



Why Should The Death Penalty Not Be Abolish For Narcotics Crimes? A Case Study In Indonesia

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Article Info	Abstract
Article History Received: 2022-06-20 Revised: 2022-07-28 Published: 2022-08-06 Keywords: <i>Death Penalty; Criminal Code; Narcotics; Indonesia; Human Rights.</i>	Narcotic crimes are global phenomena that transcend jurisdictional borders. In Indonesia, narcotics crimes attract a different form of punishment, including the death penalty, depending on the nature and gravity of the crimes. This study examines Indonesian law's death penalty sentence for narcotics crimes. It explores the governing principles and current law position relating to this controversial law. This research adopts doctrinal research. The sources of legal materials consist of three, namely, primary, secondary, and tertiary sources of law. The results of this study reveal that the death penalty for the offenders of narcotics crimes under Indonesian law is lawful and justifiable, considering its gravity, nature and impacts. The crimes have caused substantial social, economic and resource loss to the nation and country.
Artikel Info	Abstrak
Sejarah Artikel Diterima: 2022-06-20 Direvisi: 2022-07-28 Dipublikasi: 2022-08-06 Kata kunci: <i>Hukuman Mati; Kode Kriminal; Narkotika; Indonesia; Hak Asasi Manusia</i>	Kejahatan narkotika merupakan fenomena global yang melampaui batas yurisdiksi. Di Indonesia, kejahatan narkotika menarik bentuk hukuman yang berbeda, termasuk hukuman mati, tergantung pada sifat dan beratnya kejahatan. Penelitian ini mengkaji hukuman mati hukum Indonesia untuk kejahatan narkotika. Ini mengeksplorasi prinsip-prinsip yang mengatur dan posisi hukum saat ini yang berkaitan dengan undang-undang kontroversial ini. Penelitian ini mengadopsi penelitian doktrinal. Sumber bahan hukum terdiri dari tiga, yaitu sumber hukum primer, sekunder, dan tersier. Hasil penelitian ini mengungkapkan bahwa hukuman mati bagi pelaku tindak pidana narkotika menurut hukum Indonesia adalah sah dan dapat dibenarkan, mengingat berat, sifat dan dampaknya. Kejahatan telah menyebabkan kerugian sosial, ekonomi dan sumber daya yang besar bagi bangsa dan negara.

I. INTRODUCTION

Law is guidance or direction humans make to organize humans to get peace. "It is the formation of instincts, awareness, feelings, attitudes, behaviours, values, customs, or culture that exist in society. Therefore, the law indirectly orders the public to follow the rule of law so as not to get a punishment in the form of punishment (criminal). Punishment is an unpleasant feeling given by the state or the competent authority to punish someone who commits a crime and violates the criminal rules. According to William Blackstone, there are at least three main objectives of punishment: to remove the power from the perpetrator so as not to repeat the mistake, to prevent others from committing the same offence and to rehabilitate the perpetrator. There are various types of punishment under the law, ranging from the death penalty, imprisonment, confinement, fines, and others. Among them, the death penalty is regarded as the heaviest punishment. Literally, the death penalty means the legal punishment of particular crimes by death. This article aims to analyze the implementation of the death penalty

punishment for narcotics offences under Indonesian law. The paper is divided into six parts. The first part of the article discusses the basic principles of punishment in criminal law. The second part highlights the methodology adopted in this research paper. The third part briefly discusses the death penalty from an international law perspective. The fourth part, which is the crucial part of the paper, focuses on the imposition of the death penalty for narcotics crimes under Indonesian law. It critically analyses the legal position on the death penalty punishment for specific narcotics offences, criticism and grounds for its justification. The fifth part of this paper focuses on analysis, and the final part concludes the discussion and provides recommendations.

II. METHOD

This research employs qualitative research. It engages doctrinal legal analysis. In this study, the law is conceptualized according to the law or conceptualized as norms, and rules, which are the benchmarks of human behaviour for the

method used in this research, namely the statutory, conceptual approach. The paper is based on the data sourced from peer-reviewed literature and databases of regulatory authorities.

III. HASIL DAN PEMBAHASAN

1. International law Perspective

The issue of the death penalty has always been regarded as a human rights issue. The imposition of the death penalty is viewed as a violation of the right to life, which is the fundamental right of human beings. Reference to the international instruments reveals that the right to life is recognized as the supreme right and a pre-requisite for the enjoyment of any other rights. It is regarded as the irreducible core of human rights. In upholding this notion and principles, the international instruments emphasize that this right must be protected. The Universal Declaration of Human Rights (UDHR) lays down the initial framework for the protection of the right to life. It provides that everyone has the right to life, liberty and security of person. In addition, the International Covenant on Civil and Political Rights (ICCPR) also provides essential provisions for the protection of life. It states that every individual has the right to life and prohibits any arbitrary deprivation of this right. In recognizing the right to life, the ICCPR promotes the abolishment of the punishment of the death sentence. Thereafter, the Second Optional Protocol to the Covenant on Civil and Political Rights, which came into force in 1991, stresses the importance of the right to life and prohibits the imposition of capital punishment. This optional Protocol paves the way for the call toward the abolishment of capital punishment on the basis that it violates the fundamental human right. Consequently, in 1997, the United Nations adopted a resolution for a moratorium on the execution of capital punishment. Apart from that, there are various other international instruments which call for the abolishment of the death penalty.

For example, Protocol No. 6 to the European Convention on Human Rights (ECHR) states that the death penalty must be abolished because no one can be punished with this punishment. The Office of the High Commissioner for Human Rights (OHCHR) regards the death penalty as torture and the cruellest treatment and punishment. It

stresses that the death penalty runs in conflict with the right to life, which is a fundamental human right. Apart from that, the International Amnesty views capital punishment as the cruellest and the most inhuman and degrading punishment as a result strongly opposes this practice without exception. In short, it can be summarized that the right to life is recognized under a plethora of international instruments. The international instruments have laid down the legal framework which aims at protecting the right to life. In general, these instruments consistently prohibit the imposition of the death penalty and regard this practice as a violation of fundamental human rights.

2. Death Penalty For Narcotic Offences under Indonesian law

The imposition of the death penalty sentence under Indonesian law is controversial. Currently, specific offences under Indonesian law are punishable by the death sentence. The primary statute that governs offences punishable by the death sentence is the Penal Code. The Penal Code list down offences that provides punishment of death sentences, namely, treason, inviting or inciting other countries to attack the country, killing the head of a friendly country, murder, violent theft at night by destroying houses resulting in serious injury or death, piracy, encouraging rebellion or rioting of a worker towards state defense companies during the wars, and violent extortion. Apart from that, there are specific statutes that provide for offences that are punishable with the death sentence, such as Law 05/1997 (Psychotropics), Law 22/1997 (Narcotics), Law 26/2000 (Human Right Courts), Law 31/1999 (Corruption Eradication) and others. As far as the punishment of the death penalty is concerned, the statistic discloses that the number of recorded cases is alarming. The statistic reveals that 126 cases involving 135 defendants were sentenced to the death penalty between 2018 and 2019. The number keeps increasing in 2020, whereby a total of 173 cases involving 210 defendants were sentenced to the death penalty. Out of 210 defendants, nineteen of them are women. In terms of citizenship, the record shows that offenders sentenced to the death penalty originated from various countries, such as Bangladesh (2), Indonesia (4), Laos (4), Taiwan (1), Thailand (1), and Vietnam (7).

Amnesty International reported that Indonesia experienced a 46% increase in the imposition of the death penalty punishment.

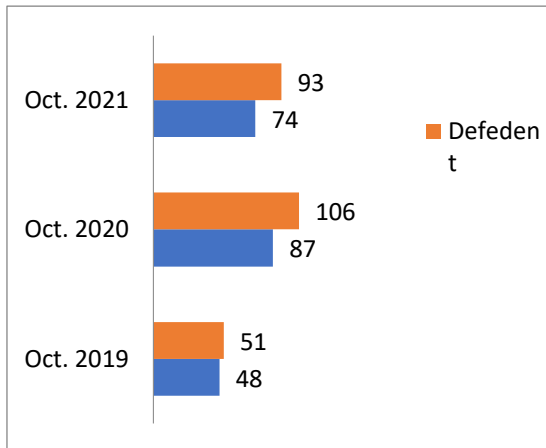


Figure 1. The recorded number of death penalty cases in 2019-2021

3. Legality

Some quarters of people argue that the punishment of the death sentence is not legal under Indonesian law as it is contrary to the Constitution 1945. It has been contended that the death sentence runs against Article 28A of the Constitution, which concerns the right to life and human rights in general. However, relative references to the provisions of the law reveal otherwise. The provision of the Criminal Code expressly allows the imposition of the death penalty for a specific offence. More importantly, the decision of the Constitutional Court (MK) in Case No. 2-3/PUU-V/2007 Regarding the Review of Law No. 22/1997 on Narcotics affirmed that the death penalty sentence is legal and not contrary to the provision of the Constitution. In this case, the court rejected the application to annul the death penalty in a narcotic case. The judge, in this case, held that, *inter alia*, the death penalty does not violate the Constitution and does not conflict with the right to life guaranteed by the 1945 Constitution. Commenting on this issue, the judge highlights that the death sentence under Indonesian Law has not violated any international agreements, including the ICCPR. The learned judge highlights Article 6 paragraph (2) of the ICCPR, which expressly states that the death penalty is still allowed for countries that have not abolished the death penalty, specifically for the most severe crimes. In addition, para 6 of Article 6 further reiterates that nothing in this article may be used to delay or prevent the death penalty.

4. Narcotics Offences

In Indonesia, narcotics-related problems are regarded not merely as a severe social problem but also a threat to national security. The government of Indonesia has given priority and immense efforts to the fight against narcotics crimes. The government firmly declares that these crimes must be dealt with systematically, intensively, and thoughtfully. The narcotic crimes cause enormous losses for a country, especially in terms of economic, social and resource losses. These crimes have weakened the character of society, especially the young generation, which may lead to the beginning of the destruction of the nation. Indonesian law relating to narcotic crimes is stringent. The specific type of narcotic crime is punishable with a death sentence. It is interesting to highlight that 101 out of 107 death penalty sentences handed down under Indonesian law in the year 2020 are for narcotic-related crimes. According to the ICJR internal database report, the type of cases with the most death sentences imposed during 2021 were narcotics crimes, beating crimes against life, terrorism, and corruption and terrorism crimes. The detail of the data can be seen in the following chart.

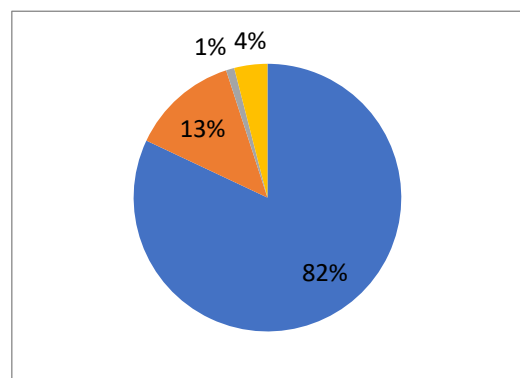


Figure 4. Statistics of the types of cases sentenced to death in 2020

Based on the above graph above, it is clear that narcotic crimes record the highest number of offenders sentenced to death in 2020. Narcotic crimes recorded 120 cases sentenced to death (82%), followed by crimes against life (13%), terrorism crimes (4%), and the last one was corruption crimes (1%). The Indonesian government has declared narcotic crimes as a threat to national security. Accordingly, the government has introduced special laws regulating the various type of narcotic crimes. The governing statutes for

narcotic crimes are Law no. 22 of 1997 and Law no. 35 of 2009. The current laws provide three categories of narcotic offences: Narcotics Group I, Narcotics Group II, and Narcotics Group III. There are different modes of punishment provided for each group of narcotics offences. Narcotics type I (raw opium, coca plant, coca leaf, raw cocaine, heroin, methamphetamine, and marijuana plant) is the most dangerous drug and can cause dependence, the use of which is limited for development and scientific purposes. Narcotics type II (ekgonina, morphine metobromide, and morphine) have a high potential to cause dependence but contain efficacy as drugs, which are used as a last resort, and can be applied in therapy and scientific development. Meanwhile, type III narcotics (ethylmorphine, codeine, polkodina, and propiram) have a mild effect but can cause dependence and efficacy as a treatment instrument often used in therapy and scientific development. Law Number 35 of 2009 concerning narcotics crimes distinguishes narcotics criminals into 2, namely, narcotics dealer and narcotics users. Narcotic dealers are defined as selling narcotics, adopting or exporting narcotics, carrying out transportation (courier), and conducting illicit traffic against the narcotics law. On the other hand, narcotics users are divided into 2, namely, narcotics addicts and narcotics abusers. Narcotics addicts are people who use narcotics and depend on narcotics physically and physically. Meanwhile, narcotics abusers are people who are against the law and actively using narcotics.

According to this law, there are different types of punishment provided for narcotics crimes, depending on the nature and gravity of the offences. For example, the offenders who are convicted for the offence of drug addiction or victims of drug abused may be subjected to rehabilitation order by the court. Furthermore, Articles 111 and 112 paragraph 1 provides that any person who owns, plants, maintains, stores and controls, or provides class 1 drugs in the form of plants or non-plants shall be liable to the sentence of imprisonment not less than 4 years and not more than 12 years, and a fine not less than Rp. 800,000,000 (Eight Hundred Million Rupiah) and not more than Rp. 8,000,000,000 (Eight Billion Rupiah). As regards to the punishment of the death sentence, it is

specifically provided under Article 113. This article states that any person violates the law by importing, producing, or distributing type 1 drugs in the form of plants weighing more than 1 (one) kilogram or equivalent to 5 (five) trees or in the form of non-plants weighing more than 5 (five) grams, shall be sentenced to the death penalty. Furthermore, article 114 provides a person who, without rights and against the law, makes an offer for sale, sells, buys, or becomes an intermediary for buying and selling, exchanging, delivering, or receiving type 1 drugs in the form of plants weighing more than 1 (one) kilogram or equivalent to 5 (five) tree trunks, or in the form of non-plants weighing more than 5 (grams) shall be punished with the death sentence. Lastly, Article 116 states that the offender who uses class 1 drugs against other people, resulting in permanent disability or death, shall be punished with the death sentence.

5. Retentionists vs Abolitionists

There are conflicting views regarding the imposition of the death penalty among scholars and experts. While some insist that the death penalty should be abolished, others incline to steadfastly maintain this type of sentence, especially against serious criminal offences like narcotics, murder and others.

6. Argument by the Retentionists

Retentionists maintain that the death penalty is an appropriate sentence for the offenders convicted of narcotic crimes, given the severe nature and gravity of the offence. According to Arsul Sani, Vice Chairperson of the People's Consultative Assembly (MPR), the death penalty is an appropriate sentence to combat narcotics crimes. Considering that narcotics cases have not shown signs of disappearing, it is vital to make various legal breakthroughs in the form of an effort to reduce and even eliminate narcotics crimes. In addition, Idham Azis, Ex-Chief of Police of Indonesia, explained there were 100 convicts had been sentenced to capital punishment due to drug crime in Indonesia. He reiterates that the execution of the death penalty sentence on those convicts could be expedited to honour the rule of law. ST. Burhan Uddin, the Indonesian Attorney General, also supports the retention of the death sentence punishment. Rejecting the argument by human rights activists calling for abolishing the death

penalty on the ground that it is against human rights, he emphasizes that the Constitution explicitly legalizes and provides a juridical platform for the imposition of the death sentence. He also stresses that since serious narcotic crimes are very apparently detrimental to the state, there is no option except to carry out the death penalty on the offender.

7. Arguments by the Abolitionists

The abolitionists have consistently urged the government to abolish the imposition of the death sentence, including for narcotics crimes. From the abolitionists' point of view, the death penalty is seen as cruel, inhumane, barbaric, and outdated. In supporting their views, they have canvassed several grounds to justify the opposition to the punishment of the death sentence. Firstly, according to the abolitionists, the punishment for criminal actions should not be too extreme. They argue that there is a limit to the extent of punishment, and it cannot exceed the death penalty. In addition, the abolitionists also argue that the death penalty violates the principle of human rights. Relying on the principle of human rights as the basis of their argument, they vehemently oppose the imposition of the sentence death penalty as it is expressly against the human. Calling for abolishing the supporters of the death sentence, the abolitionist group emphasizes the sentence of the death penalty is a serious violation of human rights. According to Ahmad Taufan Damanik, Chairman of Commissioner Human Rights 2017-2022, they are strongly against the punishment of the death penalty as it deliberately violates the principles of human rights. Apart from that, the abolitionists emphasize that the death penalty does not have a significant impact on perpetrators of crimes. They highlight that studies conducted by various parties indicate no direct relationship between crime eradication and the death penalty. The studies show that the death penalty does not provide a reduction in numbers and criminal practices. For example, even with the death sentence punishment in place, the number of criminal cases that are punishable with death still keeps increasing. The statistic also recorded the highest number of crime incidents in 2019.

In the same year, the Central Statistics Agency, in collaboration with the Indonesian National Police Headquarters (Mabes Polri), stated that crimes specifically related to

narcotics crimes keep on increasing from year to year. According to the crime statistics report 2020, particularly on narcotic crimes, it was noted that there were 4,103 narcotics-related cases recorded in 2014. The number sharply increased to 12,579 cases in 2018. Based on that, the abolitionists maintain that the punishment of the death sentence does not have a significant impact on deterring criminals from committing a serious criminal offence.

8. Analysis

Based on the discussion in the preceding sections, it is clear the imposition of the death penalty for this offence is controversial and has been subjected to prolonged debate among various parties in this country. While some parties emphasize the need to maintain the death penalty as punishment for drug-trafficking crime due to its detrimental impacts, others are not convinced and believe that it is inhumane, in conflict with human rights and against the principle of natural justice. Despite the criticism from various parties, particularly the abolitionists who aggressively call for abolishing the death penalty for drug trafficking, the government remains adamant and steadfastly decides to maintain the death penalty punishment. It is submitted that the consistent stand by the government in maintaining the death penalty punishment for narcotic crimes is appropriate and justifiable. This is mainly due to the reason that the crime rate of narcotic crimes in Indonesia is very high and rampant. Based on the statistic, the number of narcotic-related crimes keeps on escalating from year to year. The impacts of this type of crime are very serious and substantial. In addition, these crimes have caused massive social, economic and resource losses to the nation and country. In view of that, the government of Indonesia has no option except to adopt an aggressive approach and strategies in combating narcotic crimes. The implementation and enforcement of harsh laws on narcotic crimes, including the imposition of the death penalty, should be viewed as the government's effort and policy in tackling and controlling narcotics crimes rather than encroaching on human rights. Apart from that, the issue of the legality of the death penalty for narcotics crimes raised by the abolitionists of the death sentence, on the ground that it is contrary to the Constitutional law, is not maintainable as the constitutional

court has decided on this matter. The decision of the Constitutional Court (MK) in Case No. 2-3/PUU-V/2007 the Constitution expressly declares that the punishment of the death sentence is lawful and valid.

IV. CONCLUSION AND SUGGESTION

A. Conclusion

In short, the existing Indonesian law on narcotic crimes is stringent. It allows a death sentence to be imposed on the offenders found guilty of committing the specific offence of narcotics crimes. While it is admittedly that the current law position of the law on narcotics crimes is very harsh, it should be viewed from broader perspectives. Consideration and attention should also be given to the fact the serious nature and gravity of the offence, the high number of recorded cases, and the impacts of these crimes on society and the country. The harsh punishment imposed on narcotic crimes reflects the government's efforts and policy in protecting the nation's best interest. Nevertheless, it is important to highlight that the current narcotic law should remain flexible and open to the possibility of amendment. The law may need to be amended in future, subject to the local need and circumstances.

B. Suggestion

From the discussion above, the author suggests that the death penalty for narcotics crimes should not be abolished, considering that the crime rate, especially narcotics, has not decreased from year to year. Therefore, it is appropriate if the death penalty is given because narcotics crimes are transnational in nature, damaging the country's economy and the nation's next generation.

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