

DEATH PENALTY FOR CRIMINAL ACTIONS IN INDONESIA IN A LEGAL PERSPECTIVE AND HUMAN RIGHTS

Suyatno^{1*}, Hudi Yusuf^{2**}

^{1,2}Universitas Bung Karno

* [sy250105@gmail.com](mailto:syt250105@gmail.com), ** hoedydjoesof@gmail.com

ABSTRACT

Death penalty for perpetrators of narcotics crimes is one of the punishments that is debated in various international countries, especially in Indonesia, a very big reaction from the community and even international countries in responding and intervening in the imposition of capital punishment with various fundamental reasons that death penalty is one of the crimes. the most cruel, sadistic, and undignified. This study aims to analyze capital punishment for crimes in Indonesia from a legal and human rights perspective. The method applied in this study uses normative legal research, which is a way of writing based on an analysis of several legal principles and legal theories as well as laws and regulations that are appropriate and related to problems in legal research writing. Death penalty for perpetrators of narcotics crimes in a country based on Pancasila as the basis of the philosophy of the Indonesian state and the 1945 Constitution of the Republic of Indonesia as the Great State Norms or Basic Norms of the Unitary State of the Republic of Indonesia and certain statutory regulations that regulate them in law something positive that is upheld is not said to violate the provisions on human rights violations, especially the basic right to life which is continuously debated in various international conventions, this must continue to be implemented.

Keywords: *death penalty, narcotics crime, human rights*

This article is licensed under [CC BY-SA 4.0](https://creativecommons.org/licenses/by-sa/4.0/) 

INTRODUCTION

The death penalty is an imposition of punishment that is currently still being debated by jurists and criminologists because they see the consequences of the death penalty itself, namely death. Those who support the death penalty see it as a means of settlement to protect society. There are pros and there are cons. Those who are against or see the death penalty as a punishment that violates human rights, namely the right to life. At present, there are several countries that have abolished the death penalty in their criminal laws.

Indonesia is a country that still uses the death penalty as a sentence in its criminal law. One of them is Law No. 22 of 1997 concerning Narcotics still believes that the death penalty is a positive law that applies in Indonesia. And currently, the imposition of the death penalty against those who are proven guilty of violating these rules and have permanent legal force interaction must continue to be implemented in this country (Nawawi, 2017).

Until now, the problem of narcotics abuse in Indonesia is very concerning. This is due to a number of reasons, among others, because Indonesia is situated between three continents, and considering the rapid progress of the development of science and technology, the influence of globalization, and the flow of highly developed transportation and materialistic value with the dynamics of the target of illicit circulation (Anwar & Hukum, 2016). The Indonesian people and even the world community, in general, are currently facing a very big and worrying problem due to the rampant illegal use of various types of narcotics. This concern is increasingly sharpened due to the spread of narcotics circulation to reach the layers of society (Sudanto, 2017). Starting from the parents, the younger generation, and even in some places of

entertainment, underage children who consume narcotics are found. This has a very large negative impact on the image of a country.

Seeing conditions like this, of course, there are many efforts and steps taken by the Indonesian government in restoring the condition of society, nation, and state. Indonesia in terms of law actually has Law No. 22 of 1997 concerning Narcotics and Law No. 5 of 1997 concerning Psychotropics (Damanik & Erwinsyahbana, 2022). In the provisions of the law, it is clearly stated that the act of narcotics abuse is a criminal act that can be subject to legal sanctions. The forms of legal sanctions in these two laws range from serious to light to the death penalty if they are in provisions related to narcotics abuse. The provision and application of two forms of punishment in the law are intended so that the perpetrators who want to commit the act think twice before doing it (Sumanto, 2017).

Discussions about the death penalty for perpetrators of narcotics crimes from various groups, both from government, academics, practitioners, media, and all elements or non-governmental organizations and even foreign countries are very enthusiastic about the death penalty carried out by the Indonesian government. Recently, we learned that 6 foreign nationals and Indonesian citizens who were to be executed were related to narcotics cases (Anwar & Hukum, 2016). They consist of several countries, namely France, Brazil, Ghana, Cordoba, the Philippines, and Australia. Minister of Law and Human Rights Yassonna H Laoly has also provided information that there are 133 death row convicts who have not been executed. They are placed in several correctional institutions in Indonesia (Batubara et al., 2023).

Many interventions in the form of criticism and threats from the foreign countries concerned have made the problems of enforcing the death penalty for convicts in narcotics cases in Indonesia the headlines and current topic of conversation. They think the death penalty is a way of legal settlement that is contrary to the values of human rights, and the ratification of international conventions and the Universal Declaration of Human Rights (DUHAM) (Effendi, 1994).

METHOD

Research is a scientific activity related to analysis and construction which is determined methodologically, systematically, and consistently. Methodology means according to a certain method or method, systematic is based on a system while being consistent means that there are no contradictory things within a certain framework.

To analyze the questions posed, this study uses normative legal research, namely a way of writing based on an analysis of several legal principles and legal theories as well as laws and regulations that are appropriate and related to problems in legal research writing. This normative legal research is a procedure to find the truth based on legal scientific logic from a normative perspective. The approach taken is a statutory approach (statute approach) and a case approach (case approach).

Research using the statute approach is research that prioritizes legal materials in the form of laws and regulations as basic reference material in conducting research. The statutory approach (statute approach) is usually used to examine statutory regulations which in their norms still lack or even foster deviant practices both at the technical level and in practice in the field. This approach is carried out by examining all laws and regulations that are related to the problems (legal issues) that are being faced. This statutory approach, for example, is carried out by

studying the consistency or conformity between the Constitution and the Law, or between one Law and another Law. Research using case.

The approach is carried out by examining cases related to the legal issues at hand. The cases reviewed are cases that have obtained court decisions with permanent legal force. The main thing that is studied in each of these decisions is the consideration of the judge to arrive at a decision so that it can be used as an argument in solving the legal issues at hand.

RESULTS AND DISCUSSION

Death Penalty

The death penalty is one of the punishments or sentences handed down by the court as the heaviest form of punishment imposed by a person due to an act. Amnesty International noted a decrease in the number of death sentences in Bangladesh from 181 death sentences in 2021 to 169 in 2022. Then, Indonesia from at least 114 death sentences in 2021 to 112 in 2022.

In history there are several ways or methods of carrying out the death penalty:

1. The punishment of beheading: the punishment of beheading is a punishment by beheading.
2. Hanging: punishment by hanging on the gallows.
3. Lethal injection: punishment carried out by injecting drugs that can kill.
4. Shooting punishment: a punishment by shooting someone's heart, usually in this punishment the convict must close his eyes so as not to see.
5. Rajam: a form of punishment given to someone by being stoned to death, this punishment is usually applied in Saudi Arabia or Islamic countries.

Scientific studies have consistently failed to prove that the death penalty can be a deterrent and effective compared to other types of punishment. The level of crime is closely related to the welfare and poverty problems of society, as well as the functioning or not of the state apparatus in enforcing law enforcement. Support for the death penalty is based on the argument that the death penalty should be imposed, among others, on recidivists or contract killers who threaten the vigilance of the public, so they can think when they want to commit a crime. will do it again because it has been sentenced to death and that is its essence in maintaining a wider life.

List of Death Penalties in Indonesia

Throughout 2008 there were 8 (eight) death sentences carried out, those convicted were 2 (two) Nigerian citizens who smuggled drugs, the dukun ahmad sahydroji who killed 42 (forty-two) people in North Sumatra Tubagus Yusuf Maulana the shaman who doubled the money who killed 8 (eight) people in Banten as well as Sumiarsih and Sugeng who were involved in the murder of a family in Surabaya.

The most well-known executions in Indonesia are those of Imam Samudra and Ali Gufon, convicts of the 2002 Bali bombing. Basically, the death penalty is one of the steps that are very commonly applied, bearing in mind the shared commitment of the community, nation, and state towards survival together, the state is obliged to always be consistent in upholding law enforcement.

Overview of Human Rights (HAM)

Actually, human rights are not a new problem for the world community. Since the 13th (thirteenth) century the struggle to strengthen human rights has begun with evidence of the signing of the Magna Carta in 1215 by King John Lackland. The next development was the signing of the Petition of Rights in 1628 by King Charles I. Meanwhile, a more real struggle for the idea of human rights was the signing of the Bill of Rights by King Willem III in 1689 as a result of the Glorious Revolutions.

In principle, human rights are human rights/natural rights/absolute rights belonging to human beings, individually owned by human beings from birth to death; while in its implementation accompanied by obligations and responsibilities. Since human rights are basic rights that humans have been born with as a gift from God Almighty, then these human rights do not originate from the rule of law, but solely originate from God as the creator of the universe and its contents, so that human rights cannot be reduced (non Derogable Rights). Therefore, what is needed from a rule of law is assurance and guarantees for the protection of human rights (Sumanto, 2004).

The essence of the basic existence of human rights is solely for the benefit of humans, meaning that every human being/individual can enjoy their human rights. Humans are whole people and in society do not dissolve/not lose their identity as human beings, they have rights on the basis of themselves apart from other people. Thus every individual still has human rights without exception.

Below are several definitions of human rights based on the laws and regulations in force in Indonesia:

1. The 1945 Constitution of the Republic of Indonesia contains 11 (eleven) articles on human rights, starting from Article 28, Article 28A, up to Article 28J. ranging from the right to assemble/associate, defend life, have a family and protection from violence, developing from guarantees of legal certainty, freedom to communicate/obtain information on self-protection and family and dignity and property, physical and spiritual well-being/equality of justice/private property rights, the right to life and freedom from slavery as well as demands based on retroactive law.
2. Decree of the People's Consultative Assembly of the Republic of Indonesia ("TAP MPR RI") Number XVII/MPR/1998 Concerning Human Rights.
"Human rights are basic rights inherent in human beings that are natural and universal as a gift from God Almighty and function to guarantee the survival, independence, development of humans and society, which cannot be ignored, taken away or contested by anyone".
3. Law No. 39 of 1999 concerning Human Rights and Law No. 26 of 2000 concerning the Human Rights Court.
"Human rights are a set of rights that are inherent in the essence of human existence as creatures of God Almighty and are His gifts that must be respected, upheld, and protected by the State, law, government, and everyone for the honor and protection of human dignity and worth".

According to the view of Pancasila as filosofische Grondslag (Basic Philosophy) and the 1945 Constitution of the Republic of Indonesia as the Basic Law of the Unitary State of the Republic of Indonesia.

We find the formulation of Pancasila in the preamble to the 1945 Constitution which reads: "Then the independence of the Indonesian nation was compiled in the Constitution of the State of Indonesia, which took the form of the composition of the Republic of Indonesia which has people's sovereignty based on: Belief in One Almighty God, Humanity Just and Civilized, Indonesian Unity, Democracy led by wisdom in deliberations/representations and realizing Social Justice for All Indonesian People."

The symbolic nature of the Constitution and Legislation, then connected with information about the meaning and understanding contained in the Pancasila symbol in its position with these formulations also has the nature and position as "something that has been combined or put together", which is used to refer to a combination of things that are seen individually are different. Here Pancasila is used to refer to a combination of Belief in the One and Only God, Just and Civilized Humanity, Indonesian Unity, and Democracy Led by Wisdom (Kholiq, 2007).

Wisdom in Representative Deliberations, and Social Justice for All Indonesian People. According to the author's observations, Pancasila can fully draw out all the meanings intended by symbols based on these states of thought, it can also be said that: Pancasila is a statement of psychological values, Pancasila is a statement of desires, Pancasila is a sign of the bond between souls and a very deeply animating reality/base (Sari & Budoyo, 2019).

The objectives of criminal law and sentencing can no longer completely dispense with the elements of punishment in the form of retaliation, acquittal, special educational purposes, frightening and destroying certain crimes. In this case, part of the formulation of the concept of the purpose of punishment in the Criminal Law Bill, in this case, is to prevent the commission of a criminal act. "To guide convicts so that they are converted and become virtuous and useful members of society, to remove the stains caused by criminal acts".

In looking at the formulation of Law No. 22 of 1997 concerning Narcotics, in the article containing the threat of the death penalty, among others:

1. Article 80 Paragraph (1) letter a, the contents of which are as follows: ¹⁰ Producing, processing, extracting, converting, assembling, or providing narcotics type class 1, shall be punished with death or life imprisonment, or a maximum imprisonment of 20 years and a maximum fine of Rp. 1,000,000,000 (one billion rupiah)
2. Article 81 Paragraph (3) letter a, namely paragraph (1) letter a, is carried out in an organizational manner, shall be punished with the death penalty or life imprisonment, or with imprisonment for a minimum of 4 years and a maximum of 20 years and a fine of at least Rp. 500,000,000 (five hundred million rupiah) and a maximum of Rp. 4,000,000,000 (four billion rupiah).
3. Article 82 paragraph 2, if it is carried out as referred to in paragraph (1) preceded by a conspiracy, then the crime referred to in Paragraph (1) letter a, shall be punished with the death penalty or life imprisonment or imprisonment for a minimum of 4 years and a maximum 20 years and a minimum fine of Rp. 200,000,000 (two hundred million rupiah) and a maximum of Rp. 2,000,000,000 (two billion rupiah).

Since the enactment of the Narcotics Law, quite a number of perpetrators of narcotics crimes have been sentenced to death, but what is noteworthy is that until now the executions have not been carried out. The delay in carrying out the death penalty was due to the many processes that had to be carried out, one of which was the convict waiting for an appeal or cassation process by the Supreme Court, besides that many also asked for clemency from the president so that the implementation process was delayed (Nasution, 2018).

Some Views of the Pros and Cons of the Death Penalty

Pro Opinion of the Death Penalty:

1. Bichon Van Yssel Mode, who agrees with the existence of the death penalty, said, among other things: "the threat and execution of the death penalty must exist in every country and in an orderly society, both from the point of view of propriety and from the point of not being able to abolished."
2. Lamborso and Garlofalo, argue that: The death penalty is an absolute tool that must eliminate individuals who cannot be repaired anymore, in other words, the death penalty is a radical effort to eliminate people who cannot be repaired anymore, with this death penalty, it disappears also the obligations to keep them in prison at such a great cost. Likewise, the fears will disappear when someone escapes from prison and commits crimes again in society."
3. Prof. Oemar Seno Adji, SH has the views and principles of agreeing to carry out the death penalty for perpetrators of violent crimes or Extra Ordinary Crimes such as corruption, narcotics, and terrorism which are clearly very bad for human civilization.

Opinions Against the Death Penalty:

1. Amnesty International rejects the death penalty under any circumstances, saying that the death penalty is the most cruel, inhumane and degrading punishment because it is contrary to and violates the basic rights and cannot be violated under any circumstances, namely the right to life.
2. Dr. Wirjono Prodjodikoro, SH expressed his opinion that the public's clear objection to the death penalty cannot be corrected if it is later proven that the judge's decision that imposed the death penalty was based on an error and the statements turned out to be incorrect.
3. Dr. Adnan Buyung Nasution, SH stated that in principle the death penalty or capital punishment should be abolished and a maximum criminal sanction in the form of a life sentence is sufficient as a substitute. This sentence was also imposed with the provision that after a certain period of time, it must be converted into a prison sentence of 20 years so that the person concerned (the convict) still has hope of getting remission of his sentence and finally returning to society. Thus, on the one hand, it is required that the fatal nature of capital punishment and public order remain protected because the convict is exiled, but on the other hand, the opportunity is opened for the convict to repent and improve himself within a certain period of time and become a useful citizen for his community.

Death Penalty Under International Law

Violation of human rights is any act of a person or group of people including state apparatus, whether intentional or unintentional or negligence, which unlawfully reduces, hinders, limits,

and/or revokes the human rights of a person or group of people guaranteed by this law, and do not get or are afraid that they will not get a fair and correct legal settlement, based on the applicable legal mechanism (Triwahyuningsih, 2018).

As an example of a case, departing from a person named Saka bin Juma, a foreign national convict (WNA) who has been carrying out death sentences at the Cipinang Correctional Institution, East Jakarta since 1995 who has confessed that he is innocent but has not been given legal assistance and opportunities. talk to his attorney or lawyer since the time he was arrested for allegedly killing three people in Riau in 1994. He pleaded guilty after going through the torture process carried out by the police.

If what Juma said is true, the most basic human rights are the right not to be arrested without an arrest warrant, the right to receive legal counsel (fundamental principles regarding the role of lawyers, principle 1), the right to question the legality of arrest¹⁸ the right to time for sufficient facilities to defend oneself, the right not to be tortured and forced to confess, and most importantly the right to life has been violated.

There are three types of crimes punishable by death in Indonesia, namely: production, processing, extraction, conversion or supply of category I drug, premeditated murder and escape or treason against the country during the war. The perpetrators of these crimes can all be shot dead as the heaviest punishment in force in the laws and regulations in Indonesia (Anugrah & Desril, 2021).

The International Covenant on Civil and Political Rights (KIHSP) states that the right to life is a fundamental right and cannot be violated under any circumstances. This KIHSP encourages the death penalty to be abolished. KIHSP also said, in countries that still use the death penalty, the death penalty may only be used for the most severe punishment, and its implementation if the KIHSP provisions are fulfilled, including the right to trial before a "competent" court. In the development, the members of the United Nations (UN) have decided that "Abolition of the death penalty helps increase human dignity and development of human rights in stages" and then made the second KIHSP protocol which explicitly aims to abolish the death penalty (Efendi, 2022; Purnomo, 1982). Countries that have ratified the second protocol agree to abolish the death penalty for ordinary crimes. Countries that have ratified the second protocol can only make exceptions if they have clearly made reservations to the protocol, and exceptions are only for crimes committed "in time of war for the most serious crimes of a military nature".

To date, 43 (forty-three) countries have ratified the second KIHSP protocol, and 6 (six) have signed it. Indonesia has not ratified the second KIHSP protocol, at the IV national human rights workshop in 1998, Komnas HAM recommended that the Indonesian government immediately ratify the KIHSP and the first and second protocols. although Indonesia has not ratified the convention so far, in the Bill on the Human Rights Court, for example, the death penalty has been abolished for serious crimes against humanity, but PERPU No. 1 of 1999 concerning the Human Rights Court is still included.

CONCLUSION

The death penalty for perpetrators of narcotics crimes in a country based on Pancasila as the basis of the philosophy of the Indonesian state and the 1945 Constitution of the Republic of Indonesia as the Grand State Norms or Basic Norms of the Unitary State of the Republic of Indonesia and certain laws and regulations that govern them in positive law are still being

enforced is not said to have violated the provisions against human rights violations, especially the fundamental right to life which has been continuously debated in various international conventions, this must continue to be carried out and implemented in the context of law enforcement (law enforcement). All existing legal considerations can be accounted for and realized as a form of individual protection as well as protecting the community in order to achieve legal sovereignty, justice, and legal certainty that has been formulated through statutory regulations, especially the Narcotics Law which applies retroactively based on Belief in One Almighty God, Just and Civilized Humanity, Indonesian Unity, Democracy Led by Wisdom in Representative Deliberations and upholding the values of Social Justice for All Indonesian People.

We recommend that all elements of the executive branch of the Indonesian Legislative, Executive, and Judiciary remain consistent, in particular in each of our judicial institutions and in particular the judges as God's representatives to continue to be competent in the faith, power which is very holy and scrupulous in examining, adjudicating, and deciding cases of narcotics crimes so that there is no mistake in issuing a decision in imposing the death penalty.

Considering that Indonesia is a country participating in the UN convention on international legal values that apply internationally, the government on the recommendation of one of its institutions, Komnas HAM, ratifies various international conventions relating to human rights provisions with several requirements and options determined by the state in considering them. law on the legal sovereignty of the Indonesian state.

REFERENCES

- Anugrah, R., & Desril, R. (2021). Kebijakan Formulasi Pidana Mati Dalam Pembaharuan Hukum Pidana Indonesia. *Jurnal Pembangunan Hukum Indonesia*, 3(1), 80–95.
- Anwar, U., & Hukum, D. (2016). Penjatuhan Hukuman Mati Bagi Bandar Narkoba Ditinjau Dari Aspek Hak Asasi Manusia (Analisa Kasus Hukuman Mati Terpidana Kasus Bandar Narkoba; Freddy Budiman). *Jurnal Legislasi Indonesia*, 13(3), 241–251.
- Batubara, M. H., Nisa, L., Putri, W., Lbs, M., & Nurmawati, N. (2023). SOSIALISASI PENERAPAN DAN PEMAHAMAN HAM DI RUANG LINGKUP MAHASISWA: Penerapan HAM. *JPMA-Jurnal Pengabdian Masyarakat As-Salam*, 3(1), 8–13.
- Damanik, R. C., & Erwinsyahbana, T. (2022). Kewenangan Jaksa dalam Penerapan Sanksi Pidana Mati Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkotika. *Jurnal Doktrin Review*, 1(1), 163–174.
- Efendi, M. F. (2022). Perbandingan Hukum Internasional Dan Nasional Tentang Hak Asasi Manusia. *Yurispruden : Jurnal Fakultas Hukum Universitas Islam Malang*, 5(2). <https://doi.org/10.33474/yur.v5i2.9071>
- Effendi, M. (1994). Human Rights in National and International Law. In *Jakarta, Ghali Indonesia*. Ghalia Indonesia.
- Kholiq, M. A. (2007). Kontroversi Hukuman Mati dan Kebijakan Regulasinya dalam RUU KUHP (Studi Komparatif Menurut Hukum Islam). *Jurnal Hukum IUS QUIA IUSTUM*, 14(2).
- Nasution, A. R. (2018). Penyelesaian Kasus Pelanggaran HAM Berat melalui Pengadilan Nasional dan Internasional serta Komisi Kebenaran dan Rekonsiliasi. *Jurnal Mercatoria*, 11(1), 90–126.
- Nawawi, A. (2017). Komnas HAM: Suatu Upaya Penegakan HAM Di Indonesia. *PROGRESIF: Jurnal Hukum*, 11(1).

- Purnomo, B. (1982). Ancaman pidana mati dalam hukum pidana di Indonesia. In *(No Title)*. Liberty.
- Sari, R. K., & Budoyo, S. (2019). Perkembangan Pengaturan Hak Asasi Manusia (Ham) Dalam Hukum Di Indonesia. *Jurnal Meta-Yuridis*, 2(2).
- Sudanto, A. (2017). Penerapan Hukum Pidana Narkotika di Indonesia. *ADIL: Jurnal Hukum*, 8(1), 137–161.
- Sumanto, A. (2004). Kontradiksi Hukuman Mati Di Indonesia Dipandang Dari Aspek Hak Asasi Manusia, Agama Dan Para Ahli Hukum. *Perspektif*, 9(3), 192–215.
- Sumanto, A. (2017). Efektifitas Pidana Mati Dalam Proses Penegakan Hukum Tindak Pidana Narkotika. *Perspektif: Kajian Masalah Hukum Dan Pembangunan*, 22(1), 21–31.
- Triwahyuningsih, S. (2018). Perlindungan dan penegakan hak asasi manusia (ham) di indonesia. *Legal Standing: Jurnal Ilmu Hukum*, 2(2), 113–121.