

Effectiveness of The Death Penalty as An Instrument of Legal Strengthening Against Drug Dealers

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Abstract. *Illegal drug trafficking in Indonesia has reached a very alarming level and is a serious threat to national resilience, so that the state has taken a firm legal policy through the application of the death penalty to drug dealers as regulated in Law Number 35 of 2009 concerning Narcotics. The death penalty is believed to be a form of ultimum remedium as well as an effective deterrent instrument to overcome this extraordinary crime. However, its effectiveness is still being debated, especially due to the lack of empirical evidence that the death penalty can significantly reduce the number of drug crimes. In writing this thesis, the aim is to study and analyze the effectiveness of the application of the death penalty to drug dealers in the criminal law system in Indonesia and to study and analyze the obstacles and solutions in the application of the death penalty to perpetrators of drug crimes in Indonesia. The method used is an empirical juridical legal approach, which combines normative analysis of laws and regulations with the reality of their application in the field. Data were collected through document studies, interviews with law enforcement officers, and observations of a number of court decisions that imposed the death penalty on perpetrators of narcotics crimes. The author uses the theory of Effectiveness of Law Enforcement and the theory of legal certainty to analyze the effectiveness of the application of the death penalty to drug dealers in the criminal law system in Indonesia, obstacles and solutions in the application of the death penalty to perpetrators of drug crimes in Indonesia. Factors such as weak oversight systems, potential abuse of authority, and lack of consistency in law enforcement are major obstacles. In addition, the death penalty also raises controversy in the context of human rights, especially the right to life. Therefore, an evaluation of the death penalty policy and strengthening of a transparent and accountable justice system are needed as part of a more effective drug control strategy. The government needs to reform the Narcotics Law to clarify the criteria for applying the death penalty, so that it includes not only big drug lords but also dealers involved in drug distribution networks at various levels, in order to provide legal clarity and ensure justice for all perpetrators. In addition, the effectiveness of its implementation must be supported by ongoing training and education for law enforcement officers to improve integrity and prevent errors in the sentencing process.*

Keywords: *Death Penalty; Drug Dealers; Legal Effectiveness.*

1. Introduction

The drug problem in Indonesia has reached an alarming level, with reports from the National Narcotics Agency (BNN) showing that the number of drug users has increased significantly in recent years. According to BNN data, 3,000 drug cases during September 2024 in Indonesia were actively using narcotics, with this trend continuing to increase every year. Drug abuse not only impacts individual health, but also causes various wider social and economic problems. The existence of an organized and widespread drug trafficking network further exacerbates this situation, creating major challenges for law enforcement officers, especially the police.

Illegal drug trafficking is a serious threat to the survival of the nation and state. This crime not only damages individual health, but also destroys the future of the younger generation, increases crime rates, and has the potential to weaken national resilience. Therefore, Indonesia places drug crimes as extraordinary crimes that must be addressed with firm legal measures, including through the application of the death penalty.

In response to this increasingly pressing problem, the Indonesian government has issued various policies to eradicate drug trafficking. One of the most controversial steps is the imposition of the death penalty for drug offenders. This policy is expected to provide a deterrent effect and prevent further violations of the law. However, this approach is not without criticism. Many legal experts and human rights activists argue that the death penalty does not provide a comprehensive solution to the drug problem. They argue that the harsh criminal approach often ignores the rehabilitation aspect, where drug users, who are often victims of addiction, actually need help to recover and reintegrate into society.

In Indonesia there are two types of legal rules governing the death penalty, namely Islamic law and national law. Among them in national law is the Criminal Code which contains basic rules including the death penalty. This is clarified in CHAPTER II of the Criminal Code in article 10 point a concerning the main penalties, namely the death penalty, imprisonment, detention, and fines.¹

The death penalty for drug dealers is regulated in Law Number 35 of 2009 concerning Narcotics, which gives judges the opportunity to impose the maximum sentence on certain perpetrators.² One of the main reasons for implementing the death penalty is to provide a deterrent effect and prevent the development of increasingly widespread narcotics networks.³

The death penalty for drug dealers in Indonesia has a clear legal basis in various laws and regulations. Specifically, Law Number 35 of 2009 concerning Narcotics gives judges the authority to impose the death penalty in certain cases. Article 114 paragraph (2) of the Narcotics Law states that anyone who offers for sale, sells, buys, acts as an intermediary in the sale and purchase, exchanges, delivers, or receives Class I narcotics weighing more than five grams can be sentenced to death. This provision shows that Indonesian law views drug dealers as perpetrators of serious crimes that endanger the lives of the community.

¹Moeljatno, 2003, Criminal Code, PT. Bumi Aksara, Jakarta, p. 44

²Article 114 paragraph (2) of Law Number 35 of 2009 concerning Narcotics.

³Barda Nawawi Arief, 2018, Anthology of Criminal Law Policy, Jakarta, Prenadamedia Group, p. 123.

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Article 118 paragraph (2) of the same law stipulates that in the case of perpetrators importing or exporting Class I narcotics in large quantities, the death penalty can also be imposed. This is reinforced in Article 121 paragraph (2), which regulates the death penalty for parties who finance narcotics crimes if they cause the death of another person or disrupt state security. These three articles show how serious the state is in taking action against narcotics distribution networks that have a large scale and wide impact.

The death penalty is the most severe sanction of all the crimes that are threatened. The death penalty is imposed on one of the defendants who committed a serious and extraordinary crime. One of the most serious crimes is the illicit trafficking of drugs that can damage the ideals and future of the nation's next generation. Drugs are an abbreviation of narcotics and dangerous drugs which are often interpreted as NAZA (narcotics, alcohol, and other addictive substances) drugs can be defined into 3 groups, namely narcotics, psychotropics, and drugs or dangerous substances.⁴

The death penalty for drug convicts is basically a protection of human rights for many people because drug cases are one of the extraordinary crimes that have harmed the nation in large amounts, both materially and immaterially. The judiciary in Indonesia should indeed be independent and impartial, meaning that it cannot be intervened by any party, including intervention from other countries.

The application of the death penalty to drug dealers has raised various debates. On the one hand, there are views that support the death penalty as a symbol of legal firmness and a form of protection for society from the threat of narcotics.⁵ There are many pros and cons regarding the death penalty also for drug dealers because of the issue of human rights, namely the right to life that the perpetrator has as a human being since birth, which basically cannot be revoked or reduced. This is regulated in the 1945 Constitution Article 28a and 28i paragraph (1). However, in the decision of the Constitutional Court of the Republic of Indonesia, it was stated that the death penalty in the Narcotics Law does not conflict with the right to life guaranteed by the 1945 Constitution.

The definition of narcotics based on Article 1 point 1 of Law Number 22 of 1997 is a substance or drug derived from plants or non-plants, either synthetic or semi-synthetic, which can cause a decrease or change in consciousness, loss of feeling, reduce or eliminate pain, and can cause dependency, which is divided into groups as attached to this Law or which is later determined by the Decree of the Minister of Health.

Achmad Ali stated that legal certainty must be accompanied by fair legal certainty.⁶ Regarding the death penalty for drug dealers, Achmad Ali warned about the potential for miscarriage of justice which could have fatal impacts on human rights, so its implementation must be truly selective and based on strong evidence.

According to Barda Nawawi Arief, the death penalty is a form of maximum legal protection that aims to maintain public order and prevent extraordinary crimes, including narcotics.⁷

⁴Yusuf Apandi, 2015, Say No to Drugs, Simbiosia, Bandung, p. 5

⁵Muladi, 1997, Human Rights, Politics, and the Criminal Justice System, Semarang, Diponegoro University Publishing Agency, p. 89.

⁶Andi Hamzah, 2008, Introduction to Indonesian Criminal Law, Jakarta, Ghalia Indonesia, p. 140.

⁷Barda Nawawi Arief, 2010, Problems of Law Enforcement and Criminal Law Policy in Combating Crime, Jakarta, Kencana, p. 65.

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Barda emphasized that legal certainty through the death penalty functions as a means of collective legal protection against serious threats that endanger people's lives.

Indonesia has consistently maintained the death penalty as a form of law enforcement, especially since the rise in major cases of cross-border drug trafficking. The government believes that without tough policies, Indonesia will become an easy target for international syndicates in the illicit drug trade.⁸

Various strategies have been implemented, ranging from preventive to repressive measures, including the application of the death penalty for perpetrators of drug crimes which is considered a firm step in providing a deterrent effect. However, the effectiveness of the application of the death penalty in suppressing the number of drug trafficking is still being debated. Some argue that this punishment can be a deterrent for perpetrators of drug crimes, while others question its impact on significantly reducing cases of drug trafficking.

An example of a case that has occurred in the court decision against AKP Andri Gustami, former Head of the South Lampung Police Narcotics Unit, is recorded in Number 827/Pid.Sus/2023/PN Tjk at the Tanjungkarang District Court. The verdict hearing took place on February 29, 2024, with a panel of judges led by Lingga Setiawan. In the verdict, AKP Andri Gustami was sentenced to death after being proven legally and convincingly guilty of committing a crime "without rights or against the law to commit a criminal conspiracy to commit a crime of Narcotics and Narcotics Precursors as an intermediary in the sale and purchase of Class I Narcotics not plants weighing more than 5 (five) grams".⁹ After the verdict at the first level, AKP Andri Gustami appealed to the Tanjungkarang High Court. However, the appeal was rejected, and the death sentence was upheld. This case highlights the firm action of law enforcement officers against police officers involved in the drug trafficking network, especially those who have significant roles in international syndicates such as those controlled by Fredy Pratama.

The challenges in eradicating narcotics are still very complex. One of the biggest obstacles is the limited police resources in monitoring the entry routes of narcotics spread across various regions, especially in border areas and ports which are often the main entry points for international drug trafficking. In addition, indications of the involvement of certain officers in narcotics networks are factors that complicate law enforcement, thus creating public distrust of the effectiveness of the policies implemented. Therefore, eradicating narcotics requires a reform of the law enforcement system that is more transparent, accountable, and based on a multidisciplinary approach involving various sectors, including the community.

Research on the effectiveness of the death penalty is important to examine whether the threat of this severe punishment fulfills the objectives of criminal law, namely justice, benefit, and legal certainty.¹⁰ If the death penalty does not significantly reduce the rate of narcotics trafficking, then alternative legal policies that are more humanistic but still firm need to be considered.

⁸Anti-Narcotics Team, 2023, National Strategy for Eradicating Narcotics, Jakarta, Coordinating Ministry for Political, Legal, and Security Affairs, p. 42.

⁹Article 114 paragraph (2) of Law Number 35 of 2009 concerning Narcotics

¹⁰Sudarto, 1986, Law and Criminal Law, Bandung, Alumni, p. 52.

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Amidst the global trend of abolishing the death penalty, Indonesia faces the challenge of balancing its commitment to human rights with the need to protect society from the dangers of narcotics. Therefore, an in-depth analysis of the effectiveness of the death penalty against drug dealers is very relevant for the future of national law enforcement.

Based on the description above, the author is interested in studying and conducting research with the title "The Effectiveness of the Death Penalty as an Instrument of Legal Firmness Against Narcotics Dealers".

2. Research Methods

This research is an empirical legal research. According to Mukti Fajar, empirical legal research is a type of research that examines law from a social perspective by emphasizing legal practices in society. Fajar explained that this research aims to understand how the law is applied, implemented, and felt by society, as well as to assess the effectiveness and justice of the law in force in that society. This research is different from normative legal research which prioritizes analysis of legal theory or written law.¹¹

3. Results and Discussion

3.1. Effectiveness of the Implementation of the Death Penalty Against Drug Dealers in the Criminal Law System in Indonesia

The death penalty is one of the main criminal sanctions that has long been known in the Indonesian criminal law system. Provisions regarding this punishment are contained in Article 10 of the old Criminal Code (KUHP), and are applied to certain serious crimes. However, through the ratification of Law Number 1 of 2023 concerning the Criminal Code, the concept of the death penalty has undergone normative and functional changes. In this latest law, the death penalty is no longer positioned as the main punishment, but rather as a special form of alternative punishment.

The application of the death penalty to drug dealers in Indonesia is a form of legal protection for society from serious threats caused by the illicit trafficking of narcotics. The death penalty in this context is considered as a last resort (*ultimum remedium*) which is extraordinary (extraordinary crime), considering its very damaging impact on the nation's generation and national stability.

The death penalty is not explicitly prohibited by the 1945 Constitution of the Republic of Indonesia. Article 28I paragraph (1) states that "The right to life is a human right that cannot be reduced under any circumstances". However, the Constitutional Court in several decisions, such as Decision Number 2-3/PUU-V/2007, has emphasized that the death penalty can still be imposed for extraordinary crimes, including narcotics, as long as its application is carried out proportionally and through a fair legal process.

In Indonesia's positive legal system, the death penalty for perpetrators of narcotics crimes is regulated in Law Number 35 of 2009 concerning Narcotics, specifically in Articles 113, 114, 118 and 119. For example, Article 114 paragraph (2) states that perpetrators who distribute

¹¹Mukti Fajar and Yulianto Achmad, 2010, *Dualism of Legal Research: Normative and Empirical* Yogyakarta, Pustaka Pelajar, p. 45.

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class I narcotics in certain quantities can be sentenced to death or life imprisonment.

The death penalty is also listed in the Criminal Code (KUHP) as one of the main types of punishment. Although the new Criminal Code which was ratified through Law Number 1 of 2023 concerning the Criminal Code regulates the death penalty more restrictively, including with a probationary period of 10 years (Article 100), this provision shows a paradigm shift from the death penalty as a final punishment to a conditional and alternative punishment.

The effectiveness of the application of the death penalty to drug dealers is still a matter of debate among academics and legal practitioners. On the one hand, the death penalty is believed to have a deterrent effect and prevent repeated crimes. However, data from the National Narcotics Agency (BNN) shows that drug trafficking remains high despite the death sentence against a number of dealers. This raises questions about the effectiveness of the death penalty as a deterrent.

Based on an interview via Melky Salahudin's mobile phone, according to him, when viewed from the legal certainty side, the death penalty is effective, in the sense that the actions of the defendant sentenced to death have shown that the actions have been given a criminal sentence that is commensurate with their actions, but from the deterrent effect side, it is not effective because it is widely known that several death row convicts have been executed but the same narcotics crimes still occur, meaning that other perpetrators are not afraid of the threat of the death penalty, from the execution side, we both know that the implementation of the death penalty is not immediately carried out once a case is inkrah/has permanent legal force, but also waiting for the death row convict to file a judicial review so that it takes years.¹²

In the case of drug trafficking crimes, the perpetrator can be sentenced to the heaviest possible punishment because every perpetrator of a crime must be held accountable for his actions in accordance with the principle of criminal responsibility. The actions carried out by the perpetrator of drug trafficking contain elements of error, namely the existence of evil intent (*mens rea*) and unlawful acts (*actus reus*). These elements are the basis for imposing severe criminal sanctions, including the death penalty under certain conditions.¹³

Freddy Budiman is one of the death row convicts who was found guilty of violating Article 114 of Law Number 35 of 2009 concerning Narcotics, which regulates the prohibition on distributing class I narcotics in large quantities.¹⁴In addition to him, there are a number of similar cases that show the consistency of the application of the death penalty by the courts. For example, Haji Dawang was sentenced to death by the Pinrang District Court, and Tri Diah received a similar verdict from the Surabaya District Court.¹⁵Another case involved Jusman and Rubiyanti Hasyim, who were each also sentenced to death, one of them by the North Jakarta District Court, for violating the same article.¹⁶Based on the case examples

¹²Interview with Melky Salahudin, SH, Judge of the Meulaboh High Court Accessed April 28, 2025

¹³Oksidelfa Yanto, 2017, "Imposing the Death Penalty on Corruption Offenders in Certain Circumstances," Jurnal Hukum, Vol. 14, No. 1, p. 54.

¹⁴Law Number 35 of 2009 concerning Narcotics, Article 114 paragraph (2).

¹⁵Kompas.com, "Surabaya District Court Sentences Tri Diah to Death in Drug Case", accessed May 5, 2025 from <https://www.kompas.com>.

¹⁶Tempo.co, "Court Imposes Death Sentence for Drug Dealer", accessed May 5, 2025 from <https://www.tempo.co>.

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above, the death penalty has been applied to a number of drug dealers, in reality the number of drug dealers in Indonesia is still high. This shows that even the maximum sentence has not fully provided the expected deterrent effect.

The application of the death penalty in various cases is not only based on violations of the narcotics law, but also because the actions of the defendants are considered as actions that oppose state policy in efforts to eradicate drugs. In addition, large-scale drug trafficking is considered a serious threat to national resilience and the joints of national life.

Statistics from the National Narcotics Agency (BNN) show that the spread of narcotics has reached almost all provinces in Indonesia, even reaching educational and household environments. Therefore, the application of the death penalty is often seen as a form of protection for society and an instrument to suppress the escalation of narcotics crimes.

The circulation of narcotics is seen as a serious threat to society because it not only has the potential to cause death for users, but is also a trigger for various other crimes that occur due to the influence of these addictive substances.¹⁷ Cesare Lombroso and Raffaele Garofalo stated that the death penalty is a form of punishment that needs to exist in a country to deal with extraordinary criminals who are considered irreparable. This punishment is considered an effective way to protect society from ongoing threats by individuals who have proven to be very dangerous.¹⁸

Barda Nawawi Arief stated that criminal law is essentially a tool or means to achieve certain goals, which are based on two basic things, namely community protection and guidance for perpetrators of criminal acts. In recent developments, the application of criminal law has become increasingly complex because it must consider the dimension of protection of human rights, including the rights of the perpetrators of the crime themselves. Suhariyono stated that the determination of criminal sanctions in laws and regulations must consider the balance between aspects of justice, benefit, and legal certainty, so as not to conflict with the principles of human rights.¹⁹

Law enforcement theory, Soerjono Soekanto explains that the effectiveness of law enforcement does not only depend on legal norms alone, but also on the interaction between three main components, namely: legal substance, legal structure, and the legal culture of society.²⁰ If one of these three elements does not function optimally, then law enforcement will not run effectively.

According to Soerjono Soekanto, the law will be effective if the norms created can truly be implemented in the life of society and accepted as something that should be obeyed. If the death penalty for drug dealers is not accompanied by improvements in the structure and culture of law, then its existence will only be symbolic. For this reason, a comprehensive approach through preventive, educational, and rehabilitative efforts needs to be put

¹⁷Hafifi, Muhammad Noor. 2015, "Crimes of Theft With Violence Committed By Drug Addicts Reviewed From A Criminological Perspective In Pontianak City." *Journal of Law Tanjungpura University* 3.4, p. 54

¹⁸Wahyu Wibowo, 2018, *Criminology and Criminal Acts in the Perspective of Classical and Modern Theories*, Yogyakarta: Pustaka Pelajar, pp. 87–89.

¹⁹Suhariyono, 2009, "Determination of Criminal Sanctions in a Law," *Jurnal Hukum*, Vol. 6, No. 4, p. 621.

²⁰Soerjono Soekanto, *Op. Cit.* pp. 5–10.

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forward along with repressive sanctions.

The application of the death penalty to drug dealers in Indonesia is still not fully effective according to Soerjono Soekanto's theory. The imbalance between strict legal norms and weak implementation and a legal culture that has not supported it makes the effectiveness of this policy at a problematic point.

The application of the death penalty to drug dealers in Indonesia is often in the spotlight in the realm of criminal law, especially in the context of its effectiveness as an instrument for eradicating extraordinary crimes. In assessing the effectiveness of the application of this punishment, one relevant approach is the theory of legal certainty as put forward by Satjipto Rahardjo.

According to Satjipto Rahardjo, legal certainty is not merely interpreted as certainty in written texts or norms, but must be understood as a tool that is able to present justice and legal benefits in society. In his view, law is not only rigid normative logic, but must also pay attention to the social reality that underlies the birth of a legal rule.²¹

Based on the case example of AKP Andri Gustami, former Head of the South Lampung Police Narcotics Unit, sentenced to death in case Number 827/Pid.Sus/2023/PN Tjk by the Tanjungkarang District Court on February 29, 2024. The panel of judges led by Lingga Setiawan decided that Andri was proven guilty of conspiracy related to narcotics, as well as acting as an intermediary in the sale and purchase of class I narcotics weighing more than 5 grams. After being sentenced to death by the Tanjungkarang District Court, AKP Andri Gustami filed an appeal to the Tanjungkarang High Court. However, the application was rejected, and the panel of judges at the appellate level decided to uphold the death sentence that had been handed down at the first instance.

This case reflects the firm action of law enforcement officers in dealing with the involvement of certain officers, especially police officers, in the drug trafficking network. The death penalty verdict against AKP Andri Gustami shows that law enforcement is impartial and that the involvement of law enforcement officers in drug crimes is considered a serious violation that betrays the trust of the institution.

Satjipto Rahardjo reminded that the law should not stop at certainty alone, but must lead to justice and benefit. In practice, even though the death penalty has been imposed, the level of drug trafficking is still high, even tending to increase. This shows that legal certainty in the form of the threat of the death penalty is not necessarily effective in reducing drug crimes, if not accompanied by other approaches such as prevention, education, and rehabilitation.

Satjipto stated that the law must side with humans, and not merely with the text. Thus, the application of the death penalty which is absolute, without considering the social context, the background of the perpetrator, and the possibility of rehabilitation, can actually be contrary to the essence of legal justice itself.

Satjipto Rahardjo's perspective, the application of the death penalty to drug dealers is not fully effective if it only relies on the principle of legal certainty in a narrow way. A more progressive legal policy is needed, which does not only emphasize the repressive aspect, but also creates substantive justice that sides with the safety of the nation's generation and

²¹Satjipto Rahardjo, 2008, *Progressive Law: Law that Liberates*, Jakarta: Kompas, p. 15.

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human rights.

The effectiveness of the application of the death penalty to drug dealers in the criminal law system in Indonesia cannot be separated from the five factors that influence the implementation of the law according to Soerjono Soekanto. Each factor makes a significant contribution in assessing whether the death penalty policy is truly capable of causing a deterrent effect or merely being a legal symbol. The correlation of the theory of legal effectiveness to the application of the death penalty to drug dealers in Indonesia, the five factors that influence the implementation of the law according to Soerjono Soekanto, namely:

1. Legal Substance: Laws that regulate the death penalty for drug dealers already exist, especially in Law Number 35 of 2009 concerning Narcotics. However, the effectiveness of this law is highly dependent on the clarity of norms, consistency of rules, and their conformity to the values of social justice. If these norms are too rigid or unable to answer the complexity of the drug problem, then their effectiveness will be low even though the threat of punishment is severe.
2. Law Enforcement Factors: Law enforcers such as the police, prosecutors, judges, and correctional officers play a vital role in the implementation of the death penalty. If their integrity, professionalism, and consistency are low or they are exposed to corrupt and nepotistic practices, then the implementation of the death penalty will cause injustice and weaken public trust in the legal system. The many narcotics cases involving certain officers also reflect the weakness of fair and effective law enforcement.
3. Facilities and Infrastructure Factors: Law enforcement cannot be effective without the support of adequate facilities, such as forensic laboratories, narcotics detection technology, intelligence systems, and adequate rehabilitation institutions. The unpreparedness of these facilities can hinder the fair legal evidence process, or even lead to wrongful arrests and abuse of authority.
4. Community Factors: Community response to the implementation of the death penalty also affects the effectiveness of the law. If the community supports the death penalty as a form of justice for perpetrators of drug crimes, then the implementation of the law will gain social legitimacy. However, if the community considers the death penalty to be inhumane or does not touch the root of the problem of drug trafficking, then this can give rise to resistance or distrust of the legal system.
5. Legal Culture Factors: Legal culture reflects the legal awareness of society and law enforcement. In Indonesia, there are still many views that the law is only enforced on certain groups and does not touch the main actors (big dealers). Society is still permissive towards the use or trade of narcotics due to economic factors or social pressures, so the application of the death penalty will not have a major impact on prevention.

The author argues that the application of the death penalty to drug dealers in Indonesia, despite having a strong legal basis, is not yet fully effective in overcoming the problem of drug trafficking. Normatively, the existence of Article 114 paragraph (2) of Law Number 35 of 2009 provides legal certainty in the form of a firm criminal threat. However, when viewed from Satjipto Rahardjo's perspective, the law should not be trapped in rigid certainty without considering social reality and humanitarian aspects.

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The author believes that repressive approaches such as the death penalty need to be reviewed for their effectiveness. Reliance on the death penalty as the main solution can actually obscure the principle of substantive justice. Therefore, according to the author, drug eradication must be comprehensive and progressive. The effectiveness of law is not only measured by the existence of firm norms, but by its ability to resolve social problems fairly, humanely, and with real impact.

3.2. Obstacles and Solutions in the Implementation of the Death Penalty against Drug Crime Offenders in Indonesia

1. Obstacles in the Implementation of the Death Penalty Against Drug Crime Offenders in Indonesia

The Indonesian government considers that the imposition of the death penalty on perpetrators of narcotics crimes is a real form of the state's serious commitment to combating narcotics crimes. This step is also a symbol that Indonesia, as a sovereign state, is able to enforce the law firmly and consistently against forms of crime that are considered to endanger the existence of the nation and state. Narcotics crimes are seen as a serious threat, especially to the young generation of Indonesia, many of whom are victims and perpetrators of the illicit drug trade. Therefore, the government is determined to impose the most severe legal sanctions on anyone involved in the narcotics crime network, as an effort to protect the future of the nation and maintain national integrity.

Pancasila contains fundamental values that must be respected and upheld by all citizens, including law enforcement officers, in the process of imposing criminal sanctions on perpetrators of crimes. Therefore, in imposing punishment for criminal acts, especially in narcotics cases, the judicial institution is not only based on positive legal provisions, but must also pay attention to the noble values that live in society. The judge's decision should be in line with the purpose of punishment and reflect the principles of virtue contained in Pancasila and the 1945 Constitution of the Republic of Indonesia.

The death penalty has long been accommodated in the Indonesian criminal law system as the highest form of punishment, its application to perpetrators of drug crimes is inseparable from various complex obstacles. These obstacles include legal, social, political aspects, as well as moral and human rights considerations, which overall reflect the dilemma between the demands of strict law enforcement and the principles of humane justice.

The application of the death penalty in drug crime cases in Indonesia faces various obstacles that are normative, practical, and philosophical. The following are some of the main obstacles:

a. Contrary to the Principles of Human Rights (HAM)

The death penalty is considered to violate the right to life guaranteed by the constitution and various human rights instruments, both national and international. Article 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that the right to life is a human right that cannot be reduced under any circumstances. This is a very strong normative challenge in the implementation of the death penalty, because it can be considered to be contrary to the constitution itself.

The right to privacy refers to the rights that individuals have over their own bodies and identities. This right is protected by law, both in the realm of criminal and civil law. In

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Indonesia, the right to privacy is strongly guaranteed by the constitution as part of the protection of human rights. The right to privacy includes various basic rights, such as the right to life, the right to defend life, freedom of choice of religion, the right to express opinions, freedom of movement, and a number of other rights that are part of the protection of individuals.

Human Rights (HAM) refers to the rights inherent in every individual as part of their human dignity. Human rights are the basic principles underlying human existence, where every individual is valued and treated with equal dignity regardless of their gender, age, race, religion, or political views.²²

Protection of Human Rights (HAM) internationally began with the drafting of the Universal Declaration of Human Rights (UDHR). This document has become a global reference in guaranteeing and enforcing human rights in various countries. It contains various fundamental rights, such as the right to equality, protection from discrimination, the right to life, freedom from slavery and torture, equality before the law and courts, and freedom of expression and participation in political affairs.

The death penalty as a form of punishment has drawn much controversy because it is considered contrary to the basic principles of Human Rights, especially the right to life which is an absolute right and cannot be reduced under any circumstances (non-derogable right). From a human rights perspective, the state does not have the moral authority to take someone's life, regardless of the severity of the crime committed. This view is supported by various international instruments as well as the opinions of experts and human rights institutions. The death penalty is considered to eliminate the opportunity for rehabilitation for the perpetrator and risks causing serious violations of individual rights, including the possibility of errors in the judicial process.²³

In Indonesia itself, although the government states that the death penalty for drug dealers is part of a community protection strategy, criticism of this policy has emerged from academics, legal practitioners, and human rights organizations. They argue that the implementation of the death penalty is often not accompanied by a transparent and accountable legal process. This is feared to open up opportunities for human rights violations, especially for vulnerable groups or those who do not have access to adequate legal assistance.²⁴

Modern criminal law increasingly emphasizes a rehabilitative approach rather than a retributive one. Punishment should be directed at improving the perpetrator, not merely avenging his actions. In this context, the death penalty is considered to close the opportunity for convicts to improve themselves and return to society. Moreover, not all criminals, including drug dealers, commit their actions in a conscious state, free from social pressure, or without a certain economic and psychological background.

²²The 1945 Constitution of the Republic of Indonesia, Articles 28A-28J.

²³Usman Hamid, 2015, *Law and Human Rights: Between Certainty and Justice*, Jakarta: National Human Rights Commission, pp. 88–91.

²⁴Siska Trisia, 2014, "The Death Penalty in the Perspective of Human Rights," *Journal of Law and Human Rights*, Vol. 3, No. 2, pp. 117–118.

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From a moral and religious perspective, many reject the death penalty on the grounds of universal humanitarian values. In major religions, there is an emphasis on the importance of giving a second chance and leaving the matter of life and death to God. Rejection of the death penalty does not mean supporting crime, but rejecting a form of punishment that is considered unfair, cruel, and does not allow for improvement.²⁵

Indonesia has imposed a moratorium or even eliminated the death penalty from the national legal system. Criminal law reform efforts must reflect respect for human rights as a whole and make the principles of justice, humanity, and rehabilitation the basis for sentencing. Rather than executing perpetrators, the state should strengthen the prevention and rehabilitation system as part of a long-term solution.²⁶

Law enforcement that is contrary to human rights principles will reduce the legitimacy of the law itself. When the substance of the law (such as the death penalty) does not reflect the values of justice, humanity, and equality as protected by the 1945 Constitution and international human rights conventions, then one of the important elements of legal effectiveness, namely public acceptance, is not fulfilled.²⁷

b. A Long and Uncertain Legal Process

Death row convicts often undergo a very long legal process because there is still an opportunity to file for clemency, cassation, or judicial review (PK). This process can last for years, creating legal uncertainty and high psychological burdens, both for convicts and victims.

The application of the death penalty to perpetrators of narcotics crimes in Indonesia still faces various obstacles, especially from the aspect of the long and uncertain legal process. This has implications for legal uncertainty for convicts, victims, and the criminal justice system as a whole. In the Indonesian legal system, the death penalty is a form of principal punishment that is still legally regulated in positive legislation, including in Law Number 35 of 2009 concerning Narcotics, especially Article 114 paragraph (2) which states that perpetrators can be sentenced to death if they meet the elements of a large quantity of narcotics and are involved in an organized network.

the death penalty is permitted under Indonesian positive law, its implementation often faces procedural obstacles. One of the main factors is the large number of extraordinary legal remedies available, such as judicial review (PK) which can be submitted repeatedly without explicit limits, as decided in Constitutional Court Decision Number 34/PUU-XI/2013, which revoked the limitation of submitting a PK only once. As a result, the execution process becomes very long and uncertain.

This uncertainty is contrary to the principle of legal certainty as guaranteed in Article 28D paragraph (1) of the 1945 Constitution, which states that everyone has the right to recognition, guarantees, protection and fair legal certainty. In the context of the death penalty, the lengthy legal process disrupts this principle because the legal status of the prisoner becomes "hanging", even for years.

²⁵Luhut MP Pangaribuan, 2010, *Justice in Criminal Law Practice*, Yogyakarta: FH UII Press, , p. 65.

²⁶A. Anshori, 2020, "Problems of Implementing the Death Penalty in Indonesia: Between Effectiveness and Human Rights," *Journal of Legal Studies*, Vol. 15, No. 1, p. 88.

²⁷Luhut MP Pangaribuan, *Op Cit*, p. 66

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The application of the death penalty also faces challenges in the pardon process. Based on Article 14 paragraph (1) of the 1945 Constitution, the President has the right to grant pardon to convicts. However, the process of submitting and granting pardons often does not have a clear time limit, thus prolonging the uncertainty of the legal fate of convicts. This uncertainty strengthens public opinion about the weakness of the criminal justice management system in Indonesia.

The long waiting period for the execution of the death penalty against drug offenders causes the cost of maintaining prisoners to increase significantly, while not directly contributing to the deterrent effect or reducing the number of drug abuse. That the execution of the death penalty is not always comparable to the level of success in eradicating narcotics. In fact, international drug networks often replace their members who are executed quickly. This shows that the death penalty is more symbolic than strategic.²⁸

The theory of legal certainty emphasizes that the law must be able to provide certainty to every individual regarding the legal consequences of their actions. In the context of the application of the death penalty to perpetrators of drug crimes in Indonesia, the long and uncertain legal process creates uncertainty about when and whether the punishment will actually be carried out. This is contrary to the basic principle of legal certainty which requires everyone to know for sure what will happen if they commit a certain violation of the law.

Solutions in the Implementation of the Death Penalty for Drug Crime Offenders in Indonesia

The application of the death penalty in drug cases is an issue that often triggers global human rights debates. Several countries maintain the death penalty as a form of deterrent effect against extraordinary crimes, especially in drug cases. Indonesia is one of the countries that still maintains the death penalty for perpetrators of drug crimes. However, the approach, legal basis, and practice of implementing the death penalty differ from one country to another.

Solutions to overcome obstacles in implementing the death penalty against perpetrators of drug crimes in Indonesia so that this policy remains relevant and just include:

a. Consistent and Transparent Law Enforcement

Consistent and transparent law enforcement is a basic principle in a state of law that upholds justice. In the context of narcotics crimes, this is very important considering the broad impact of these crimes on national security and the future of the younger generation. Inconsistent law enforcement will create legal uncertainty and reduce public trust in the criminal justice system. Therefore, law enforcers, especially judges, prosecutors, and police, are required to apply the law objectively, non-discriminatively, and in accordance with applicable laws. This is in accordance with the provisions of Article 27 paragraph (1) of the 1945 Constitution which states that "all citizens have equal standing before the law and government and are required to uphold the law and government without exception". In addition, Article 8 of Law Number 48 of 2009 concerning Judicial Power emphasizes that judges are required to explore, follow, and understand the legal values and sense of justice

²⁸Sudarsono, D. 2018, "Effectiveness of Death Penalty in Combating Drug Crimes in Indonesia." *Journal of Law & Development*, Vol. 48 No. 1

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that exist in society. Consistent and transparent law enforcement is also a reflection of the principle of due process of law which guarantees procedural justice in every legal process.²⁹

According to Soerjono Soekanto, the effectiveness of law enforcement is determined by five main factors, namely:

- 1) The law itself (legal substance),
- 2) Law enforcement (legal structure),
- 3) Supporting facilities or infrastructure,
- 4) Society (legal culture),
- 5) A developing legal culture.

Consistent and transparent law enforcement is closely related to the substance of the law and the structure of law enforcement. Consistency in imposing criminal penalties is very important so that the law can have a deterrent effect and create justice. When perpetrators of the same crime receive different sentences, it indicates an inconsistency in law enforcement that can erode the sense of justice in society. This will also weaken the function of law as an effective instrument of social control.

Transparency in law enforcement serves as a form of accountability to the public. An open legal process will increase the legitimacy of judges' decisions and public trust in judicial institutions. As emphasized by Satjipto Rahardjo, the law should not be frightening, but must be able to provide a sense of security and justice for all parties.

b. Evaluation of the Criminal Justice System

The government needs to review the effectiveness of the death penalty, and provide an alternative in the form of life imprisonment without remission for perpetrators who are not proven to be part of a large network. This is in accordance with Article 100 of Law No. 1 of 2023 concerning the Criminal Code, where the death penalty is an alternative punishment with a probationary period of 10 years.

Evaluation of legal justice needs to be done with a focus on transparency, accountability, and protection of human rights, so that the justice system can provide substantive justice for all parties. Integration of data-based risk assessment methods can help judges impose proportionate and effective sentences, and prevent high-risk offenders from repeating crimes.

The application of the death penalty for all dealers will ensure that no party involved in drug trafficking escapes legal responsibility. This comprehensive approach aims to prevent the spread of narcotics more widely and deeply into various levels of society. It will also demonstrate the state's firmness in dealing with the increasingly rampant drug problem.

c. Improving the Quality of Law Enforcement Officers

Continuous training and education for law enforcement officers, including judges, prosecutors, and police, can ensure that they have a deep understanding of the law and the principles of legal certainty. This also helps reduce errors in law enforcement.

²⁹Jimly Asshiddiqie, 2006, Introduction to Constitutional Law, Jakarta, Konstitusi Press, p. 184.

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The quality of law enforcement greatly determines the fairness in sentencing. The death penalty should not be imposed if the legal process is still vulnerable to errors or abuse of authority. Professionalism, integrity, and technical capacity of the apparatus determine the success of the legal process. Regular training, improving welfare, and improving the internal monitoring system are priorities.³⁰

Tackling the narcotics problem seriously, the law must be applied firmly and without discrimination. Small dealers who play a role in the narcotics network must also receive appropriate punishment, because they contribute to the damage caused by drug trafficking. Without discrimination in law enforcement, it is hoped that drug trafficking can be better controlled.

d. Reform of Legislation

Evaluating and revising ambiguous or overlapping laws and regulations can help create a clearer and more certain legal framework. This reform must involve public participation to ensure that the resulting laws reflect the values of social justice.

The results of the interview with Melky Salahudin provide interesting insights related to the need for adjustments in the criminal law system in Indonesia. According to him, one solution that can be taken to improve justice in sentencing is through a revision of the existing Law, or by issuing more detailed implementing regulations. The issuance of these implementing regulations can provide clear guidelines and detailed criteria for judges or other law enforcement officers in determining sentences, so as to minimize uncertainty in legal decisions and avoid injustice.³¹

The importance of reforming the Narcotics Law to strengthen the implementation of the death penalty. This reform needs to explain clearer criteria regarding who is eligible for the death penalty, not only limited to big dealers or drug lords, but also those involved in the drug distribution network, including medium and small dealers who play a role in destroying society. This will create clarity in the implementation of the law and reduce the possibility of inconsistent interpretations.

The author's opinion that suggests that not only big drug lords be sentenced to death, but all drug dealers, reflects the view that drug crimes must be dealt with comprehensively and fairly. In this case, the author argues that the death penalty should be applied more widely to all dealers, regardless of their status or position, with the aim of creating a more effective deterrent effect on a larger scale.

Ensuring a fairer and clearer implementation, the author also states that there needs to be a change in the Law (UU) related to narcotics in Indonesia to clarify the criteria and implementation of this death penalty. In addition to changes in the law, the author also argues that the implementation of the death penalty for drug dealers must be supported by increased cooperation between law enforcement agencies, both at the local and international levels. This is important to break the drug distribution network that involves various parties and has a very large scale.

³⁰Romli Atmasasmitha, 2011, Legal Reform, Human Rights and Law Enforcement in Indonesia, Bandung, Refika Aditama, p. 87.

³¹Interview with Melky Salahudi, SH, Accessed April 28, 2025

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The author argues that the amendment to the Narcotics Law to strengthen the death penalty for all dealers, not just big dealers, is the right step to show the state's firmness in combating drug crimes. However, although the death penalty can be a firm solution, it is also important to pay attention to justice and effectiveness in implementing the law, while still considering human rights and the need for a more comprehensive approach to eradicating drugs.

4. Conclusion

1. The effectiveness of the application of the death penalty to drug dealers in the criminal law system in Indonesia is still being debated, considering the challenges in terms of consistency of law enforcement, potential legal errors, and human rights issues. Its application must be accompanied by a more transparent and consistent system in order to achieve substantive justice. Evaluation of the criteria for the application of the death penalty, improvement of the justice system, and improvement of the quality of law enforcement officers are very necessary so that this policy can provide a more effective deterrent effect without sacrificing the principles of justice and human rights. 2. The application of the death penalty to drug offenders in Indonesia faces a number of obstacles, such as legal uncertainty, inconsistency in law enforcement, and potential human rights violations. To overcome these obstacles, more consistent and transparent law enforcement is needed, an evaluation of the criminal justice system by considering alternative punishments, and improving the quality of law enforcement officers. In addition, reform of laws and regulations, especially the revision of the Narcotics Law, is very important to emphasize the criteria for the application of the death penalty that is fair and comprehensive. The wider application of the death penalty to all drug dealers, while still paying attention to justice and human rights, can be a more effective step in eradicating drug crimes in Indonesia.

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