



PROS AND CONS OF THE DEATH CRIME IN INDONESIA

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Abstract

This paper deals with capital punishment imposed on certain crimes. This punishment is governed in the Indonesian Penal Code and other regulations which have been still in use in Indonesian. Of these regulations is Code No. 26/2000 on Human Rights Court. If Indonesia still imposes death punishment to those committing certain crimes, it should amend Article 28/A in order that it does not contradict with the Basic Coder of 1945.

Keywords: *Death Crime. Indonesia*

1. Introduction

The death penalty is one of the most controversial types of crime and always gets the spotlight from various circles around the world. Various opinions and reasons were put forward for and against the death penalty. The international community also shows concern for the threat of the death penalty. In 1987 in Syracuse, Italy, an International Conference on the Death Penalty was held. The conference discussed, among other things, various arrangements for capital punishment in various countries in the world. The description of this is as follows:

- a. 32 countries have completely abolished the death penalty.
- b. Countries that threaten the death penalty (only for certain crimes under military law or because of state conditions) are 18 countries.
- c. Countries that are included in the de facto abolitionist group are 16 countries.
- d. There are 110 countries that belong to the retentionist group, including Indonesia¹

The problem of capital punishment in the world is a reality, whose existence cannot be separated from the socio-cultural values of each nation and from the history of the nation, including in Indonesia. The death penalty is the heaviest type of crime compared to other crimes, because the death penalty takes human souls to defend their lives. The death penalty is also a form of heinous punishment that provides a deterrent effect to criminals.

Within the framework of national law, the right to life is also regulated in the Indonesian Constitution. This provision is confirmed in Article 4 of Law no. 39 of 1999 concerning Human Rights are the right to live, the right not to be tortured, the right to freedom of personality,

¹ Syahrudin Husein, 2003. *Digitized by USU digital library*



thought and conscience, the right to religion, and the right not to be enslaved. "In relation to this issue, the implementation of the death penalty actually still contains controversy in the community, in relation to human rights.

The various reasons they put forward were related to whether or not they agreed with the death penalty. There are those who agree to provide a precise deterrent effect, there are those who say they agree so that potential criminals do not arise or appear, so that the objectives of criminal law can be achieved properly. In addition, there are also those who claim that the death penalty is legal because it is still valid in this country. Then from those who disagree, they often argue because the death penalty is against human rights, there are also those who say that the death penalty is against our Constitution. It has been regulated in Article 28 A of the 1945 Constitution which reads "Everyone has the right to live and has the right to defend his life and life". Thus, it means that it is not an exaggeration if the party rejects the death penalty because it is contrary to the Constitution.

If we only understand article 28 A maybe this could be true. For this reason, it is very natural that there are many pros and cons related to the death penalty in terms of the Constitution. However, if we look more broadly, especially in terms of constitutional law, there are parties who have submitted a review at the Constitutional Court regarding whether the death penalty is against the Constitution or not. Against the review test, Decision Number 2-3/PUU-V/2007 was finally born. The test was proposed by several parties, some of whom were death row inmates for narcotics cases who were about to be executed. In the decision from the applicant's side, the point is that they consider that the death penalty is very contrary to the Constitution.

2. Method

The method used in this research is a normative juridical approach, namely by conducting research based on legal/reference materials by examining the theories and concepts of these legal materials, which relate to the legal principles of statutory regulations. Invitations related to this writing/research.

3. Findings And Discussion

a. Death Penalty in Customary Law and Islamic Law

The death penalty is known by almost all ethnic groups in Indonesia. Various kinds of offenses committed are punishable by the death penalty. There are various ways to carry out the death penalty; stabbed with a dagger, drowned, dried under the sun to death, pounded his head with a pestle and others. In the following, it can be seen that several regions in Indonesia had imposed the death penalty long before the Dutch came to Indonesia, including:

1. Aceh: an adulterous wife was killed.
2. Batak: if the murderer does not pay the wrong amount and the family of the murdered submits it to the death penalty, then the death penalty will be carried out immediately. Likewise, if someone violates the exogamous marriage order.
3. Minangkabau: according to the conservative opinion of Datuk Ketemangungan, the law is known to retaliate, whoever bleeds also has his blood poured out.



4. Cirebon: kidnappers or female robbers, whether native or foreign, kidnapping or pawning the Cirebon people is considered a crime punishable by death.
5. Bali: death penalty is also threatened for perpetrators of clumsy marriages (marriages that occur between relatives)
6. Tribes from Southeast Kalimantan: people who swear perjury are sentenced to death by drowning.
7. South Sulawesi: rebellion against the government if the guilty person does not want to go to his exile, then he can be killed by anyone.
8. Central Sulawesi: a woman kabisenya, namely a woman who is related to a stone man who is a slave, so regardless of the process, he is sentenced to death.
9. Aru Islands: a person who carries a gun with a face weapon, if he cannot pay the fine he is sentenced to death.
10. Bonerate Island: thieves were sentenced to death by not being fed, the thief was tied to his accomplices and then put to sleep under the sun until he died.
11. Nias : if within three days you have not given money as the price of blood to the victim's family, then the death penalty will be applied.
12. Timor Island: any loss to health or property of a person must be paid or repaid. The response can be in the form of a death penalty.
13. Lampung: there are several offenses that are punishable by the death penalty, namely murder, wrong white offense (adultery between a father or mother and her child or between parents-in-law and daughter-in-law etc.) and adultery with another person's wife.

From the description above, it can be concluded that the Indonesian tribes had known the death penalty long before the Dutch arrived. So it was not the Dutch with their WvS who introduced the death penalty to the Indonesian people. The death penalty is also known in Islamic law known as Qishash. The Islamic view of the death penalty is stated in Surah Al-Baqarah verses 178 and 179, the translation of which is as follows:

Verse 178: "O you who have believed, Qishash is required of you regarding those who were killed; free people and free people, slaves to slaves, women to women. So whoever gets forgiveness from a brother is killed, let him (those who forgive) follow in a good way, and let (those who are forgiven) pay diyah to those who forgive in a good way (also). That is a leniency that has been signaled by your Lord, while for you it is also a mercy Whoever violates after that will get a painful torment²

Verse 179: "In the law of Qishash there is (guaranteed) survival, O people of understanding, so that you may become pious.

b. The Urgency of the Death Penalty in Indonesia

The death penalty in Indonesia is the most severe punishment handed down by the Panel of Judges for certain crimes which are punishable by the death penalty. The imposition of the death penalty is regulated in the Criminal Code (Book of Criminal Law) and is regulated in other laws

² Departemen Agama RI, 1992, *Al-Qur'an dan Terjemahnya* (Jakarta: Proyek Pengadaan Kitab Suci Al-Qur'an, p. 43



which are positive laws, meaning the laws currently in force in Indonesia, one of which is Law No. 26 of 2000 on the Human Rights Court.

The death penalty in Indonesia has been going on for a long time, since the Indonesian nation was colonized by the Dutch for approximately 350 years, until now it is still enforced, even though the Netherlands has abolished the death penalty starting in 1870. The Criminal Code (Wetboek Van Strafrecht) was passed on January 1, 1918. According to criminal experts at the time, they maintained the death penalty because special conditions in Indonesia demanded that the biggest criminals be punished with the death penalty. In such a large area with a heterogeneous population, the State police apparatus cannot guarantee security³. In addition, those who agree with the death penalty should not only see the interests threatened with the death penalty, but also the interests of the victims and their families as well as the interests of the community. For those who are against the inhumane death penalty on the grounds of the death penalty, the convict cannot improve it in the community.

One of the legal experts who agrees with the implementation of the death penalty in Indonesia is Achmad Ali. He agreed on the grounds that first and foremost, the death penalty was intended to give fair rewards to perpetrators of serious crimes. Just imagine, a terrorist who has caused the death toll to hundreds of innocent people, then we let him laugh giddily, is only sentenced to 10 years in prison or at best for life, which is then gradually "corked" (getting remission) just for the reason behaved "well" while in prison. If the perpetrators of these serious crimes escape the death penalty, justice is only a word that is highly valued in society and in politics, but the reality is, in the legal system and systems relating to crime and punishment, justice either as a word or a concept, has ended. exists only in the shadows⁴.

In a society where there is law and order, the consequence is that justice must be served. Not on the contrary, a state ruled by law refuses to provide justice. And instead it shows the perpetrators of serious crimes a "kinder" side so that we can state that in fact justice and law in their usual and original meaning, actually "have ceased to function". Termed by many experts as the death of justice⁵. Indonesia's position which is still in the top ranking, in corruption cases, for the Asian class, the problem does not lie in the legislation, but in the absence of strong commitment from law enforcement. We can see, for example, in handling corruption cases, but it is very rare for corrupt suspects to be arrested. Not to mention, even though they were initially detained, under various pretexts, they were finally suspended

Did not the famous legal expert, Gordon Heward once stated: Justice should not only be done; but should manifestly and doubtfully be seen to be done" (justice must not only be enforced, but also must be seen, felt and understood by the public that it has indeed been enforced). So how

³ Andi Hamzah dan Sumangilepu, 1985, *Pidana Mati di Indonesia Dimasa Lalu, Kinidan Masa Depan*, Jakarta, Ghalia Indonesia, cetakan kedua, p. 23

⁴ Achamd Ali. 2008. *Menguak Realitas Hukum: Rampai Kolom & Artikel Pilihan dalam Bidang Hukum*, Cet. I; Jakarta: Kencana, p. 85

⁵ *Ibid*



can justice be felt by the small people if the suspects are corrupt cases? not detained. On the other hand, whenever a chicken thief is caught stealing for a living, he will be immediately arrested, instead using a beating first. The corruption suspects being investigated still have time to enjoy a refrigerated room, and a comfortable life outside the detention cell.

c. The death penalty is not against the 1945 Constitution of the Republic of Indonesia

With the existence of the Constitutional Court of the Republic of Indonesia, as the "guardian" of the constitution, groups that are anti-death penalty see an opening to try to abolish the death penalty on the grounds that the death penalty is contrary to the 1945 Constitution of the Republic of Indonesia, especially Article 28 A which affirms "Everyone has the right to live, to defend life and life".

Then Article 28 A is linked by them again with Article 28 I (1) which affirms: "The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of retroactive law are human rights. which cannot be reduced under any circumstances".

Is it true that the death penalty violates the human rights of the death convict? The problem is, why isn't the question behind to be, whether serious crimes such as drug trafficking, terrorism, sadistic premeditated murder are not part of the cruelest, most inhumane crimes and insult the lives and dignity of humanity of all people. and human children, violate the rights of the victims to live. If the answer "Yes!", and indeed "Yes", then there is nothing more violating the human rights to life, than the perpetrators of these serious crimes, and not a lawful and lawful court that has sentenced him to death. The death penalty by itself is not something to be desired, but this horrific crime is imposed by the icy brutal reality of the perpetrators of serious crimes.

To answer the accusations of anti-death penalty groups that capital punishment is a "crime against human rights" namely "the right to life", then Achmad Ali will quote and adapt the views of David Anderson "In the formulation of the 'right to life' the abolitionists have, to the benefit of the criminals, found something which is often used with the same authority as if it were an unquestionable direct command from God".

While the death penalty group, on the other hand, means that premeditated murder is a terrible crime against the basic human right to life. But a country governed by law, which executes a guilty criminal, based on a valid court decision, of course cannot be analogous to having committed 'premeditated murder' against the convict. Exactly the same as a soldier (soldier) never by any nation and country in this world is considered to have committed the crime of 'premeditated murder', when the soldier (soldier) was defending his country and killing enemy soldiers. when in extreme dangerous situations kills a dangerous armed criminal, or even when a citizen kills someone in self-defense with the aim of saving his own life or that of his family.

Anti-death penalty groups make a fatal mistake when they allow criminals who commit violent



crimes and premeditated murder to be covered by this right. There is a dire situation that occurs when anti-death penalty groups place the premeditated killer or perpetrator of violence (sadists, drug dealers, including terrorists) in the "right to life" focus. The anti-death penalty groups have thus taken this principle of humanism down the drain and allowed it to become something that stinks and is contaminated.

It should not be a big criminal (including drug dealers) who is allowed to run rampant in society by spreading his crimes from inside his suitcase, and always trying to save his own life only by referring to these human rights. If this happens, then the principle of 'right to life' will be turned into an inhuman principle for the defender of the criminal, and then this principle has become a kind of 'enemy of humanity'. Therefore, the 'right to life' does not apply unconditionally to everyone under all conditions. There are exceptions to these rules and principles."

Achmad Ali strongly agrees with David Anderson's view, therefore, we cannot understand the meaning of Article 28A and Article 281 of the 1945 Constitution indefinitely, because if we make absolutes that "anything and whatever the situation, a person cannot and has no right to take another person's life, because it is contrary to 'Human Rights' especially the 'right to life', the consequences will be very extraordinary, namely, among others:

1. The Indonesian National Armed Forces and the Indonesian National Police must be disbanded, and all weapons which can be used to kill in any form must be destroyed; even those anti-death criminals must immediately write to the United Nations (UN) to disband all soldiers and police in all countries in the world, and also destroy all weapons on this earth
2. Doctors are strictly forbidden to kill a mother, even to save the life of her baby, or vice versa.
3. If our house is being raided by armed criminals and ready to kill us, or our families, then because we have no right to eliminate the lives of other people in absolute terms, then we surrender ourselves or our families to be killed by these criminals.
4. Article 48 and Article 49 of the Criminal Code must immediately be abolished, which stipulates that a person has the right to take the life of another person, under duress and/or in self-defense (as long as the threat of attack is balanced).

Achmad Ali further reminded that Article 281 does not only mention "the right to life", but also "the right not to be prosecuted on the basis of retroactive law". If even this is to be interpreted indefinitely, then the provisions in the Law on Human Rights Courts, both applicable in Indonesia and in other countries in the world, which allow retroactive prosecution of cases of gross human rights violations, must be abolished.

Achmad Ali strongly criticized the Kingdom of the Netherlands, which abolished the death penalty, except for war crimes the death penalty was still imposed. Such a policy is clearly a very inconsistent policy, because it should once be of the view that the "right to life" is an absolute right that cannot be negotiated, so the Kingdom of the Netherlands should also abolish the death penalty for war crimes. And it is even more consistent that the Kingdom of the



Netherlands and countries that have abolished the death penalty, also immediately disband their soldiers and police, and immediately destroy all the weapons they have, because like it or not, these weapons are produced to take away the "right to life". from their enemy.

As we all learned when we studied "Legal Theory", especially about various methods of finding law by judges, then we know that one type of interpretation is systematic interpretation, which in essence is that an article or sub-article in legislation, does not can only be understood partially, but must be understood in relation to other articles or other sub-articles or even with other legislation. Law must always be seen as "a complete system", and not partial.

Thus, Article 28A and Article 281 of the 1945 Constitution of the Republic of Indonesia must be linked with Article 28J which is the exception and the lex specialist which determines: (1) Everyone is obliged to respect the human rights of others in the orderly life of society, nation and state. (2) In exercising his rights and freedoms, everyone is obliged to comply with the restrictions established by law for the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with moral considerations. , religious values, security, and public order in a democratic society.

Article 28J is the main basis for justifying the death penalty, as long as the death penalty meets the criteria in Article 28J. Moreover, the justifications or exceptions regulated by Article 28J, in particular with regard to "to fulfill fair demands in accordance with moral considerations and religious values", cannot be separated from the five (5) precepts contained in Pancasila, in particular the Precept I: Belief in the One Supreme God. Esa, which is an inseparable part of the 1945 Constitution of the Republic of Indonesia contained in the Preamble to the 1945 Constitution of the Republic of Indonesia.

4. CONCLUSION

There are pros and cons to the death penalty. For those who are pro against the death penalty if the perpetrator has shown from his actions that he is a very dangerous individual for society. Therefore, it must be made powerless again by being expelled from society or social life. For those who are against the inhumane death penalty on the grounds of the death penalty, the convict cannot improve it in the community.

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