

Death Penalty in the Indonesian National Legal System

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Abstract

The death penalty is the most severe type of punishment compared to other crimes, because death penalty takes away human souls to defend their lives. The issue of death penalty in Indonesia is regulated in Article 10 of the Criminal Code, where there are differences of opinion between the pros and cons, because it is contrary to religion and human rights. The purpose of this paper is the existence of death penalty in law enforcement in Indonesia, the existence of death penalty in Indonesia in the context of a state based on law as set forth in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the implementation of death penalty in Indonesia in the framework of law enforcement in order to achieve the goal of the law itself. The research method used is library research. It can be concluded that the death penalty is acceptable to the people of Indonesia and remains there to be defended by the decision of the Constitutional Court.

Keywords: *Death Penalty, Pros and Contracts, 1945 Constitution, Human Rights.*

INTRODUCTION

The term 'law' in Indonesian comes from the word huk'mum in Arabic, which means 'to determine'. Furthermore, in English it is called 'law', in German and Dutch it is called (das/het) 'Recht', which has a plural meaning. That word in both languages also means 'straight', 'right' or 'right', and also means 'right', and more seriously, means 'right'. In French 'le droit', and in Spanish 'el derecho', the term means 'right', roughly paralleling German and Dutch, while 'le loi'(Fra) and 'le ley'(Esp) mean 'law'.

So in simple etymology we can say that legal matters are more or less matters of determining something to be straight and correct. But from a history that is as old as the age of the human race, the law is not that simple and its developments throughout the world show that the meaning of law for most people is becoming increasingly more than simple. Before being able to determine something to be straight and true, the law is often held through many twists and turns of procedures and what for most people is 'silat bahasa'. And of course the main task is to establish peace and order and if possible even justice in common life. It is further said that the essence of law is how the law can be understood as a whole and comprehensively and the law is able to fulfill its function/purpose to satisfy justice seekers.

The 1945 Constitution of the Republic of Indonesia Article 1 paragraph (3) confirms that "Indonesia is a country based on law. In the sense that Indonesia highly upholds the law in every aspect of social and state life. The rule of law is that the state cannot act arbitrarily, the actions of the state against its citizens are limited by law. In its journey to uphold the law, Indonesia refers to the civil law legal system, namely a legal system based on written positive legal regulations that have been codified.

As it is known that codification as a universal legal institution which is also known in Indonesia is the same as codification carried out in many civilized countries in the world. The codification of criminal law provisions in the Netherlands was carried out by Het Crimineel Wet Boek voor Het Koninkrijk Holland. One of the products of this codification is the Criminal Code, or better known as the Criminal Code. The Criminal Code that we have used so far has been applicable to all groups of people so that there is no dualism anymore like in civil law and the Criminal Code before 1918. The Criminal Code, which is a derivative of the WvS (Dutch

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Criminal Code), regulates 2 types of punishment in it, namely the main crime and the additional punishment contained in Articles 10 to 43 of the Criminal Code.

Criminal law is defined as the whole of the regulations that determine what actions are prohibited and included in criminal acts, and determine what penalties can be imposed on those who commit them. Furthermore, a criminal act in the Big Indonesian Dictionary means an act of violating the law, an act of crime. Article 1 of the Criminal Code states that an act whose perpetrator can be punished/punished is an act that has been stated in the law before the act was committed. The term criminal offense in Dutch means strafbaar feit which is the official term in strafwetboek or the Criminal Code. As is well known, the term strafbaar feit has been translated into Indonesian which has various meanings, namely that it can be said to be an act that can or may be punished, a criminal act, a criminal act, a criminal act. Usually a criminal act is synonymous with a delict, namely an act that can be subject to punishment because it is a violation of the criminal act law.

In Indonesia the death penalty is still valid, meaning that death penalty sanctions are still regulated and imposed on the perpetrators of certain crimes and are still an interesting discourse to discuss by taking into account the various effects that will arise. The existence of such punishment raises pros and cons in society, with various reasons, especially in relation to human rights and the constitution. "The death penalty is closely related to the right to life which is the crown of human rights. As a category of non-derogable rights, the state is burdened with a positive obligation to protect and ensure the right to life," said Komnas HAM Internal Deputy Chairperson Munafrizal starting his presentation in the Webinar "Criminal Snare of Social Assistance Funds Corruption during the Pandemic: Knock the Hammer Death Penalty, According to Human Rights or the Constitution?" on the weekend of mid-January 2021.

The Existence of the Death Penalty in Indonesia

In Law No. 48 of 2009 concerning judicial power it is also stated, judicial power is the power of an independent state to administer justice in order to uphold rights and justice based on Pancasila and the 1945 Law for the sake of the implementation of the Republic of Indonesia's legal state. An orderly, orderly and law-abiding society is a dream because where there is a community, there are also legal problems. Therefore, both institutions and law enforcement officers must always be ready to face legal problems experienced by the community according to the level of authority or capacity they have in a fair and legally accountable manner.

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. The death penalty is a type of punishment that is as old as human life and is the most controversial of all criminal systems, both in countries that adhere to the Common Law system, and in countries that adhere to Civil Law.

According to Djoko Prakoso, the death penalty is still being applied as a sanction for those proven to have committed a crime. The death penalty can be categorized as the most cruel punishment, because there is no longer any hope for the convict to improve his crime. In Indonesia the death penalty or death penalty is still enforced within the framework of the national criminal law as contained in the Dutch colonial Criminal Code.

According to Andi Hamzah and A. Sumangelipu, the death penalty is a social defense, namely: a social defense to prevent the general public from disasters and dangers or threats of great danger that may occur that will befall the community, which will result in misery and disturb order and security. common people in the association of human life in society and religion / state.

In imposing the death penalty or capital punishment, there has been much debate from various elements of society, including other countries whose citizens are sentenced to death in Indonesia. Debating the pro death penalty group and the contra death penalty group. Those who are against the death penalty see it from the point of view as not in accordance with the Indonesian Constitution which guarantees the right to life for every citizen and not in accordance with Human Rights as formulated in the 1945 Constitution to be precise in Article 28 paragraph 1 which confirms that Human Rights cannot be reduced in anything.

Capital punishment or capital punishment when viewed from the existence of the sound of article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia in the provisions of Article I of the Transitional

Regulations of the 1945 Constitution which states that all existing laws and regulations are still valid as long as a new one has not been enacted according to the 1945 Constitution and strengthened by Law Number 1 of 1946 concerning the application of *Wetboek van Strafrecht* to become the Criminal Code. In the Criminal Code (KUHP) CHAPTER II Punishments Article 10 explains several existing penalties in Indonesia such as:

Principal penalties

Death penalty

Imprisonment

Confinement sentences

Fines

Additional penalties

Revocation of certain rights

Confiscation of certain goods

Announcement of judge's decision

The process of the death penalty itself is also regulated in the Criminal Code (KUHP), as follows:

Article 11: Death sentences are carried out by the executioner in the hanging place, by using a noose around the neck of the convict and tying the noose to the gallows and dropping the board on which the person was standing.

Soesilo in His Explanation in the Criminal Code Regarding Article 11

Because the provisions regarding the implementation of capital punishment as referred to in Article 11 are no longer in line with developments in the condition and spirit of the Indonesian revolution, Presidential Decree No. 2/1964 execution of capital punishment is carried out by being shot to death in a place within the jurisdiction of the Court which renders a decision in the first instance, with the provisions as follows.

The time and place are determined by the Head of the Regional Police Commissariat where the Court is located, after hearing the advice of the High Prosecutor/Prosecutor who is responsible for the implementation of the death penalty.

The Chief of Police Commissariat or an Officer appointed by him together with the High Prosecutor/Prosecutor in charge, as well as the convicted defender/Attorney at his own request or at the request of the convicted person, attend the execution of the death penalty.

The High Prosecutor/Prosecutor is notified that the death penalty will be carried out three times twenty-four hours beforehand during execution, and the convict is given the opportunity to present a statement or order in the last days. If the convict is a pregnant woman, the death penalty will only be carried out forty days after the child is born.

To carry out the death penalty, the head of the Police Commissariat forms a shooting team, all of them from the Mobile Brigade, consisting of a non-commissioned officer, twelve privates, under the leadership of an officer, for this task the shooting team does not use organic weapons, and until the task is completed The shooting team was under the orders of the High Prosecutor/Prosecutor.

Capital punishment is carried out not in public and in the simplest way possible, unless otherwise determined by the President.

It is noted here that the execution of death sentences handed down by the Military Court is also carried out according to Presidential Decree No. 2/1964 as stated above, provided that the words „Head of Police, Regional Commissariat, High Prosecutor/Prosecutor, Mobile Brigade and Police", must read successively: Commander/Commander of the Military area ", Military Prosecutor /Military Prosecutor" , and military".

After the 1998 reform, courts in Indonesia still imposed death sentences. Death penalty is punishable in six crimes. This is due to the fact that there are still various statutory regulations that contain capital punishment which are actually pre-reform products but are still valid post-reform, namely

Acts of terrorism regulated through Law 15 of 2003 concerning the Stipulation of government regulation in lieu of law 1 of 2002 concerning Eradication of Criminal Acts of Terrorism Jo government regulation in lieu of law 1 of 2002 concerning Eradication of Criminal Acts of Terrorism Jo Law 16 of 2003 regarding the Establishment of government regulation in lieu of law 2 of 2002 concerning Enactment of government regulation in lieu of law 1 of 2002 concerning Eradication Terrorism Crime in the Bali Bomb Explosion incident on 12 October 2002 juncto government regulation in lieu of law 2 of 2002 concerning the Enforcement of government regulation in lieu of law 1 of 2002 concerning Eradication of Terrorism Crime in the Bali Bombing Incident on 12 October 2002;

Narcotics crimes are regulated through Law Number 35 of 2009 concerning Narcotics Juncto Law Number 22 of 1997 concerning Narcotics;

psychotropic crimes regulated by Law Number 5 of 1997 concerning Psychotropics;

the crime of premeditated murder regulated by the Criminal Code;

Crimes against state security (treason) which are regulated through the Criminal Code;

The criminal act of spreading hatred that causes war is regulated through the Criminal Code;

The crime of treason regulated through the Criminal Code;

The crime of theft causing death which is regulated through the Criminal Code; and

The crime of extortion causing death which is regulated through the Criminal Code.

Implementation of the Death Penalty in Indonesia in the Context of Upholding the Law for the Achievement of Justice.

According to The Indonesian Human Rights Watch in (Waluyadi, 2009: 58) there are three main reasons why the death penalty is often used by courts, including:

The result of the application of the death penalty was used by the Dutch colonial regime, then in practice it continued to be used until the New Order authoritarian regime to give fear and even exhaust political opponents. This can be seen in the application of political crimes Article 104 of the Criminal Code.

Efforts to issue several new legal provisions that include the death penalty as a measure of political compensation for the inability to fix the corrupt legal system. Even though the death penalty has never been able to prove its effectiveness in reducing crime rates, including drugs.

The increase in crime rates is seen solely as the responsibility of individual perpetrators.

The death penalty is terrible. In this death sentence, humans seem to take on the role of God by determining someone's life or death. Every human being actually has the right to life so that many oppose the imposition of the death penalty. However, when viewed from a different perspective, someone who has committed a serious and cruel crime has violated the rights of many people. Like he robbed, raped, and killed his victims or other sadistic murders, may be sentenced to death. This is to warn others not to do something like that again. The same goes for the perpetrators of heroin smuggling or the like who have destroyed the future of the Indonesian people. If heroin is consumed by millions of teenagers in Indonesia, one generation of the nation's next generation will be damaged. Someone who consumes heroin often ends in death, so that heroin can kill millions of Indonesians. This makes the imposition of the death penalty for drug smugglers, sellers, and suppliers very appropriate to do so that similar incidents do not occur in Indonesia. 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. The death penalty, which is referred to as capital punishment, is one of the main punishments.

The provisions regarding capital punishment show that the use of capital punishment in the Draft Criminal Code is not meant to be a type of death penalty. This is marked by placing the death penalty as a special punishment that is used selectively. Considerations for imposing capital punishment are aimed at the actions and impact of the defendant's actions, so that the death penalty can be balanced with the actions and consequences of the defendant's actions, namely causing the death of a person. If the act does not result in the death of a person, as far as possible it is avoided to impose capital punishment, except for actions that are very dangerous to human life now and in the future. This means that capital punishment is only imposed after legal and humanitarian efforts have been taken. Including a prison term of ten years and a change to a temporary prison sentence.

Experts such as Bismar Siregar, Hamka, M Natsir, and Ali Said are of the opinion that it is necessary to apply the death penalty for the following reasons:

Death penalty is more effective than other punishments, however, because it has the effect of frightening and mentally threatening the offender.

More practical than other crimes.

To prevent public actions in beating the community.

The only sentence that can be ascertained with certainty because of the offense of murder that is sentenced to life imprisonment, often gets clemency; And

To protect humanity.

Death Law in Indonesia is in accordance with Human Rights Principles

The pros and cons regarding the death penalty have invited various reactions and opinions from legal experts and human rights activists to the public. Therefore, the consistency of the application of death penalty in the world has always been a controversial matter, both among the government, legal practitioners, religious leaders and the community itself. Because the death penalty is considered to violate the most basic rights for humans, namely the right to live and improve their life. Death penalty is the most severe type of punishment compared to other crimes, because death penalty takes away the human soul to defend his life. The death penalty is also a heinous form of punishment that gives a deterrent effect to criminals. Unfortunately this sentence also violates the right to life as stipulated in the Universal Declaration of Human Rights (DUHAM).

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 that must be respected, upheld and protected by the state, law, government and everyone for the honor and protection of human dignity.

One of the very basic aspects of humanity is the right to life and the right to live that life. This right is very basic because it is given directly by God to every human being. Therefore, everyone has the right to defend/defend himself against any threats or attacks aimed at the safety of his soul. Because the right to life is a human right, the deprivation of life by another person (in the form of murder) or by the state (in the form of imposition of a death penalty) is essentially a human rights violation if it is carried out arbitrarily or without a valid justification according to applicable law. In other words, no one can be arbitrarily deprived of life (killed or subject to capital punishment). In connection with the problem of murder and the execution of arbitrary executions ("extralegal execution"), the 5th resolution of the 6th UN Congress of 1980 regarding The Prevention of Crime and The Treatment of the offenders, expressly condemns and confirms that acts such as it was a "crime of the utmost repugnance the eradication of which is of the utmost international priority." This constitutional view, according to the Constitutional Court, was also continued and confirmed by Law No. 39 of 1999 on Human Rights which also stated that the limitation of a person's human rights by the existence of other people's rights for the sake of public order.

According to Manfred Nowak, human rights cannot be considered absolute, but only have relative validity, or what Jimly Asshiddiqie calls absolute human rights, namely that their absolute nature applies as long as the formulation of the constitution itself, which is the product of the highest social agreement, has not been

changed at any time. That is, absolutely binding nature of the legal norms of the highest legal constitution, it is still relative, but as the highest basic legal norm, the provisions of the constitution that determine the absolute nature of rights are referred to as non-derogable rights or human rights that are not can be reduced under any circumstances must still be recognized.

So in our opinion, the guarantee of human rights in the Criminal Code Bill has been given more priority because even though it does not completely abolish death penalty, the Criminal Code Bill places capital punishment in the formulation as a principal punishment that is specific in nature and is threatened alternatively. The inclusion of capital punishment in a separate article to show that this type of punishment is truly special. When compared with other types of punishment, death penalty is the most serious type of punishment. This death penalty must always be threatened alternatively with other types of punishment, namely life imprisonment or imprisonment for a maximum of 20 (twenty) years. Capital punishment can also be imposed conditionally, by providing a probationary period, so that within the grace period of the probationary period the convict is expected to improve himself so that the death penalty does not need to be carried out.

CONCLUSION

Capital punishment or capital punishment when viewed from the existence of the wording of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia in the provisions of Article I of the Transitional Regulations of the 1945 Constitution which states that all existing laws and regulations are still remain valid as long as a new one has not been implemented according to the 1945 Constitution and strengthened by Law Number 1 of 1946 concerning the application of *Wetboek van Strafrecht* to become the Criminal Code.

Death penalty in the Draft Criminal Code becomes a special (special) punishment, because it is only imposed as a last resort to protect society.

Human rights guarantees in the Draft Criminal Code have been given more priority because, although it does not completely abolish capital punishment, the Draft Criminal Code places death penalty in the formulation as a principal punishment that is specific in nature and is threatened alternatively. The inclusion of capital punishment in a separate article to show that this type of punishment is truly special. When compared with other types of punishment, death penalty is the most serious type of punishment. This death penalty must always be threatened alternatively with other types of punishment, namely life imprisonment or imprisonment for a maximum of 20 (twenty) years. Capital punishment can also be imposed conditionally, by providing a probationary period, so that within the grace period of the probationary period the convict is expected to improve himself so that the death penalty does not need to be carried out.

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In terms of the implementation of capital punishment according to Indonesian criminal law, the Indonesian government needs to maintain capital punishment in order to protect the benefit of mankind in general and by maintaining capital punishment it will be useful to increase security and a sense of peace in society against perpetrators of extraordinary crimes (extra ordinary).

With this death penalty, humans seem to take on the role of God by determining someone's life or death. Every human being actually has the right to life so that many oppose the imposition of the death penalty. However, when viewed from a different perspective, someone who has committed a serious and cruel crime has violated the rights of many people. Like he robbed, raped, and killed.

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