

THE DEATH PENALTY IN INDONESIA FROM A HUMAN RIGHTS PERSPECTIVE

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Keywords	Abstract. The imposition of the death penalty is closely related to the most basic rights for humans, which is a serious crime in the sense that the perpetrator will lose his life which is an invaluable right to life. Law Number 39 of 1999 concerning Human Rights which is an acknowledgment of Human Rights in Indonesia. Giving limits on human rights as a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the State, law, government and everyone for the sake of honor and protection of human dignity.
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1. INTRODUCTION

Law was created to regulate that different interests between individuals, society and the state can be guaranteed and realized without harming others.¹ Therefore in all these relationships it is regulated by law (*rechtsbetrekkingen*). To regulate legal relations in society, a legal codification is held which has the aim of legal certainty and maintaining the values of justice from legal substance. Although the law has been codified, it cannot be static because the law must continue to adapt to the community, especially with regard to public law because it is in direct contact with the lives of many people and is generally accepted.

Based on a report from the Death Penalty Database of the Cornell Center on Death Penalty Worldwide, in December 2019³, China is in the top three countries that have carried out executions in 2015 along with Iran and Pakistan. Thailand, Laos, Myanmar, Morocco, Indonesia, North Korea, Iraq. Support for the death penalty is based on the argument that the death penalty for a sadistic murder will prevent many people from killing because they are afraid of a very severe punishment. If in punishment criminals can be a deterrent and can also kill again not because they have been sentenced to death and that is essentially preserving a wider life. In various cases, many criminals are division receipts who continue to commit crimes repeatedly because of the lightness of the sentence. Often the rejection of the death penalty is only based on the humanitarian side of the perpetrator seeing the humanitarian side of the victim himself, his family, relatives or the community who depend on the victim. It is different if the victim's family has forgiven the perpetrator, of course, it can be changed with clear conditions. In Indonesia, the threat of the death penalty is at the top level with cases of narcotics, premeditated murder, terrorism. The current implementation of the death penalty for Indonesia has become a topic of discussion that is quite actual and a prolonged polemic for civilized countries. It is different if the victim's family has forgiven the perpetrator, of course, it can be changed with clear conditions. In Indonesia, the threat of the death penalty is at the top level with cases of narcotics, premeditated murder, terrorism. The current implementation of the death penalty for Indonesia has become a topic of discussion that is quite actual and a prolonged polemic for civilized countries. It is different if the victim's family has forgiven the perpetrator, of course, it can be changed with clear conditions. In Indonesia, the threat of the death penalty is at the top level with cases of narcotics, premeditated murder, terrorism. The current implementation of the death penalty for Indonesia has become a topic of discussion that is quite actual and a prolonged polemic for civilized countries.

That the application of the death penalty is not in accordance with the philosophy of the State that adheres to the Pancasila understanding, which always upholds just and civilized human beings. In

reality, the implementation of the death penalty regardless of the reason and logic is still carried out in Indonesia from various cases of existing crimes.⁴ The imposition of the death penalty is closely related to the most basic rights for humans, which is a serious crime in the sense that the perpetrator will lose his life which is something priceless right to life. Law Number 39 of 1999 concerning Human Rights which is an acknowledgment of Human Rights in Indonesia. Giving limits on human rights as a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected,

Talking about the death penalty cannot be separated from talking about human life which is a human right, the right to life, means talking about His creation as a religious human being. Indonesia consists of a pluralistic society. The death penalty is a proposition and a contradiction. On the one hand it is considered a violation of human rights, but on the other hand it is considered as enforcement.

2. METHODS

The type of research used is library research by conducting research on written sources, so this research is qualitative. As library research because the data sources in this study are sources of data obtained in literature, books, journals, magazines, websites and other data and examine them.


3. RESULTS AND DISCUSSION

Order of the Death Penalty in Indonesia

The regulation of the death penalty is contained in Article 10 of the Criminal Code, which is included in the main punishment. Prof. Roeslan Saleh in his book *Stelsel Pidana Indonesia* said that the Indonesian Criminal Code limits the possibility of the death penalty being imposed for some serious crimes. What is meant by serious crimes is 8:

- a. Makar against the President and Vice President. Article 104 of the Criminal Code: "Treason with the intention of killing the President or vice-president, or with the intention of depriving them of their independence or rendering them incapable of governing, is punishable by death or imprisonment for life or imprisonment for a certain period of not more than twenty years.
- b. Persuading foreign countries to be hostile or to war. Article 111 paragraph 111 paragraph (2) of the Criminal Code 9 "If hostilities or war do occur, they are threatened with capital punishment or life imprisonment or imprisonment for a certain period of at most twenty years."
- c. Assisting the enemy during war Article 124 Paragraph (3) of the Criminal Code 10 "The death penalty or imprisonment for life or for a certain period of twenty years is imposed if the maker; 1). Notify or surrender to the enemy, destroy or damage any place or post fortified or occupied, a means of communication, warehouse of war supplies, or war treasury or navy, army or part thereof; hinder, thwart or thwart an attempt to defend water or any other planned or organized military formation planned or organized to repel or attack. 2). Causing or facilitating the emergence of rah-rah, rebellion or desertion among the armed forces.
- d. Article 140 Paragraph (3) of the Criminal Code 11 "If treason against a life is carried out with a plan and results in death, it is threatened with a death penalty or life imprisonment or imprisonment for a certain period of at most twenty years".
- e. Murder Article 140 Paragraph (3) of the Criminal Code 11 "If treason against a life is carried out with a plan and results in death, it is threatened with a death penalty or life imprisonment or imprisonment for a certain period of at most twenty years." e). Murder Article 140 Paragraph (3) of the Criminal Code 11 "If treason against a life is carried out with a plan and results in death, it is threatened with a death penalty or life imprisonment or imprisonment for a certain period of at most twenty years."
- f. Murder planned. Article 340 of the Criminal Code: "Anyone who deliberately and with a premeditated plan takes the life of another person is threatened, because of murder with a plan (moord), with a death penalty or imprisonment for life or for a certain time, a maximum of twenty years."
- g. Violent theft resulting in serious injury or death. Article 365 Paragraph (4) of the Criminal Code:

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"Threatened with the death penalty or life imprisonment or for a certain period of twenty years at most, if the act results in serious injury or death and is committed by two or more people in partnership, also accompanied by one of the following: described in no. 1 and 3." g). Extortion with violence resulting in serious injury or death. Article 368 Paragraph (2) of the Criminal Code: Threatened with capital punishment or imprisonment for life or for a certain period of twenty years, if the act results in serious injury or death and is committed by two of the things described in no. 1 and 3."

- h. Piracy in the sea, coast and river that results in death. Article 444 of the Criminal Code "If the acts of violence described in Articles 438-441 result in the death of a person on board the ship being attacked, the captain, commander or leader of the ship and those who participate in committing acts of violence, are threatened with death or imprisonment for as long as period of at most twenty years.

In the decision of the Constitutional Court Number 2-3/PUUV/2002, it is stated that the death penalty does not contradict the constitution because the right to life in the spirit of the 1945 Constitution and Indonesian history is not intended as an absolute and inderogable right. In addition, the international instrument of the convention on civil political rights still accommodates the death penalty as long as it is seen by the member states of the covenant as the most serious crime and in accordance with the current law.

The application of the death penalty in Indonesia can also be outside the Criminal Code, namely:
a). Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption in Article 2 paragraph (2) is stated in the case of a criminal act of corruption as referred to in paragraph (2).

1. is carried out under certain provisions, the death penalty may be imposed. b). Death penalty against terrorism in Article 6 of Law Number 15 of 2003 concerning Eradication of Criminal Acts of Terrorism
- 2) Study on Death Penalty in Indonesia From a Rights Perspective Human Rights

The death penalty for the perpetrators of crimes decided by the judge means the judge has taken the right of human life. Teaching Human Rights published by the United Nations (UN), Human Rights are rights inherent in every human being, without which it is impossible for humans to live as humans. The right to life, for example, is the claim to obtain and do everything that can keep a person alive, because without this right his existence as a human being will be lost.¹² The Universal Declaration of Human Rights (UDHR) is the first element of the International Human Rights Legislation (UDHR). International Bill of Rights) which is a tabulation of fundamental rights and freedoms. In a narrow legal sense, the declaration indicates international opinion. All members of the United Nations agree to respect human rights when the country is bound by this membership. The state of Indonesia cannot be avoided from its attachment to the Universal Declaration of Human Rights. The right to life and protection in the Universal Declaration of Human Rights (UDHR)¹³ Article 3 of the Universal Declaration of Human Rights which reads: "Everyone has the right to life, liberty and security of a person." The application of the death penalty in Indonesia is classified as a form of cruel punishment and Inhumane, besides that executions in Indonesia violate Article 3 of the Universal Declaration of Human Rights.¹⁴ The Universal Declaration of Human Rights is at the root of international human rights instruments, even more than 60 years after its stipulation. No country can bear the losses that result from the service of human rights. the country must ensure respect for the rights and freedoms set forth in a declaration as a minimum standard. In some instruments, the prohibition of the death penalty is contained in a separate protocol. This guarantee is also confirmed by Article 6 paragraph 1 and Article 7 of the International Covenant on Civil and Political Rights (ICCPR) as well as strengthened by the Second Optional Protocol (Second Optional Protocol) on international agreements on civil and political rights. The 1989 Politics concerning the Abolition of the Death Penalty.¹⁵ Both stipulate that the death penalty may only be imposed by a final decision of a competent court in accordance with the law which is not retroactive. That this principle is repeated for criminal penalties and is also contained as the first article in The codification of criminal law indicates that this retroactive prohibition by legislators is

emphasized for criminal law. The principle of retroactive (non-retroactive) application. Basically, all legal rules apply forward (prospectively).¹⁸ Article 6 of the International Covenant on Civil and Political Rights (ICCPR) states that the right to life must be protected by law and this right cannot be treated arbitrarily. This right has actually been enshrined in the Amendments to the 1945 Constitution, especially Article 27 Paragraph (2), Article 28 A, Article 38 D Paragraph (2), Article 28 H and Article 28 I. Because Article 6 is referred to as the right of nountstandfest (art. 4 paragraph 2), when the privilege applies, it must not deviate from the procedural guarantee.

Human rights which are grouped into Article 28I Paragraph (1) of the 1945 Constitution and human rights which are classified as non-derogable rights according to Article 6 Paragraph (2) of the International Covenant on Civil and Political Rights (ICCPR) have something in common. Therefore, the ICCPR provisions related to non-derogable rights are very relevant to be used as a reference in interpreting the phrase "Human rights that cannot be reduced under any circumstances" contained in Article 28I Paragraph (1) of the 1945 Constitution. Therefore, the implementation of the death penalty in Indonesia has violated the article in the human rights instruments where people who are sentenced to death have been deprived of their lives, freedoms, and personal security. After all, the implementation of the death penalty is a punishment that violates the right to life for humans.

4. CONCLUSION

Based on the discussion, there are two conclusions: The death penalty in Indonesia is regulated in Article 10 of the Criminal Code, including the main crime and is one of the main crimes that are still maintained by the Indonesian Criminal Law. The regulation of the death penalty in the legal system in Indonesia is contrary to human rights, namely the right to life, Law No. 39. Article 9 of 1999 concerning Human Rights states that: Everyone has the right to live, maintain life and improve their standard of living. -derogable rights)

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