

A Study on the Implementation of Capital Punishment within Indonesia's Criminal Justice System through the Lens of Human Rights

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Abstract

The death penalty remains a contentious issue, sparking debate both nationally and internationally. It represents the harshest form of punishment within the criminal justice system. This sanction is deemed necessary by some due to its strong deterrent effect on individuals committing grave offenses. This research aims to examine how the death penalty is implemented within Indonesia's legal framework. The study employs a normative juridical method, relying on primary sources such as legal texts, academic literature, and relevant regulations. The analysis is conducted descriptively. Currently, the death penalty is no longer regarded as the primary form of punishment but rather as a special and alternative measure. The findings indicate that judges consider multiple considerations when deciding on capital punishment, including legal principles, existing laws, regulatory frameworks, and religious factors. The death penalty is applicable for the most severe crimes as stipulated by law. Indonesian law treats foreign nationals and citizens equally in this regard. In judicial decisions, judges evaluate both juridical evidence—such as testimonies from witnesses and experts, defendant statements, and other proofs—and non-legal factors that may either mitigate or intensify the defendant's sentence.

Keyword: Death Penalty, Human Rights, Sanctions

INTRODUCTION

In Indonesia's positive legal system, the Indonesian Penal Code identifies capital punishment, or the death penalty, as a type of criminal sanction, explicitly listed in Article 10, in Chapter II concerning Crime, mentions various types of punishments, which are divided into principal crimes and additional crimes. The death penalty is classified as a major offense and holds the highest rank among them (Leonard, 2016).

Indonesia remains among the nations that uphold and legally permit the use of the death penalty for criminal offenders, despite ongoing debates and differing opinions surrounding its

implementation (Hamenda, 2013). In fact, in the new Draft Criminal Code, the death penalty is still maintained as one of the sanctions for serious crimes whose perpetrators are considered unable to return to society. The most extreme form of punishment is often viewed to be the death penalty, but also a very frightening punishment, especially for those who are awaiting execution. In the history of criminal law, the death penalty has been a topic of long debate (Najicha, 2023).

According to Sudikno in his book, law is defined of rules or norms that regulate behavior in common life, the implementation of which can be imposed with sanctions (Efendi, 2022).

In the context of justice according to Indonesia law, as stipulated in the Terrorism Law and the Narcotics Law, the death penalty is given as a sanction for the perpetrators of crimes (Mulkan, 2019). There are two views regarding the death penalty: first, which supports its existence because it is considered proportional to the crime committed and can have a deterrent effect; Second, those who refuse because they are considered inhumane and contrary to humanitarian principles (Harefa S. , 2019).

The Constitutional Court has consistently maintained its stance on the death penalty, as seen in the Constitutional Court's Decision on the testing of Law No. 22 of 1999 on Narcotics, which still imposes the death penalty in Indonesia's legal system (Yanto, 2017).

The Constitutional Court held that the death penalty does not conflict with the right to life guaranteed by the 1945 Constitution because the Indonesia constitution does not recognize the absoluteness of human rights (Krisnanda, 2016).

This research investigates the implementation of capital punishment within Indonesia's criminal justice system from a human rights perspective, focusing on how state-sanctioned executions align or conflict with international human rights norms, particularly the right to life and protection from cruel, inhuman, or degrading punishment. The study aims to examine the legal framework, judicial practices, and socio-political dynamics that sustain the death penalty in Indonesia, while evaluating the extent to which these practices conform to Indonesia's obligations under international human rights treaties. Utilizing the theory of legal positivism to assess statutory legitimacy and the critical legal studies (CLS) approach to interrogate underlying power structures and moral inconsistencies, this research seeks to uncover the tensions between national legal sovereignty and universal human rights principles.

Despite the provisions in Article 11 of the Criminal Code regarding the death penalty procedure, Indonesia formally enforces Presidential Decree No. 2 of 1964 as the operative legal framework, marking a shift in execution method from hanging to shooting. This change was made through Presidential Decree No. 3 of 1964 dated April 27, 1965,

which was then regulated in Law No. 2 of PNPS of 1964 (Olivia, 2021).

The death penalty has not fully functioned as the main tool to regulate, order, and improve society (Priyono, 2018). Therefore, a criminal law policy is needed through a formulation policy, namely formulating laws and regulations that regulate the death penalty, especially in the future narcotics law.

METHODS

This study employs a normative or doctrinal legal research approach by analyzing various written legal sources. The data utilized are classified as secondary (normative juridical research), originating from primary legal documents such as the 1945 Constitution of the Republic of Indonesia; Law No. 8 of 1981 on Criminal Procedure; Law No. 39 of 1999 on Human Rights; Law No. 2 of 2002 on the Indonesian National Police; Law No. 35 of 2009, and other statutory regulations pertinent to the subject matter. Secondary legal sources include academic books, scholarly articles, previous studies, newspapers, and conference papers that elaborate on and interpret the primary legal texts. In addition, tertiary legal materials, such as legal dictionaries and encyclopedias, are consulted to clarify terms and provide broader context to both primary and secondary sources. Data was gathered through a literature review method, involving a systematic examination of legal documents, academic writings, and regulatory texts relevant to the research focus. The analysis was conducted using a descriptive normative qualitative method (Supriyanto, 2021).

RESULT

Capital punishment

The death penalty has always been a controversial topic. This controversy arises because of the complexity in the basis of the execution of the death penalty, with various interrelated problems. One problem can be viewed from different perspectives, and conversely, different problems can appear similar when viewed from the same perspective (Nurillah, 2017).

Capital punishment is a state-imposed penalty assigned to individuals convicted of extremely grave offenses, typically involving actions that endanger public safety or violate human dignity such as intentional homicide, acts of terrorism, betrayal of the nation, and other similarly severe crimes (Purnomo, 2016). This penalty is considered the highest penalty, where the convict will lose his life as a form of retribution or termination of the legal process.

In various perspectives, the death penalty is often a controversial subject. Some parties consider it an effective way to provide a deterrent effect, maintain public order, and provide justice for victims. However, on the other hand, there is a view that rejects the death penalty on the basis of human values, human rights, and the risk of legal errors that can be fatal to innocent people (Debora, 2020).

As outlined in Regulation Number 12 of 2010 issued by the Chief of the Indonesian National Police regarding the procedures for carrying out capital punishment, the death sentence is categorized as a principal punishment given by the court to convicts whose verdicts have become legally binding, as stated in Article 1, point 3 (Hadjar, 2024).

Criminologists such as Lamroso and Garofalo argue that the death penalty is an absolute excuse for eliminating irreparable individuals (Prasetyo, 2019). Because of this, both experts advocated the death penalty as a radical way to eliminate irreparable people, thus removing the obligation to keep them in prison which was costly to raise. In addition, the fear that they might escape from prison and return to commit crimes in society disappeared (Daming, 2016).

Lamroso's opinion is understandable if it is linked to his theory that there are different from others from birth, have an innate tendency to commit crimes. He introduced the concept of *born criminals*, which concluded that no external factors or influences could improve these people. Therefore, for them, the death penalty is considered the right way to protect society (Purba, 2021).

History of the Enactment of the Death Penalty System in Indonesia

The death penalty is one of the oldest forms of punishment ever. Although this punishment is

often considered irrelevant to the times, until now there is no adequate alternative as a replacement. In the history of punishment, the death penalty has existed since the beginning of human existence on earth, with a legal system based on the principle of "retailism" or absolute retribution, where revenge is likened to a wolf preying on another wolf. The use of the death penalty has been a longstanding feature of Indonesia's judicial practices, rooted from the Netherlands colonial period to the post-independence modern era (Adam, 2022).

The following are important stages in the history of the implementation of the death penalty in Indonesia:

Colonial Period (Netherlands East Indies)

During the rule of the Netherlands East Indies, the applicable criminal law was *Wetboek van Strafrecht voor Nederlandsch-Indië* (WvS), which is the Criminal Code (KUHP) for the Netherlands East Indies region (Al-Djufri, 2022).

Derived from Dutch criminal law, the Indonesian Criminal Code incorporated the death penalty as a sanction for the most severe offenses, including intentional homicide and acts of treason. During the colonial era, courts-imposed capital punishment for a wide range of grave criminal acts, including resistance to colonial authority and crimes that threatened the stability of the colonial government. The execution of the death penalty during this period was carried out by various methods, such as hanging, shooting, or even beheading (Adelina, 2024).

Independence Era and Old Order

After Indonesia gained independence in 1945, Indonesia's legal system still adopted many laws that applied during the Netherlands East Indies period, including the Criminal Code. The death penalty remains part of Indonesia's criminal law. In the Old Order era under the leadership of President Soekarno, the death penalty was imposed in several major cases, especially related to rebellion and treason. One of the major events involving the death penalty was the PKI (Communist Party of Indonesia) rebellion in 1948 and various other cases that were considered to threaten national stability (Kholiq, 2023).

New Order Era

During the Suharto administration, the death penalty remained an integral part of the criminal justice system, especially for cases that were considered very serious, such as treason against the state, gross corruption, and narcotics. During this period, the government used the death penalty as a tool to enforce political stability, and several major political figures and criminals were executed. A major event involving the death penalty was the G30S/PKI-related case in 1965, in which many PKI members and sympathizers were executed. In addition, several major narcotics cases also ended with the death penalty, because they were considered to threaten the young generation and the future of the nation (Fadilah, 2022).

The Reformation and Contemporary Era

Following the collapse of the New Order regime in 1998, Indonesia transitioned into the Reformasi period. Throughout this time, intense discussions emerged regarding the continuation of capital punishment, largely driven by human rights activists who strongly opposed it. Nevertheless, the death penalty remains codified in Indonesian law, primarily reserved for grave offenses such as deliberate homicide, terrorism, and major drug-related crimes. During President Joko Widodo's administration, the enforcement of the death penalty focused predominantly on narcotics offenses, which were seen as a significant national threat. The executions of several domestic and foreign drug offenders in 2015 sparked widespread international criticism, with numerous countries and human rights groups denouncing the actions (Herindrasti, Indonesia's challenges in overcoming drug abuse." Journal of International Relations, 2018).

Contemporary Debate Regarding the Death Penalty

In the contemporary context, the death penalty in Indonesia continues to be a controversial topic. There are two major camps: supporters of the death penalty, who believe that the sentence is necessary to provide a deterrent effect for serious crimes, and those who oppose it on human rights grounds and possible wrongdoing in the judicial process. Despite calls from the international community and human rights groups to abolish the death penalty, the majority of Indonesia, based on surveys, still support the application of the death penalty for serious

crimes, especially narcotics and terrorism. The Indonesia government also often emphasizes the importance of the death penalty to maintain national security and order (Daming, 2016).

Implementation of Capital Punishment and Its Legal Foundations in Indonesia

In Indonesia, capital punishment is applied as a sanction for individuals who commit particularly grave offenses. The Indonesian legal framework contains various statutes that explicitly identify crimes eligible for the death penalty as a possible punishment (Nugraha, 2020).

Legal Basis for the Application of the Death Penalty

The death penalty in Indonesia has a strong legal basis and is regulated in various laws (Izad, 2019). Here are some of the legal bases:

- The Indonesian Criminal Code (KUHP), which serves as the principal legislation on criminal matters, includes provisions for various offenses punishable by death. Specifically, Article 10 of the Criminal Code categorizes the death penalty as one of the primary forms of punishment (Mahmud, 2023).
- Narcotics Law (Law No. 35 of 2009 concerning Narcotics): In this law, the death penalty is imposed on dealers or producers of narcotics in large quantities or who act as part of an international syndicate (Herindrasti, Indonesia's challenges in tackling drug abuse, 2018).
- Terrorism Law (Law No. 5 of 2018 concerning the Eradication of Terrorism Crimes): The death penalty can also be imposed for perpetrators of terrorism crimes that cause the loss of many lives, serious damage, or threats to the stability of the country (Ambarita, 2018).
- According to the Corruption Crime Law (Law No. 20 of 2001 on the Eradication of Corruption Crimes), the death penalty may be applied to individuals who commit corruption offenses under specific conditions, such as during times of national economic crisis (Yanto, Death Penalty to Corruptors In A Certain Condition, 2017).

Criminal Acts Threatened with the Death Penalty

Some of the crimes that are threatened with the death penalty in Indonesia include: (Munasto, 2022)

- Premeditated murder (Article 340 of the Criminal Code)
- Genocide (Law No. 26 of 2000 concerning Human Rights Courts)
- Terrorism
- Narcotics crimes involve large amounts and play an important role in international networks.

Execution Procedures for Capital Punishment in Indonesia, capital punishment is implemented by means of a firing squad, as stipulated by the applicable laws and regulations. This procedure takes place only after a judicial ruling has attained permanent legal status (inkracht). Furthermore, the death sentence can be enforced only if the convict's petition for clemency to the President has been denied (Refani & Firmansyah, 2024).

Controversy and Debate

The death penalty in Indonesia has become a hot topic of debate, both in terms of ethics, morality, and effectiveness in preventing serious crimes. Pro-death penalty groups consider that this punishment has a strong deterrent effect, especially in exceptional cases such as narcotics and terrorism. Nevertheless, opponents of capital punishment contend that this form of sentencing infringes upon human rights, particularly the fundamental right to life as protected by both the Indonesian constitution and the Universal Declaration of Human Rights (Fanani, 2018).

In addition, one of the main criticisms of the death penalty is the possibility of errors in the justice system that could result in the execution of innocent people. Some also highlighted the need for reforms in the legal system, especially regarding transparency and independence of the courts.

International and Indonesia Legal Position

Internationally, many countries have abolished the death penalty, and there is pressure from the international community to stop this punishment. However, Indonesia still maintains the death penalty on the grounds that the state has the sovereign right to determine criminal law

according to the needs of society. Indonesia remains dedicated to evaluating each death penalty case individually, considering humanitarian considerations like the conduct of inmates during incarceration, along with various social aspects.

Therefore, the death penalty in Indonesia is firmly grounded in law and is imposed for specific offenses deemed extremely serious. Nonetheless, its implementation remains a subject of ethical and legal controversy, particularly in relation to human rights. Within the framework of Indonesian law, capital punishment is still viewed to address crimes that cause significant harm to both society and the nation (Afif, 2021).

The Death Penalty in the Context of Human Rights

Capital punishment often sparks debate in numerous conversations concerning human rights. On the one hand, there are countries and societies that view the death penalty as a legitimate step to uphold justice, especially in cases of serious crimes such as murder, terrorism, or war crimes. Conversely, significant worries exist about infringements on human rights, particularly the right to life, which is regarded as the most essential of all rights (Ramadhan, Wafiroh, & Kurniawan, 2024).

Basically, every country has the same goal, which is to create a prosperous, fair, and prosperous life for its citizens. One of the main obstacles to achieving this goal is the criminal acts committed by some of its own citizens. Therefore, to prevent and reduce crime, every country must make effective efforts (Isnantiana, 2019).

One method to eradicate crime is to apply and threaten criminal penalties for every criminal act, which initially aims to deter perpetrators and prevent others from getting involved in crimes. Over time, the purpose of this crime has also developed, namely, to foster and educate criminals to be better (Michael, 2024).

The fact that every human being has a fear of death leads to the threat of the death penalty is considered the right step to prevent the act of murder. However, the application of the death penalty faces various problems. If we examine various aspects related to the death penalty, we

will see the inevitable pros and cons, accompanied by various arguments that underlie these considerations (Jarot Yusviq Andito, 2022).

Regarding the issue of the application of the death penalty, especially in the context of Human Rights (HAM), there are several considerations, namely as follows.

Right to Life

In the context of human rights, the right to life is regarded as an absolute and non-negotiable right. Article 3 of the Universal Declaration of Human Rights (UDHR) states that every individual is entitled to life, freedom, and personal security." The application of the death penalty is viewed as a breach of this right, as it involves the state intentionally ending a person's life as a form of punishment. Numerous human rights groups, including Amnesty International, oppose capital punishment, arguing that the protection of the right to life must be upheld under all circumstances (Surajiman, 2022).

Court Errors and Risks of Execution of Innocent People

A major objection to the death penalty is the chance of wrongful convictions. Despite efforts within the justice system to prevent errors, innocent people may still be condemned to death. Since the punishment is irreversible, this raises significant concerns regarding human rights violations (Adelina, 2024).

Death Penalty and Torture

According to the UN Convention Against Torture, any form of punishment that is inhuman or degrading constitutes a breach of human rights. The death penalty, especially those carried out in painful or inhuman ways, such as crucifixion, hanging, or lethal injection, is often considered a violation of these principles. Public executions carried out in several countries are also considered a form of insult to human dignity.

Deterrent Effect

Supporters of capital punishment frequently claim that it acts as a preventive measure against major offenses. Nonetheless, the actual effectiveness of the death penalty as a deterrent remains a subject of ongoing debate based on available empirical data. Some studies have shown that countries without the death penalty

have the same or lower crime rates than countries that implement it. This prompts an inquiry into the true effectiveness of the death penalty as a means of deterring crime (Hendra Arjuna, 2024).

Discrimination in the Application of the Death Penalty

Numerous studies reveal that the death penalty is frequently imposed unfairly on minority populations, economically disadvantaged individuals, or those without adequate legal representation. This situation highlights the presence of inequality in the enforcement of capital punishment, which contradicts the fundamental human rights principle of equality before the law (Sholahudin, 2016).

Cultural and Religious Context

In some countries, the death penalty is still seen as morally valid based on cultural or religious traditions. For example, some Muslim-majority countries refer to Sharia law in applying the death penalty, especially in cases of serious crimes such as murder or adultery. Here, a debate arises between the application of religious law and universal human rights principles (Dhamayanti, 2022).

Criminal Law Reform

Countries that still implement the death penalty are often faced with international pressure to reform their legal systems to better align with human rights standards. Some countries have taken steps to limit the use of the death penalty, for example only for extraordinary crimes, or establish temporary moratoriums for executions (Daming, 2016).

From a sociocultural perspective, the application of the death penalty refers to abolitionist theory. In a culture that highly values human life and dignity, the death penalty has always been considered controversial. There is a general view that the death penalty is contrary to humanitarian principles, given the prohibition on killing that applies in conjunction with the death penalty order in the current legal system.

The Death Penalty for Corrupt Perpetrators Does Not Contradict Human Rights

Corruption is a crime that is considered extraordinary (extraordinary crime), because of its impact that is very detrimental to many aspects of social, economic, and political life. In

many countries, corruption is considered a serious threat to government stability, law enforcement, and social justice (Rahmatullah, 2021). In Indonesia, for example, corruption has resulted in the loss of trillions of rupiah from the state treasury that could have been used for the welfare of the people. Therefore, the provision of severe punishment for corruption perpetrators is often considered reasonable as a form of justice.

In Indonesia, the death penalty is regulated by Law No. 31 of 1999 alongside Law No. 20 of 2001 concerning the Eradication of Corruption. Nevertheless, its application is restricted to individuals convicted of corruption offenses that result in substantial damage to the state, especially in particular circumstances such as disasters or national emergencies. This demonstrates that the imposition of the death penalty follows strict and well-defined conditions, rather than being applied arbitrarily (Harefa A. , 2022).

According to Article 1, paragraph (3) of the 1945 Constitution, Indonesia is defined as a country that is based on the rule of law. According to Kansil, as a law-based state, there are two fundamental requirements: the supremacy of law and legal equality. The supremacy of law implies that the law holds the highest authority, while legal equality means that all individuals are treated equally under the law (Nasarudin, 2020).

Julius Stahl identifies four fundamental components that define the concept of the rule of law:

1. The acknowledgment and safeguarding of human rights.
2. The state's foundation on the principle of separation of powers (*trias politica*).
3. Governance conducted in accordance with legal norms.
4. The existence of an administrative court system within the state.

Law Number 39 of 1999 concerning Human Rights (UU HAM) guarantees the protection of human rights, defining them as inherent rights naturally possessed by every individual as creations of God. These rights are considered divine endowments that must be respected, upheld, and safeguarded by the state, legal

system, and government to preserve human dignity and honor (Ardinata, 2020).

Fundamental human rights embody core values that guarantee every person's basic freedom, including the rights to life, freedom, and personal safety. Notably, the right to life holds a central position and is recognized in many key international human rights treaties, including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (Muni, 2020).

Nonetheless, Article 6(2) of the ICCPR allows for an exception regarding the death penalty, specifying that it may only be imposed for 'the most serious crimes.' This provision leaves room for interpretation, permitting the application of capital punishment in specific instances, provided it follows a legitimate and just legal process (Makatita, 2020).

Massive corruption can cause widespread suffering for society, such as continued poverty, the state's inability to provide basic public services, and exacerbate social injustices. Some countries consider corruption to be a "serious crime" that has a major impact on people's basic rights, including the right to welfare, health, education, and even the right to a decent life. Therefore, the death penalty for corrupt perpetrators in several countries can be seen as a decisive step to safeguard the greater public interest.

Based on the above understanding, the death penalty for corrupt perpetrators is not necessarily contrary to Human Rights, as long as its application meets the principles of justice, including a fair legal process, transparency, and only applies to very serious cases. The principle of human rights remains respected to the extent that the death penalty is given through a judicial process that meets international standards and is recognized as a response to crimes that seriously endanger the wider community.

In this regard, limiting the right to life by imposing the death penalty on individuals guilty of corruption can be defended on the basis that corruption offenses violate a broad spectrum of fundamental rights within society. This harsh penalty aims to serve as a deterrent, ensure justice, and safeguard the interests of the larger

community from significant harm caused by corrupt actions.

The discussion surrounding the right to life, particularly concerning the application of the death penalty for individuals convicted of corruption offenses, has persisted for a considerable time and remains a relevant topic for ongoing analysis. According to the 1945 Constitution, the right to life is articulated in Article 28A and Article 28I paragraph (1), which affirm that every person possesses the right to life as a divine gift from God Almighty that cannot be diminished under any condition. Ultimately, only God holds the authority to decide over a person's life or death (Damping, 2019).

However, it is important to reflect that although God determines a person's life and death, the way a person lives or dies is a person's own choice. Humans can choose to die in good or bad circumstances. If a person wants to avoid death in bad circumstances, he should not commit a crime.

If a person commits a crime, then he has chosen to die in bad circumstances. Especially for people who are educated and have an honorable status, who of course know that their actions violate religious teachings and state laws (Zein & Marpaung, 2022).

Rehabilitating offenders to regain their social dignity is a crucial undertaking. Applying the death penalty to individuals convicted of corruption should be regarded as a component of the restoration process aimed at reestablishing social harmony disturbed by the offense (Suhariyono, 2018).

In criminal law, the aspect of retaliation is often difficult to avoid, because the nature of criminal sanctions itself contains a retributive element. However, if criminal sanctions, including the death penalty, are viewed from the perspective of restoring social harmony, this impression of retaliation can be diminished or even lost (Permono, 2019).

The refusal to eliminate the death penalty in Indonesia should be viewed within the historical framework of Indonesian society, which has yet to fully embrace its abolition (Syauket, 2022). The evolution of Indonesia's constitutions from

the initial 1945 Constitution, through the 1949 Constitution of the Republic of Indonesia, the 1950 Constitution, to the amended 1945 Constitution reveals a historical lack of explicit and thorough human rights guarantees, particularly concerning the right to life. Despite the constitutional amendments, restrictions on human rights, including the right to life as specified in Article 28J, remain in place. This indicates that Indonesia's constitutional framework since independence has not fully embraced the concept of absolute human rights. Moreover, the application of the death penalty, especially in cases of corruption, continues to be regarded as a reflection of societal values of legal and moral justice in Indonesia.

CONCLUSION

The implementation of capital punishment within Indonesia's criminal justice system presents a complex intersection between legal authority and human rights obligations. While the death penalty remains legally sanctioned for certain severe crimes, its application often raises serious concerns regarding due process, transparency, and adherence to international human rights standards, particularly the right to life and the prohibition of cruel, inhuman, or degrading treatment. The research reveals inconsistencies in judicial practice, limited access to clemency, and inadequate consideration of mitigating factors, which collectively undermine the legitimacy and fairness of capital punishment. Therefore, the findings suggest an urgent need for critical reforms, including a moratorium or eventual abolition, to align Indonesia's criminal justice system with its constitutional commitments and evolving global human rights norms.

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