

The Urgency of The Death Penalty for Narcotics Crime Perspectives in A Human Rights Perspective

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Abstract. *Narcotics can become an obstacle to national development in material and spiritual aspects. The danger of using narcotics has a very large impact on the country. If there is widespread use of narcotics in society, Indonesia will become a sick nation. If this happens, the country will become fragile from within because national resilience is declining. This journal addresses two major issues: the urgency of the death penalty for narcotics crime perpetrators, and the legal and human rights relevance of the death penalty for narcotics crime perpetrators. This research is included in the category of normative legal research using statutory approaches, conceptual approaches, and case approaches. The urgency of the death penalty for perpetrators of narcotic crimes is because this crime creates massive victims, requires large funds for recovery and law enforcement, damages the younger generation, and weakens the foundations of social and state life. From a legal perspective, death penalty sanctions have been regulated and recognized for their existence both in the Criminal Code and in laws outside the Criminal Code.*

Keywords: Crime; Death; Narcotics; Penalty.

1. Introduction

Arrangements related to Narcotics and their sanctions have been regulated in a statutory regulation, namely Act No. 35 of 2009 concerning Narcotics. The Narcotics Law has included various types of criminal sanctions, including imprisonment, fines, and death penalty. In this context, in Indonesia there have been several cases related to narcotics abuse which were decided by the death penalty. Indonesia, which is a Muslim-majority country in the world, recognizes that the death penalty is appropriate and urgent to be applied for certain crimes

or offenses that disrupt public order and endanger the life, life and stability of the country.

In that context, it can be said that drug crime has social, economic and national security consequences as well as threatening the life of the nation and state. Therefore, drugs can be an obstacle to the country's development in terms of spiritual material. The danger of drug use has a huge impact on the country, if drug use is in large numbers in society, then the Indonesian state will become a sick country and if that happens then our country will eventually become fragile.¹Therefore, it is very reasonable and reasonable that drug trafficking should immediately find a wise and reasonable solution, because it is clear that a crime or narcotics crime is a social problem which of course can disrupt the social functioning of society. In addition, criminal acts or narcotics crimes are generally not committed by individuals, but are carried out collectively and even by organized syndicates. One of the rational efforts used to tackle drug trafficking is the criminal law policy approach.

The implementation of the death penalty in Indonesia has become quite an actual topic of discussion and a prolonged polemic for civilized countries. This is based on the application of the death penalty which is considered not in accordance with the state philosophy which adheres to the ideology of Pancasila, which always upholds a just and civilized sense of humanity. But in reality the application of the death penalty to the second in Indonesia is still being maintained and implemented in the legal system.²The death penalty is necessary for the benefit of society. This opinion is based on the belief that all countries have the right to defend or defend themselves, which can also mean that it can legitimize the use of force against individuals.

According to Hartawi AM, the death penalty is a form of social defense. Death penalty is a tool of social defense to prevent the general public from disasters and dangers or threats of great harm that may occur and which will befall the community which has caused or resulted in misery and disrupted social, religious and state life.³

If one looks at the relevance of the concept of capital punishment and its relation to narcotics crimes, it can be concluded that further studies are needed regarding the urgency of imposing capital punishment on narcotics offenders. Not only that, it also needs to be analyzed theoretically regarding the relevance

¹Gatot Supramono, Indonesian Drug Law, Djbatan, Jakarta, 2004, p.5

²M.Zen Abdullah. "Execution of the Death Penalty in Indonesia Examined in the Context of Human Rights." Scientific Journal, Jambi University (2009): p. 61

³Treasure. AM, in Andi Hamzah and A. Sumangelipu, Death Penalties in Indonesia, Ghalia Indonesia, Jakarta, 1983, p.29.

of the imposition of death penalty in the perspective of human rights. In Indonesia, which is based on the ideology of Pancasila, there is a very close relationship between the death penalty and human rights. This is based on an argument that the imposition of the death penalty is closely related to the most basic human rights. In the context of imposing the death penalty on perpetrators of crimes committed under certain circumstances, it must be studied in depth.⁴ Recognition of human rights in Indonesia can be seen in Article 1 of Act No. 39 of 1999 concerning Human Rights which provides a definition of human rights as a set of rights that are inherent in the nature and existence of human beings.

Analysis related to the description above is very important to do considering there is still controversy regarding the existence of capital punishment. Some groups want the death penalty to be abolished because it is contrary to the human right to life and contradicts the concept of the purpose of resocialization punishment so that perpetrators can become better people and can return to society. However, some other groups state that the death penalty still needs to be applied, especially for crimes that are classified as serious and endanger the life of society at large.⁵

This study aims to determine the Urgency of the Death Penalty for Narcotics Offenders and what is the Relevance of the Death Penalty for Narcotics Offenders in the Perspective of Human Rights.

2. Research Methods

This research uses descriptive research with a qualitative approach. In descriptive research, the data collected by the author are in the form of words, pictures, and not numbers. This method is a research procedure that produces descriptive data in the form of written or spoken words from people and observable behavior.⁶ 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 the regulations and literature relating to the problem being studied.⁷ The data source is Primary data is data obtained directly from the object.⁸ Primary data obtained or collected by conducting field research (field

⁴Abdur Rahim, Asruddin Azwar, Muhammad Hafiz, & Satrio Wirataru. *Death Penalty: Legality & Humanity Problems*. Malang: Intrans Institute, 2015, p. 54–57

⁵<https://law.uii.ac.id/wp-content/uploads/2019/10/Laporan-Penelitian-Agustus-2017.pdf>

Accessed Monday 9 January 2023 at 17.00 WIB

⁶Lexy J. Moleong. 2010. *Qualitative Research Methodology*, (Bandung: PT. Remaja Rosdakarya). p 4.

⁷Soerjono Soekanto & Sri Mamudji, *Normative Legal Research (A Brief Overview)*, Jakarta, Rajawali Press, p. 13-14

⁸J. Supranto, *Legal and Statistical Research Methods*, PT Rineka Cipta, Jakarta, 2003, page 2.

research) with interviews. Then Secondary Data, namely data obtained through library materials. Collecting data by way of observation, interviews, documents and the final step is to draw conclusions.

3. Results and Discussion

3.1. The Urgency of Death Penalty for Narcotics Offenders

Seeing the negative impact of narcotics crimes which have enormous negative effects and can even lead to the destruction of a nation, therefore the death penalty is a punishment that seems really necessary and appropriate to be applied to overcome this problem. Considerations for imposing capital punishment are more directed to the existence of justice in society. However, on the other hand, capital punishment is also considered a violation of human rights, namely the right to life.

The death penalty in Indonesia is contained in Article 10 of the Criminal Code Article 11 of the Criminal Code. In the case of the death penalty for perpetrators of narcotics crimes, it was originally contained in Article 113 paragraph (2), which meant for the perpetrators of illicit narcotics trafficking themselves. Because in general in Indonesia, the influence of narcotics among the public is very disturbing both from a health, economic, social perspective, even arising in the future from the addictive effects of narcotics use and even resulting in paralysis or death. So the benchmark of the death penalty is applied to them in the illicit trafficking of narcotics on a national and international scale. The death penalty is always designed as an alternative to other principal crimes. If in the desired facts the defendant is proven guilty of committing a crime punishable by death, then the judge can impose other alternative punishments. Under certain circumstances the death penalty can be suspended until the president gives an Execution tip.⁹

Although, the imposition of capital punishment is still felt urgent or important to be carried out against perpetrators of narcotics crimes. In essence, the death penalty is a crime to eliminate the life of the convict, so by eliminating the life of the perpetrators of a crime, it means stopping the perpetrators from committing crimes. This means that with the death penalty, people feel safe and protected from the evil interference of the perpetrators. Viewed from such an element of public protection, the policy on capital punishment for narcotics crimes can be said to fulfill or be in accordance with the aspect of public protection.

⁹Christofel Brayn Leonard Totomutu, I Nyoman Gede Sugiarta, I Made Minggu Widyantara, Death Penalty in Narcotics Crime From a Human Rights Perspective (Study of Constitutional Court Decision Number 2-3/PUU-V/2007), Journal of Hukum Construction, Vol Vol . 2, No. 2, May 2021, Pg. 361-366

From year to year, the perpetrators of the illicit narcotics trade continue to grow, with various and increasingly sophisticated modus operandi. Therefore to stop narcotics criminal acts of punishment capital punishment is considered appropriate because the threat from narcotics can damage the future of the nation's children. A study conducted by the University of Indonesia in collaboration with the National Narcotics Agency in 2004-2005,¹⁰ concluded that from year to year the illicit circulation of drugs has increased significantly.

Narcotics are "monsters" that can kill humans automatically slowly but surely against whoever the victim is without discrimination (old, young, male or female). In other words, dealers, suppliers and distributors of narcotics have basically taken away the right to life of many people (victims of drug abuse) which must also be protected by the constitution.

The increase in the illicit circulation of narcotics from year to year is marked by the increasing number of victims of abused drugs. The National Narcotics Agency (BNN) revealed that there was an increase in the prevalence of drug abuse in the age range of 15 to 64 years, from 1.80 percent in 2019 to 1.95 percent in 2021. Teenagers to college students fall into that category.¹¹ Then based on the data from 7 June to 8 July 2022, BNN uncovered 11 cases of narcotics crimes. The evidence reaches 3 quintals. A total of 22 suspects were arrested, three of them on the wanted list (DPO). Sadly, four of the 22 suspects turned out to be active law enforcement officers. In fact, they are involved in the illicit trafficking of narcotics. The disclosure of dozens of cases is a collaboration between BNN and the TNI, Polri, and Customs and Excise.¹²

According to the Head of the National Narcotics Agency, around 50 people die every day due to drugs and the economic and social losses reach IDR 63 trillion per year. Apart from that, the fact shows that almost 30% of prison inmates throughout Indonesia are convicts of drug abuse cases. When compared between the parties who will be executed with the number of victims who died and the social costs that must be borne by the government is very ironic. So from the aspect of public protection, the imposition of death penalty for drug crimes can be said to be very urgent to be realized.

The data above shows the empirical reality that victims of narcotics crimes are increasing, giving rise to physical and psychological implications not only for victim users but also for society at large. To enforce law and order and protect

¹⁰Mualimin Abdi, Death Penalty Against Narcotics Convicts After the Constitutional Court's Decision, published in the Journal of Indonesian Legislation, Vol.4 No.4 December 2007.

¹¹ <https://www.inews.id/news/nasional/bnn-ntak-guna-narkoba-meningkat-di-kalangan-remaja-ti-mahasiswa> Accessed Tuesday, January 9 2023 at 11.30 WIB

¹² https://pusiknas.polri.go.id/detail_artikel/narkoba, Accessed Tuesday, January 9 2023 at 11.30 WIB

society, the imposition of capital punishment will provide protection for potential victims and by imposing the death penalty will create a deterrent effect for perpetrators.

In the context of public protection, the function of criminal law can be seen specifically and in general. In particular, the function of criminal law is to protect the interests of the state, the interests of society and the public interest. In this case the narcotics crime has endangered the three interests that must be protected, so it is only natural that the perpetrators of the crime referred to be sentenced to death. Meanwhile, in general, the function of criminal law is to provide fear and educate, so that in criminal law there are criminal sanctions that are *ultimum remedium* and *primum remedium*.

That talking about the effects of capital punishment or other punishments by putting aside the effects of retaliation and deterrent effects, is like living in cyberspace, because it is inevitable from the perspective of the victim or perpetrator, so that it is always subjective. Specifically regarding the death penalty in the Narcotics Law, of course it is hoped that it will create a deterrent effect in society, it is truly unimaginable if the death penalty is abolished from the Narcotics Law. Whereas there is no relationship between capital punishment and correctional philosophy, because the philosophy of correctionalism is related to imprisonment.

As for the benchmark of the state to maintain the death penalty so that society noting that the government does not want any disturbance to public order. The death penalty needs to be maintained for law enforcement against the actions of criminals who threaten public order. Punishment theory is divided into 3, namely:

- Absolute or reprisal (*verge/dings theorien*): Punishment is intended for the basis of retaliation from his deeds.
- Relative or objective (*doe/theorien*): This theory puts forward the purpose of punishment is to change the mindset of the perpetrators spiritually and physically to become a better person so that efforts are made not to commit disgraceful behavior in society and the law.
- Combined (*verenigings theorien*): This theory focuses on revenge however prioritizing public order guaranteed.

Prof. Yusril Ihza Mahendra (MenHum 1999-2004) was of the opinion that he agreed with the application of the death penalty, because for him against extraordinary crimes by the state cannot be tolerated, because they relate to state security. Death penalty is indispensable and applied through specificity and

selectivity. Specs for incredible crimes. And selectively, the convict must be in accordance with the facts of the trial to convince the judge that the perpetrator is himself. As in his decision the Constitutional Court Judge concluded, the death penalty in the Narcotics Law at that time was not contrary to human rights and the right to human life as in the 1945 Constitution of the Republic of Indonesia because the guarantee of human rights and the right to life in the 1945 Constitution of the Republic of Indonesia did not adhere to absolute principles.

3.2. Imposition of Death Penalty on Narcotics Offenders in a Human Rights Perspective

Since Indonesia achieved its independence as a country that independence, there has been an agreement between the founders of the republic of Indonesia (founding fathers) that the Indonesian state is a country based on law which is defined as a constitution and written law that reflects respect for human rights. This is indicated in the 1945 Constitution that the government of the Indonesian state is based on law (*rechstaat*), not mere power (*maachstaat*). Translated from the *rechsstaat* and the rule of law that a rule of law is a state that stands above the law that guarantees justice to its citizens.¹³

In the perspective of human rights, the imposition of death penalty on narcotics offenders is still a problem. Some circles are concerned about the legal instruments, both national and international, which regulate human rights. Several legal instruments that recognize the existence of human rights, especially the right to life, include the 1945 Constitution, the Law on Human Rights, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR).

The implementation of the death penalty in Indonesia has become quite an actual topic of discussion and a prolonged polemic for civilized countries. This is based on the application of the death penalty which is considered not in accordance with the state philosophy which adheres to the ideology of Pancasila, which always upholds a just and civilized sense of humanity. But in reality the application of the death penalty to the second in Indonesia is still being maintained and implemented in the legal system.¹⁴ The death penalty is necessary for the benefit of society. This opinion is based on the belief that all countries have the right to defend or defend themselves, which can also mean that it can legitimize the use of force against individuals.

¹³Udiyo Basuki, "HAM, Constitution and Democracy: The Dynamics of Human Rights Protection in the Indonesian Constitution from a Democratic Perspective," In *Right: Journal of Religion and Human Rights* Vol. 8, No. 2 (November 2019), p. 235.

¹⁴M.Zen Abdullah. "Execution of the Death Penalty in Indonesia Examined in the Context of Human Rights." *Scientific Journal*, Jambi University (2009): p. 61

In Indonesia, which is based on the ideology of Pancasila, there is a very close relationship between the death penalty and human rights. This is based on an argument that the imposition of the death penalty is closely related to the most basic human rights. In the context of imposing the death penalty on perpetrators of crimes committed under certain circumstances, it must be studied in depth, bearing in mind that the imposition of the death penalty is the most severe punishment in the sense that the perpetrator will lose his life which is a priceless right.¹⁵

Human rights are a set of rights inherent in human existence as creatures of God Almighty and are gifts that must be respected, upheld and protected by the state, law, government and everyone for the sake of honor and protection of human dignity. Every human right creates basic obligations and responsibilities to be mutually respected and it is the government's duty to protect, promote and uphold them. In the 1945 Constitution of the Republic of Indonesia as the state constitution, there are formulations regarding human rights. This can be found both in the preamble and in the torso, with this formulation it means that the state recognizes the principle of legal protection of human rights.¹⁶ Recognition of human rights in Indonesia can be seen in Article 1 of Act No. 39 of 1999 concerning Human Rights which provides a definition of human rights as a set of rights that are inherent in the nature and existence of human beings.

In The 1945 Constitution specifically regulates human rights into three articles, namely Article 28A, Article 28I, and Article 28J which read:

- **Article 28A** : *The right to live and defend life.*
- **Article 28I** : **(1)** *The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to have a religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of a retroactive law are human rights that do not can be reduced under any circumstances.*
- **Article 28J** : **(1)** *everyone is obliged to respect the human rights of others in the orderly life of society, nation and state; (2) In exercising and protecting human rights and freedoms, everyone is obliged to comply with the restrictions imposed by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others, and to fulfill just demands in accordance with moral considerations, religious values, and public order.*

¹⁵Abdur Rahim, Asruddin Azwar, Muhammad Hafiz, & Satrio Wirataru. *Death Penalty: Legality & Humanity Problems*. Malang: Intrans Institute, 2015, p. 54–57

¹⁶Andrey Sujatmoko. *Human Rights Law and Humanitarian Law*. Jakarta: PT. Raja Grafindo Persada, 2015, p. 26.

Observing Articles 28A and 28I paragraph (1) of the 1945 Constitution above, it is clearly stated that the right to life is a human right that cannot be reduced under any circumstances. However, in this context we may not interpret the 1945 Constitution in bits and pieces, only Articles 28A and 28I paragraph (1), but must be interpreted in one unit with Article 28J paragraph (2) which is the limitation. The limitation is in the form of excluding, limiting, reducing, and even eliminating the right in question, provided that it is in accordance with the law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others, and to fulfill fair demands in accordance with moral considerations, values -religious values, and public order.

Then Act No. 39 of 1999 concerning Human Rights regulates the right to life which is regulated in Articles 4 and 9 which read:

- **Article 4:** The right to life, the right not to be tortured, the right to personal freedom, thought and conscience, the right to have a religion, the right not to be enslaved, the right to be recognized as an individual and equal before the law, and the right not to be prosecuted on the basis of retroactive law are Human rights that cannot be reduced under any circumstances and by anyone.
- **Article 9:** Everyone has the right to live, maintain life, and improve their standard of living.

If we look at the provisions of Article 4 and Article 9 of the Human Rights Law, it appears as if the right to life is an absolute right and cannot be reduced for any reason. However, if we read the explanatory part of the article, it turns out that there are restrictions on the right to life. The elucidation of the article reads: "Every person has the right to life, to maintain life, and to improve their standard of living. The right to life is even attached to unborn babies or people on death row. In cases or circumstances that are very extraordinary, namely for the benefit of the mother's life in an abortion case or based on a court decision in a death penalty case, then the act of abortion or capital punishment in that case and/or condition, can still be permitted. Only on these two things can the right to life be limited."

Restrictions by law on the exercise of rights and freedoms are also regulated in Article 70 of the Human Rights Law which explains that "in exercising their rights and freedoms, every person is obliged to comply with the limitations determined by law with the intention of guaranteeing the recognition and respect of the rights and freedoms others and to meet just demands in accordance with considerations of morality, security and public order in a democratic society". Then in Article 73 it is stated that the rights and freedoms regulated in this law can only be limited by and based on law, solely to guarantee recognition and

respect for human rights and basic freedoms of others, decency, public order, and the interests of others. nation.

In the case of the application of the death penalty, the Court concluded that the state had not violated itany international agreements, including the International Convention on Civil and Political Rights (ICCPR). Because actually Article 6 paragraph (2) of the ICCPR, allows the application of the death penalty but still in the grouping of certain serious crimes. The law maker's decision has been in line with other international agreements on narcotics and psychotropics. The benchmark and caution for the elements of the death penalty in the law is to carefully prepare it because it does not threaten all provisions. This is because it is only listed for manufacturers or perpetrators of large, wide and systematic illicit traffic of narcotics.

Until now, the debate about the death penalty is stillcontinues to happen, various arguments issued to support or reject the death penalty. For those who support, they have reasons that the death penalty should still exist because it functions to deter and give fear to criminals, and when the death penalty is carried out it is relatively painless, if done properly. Meanwhile, those who oppose this punishment have reasons that the death penalty is ineffective, can cause injustice, and often crimes are committed due to hot hearts and emotions that are beyond the reach of human control.¹⁷

Natural law is the law that is born from the activities of the human mind. With regard to the guarantee of human rights in Indonesia, it is regulated in the Constitution of the Republic of Indonesia1945 Article 28A- Article 281 paragraph (1) but a person's human rights, it turns out, are also limited in the state constitution, in Article 281 paragraph (2). Based on this article, the death penalty is often seen as something that does not violate human rights because it is considered in accordance with the contents of the state constitution. Death penalty is ultimately seen as a tool to protect all Indonesian people from dangerous criminals in certain crimes or special crimes (Lex Specialis).

With this explanation, it can be concluded that the imposition of capital punishment on narcotics offenders is not contrary to Act No. 39 of 1999 concerning Human Rights. In other words, that the human rights adhered to by the Indonesian people do recognize the limitations referred to in the MPR Decree Number XVII/MPR/1998, the Human Rights Law, and the 1945 Constitution, especially Article 28J. This means that the death penalty in the narcotics law can be said to have a valid constitutional basis.

¹⁷Gabriela Megawaty Runtuuwu, "Death Penalty for Narcotics Offenders," *Journal of Lex Crimen* Vol. 2, No. 6 (October 2013), p. 50.

4. Conclusion

The urgency of imposing capital punishment on perpetrators of narcotics crimes is because this crime causes massive victims, requires funds for rehabilitation and law enforcement, damages the younger generation, and weakens the foundations of social and state life. Empirically, the number of victims of narcotics crimes is increasing, giving rise to physical and psychological implications not only for victim users but also for society at large. In the context of community protection. From a human rights perspective, capital punishment does not conflict with national or international legal instruments, such as the 1945 Constitution, Act No. 39 of 1999 concerning Human Rights, the 1948 Universal Declaration on Human Rights, and the International Covenant on Civil and Political Rights 1966. In this instrument it is stated that the right to life is guaranteed but there are limitations determined by law.

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