indonesia jo Article 3 of Law No. 39 of 1999 concerning Human Rights that every citizen has the right to obtain legal certain. if a convict is still waiting for his execution by the following coaching in correctional institutions resulting in double penalties namely: prison and capital punishment (Leni Oktavia, 2019).

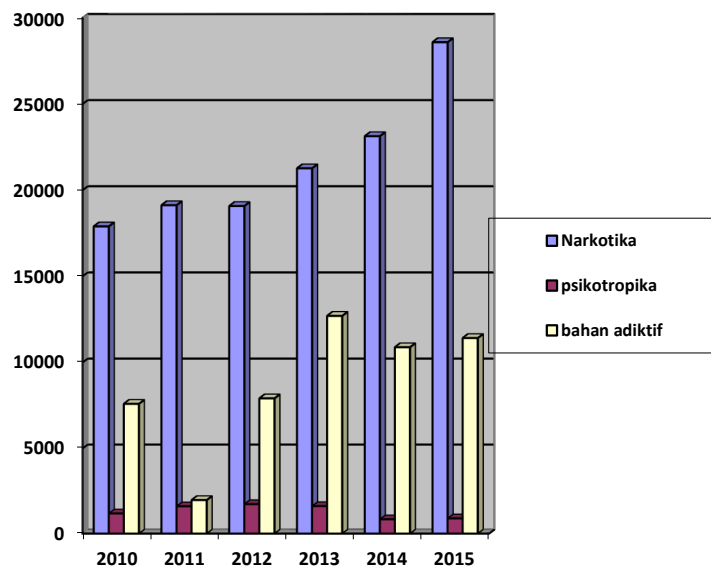
In addition, the death penalty has also been considered as an ancient punishment method and is not in accordance with the present age, besides the death penalty which is considered to be able to intensify or be able to frighten the public so that they do not do evil, in fact, is merely a myth because lust cannot be dammed with threats.

Implications of the death penalty for recidivism

If we look at the death penalty in the concept of Pancasila which is considered the highest legal source or the source of all legal sources in Indonesia ideologically and philosophically although it is still a controversy and is still being debated in various circles but is still commonly considered to be in accordance with the values of Pancasila, even though the implementation capital punishment must be carried out by taking into account that the death penalty is carried out as a last resort and carried out carefully because the death penalty is a non-evaluative criminal sanction Implications of the death penalty for recidivism (Barkah, 2013).

A country adopts capital punishment has its purpose which is to provide a sense of deterrent to the perpetrators and is expected to deter people from committing crimes. In the country of Indonesia itself, the imposition of the death penalty has a priority scale of objectives for some crimes that are considered as "extraordinary crimes" or threaten the country's sovereignty either directly or indirectly. The target of criminal penalties in Indonesia in recent years is criminal acts of terrorism with drug offenses that have taken root in Indonesia.

Diagram of the Number of Drug Cases (Year 2010 – 2015)



Looking at the diagram above, it can be illustrated that the narcotics cases in the period of 2010 - 2015 showed an upward trend, the trend of the highest increase in the number of drug cases in the period 2014 to 2015 with the original number in 2014 amounting to 23,134 cases to 28,288 cases in 2015 which showed an increase of 23, 58 percent in the previous year. If you look at the trend in the number of drug cases from 2010 - 2015, the average always experiences an upward trend from year to year, although, in that vulnerable year, Indonesia has intensified the war on drugs with threats to the death penalty (Gerintya, 2017).

Whereas for terrorism in 2016 there were 170 suspects, and increased in 2017 to 176 suspects, increased drastically in 2018 with 396 suspects (an increase of 113 percent) and decreased in the 2019 period with 257 suspects (Tim CNN Indonesia, 2019).

If you look at several recent years data from drug and terrorism cases, the average number continues to increase from year to year, although in terrorist criminal cases, the number has decreased in 2019 when compared to the previous year, the average number of increases is the most although in the same year the state

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CONCLUSION AND SUGGESTION

Conclusion

After examining some existing literature studies, it can be concluded that the death penalty which is one type of punishment in Indonesia is still difficult to apply to specific criminal acts because it is clearly regulated in several laws and regulations in Indonesia. Seeing the death penalty from the correctional perspective itself is clear very contradictory because besides being incompatible or violating the Human Rights contained in the 1945 constitution but also correctional view that there are no irreparable errors which means that correctional always provides an opportunity for prisoners to can always improve themselves and not repeat their actions by the goals of correctional, namely to restore life, life, and livelihood so that later it can be well received back to the community and participate in national development.

Suggestion

The advice given by researchers is as follows:

- a) There needs to be an in-depth study of synchronizing human rights arrangements for the death penalty, as well as an in-depth study of how opportunities for life imprisonment can replace the "reputation" of the death penalty.
- b) Providing alternative punishment to create a deterrent effect in the community which in this case is a penal system, although we know that in this system there are weaknesses and even some cases show depravity but this condition does not

necessarily be the reason that imprisonment can have a deterrent effect in the community.

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