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## The Influence of Human Rights on Death Penalty in Indonesian

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### ABSTRACT

*Death penalty has the status of principal punishment, is a type of punishment that contains pros and cons. At the international level, this type of punishment is prohibited from being imposed on convicts. The United Nations (UN) pushed for the abolition of this type of crime based on the Declaration of Human Rights which was adopted on December 10, 1948, by guaranteeing the right to life and protection against torture. This step was taken considering that the application of death penalty is contrary to human rights. Criminal execution by shooting the convict to death and not carried out in public. Imposition of capital punishment means taking away someone's right to life. Everyone has the right to live and has the right to defend his life and existence (Article 28A of the 1945 Constitution). Even the death penalty is no longer in harmony with the development of human rights. All countries have the concept of upholding human rights, Indonesia as part of the countries in the world participates in realizing human rights, it is proven that human rights are regulated legally and formally. Human rights, especially the right to life, are stated as rights that cannot be reduced in any form. However, in a positive way, the application of the death penalty is still mostly decided by judges. The purpose of this writing is to examine how human rights influence death penalty in Indonesia, using normative law research methods, namely research based on positive law studies. This study uses primary legal material in the form of laws and regulations, as the object of research. The law that is the object of research is the 1945 Constitution of the Republic of Indonesia which is related to human rights. In conclusion, human rights are rights related to the nature of human existence. Criminal imposition of convicted criminals must be oriented towards the protection of human rights*

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## I. INTRODUCTION

The imposition of punishment on the perpetrators of criminal acts is the authority of the judge by considering juridically and sociologically so that the sentence imposed can benefit both the convict and society. Therefore the concept of deterrence is modified in the implementation of prison sentences with the concept of coaching. For this reason, the application of punishment must pay attention to the purpose of

punishment, the severity of the sentence, and the method of imposing the sentence. Death penalty has the status of principal punishment, is a type of punishment that contains pros and cons. At the international level, this type of punishment is prohibited from being imposed on convicts. The United Nations (UN) is pushing for the abolition of the application of this type of crime. based on the Declaration of Human Rights (Universal Declaration of Human Rights) which was adopted on December 10, 1948, by guaranteeing the right to life and protection against torture. Likewise, the guarantee of the right to life is contained in Article 6 of the International Covenant on Civil and Political Rights/ICCPR) which was adopted in 1966 and ratified by Law Number 12 of 2005 concerning Ratification of the ICCPR. Imposition of capital punishment means taking away someone's right to life. Everyone has the right to live and has the right to defend his life and existence (Article 28A of the 1945 Constitution). Even the death penalty is no longer in harmony with the development of human rights. All countries have the concept of upholding human rights. Indonesia as part of the countries in the world participates in realizing human rights, as evidenced by the regulation of human rights legally and formally. Human rights, especially the right to life, are stated as rights that cannot be reduced in any form. This is stated in Article 28 I paragraph (1) and Article 28J paragraph (2) of the 1945 Constitution, Article 4 of Law Number 39 of 1999 concerning Human Rights. Article 1 paragraph (6) of Law Number 39 of 1999 concerning Human Rights states that: "violations of human rights are any actions of a person or group of people including state apparatus, whether intentional or unintentional or negligence which unlawfully reduces, impedes, limiting and/or revoking the human rights of a person or group of people guaranteed by this Law, and not obtaining, or fearing that they will not obtain a fair and correct legal settlement, based on the applicable legal mechanism."<sup>1</sup>

## II. RESEARCH PROBLEMS

How is the defense of human rights against the death penalty handed down by the Supreme Court?

## III. RESEARCH METHODS

This research includes normative legal research, namely research based on positive legal studies. This study uses primary legal material in the form of laws and regulations, as the object of research. The law that is the object of research is the 1945 Constitution of the Republic of Indonesia which is related to human rights.

## IV. RESULT AND DISCUSSION

### 1. Death Penalty and Human Right

Capital punishment is a means of penal in tackling crime. The selection of penal means in tackling crime is to obtain a deterrent effect for the community and for the convict himself so that he does not commit the crime again (preventing the repetition of the crime). The emphasis is on repressive efforts against criminals. In addition to penal means, another way to deal with crime Sriyanto and Desiree Zuraidah, National Human Rights Instruments Module: The Right to Life, the Right to Have a Family and Continuing Offspring and the Right to Self-Development (Jakarta: Department of Law and Human Rights of the Republic of Indonesia, Directorate General of Human Rights Protection, 2001) is through non-penal means. This facility requires a long time, and is more sociologically appealing. Its implementation emphasizes the aspect of preventing crime. Through the imposition of capital punishment, general prevention in the form of a deterrent effect, it is hoped that the crime rate can decrease. In fact, there is no link between the imposition of capital punishment and the decrease in crime rates.<sup>2</sup> The inclusion of capital punishment as the first principal punishment in Article 10 of the Criminal Code does not psychologically create a deterrent effect in society. In line with this, Sahetapy stated that the implementation of capital punishment does not have a deterrent effect. Haris Azhar emphasized that the imposition of the death penalty did not answer the problem of the high crime rate, so that the imposition of capital punishment in several crime cases did not achieve the objective of preventing crime in a penal manner.<sup>3</sup> In Indonesian criminal law there are several crimes punishable by death, namely:

1. The crime of treason, regulated in Article 104 of the Criminal Code, is in the form of killing the president and vice president; Article 111 paragraph (2) is in the form of having relations with foreign countries resulting in war.
2. The crime of premeditated murder, regulated in Article 340 of the Criminal Code, takes the form of intentionally and premeditated killing of another person.
3. The criminal act of corruption, regulated in Article 2 paragraph (2) of Law Number 31 of 1999 and Number 20 of 2001 concerning the Eradication of Corruption, is in the form of corruption in certain circumstances.
4. Genocide and crimes against humanity are regulated in Law Number 26 of 2000 concerning Human Rights. Article 36 regulates genocide, namely any act committed to destroy or annihilate all or part of a

national, racial, ethnic or religious group. Article 37 regulates crimes against humanity, namely acts committed as part of a widespread or systematic attack aimed directly at the civilian population.

5. Narcotics crime, regulated in Articles 114, 116, 118, 119 and 121 of Law Number 35 of 2009 concerning Narcotics. In essence, the article states bidding, selling, buying, receiving, being an intermediary in buying and selling, exchanging, or handing over narcotics.

6. The crime of mobilizing children in the illicit trade of narcotics is regulated in Article 89 of Law Number 23 of 2002 concerning Child Protection, which states that children are deliberately involved in the abuse, production or distribution of narcotics and/or psychotropic substances.<sup>4</sup>

Death penalty handed down by the Supreme Court on the grounds of defending human rights, one cannot take the life of another, especially if it is accompanied by violence and mistreatment of the victim. This is stated in Article 28J of the 1945 Constitution which states that every person is obliged to respect the human rights of others and must comply with the limitations set by law to guarantee recognition and respect for the rights and freedoms of others. Decision of the Constitutional Court Number 2-3/PUU-V/2007 dated 30 October 2007. The imposition of the death penalty gave rise to various controversies. Based on the human rights concept that the right to life is a nonderogable right. International instruments support the existence of the right to life as stated in the Human Rights Declaration and the ICCPR. Likewise Article 28 A of the 1945 Constitution which emphasizes that every person has the right to live, and has the right to defend his life and existence. Article 28 I states that the right to life is a basic right that cannot be reduced under any circumstances. Article 28 I requires people to pay attention to the right to life. However, in Article 28 J it states that everyone has the obligation to respect the human rights of others and must comply with the restrictions set by law to guarantee recognition and respect for the rights and freedoms of others.

In this article there is accountability for those who violate human rights, and the Indonesian criminal law system still applies the death penalty. The judge's consideration in the death penalty decision is basically to defend the human rights of victims who have been usurped by convicts. The message to be conveyed is that no one can take another person's life and must respect each other's human rights. This refers to Article 28J of the 1945 Constitution, which states that everyone is obliged to respect the human rights of others and must comply with the limitations set by law. The controversy over the application of the death penalty in the form of rejection was conveyed by the National Human Rights Commission, the Witness and Victim Protection Agency, and Kontras. This view is due to humanitarian reasons, where the right to life is a right that cannot be reduced under any circumstances. This is stated in Article 6 paragraph

(1) of the ICCPR, Article 28 A, and Article 28 I of the 1945 Constitution. In addition, Indonesian criminal law is still discriminatory in nature, in which many are found through capital punishment. It can be said that the state prolongs the chain of violence and is retaliatory. implementation is a setback. This is understandable because basically the death penalty cannot solve the crime problem which has increased along with the development of human civilization. If a death row convict has been executed and then finds a novum that the actual perpetrator is not the convict who has been executed, then it cannot be repaired. The much-anticipated deterrent effect is not manifested by imposing the death penalty. Crime will decrease if every crime committed by someone is ensured by law enforcement officials to process it according to existing regulations. Thus people will be prevented because of the certainty of a transparent process in accordance with regulations.<sup>5</sup>

The formulation policy for the application of capital punishment in the Concept of the Draft Criminal Code leads to a trend/tendency to abolish the existence of capital punishment. Starting from restrictions, reductions to the abolition of death penalty. This tendency is in accordance with the application of capital punishment which is reflected in the practice of other countries in the world, leading to the trend of abolishing capital punishment. There is a specific practice, namely in the Philippines, the death penalty was abolished from law and practice, then reinstated, and in 2006 it was completely abolished.

In practice in Indonesia, the death penalty is not certain even though the death penalty decision has received a permanent judge's decision (in kracht van gewijsd). The implementation of capital punishment awaits extraordinary legal efforts (review and clemency) that must be taken by the convict. Data from the Attorney General's Office in 2014, there were 148 death row convicts, 76 death row convicts were still waiting for a decision on review, appeal, cassation and clemency, 38 people had not yet made up their minds, and 5 convicts died. The period for filing until it is decided by the Supreme Court and the President is quite long. It even happened that death row convicts waited up to 20 years to pick up their death through execution, namely the case of death row convicts Sumiarsih and Sugeng. According to Al Araf, death row convicts suffer torture while waiting for an uncertain execution time, so that the psychological side of death convicts is neglected. The imposition of capital punishment whose legality is legalized by the state actually tortures the convict. In this case, there is an explanation of the reality of victims of crimes that are systematic in nature which are identical to the role of the state as the party that holds control of the power

exercised by a legitimate state against its citizens. As a form of protecting the human rights of convicts, Amnesty International provides input to the Indonesian government not to apply the death penalty to perpetrators of crimes in Indonesia.<sup>6</sup>

### Previous Research

Veive Large Hamenda's, with the title of researcher reviewing human rights on the application of the death penalty in Indonesia, and includes 2 formulations of the problem, namely How are the values of the human right to life regulated in the legal system in Indonesia and How are human rights reviews of the existence of punishment dead in Indonesia, the result of the formulation of the problem is that Human Rights Values in Indonesia originate and lead to Pancasila. Human Rights receive a strong guarantee from the nation's philosophy, namely Pancasila. In addition, the existing Constitution in Indonesia basically regulates human rights which are based on Pancasila and the development of regulations in general And the application of the death penalty in the legal system in Indonesia is contrary to human rights, namely the right to life which is contained in the Pancasila values and guaranteed by the 1945 Constitution.<sup>7</sup>

Warih Anjari, with the title Researcher on the imposition of capital punishment in Indonesia from a human rights perspective, includes 2 formulations of the problem, namely the imposition of capital punishment for perpetrators of crimes against or not with human rights, and the criteria for imposing capital punishment on perpetrators of crimes that do not conflict with human rights. Man. The result of the formulation of the problem is that the imposition of capital punishment in essence is that the state takes away the right to life of its citizens so that it is contrary to human rights. However, it can be justified insofar as its implementation is on the grounds of defending the human rights of other citizens and legally positive arrangements by the state lead to a tendency to reduce and eventually eliminate it altogether. , destroying human life and civilization, and destroying the country's economy. Crimes that can be sentenced to death include: premeditated murder, terrorism, drug dealers and dealers, and corruption.

### V. CONCLUSION

The death penalty imposed by the Supreme Court on the grounds of defending human rights, one cannot take the life of another, especially if it is accompanied by violence and mistreatment of the victim. This is stated in Article 28J of the 1945 Constitution which states that every person is obliged to respect the human rights of others and must comply with the limitations set by law to guarantee recognition and respect for the rights and freedoms of others. Constitutional Court Decision Number 2-3/PUU-V/2007 dated 30 October 2007.

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