

The Juridical Review of Death Penalty Imposition in Indonesia Seen From a Human Rights Perspective

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Abstract. *Pancasila is the source of all sources of law, including criminal law. The meaning of Pancasila must animate the goals of criminal law. In other words, apart from having to reflect Pancasila, criminal purposes must also be implemented with the spirit and soul of Pancasila. Indonesia is one of the countries that consistently enforces capital punishment in its national law amidst the debate over the existence of capital punishment. The pros and cons that always arise regarding the death penalty are nothing but always associated with violations of human rights. The application of capital punishment by the State through a court decision means that the State takes away the convict's right to life which is a human right that cannot be restricted (non-derogable) in nature. Therefore its application must pay attention to the human rights of convicts. The purpose of this study is to determine the death penalty for the perpetrators of crimes, whether or not it conflicts with human rights and the criteria for imposing capital punishment for perpetrators of crimes that do not conflict with human rights. The method used is a normative juridical approach using secondary data. It can be concluded that the imposition of capital punishment is contrary to human rights and the determination can be justified on the basis of defending human rights and only for crimes that are beyond humanity.*

Keywords: Death Penalty; Human Rights; Pancasila.

1. Introduction

Long history of humanity and lawcriminal law, actually has debated the death penalty and has not stopped, both in terms of the theory of punishment with prevention or deterrence effects, as well as from the theological philosophical side about the right to impose it, while from the human rights side with international human rights instruments, as well as regionally, after the formation of the United Nations -The nation (UN) and the acceptance of the Universal Declaration of Human Rights and the ICCPR slowly but surely that the view of abolishing the death penalty from the legal systems of countries in the world, is getting closer. The views of these countries began to be seen clearly when the

UN General Assembly issued a resolution to impose a moratorium on the death penalty. At the General Assembly, 109 countries supported the resolution, 41 countries rejected it (including Indonesia) and 35 countries abstained. Based on the UN General Assembly resolution in 2010 which was supported by 109 countries, there is a strong tendency for the international community to impose a moratorium and even abolish the death penalty. Even though Indonesia participates as a party to Universal Human Rights instruments, with a binding clause that state parties will no longer apply the death penalty, with the exception of what is called "the most serious crime", then with a different understanding of the provisions of "the most serious crime". crime" in the Universal Human Rights Instruments.¹

Death penalty is always a punishment reap the pros and cons. pros and cons Such is not only happening in Indonesia, however almost all countries in the world. Every expert law enforcement, human rights activists and others so always rely on the pros and opinions contra to the death penalty institution with reasons logical and rational.²

Indonesia is one of the countries that continue to apply the death penalty in its national law, this is proven by acknowledge the legality of death penalty through several the articles contained in the law still used and valid in this country, such as in the Criminal Code, Act No. 35 of 2009 Regarding Narcotics, Act No. 5 of 1997 Regarding Psychotropics, Act No. 20 of 2001 concerning Amendments to Act No. 31 of 1999 concerning Corruption Crime Eradication, Act No. 26 of 2000 Regarding Courts HAM, Act No. 23 Regarding Child Protection, Act No. 15 2003 concerning the Stipulation of the Republic of Indonesia Perpu Number 1 2002 Regarding the Eradication of Acts Criminal Terrorism Becomes Law, which all his actions are considered as an extra *ordinary crimes* which endangers life nation and state.³

The connection between death penalty and human rights is very close based on the reason that the imposition of death penalty is closely related with the most basic human rights. In the context of imposing the death penalty against the perpetrators of crimes committed in certain circumstances must be studied in depth, bearing in mind that the imposition of death penalty is a criminal punishment heaviest in the sense that the perpetrator will lose his life which is a right which is priceless.

Human rights are a set of rights inherent in nature human existence as a creature of God Almighty and is His grace which must be respected, upheld and protected by the state, law, government and everyone for the sake of honor and protection be seen of a person's right to life. Even though many people oppose the death

¹Bungasan Hutapea, An Alternative to Death Penalty in Indonesia From a Human Rights Perspective, Journal of Human Rights Research Volume 7 Number 2 of 2016

²Djoko Prakoso, Death Penalty Issues, (Jakarta: Bina Aksara, 1987), p. 100

³Rosa Kumalasari, Death Penalty Policy in the Perspective of Human Rights, Diponegoro University Journal,

penalty none of the developing countries have abolished the death penalty. Talking about capital punishment can not be separated from the discussion about human life, and talk about human life which is a human right human, means talking about the creator, and as a human who religion, we cannot close our eyes from God's law, namely religion. Indonesia consists of a pluralistic society, consisting of various ethnic groups, language, culture and religion. This pluralistic nation has held national agreement, which is contained in the Pancasila and the 1945 Constitution, as basic law (fundamental law) in the life of society, nation and patriotic. The Fundamental Law is the highest positive law must be held as the highest grip by all Indonesian citizens.⁴

The pros and cons regarding the death penalty is not a new controversy among the public and jurists, but it has been going on for a long time. Death penalty is only an excuse for state authorities as an enforcement tool to maintain law and order in eradicating criminals. The implementation of the death penalty in Indonesia is a topic of discussion that is quite actual and polemical. This is based on the fact that the application of the death penalty is not in accordance with the state philosophy which adheres to Pancasila, which always upholds a just and civilized sense of humanity. In reality, the application of the death penalty regardless of the reasons and logic is still carried out in Indonesia from various existing criminal cases.

In Article 28 J paragraph (1) of the 1945 Constitution explains that a person's human rights are limited by human rights of others as well as laws and regulations invitation. It is clear that the people who commit a crime punishable by a fine dead, has violated the human rights of others as well restrictive laws and regulations those HAMs. Therefore the purpose of this study is to find out how the death penalty is applied from a human rights perspective.

2. Research Methods

The approach method used in this study is a normative juridical approach. The normative juridical approach is legal research carried out by examining literature or secondary data as the basic material for research by conducting a search of regulations and literature related to the problem being studied.⁵ The type of research used in completing this thesis is descriptive analysis research, namely literature study as secondary data, then discussing, listening to and conceptually comparing with laws and regulations. Because of the description above, thus the object being analyzed with qualitative research is a research method that refers to legal norms and provisions contained in laws and regulations as well as literature containing theoretical concepts which are then linked to the problems

⁴Melisa Dewi Nuraini, Imposition of Death Penalty in the Perspective of Human Rights, KIMU Journal 4, Sultan Agung Islamic University, 2020;

⁵Soerjono Soekanto & Sri Mamudji, Normative Legal Research (A Brief Overview), Jakarta, Rajawali Press, p. 13-14

raised. will be discussed in this study, namely regarding application of death penalty in human rights perspective.⁶

3. Results and Discussion

The death penalty, especially in Indonesia, is still being debated by all circles of society, considering that all people in this world have the right to live. According to Act No. 39 of 1999 what is meant by Human Rights as regulated in Article 1 which reads that human rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts which must be respected, upheld and protected by the state, law and government and everyone for the sake of honor and protection of human dignity by placing humans with their nature, dignity and worth. Article 2 Act No. 39 of 1999 concerning Human Rights explains that the State of Indonesia recognizes and upholds human rights and basic human freedoms as rights that are naturally inherent and inseparable from humans which must be protected, respected and upheld in order to enhance human dignity, well-being, happiness and intelligence. as well as justice.⁷

Criminal imposition is a part that plays a role in the process of criminal justice must be based on a humanistic perspective and integrative criminal goals as well as the flow of modern punishment that prioritizes community protection. There are 3 things that become the talking point in criminal law, namely criminal acts, criminal liability, and criminal imposition. Imposing sentences, especially capital punishment, must pay attention to factors related to the convict's human rights, and make the punishment operational and functional. The application of capital punishment to perpetrators of crimes by prioritizing the criteria for crimes committed is as follows:

- 1) Beyond Humanity;
- 2) Harming And Threatening Many Humans;
- 3) Damaging the Nation's Generation;
- 4) Damaging the Nation's Civilization;
- 5) Ruining the Order on Earth;

⁶Soekanto, S. (n.d.). And Sri Mamudji. 2003. Normative Legal Research, A Brief Review. Sixth Printing. Jakarta: Radagrafindo Persada;

⁷Ni Komang Ratih Kumala Dewi, The Existence of Death Penalty in the Criminal Code (KUHP), Journal of Legal Communication (JKH) Ganesha University of Education, Vol. 6 No 1, 2020, p 112;

6) Harming and Destroying the State's Economy;

The death penalty is a sentence or sentence imposed by a court (or without trial) as the heaviest form of punishment imposed on a person due to his actions. Death penalty, hereinafter referred to as capital punishment, is one of the main punishments imposed by judges on convicts who have obtained permanent legal force. Based on Act No. 2/Pnps/1964 in conjunction with Act No. 5 of 1969 jo Regulation of the Chief of Police No. 12 of 2010 concerning Methods of Executing Death Penalties by being shot to death.

Even though the right to life is protected by a constitution imbued with human values in Pancasila, until now the legal system in Indonesia still applies the death penalty in its criminal system. If examined more deeply in accordance with the provisions of human rights documents, there are several articles in human rights documents which do not prohibit the execution of the death penalty because it is contrary to a person's right to life. The use of the death penalty is classified as a cruel and inhuman form of punishment. Human rights apply anytime, anywhere, and to anyone, so they are universal.

Human rights are in principle inalienable. Human rights are also indivisible, interconnected and interdependent. Human rights are usually addressed to the state, or in other words, it is the state that has the obligation to respect, protect and fulfill human rights. Existence of death penalty examined from a human rights perspective is of course a violation because of us depriving a person's right to life, bearing in mind that the imposition of capital punishment is not arbitrary, of course, with careful consideration by law enforcers.

If the death penalty is linked in a human rights perspective, it will certainly conflict with human rights, especially the right to life as stipulated in the 1945 Constitution of the Republic of Indonesia which is regulated in Article 28A, namely that every person has the right to live and has the right to defend his life and life and Act No. 39 of 1999 concerning Human Rights as regulated in Article 4 namely explaining the right to life, the right not to be tortured, the right to personal freedom, thoughts and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person and equality before the law, and the right to Not being prosecuted on the basis of retroactive law are human rights that cannot be reduced under any circumstances and by anyone. However, the death penalty is also needed as an effort to prevent the occurrence of crimes, especially those that are classified as serious.

Death penalty in criminal law as means of achieving the objectives of criminal law, namely to provide a sense of justice, certainty, and expediency, has generated a lot of debate among criminal law experts. The results of the study show that those who agree with the inclusion of the death penalty in positive

criminal law, from the perspective of Pancasila, are quite reasonable. That the death penalty still needs to be maintained in Indonesia with reasons for the protection of society, to prevent serious crimes, for the sake of justice and the unity of Indonesia.⁸Guide to Understanding and the practice of Pancasila (*Ekaprasetya Pancakarsa*) emphasizes "With the belief and truth of Pancasila, humans are placed in the fullness of their dignity and worth as creatures of God Almighty with awareness of carrying out their nature as individual beings and as social beings."

From this statement it is clear recognition and interweaving between the human aspect and the social aspect. One of the very basic aspects of humanity is the right to live and the right to live one's life. This right is very basic because it is given directly to every human being. Therefore, everyone has the right to defend or defend himself against any threats or attacks aimed at the safety of his soul. Based on Article 28 A Amendment to the 1945 Constitution which states that everyone has the right to live and has the right to defend his life, many people argue that the existence of capital punishment in Indonesia is contrary to Article 28 A. Thus the death penalty in Indonesia is considered to have violated constitutional rights. In addition, the implementation of capital punishment is an act of violation of human rights.

Legally speaking violation of human rights in accordance with Article 1 of Act No. 39 of 1999 concerning Human Rights, namely every act of a person or group including state officials whether intentional or unintentional or negligence which unlawfully reduces, obstructs, limits and or revokes the human rights of a person or group of people guaranteed by this law, and do not receive, or fear that they will not obtain a fair and correct legal settlement, based on the applicable legal mechanism. From the description of the article, what is categorized as a human rights violation is an intentional or unintentional act committed against the law. However,

In accordance with the description above that the right to life is a human right, then the deprivation of life by another person (in the form of murder) or by the state (in the form of imposition of a death sentence) is essentially a violation of human rights if it is carried out arbitrarily or without a valid basis of justification according to applicable law. In other words, no one can be arbitrarily deprived of life (killed or subject to capital punishment).

Recognizing the right to life as a very human rights, meaning deprivation of a person's right to life if forced to do so, is essentially an exception. This means, from the point of view of criminal law, as far as possible the death penalty must be avoided. If it is forced to be dropped, it must have passed a very strict

⁸Moeljatno, Book of Criminal Law (KUHP), (Jakarta: Bumi Aksara, 1999), p. 7

procedure. The very strict procedures or stages, among others, can be imposed for certain offenses which are considered very bad or very serious, given the right to ask for pardon, commutation, postponement, or change/replacement of capital punishment after a certain period has passed. All forms of deprivation of human rights are essentially violations of human rights. However, in an atmosphere of orderly law, for someone who is declared to have committed a violation of human rights or seen from the point of view of criminal law, it is stated that he has committed a crime.

The use of the death penalty is still felt very effective in preventing the occurrence of crimes that can be qualified as serious crimes. This can be seen from the National Criminal Code which still places the death penalty as the main punishment, in addition to criminal laws outside the Criminal Code there are also some which place the death penalty as a sanction for violating the act. According to Roeslan Saleh in his book Indonesian Criminal Stelsel, he said that the Indonesian Criminal Code limits the possibility of imposing capital punishment on a number of serious crimes.

Death penalty as a criminal policy (criminal policy) can be interpreted into 3 (three) categories. As explained by Sudarto as follows, "Efforts to prevent crime are part of criminal politics, this criminal politics can be interpreted narrowly, broadly and broadly. In a narrow sense, criminal politics is described as the whole principle and method, which form the basis of reactions to violations of law in the form of crimes. Meanwhile, in a broader sense, it is the overall function of the law enforcement apparatus, including the workings of the courts and the police. Meanwhile, in the broadest sense, it is the overall policy carried out through legislation and official bodies, which aims to uphold the central norms of society."⁹

Based on Sudarto's thoughts above, then we know, the death penalty policy is part of crime prevention. Effective countermeasures are one of the ways that must be considered in criminal policy. Preventive crime prevention efforts are actually not only from the police, but can also be interpreted in general, namely indirectly, can also be taken without using criminal means or criminal law.

The death penalty does not only provide guarantees protection of the human rights of all citizens, but in accordance with the agreements of the civilized international community. The function of criminal law is to protect and at the same time to maintain the balance of the various interests of society, the state, perpetrators of criminal acts, and victims (victims) of criminal acts. Therefore deprivation or restriction of human rights from the point of view of criminal law is only justified if it is based on applicable regulations.

⁹Sudarto, *Capita Selecta Criminal Law*, (Bandung: Alumni, 2010), p. 113-114.

4. Conclusion

The existence of capital punishment in the legal system in Indonesia is reviewed from a human rights perspective, namely that it will certainly conflict with human rights, especially the right to life. However, capital punishment is also needed as an effort to prevent the occurrence of crimes, especially those that are classified as serious. Death penalty is still a punishment very effective in preventing crimes that can be qualified as serious crimes, or it can be said that the death penalty policy is an effective effort in tackling crime. This can be seen from the placement of the death penalty as the main punishment in the Criminal Code, it is also seen in laws and regulations outside the Criminal Code. The regulation and implementation of capital punishment is not a form of violation of human rights, as explained above that from a human rights perspective, capital punishment is not a form of crime that violates human rights if the use or implementation is not carried out arbitrarily and based on applicable regulations.

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