



Human Rights For Convicted Terrorists Who Would Face Death Penalty

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Abstract

This study is to observe how human rights should be considered to convicted terrorists who would face death penalty. This study involves juridical and-normative approach which focus to pass the norms within positive law. This study discovers that death penalty could be passed to terrorism crime. There is polemic among governments, legal practitioners, religious figures, and public in terms of consistency in passing death penalty. The main reason is human rights. Passing the death penalty to the convicted terrorists is regarded as violation to the human rights unless the basic rights is lawfully fulfilled by the state. Death penalty could be passed to convicted terrorists constitutionally. The lookout to the human rights in passing the death penalty to the convicted terrorists should receive greater attention to avoid psychological burden of the delayed execution after the judge's verdict and procession to ask for pardon, amnesty, abolishment, and rehabilitation. As a result, the government and the law enforcement bodies such as acting attorneys must have an enormous authority to pass the execution immediately.

Key words: *Terrorism, Human Rights, Death Convict*

INTRODUCTION

The implementation of death penalty has been a prolong global dispute among government bodies, law practitioners, academics, and public. The prospect of the death penalty is a sort of deterrence that is effective in shielding victims from the cruel behavior of criminal offenders. The implementation of death penalty is constituted in positive law extending crimes that give risk to national and social stability, or to specific crimes that are classified as extra ordinary crimes such as corruption, terrorism, and so forth. The implementation of this sentences is purposed to give deterrent effect to the perpetrators.

Among issues in sovereignty of nations is the demolition of the people and their culture. Terrorism is an international concern that gives risk to security, peace, and global welfare, that is crucially in need of strategic and long-term design to its eradication aims to respect the human rights.

Government Regulation in Law (Perpu) Number 1 of 2002, which has been confirmed as Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism in Indonesia, declares that criminal acts of terrorism are in line with terror. Article 1 paragraph 1 through paragraph 4 contains all acts of terrorism, namely:

1. *Every individual or group of individuals who are individually or corporately responsible, whether civilian, military, or police.*
2. *A corporation is a formally organized group of people and/or assets, whether or not they are legal entities.*
3. *Violence is an act of abusing physical strength, with or without the use of force, in a way that is illegal and endangers people's bodies, lives, and independence, including weakening or incapacitating them.*
4. *Threats of violence are any act done with the goal of providing a sign or warning about a situation that is likely to provoke fear in the wider community*

Based on those articles, it is said that terrorism has met the elements of act against the law because it drives by the intention to violate the sovereignty of the nation. It is also usually carried out by violence and threat to fearmonger the public. It kills many people, demolishes public properties. As it turns transnationally, with carefully designated modus operandi, latest technology use, wider networks establishment, and resulting in large death-toll trended young people making it noticeably jeopardized to sovereignty of people, nation and state.

Furthermore, Law No. 15 of 2003 on terrorism regulates prevention and measure to eradicate people for its impact. As a deterrent effect, there are variety of sentences prescribed in article no. 6 to 19 starting from 3-year to life imprisonment and death penalty.

Article No. 10 on Criminal Code states that the ultimate penalty is death penalty which is established on the basis of revenge and classifies prevention measure, however, The court's decision called for the death sentence, but the execution was life imprisonment plus the death penalty, revealing flaws in the criminal justice system. The law's application Executions of death row inmates must be carried out in accordance with a court ruling that has permanent legal effect, and the convict must be given the opportunity to petition the President for clemency. Execution can begin with a review of the fiat executie (Statement of agreeing to run).

Because precise criteria have not been identified about the date of the punishment to be carried out, the process and phases that death row convicts must through are regarded to be violations of human rights. The most compelling reason is the need for input from various parties, such as the prosecutor's office's willingness, the president's approval if a request for clemency, amnesty, or abolition is made, and law enforcement officers' willingness to act as executioners without regard for the psychological state of the convict. In light of the aforementioned issues, it is vital to investigate the protection of human rights of death row inmates who have committed terrorist activities. As a result, it is critical to consider how to preserve the human rights of death row inmates who have committed terrorist activities.

METHODE

The legal-normative method, which focuses on the application of rules or norms in law, is the subject of this study. Normative law is a sort of law based on a positivist interpretation of the law (Soekanto, 1986). In this sense, legislation relating to written regulations produced and issued by persons or officials. In this view, the law is viewed as a closed, self-contained regulatory framework that exists independently of society's actual existence. This study employs a legal as well as a case-by-case methodology. The entire Indonesian legal system, notably criminal law, was investigated using a legal technique (Harahap, 2008).

It is also backed up by library research with the goal of supplementing theoretical studies. This is accomplished by keeping track of legal materials, such as journals, articles, newsletters, books, and research findings, in the form of notes on resources relating to the study's issue. Field data was also gathered depending on the findings of the study observation. Finally, by combining and linking the data collected in the field, the data will be analyzed qualitatively. The hierarchy of applicable laws and regulations must be studied to establish legal clarity.

RESULTS AND DISCUSSION

Terrorists who commit criminal acts of terrorism face two different types of punishment: imprisonment and death sentences, according to humanitarian law (Sinombor, 2022). Of course, this includes emotional block for the perpetrators because there is no legal certainty, which becomes a psychological hardship and might even lead to the perpetrator's death. Without a doubt, Article 28A of the 1945 Constitution ("UUD 1945") regulates the right to live:

"Everyone has the right to live and to defend his or her life and property."

In addition, the right to life in Indonesia is stated as follows in Article 9 of Law No. 39 of 1999 on Human Rights ("Human Rights Law"):

- 1) *Everyone has the right to live, to maintain their level of living, and to enhance it.*
- 2) *Everyone has the right to live in a peaceful, secure, happy, and prosperous physical and spiritual environment.*
- 3) *Everyone has the right to a safe and healthy environment in which to live*

Article 9 of the Human Rights Law expressly states that everyone has the right to live, maintain life, and advance their standard of living; additionally, Article 17 of the Human Rights Law expressly states that everyone has the right to obtain justice without discrimination.

In light of the foregoing issues, it is necessary to investigate the protection of human rights of death row convicts who have committed terrorist acts. As a result, it is critical to consider how to preserve the human rights of death row inmates who have committed terrorist activities.

The law enforcement process in court, which is conducted out by law enforcement personnel themselves, is partly responsible for terrorists' lack of legal confidence. The role and authority of judges in the judicial system is also a topic of debate. The judge is one of the most important law enforcement professionals involved in prosecuting conspiracy theories in court. The judge is the one who makes the decisions. A fair and informed court will weigh the benefits to the culprit, society, and the state of imposing a criminal (severe and minor offenses, and their categories).

Criminal law can help to determine the right punishment in this scenario. The first step in reaching a proper legal conclusion in a criminal case is to determine if the defendant has committed a crime and the appropriate punishment. Second, if a defendant is found guilty of a crime that violates a specific article, the court evaluates whether or not the defendant is liable for the offense. Third, if the elements of a crime have been met, the procedure of imposing a criminal based on the law.

Terrorism-related crimes are punished by death under a country's laws (White, Haines & Asquith, 2017). Terrorism is frequently characterized by two elements: the act itself, which includes crimes such as killing or injuring someone, kidnapping, using explosives, destroying infrastructure, or creating environmental damage, and the "terrorist" motive, which varies widely depending on the individual. -the laws of each country are frequently confusing. This could include the aim to disrupt public order, put the community's safety in jeopardy, or instill fear among the populace.

In Indonesia, the Terrorism Law provides a legal framework for the punishments meted out for acts of terrorism. People who support the anti-terrorism movement have become more supportive of the regulation. In fact, someone who performs a terrorist attack might be sentenced to death for their conduct.

There are still benefits and downsides among legal practitioners, religious leaders, the public, and other legal observers in the application of the imposition. The reason for this is that after signing in and being condemned to death, the perpetrators of this terrorism crime must wait for the process and stages of execution, which might take a long time. It must, for example, work with the high court and the prosecutor's office, as well as obtain government consent. When looked at in a compassionate light, waiting for an uncertain execution is obviously a horrible experience for the defendant and his family. It appears to be capricious and

discriminating.

The limitation of the death sentence for this heinous crime the defendant has the right to ensure due process is one of the many concerns regarding the use of the death penalty in the war against terrorism. The simplicity of administration, maximum health services, and the availability of efforts to provide authorization for family visits are all guarantees of the legal process in question. Legal protection for death row inmates is a human right that the state must provide without fail. Indeed, in its implementation, the judge's jurisdiction over the sentencing of the crime is cemented by the consideration of all legal and sociological factors, including human rights. With these factors in mind, it has the potential to benefit both criminals and the state.

Indeed, the right to life and the preservation of life is the most fundamental concept in human rights. It is apparent that the Human Rights viewpoint strongly opposes the death penalty and the rights that come with it for humanitarian reasons. The title "Declaration of Human Rights," which has been agreed upon by various governments throughout the world, echoes the freedom to live (Hakim, 2007). There are two policy results in the strategic attainment of Indonesia's national interests associated to the imposition of the death penalty, if the context of the Declaration of Human Rights is related to the death penalty for perpetrators of acts of terrorism. First, it is defined as a type of proclamation in Article 3: "Everyone has the right to life, liberty, and the security of the person." This can be translated as "everyone has the right to life, liberty, and personal security," or "everyone has the right to life, liberty, and security, as well as safety." Second, the basic explanation, which is acknowledged as the standard by civilized nations all over the world, does not explicitly include resistance to the death sentence (Permono, 2013).

It is critical that we look at real data on the rise or fall of terrorist attacks in Indonesia to see if we can better comprehend the myth of the death penalty's deterrent effect. Terrorism is frequently motivated by ideology or viewpoints rather than real-world interests like power or money. The influence of deterrence on murderers motivated by economic motivations versus murderers motivated by ideological considerations is a huge subject. The death penalty's effectiveness in preventing murders motivated by economic or ideological reasons has been thoroughly demonstrated. Suicide bombers, on the other hand, are persons who are willing to sacrifice their life in order to become a martyr or perform penance (Muzadi, 2004).

As a result, when imposing the death penalty, strategic factors on the impact and prospective dangers must be taken into account, as well as human rights enshrined in the Indonesian nation's life and blood. A terrorist assault that kills an innocent person is clearly a breach of other people's rights, and Indonesian human rights law allows the offender to be sentenced to death. There are two approaches to the death penalty: one that entails a high danger, and the other that carries a low risk. Before choosing a choice, it's critical to grasp the differences between the two.

The function of law, which is based on the concept that the law gives justice, order, security, benefit, and peace, is the instrument utilized to provide legal protection to legal entities. Some experts emphasize the importance of legal protection based on this knowledge (Arpangi, 2018).

Legal protection, according to experts like Satjipto Raharjo, is to secure the protection of human rights that have been violated by others, and it is offered to the people so that they can enjoy all of the rights allowed by law (Rahardjo, 2000). Legal protection, according to Philipus M. Hadjon, is the safeguarding of human dignity and worth, as well as the acknowledgement of human rights held by legal entities based on legal rules against arbitrariness (Hadjon, 1987). According to Setiono, legal protection is an activity or endeavor aimed at defending a community from measures taken arbitrarily by authorities who do not follow the principles of law in order to restore order and peace, and to enable individuals to enjoy their dignity as human beings (Setiono, 2004).

Legal protection, according to Philipus M. Hadjon, is described as a set of laws or regulations. According to Philipus M. Hadjon, legal protection is a system of standards or laws

that can safeguard an object from other objects. Consider the case of investment protection. This demonstrates that the law protects the interests of investors and businesses from harm. Legal protection is a word that expresses how one of the aims that law might reach is a system of fairness, efficiency, and legal clarity. A constitutional precaution against abuse is legal protection. It is preferable to utilize both written and spoken preventive (prevention) and repressive (coercion) methods while enforcing legal regulations.

People's legal protection, according to Hadjon, consists of two elements::

- a. Preventive legal protection is a type of legal protection that allows the public to express their complaints or comments before a government decision is finalized.
- b. Legal protection that is repressive, a type of legal protection more on resolving conflicts.

Article 14 (1) of the 1945 Constitution, in conjunction with Law No. 22 of 2002, regulates the granting of clemency, while Article 14 (1) of the 1945 Constitution, in conjunction with Emergency Law No. 11 of 1954, regulates amnesty arrangements, and Article 14 (2) of the 1945 Constitution regulates abolition and rehabilitation arrangements.

As a result, the idea of Pancasila-based recognition and preservation of human dignity, as well as the notion of Pancasila-based rule of law, is conceptually a legal protection given to the Indonesian nation. As a result, every individual has the right to legal protection.

Critical criminology is a branch of criminology that emerged in the late modern or early postmodern era, based on Marxism's concept (Walter S. DeKeseredy, 2020). Critical theory and conflict theory, pluralism, deconstruction, and anti-essentialism are among them (Vegh Weiss, 2017). It tends to be radical in its critical analysis, which focuses on the discourses generated by modernism, positivism, and classicism, as well as the different institutions created by these understandings, such as prisons, law enforcement organizations, and so on (John Wiley & Sons, 2016). With a focus on aspects of equality, social justice, marginalized person protection, equality before the law, and the inversion of the paradigm that the perpetrators of crime (not the authorities) are victims of a social system with stark social status distinctions in capitalist society (Munir, 2013).

As a result, critical criminology in this situation focuses on preventing criminal acts by examining the reality of everyday life (more practical and pragmatic) (Young, 2013). As a result, critical criminology is often known as "criminology of daily life" (Criminology of Everyday). Other ideologies that coexist with it, such as neoliberalism, can only cover a narrow fraction of the complexities of ordinary people's lives, but critical criminology strives to answer practically to everyday crimes in society as a whole.

Furthermore, it may be claimed that critical criminology arose organically, without the intervention of a single creator. This is because criminology is essentially an attempt to integrate and/or unite various understandings in various fields of law, criminology, and society, all of which were born at the same time and have the same style, namely being anti-establishment and moving away from Marxism and New Marxism, especially in the field of social control, class society, and the state. In this scenario, critical criminology is a synthesis and focus on the criminal area of several understandings that emerge at the same time.

CONCLUSION AND SUGGESTION

Terrorism-related crimes are punished by death under a country's laws. The government must prioritize the preservation of human rights for terrorism defendants so that it does not become a psychological burden for those sentenced to death. As a result, the government, law enforcement authorities, and courts must have complete authority over the issuance of these rights in order for death row inmates to be killed as soon as possible. In reality, a death row inmate expects basic rights such as convenience in legal administrative processes, timeliness, and sociological and psychological concerns. If one of them isn't met, it can have a negative impact on a death row inmates' health and jeopardize his or her human rights.



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