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DEVELOPMENT OF DEATH PENALTY IN INDONESIA IN HUMAN RIGHTS PERSPECTIVE

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Abstrak
Hukuman mati pada hakekatnya suatu negara mengambil hak hidup warganya sehingga bertentangan dengan Hak Asasi Manusia. Namun dapat dibenarkan sepanjang penerapannya dengan alasan membela hak asasi manusia warga negara lainnya dan secara hukum positif pengaturan oleh negara menuju pada kecenderungan pengurangan dan pada akhirnya penghapusan sama sekali. Penerapan hukuman mati hanya dapat dilakukan terhadap tindak pidana yang melampaui batas kemanusiaan, mengancam hidup banyak orang, merusak tata kehidupan dan peradaban manusia, dan merusak perekonomian negara. Tindak pidana yang dapat dijatuhi pidana mati antara lain: pembunuhan berencana, terorisme, narkoba bagi pengedar dan bandar, dan korupsi.

Kata kunci : pidana mati, hak asasi manusia, konvensi internasional

Abstract
Death penalty is essentially a country that takes the life rights of its citizens so that it is contrary to human rights. But it can be justified throughout its application on the grounds of defending other citizens' human rights and positively legally regulating the state towards a tendency of abatement and ultimately elimination altogether. The application of the death penalty can only be carried out against crimes that transcend humanitarian boundaries, threaten the lives of many people, damage the order of life and human civilization, and damage the country's economy. Crimes that can be sentenced to death include: premeditated murder, terrorism, drug trafficking and dealers, and corruption.

Keywords: capital punishment, human rights, international conventions

Backround

In the amendment to the fourth amendment to the Constitution of the Republic of Indonesia in 1945, Chapter XA regulates human rights, the addition of human rights formulas and guarantees of respect, protection,

implementation and promotion in the 1945 Constitution are not solely due to the development views on human rights which are increasingly considered important as global issues, but because they are one of the legal requirements of the state. With the formulation of human rights in the 1945 Constitution, constitutionally the rights of every citizen and citizen of Indonesia are guaranteed. In this connection, the Indonesian nation views that human rights must pay attention to the characteristics of Indonesia and a human right must also be balanced with obligations so that it is hoped that mutual respect and respect for the rights of each party will be created. One aspect of the human rights formulation included in the 1945 Constitution is human rights relating to social welfare. The equality of rights and obligations for all citizens in all aspects of life and livelihood is a prerequisite for achieving social welfare for all Indonesians.

The Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia respects and upholds human dignity. Human rights as basic rights inherently inherent in humans, are universal and lasting, are also protected, respected and maintained by the Republic of Indonesia, so that the protection and promotion of human rights including vulnerable groups, especially persons with disabilities also need to be improved.

The principle of the Indonesian Declaration in principle contained in the text of the Opening of the 1945 Constitution of the Republic of Indonesia which is a normative source for positive Indonesian law, especially the elaboration in the articles of the 1945 Constitution of the Republic of Indonesia.

Human rights are basic rights that are inherently inherent in the nature and existence of humans as creatures of God who are the Eternal and are His gifts. Human rights must be respected, protected, fulfilled, enforced and promoted for the sake of human dignity and dignity. The implementation of respect, fulfillment, protection, enforcement and promotion of human rights is basically an obligation and responsibility of the state, especially the government. This is as mandated in Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia and Article 71 of Law No. 39 of 1999 concerning Human Rights (Guidelines for National Action Plan for Human Rights for Higher Education 2016 - 2019).

The Indonesian people uphold human rights can be seen also in Article 2 of the Law on Human Rights which states that the Republic of Indonesia recognizes and upholds human rights and basic human freedoms as rights inherently inherent in and inseparable from humans, which must be protected, respected , and upheld for the sake of enhancing human dignity, prosperity, happiness, and intelligence and justice. Then in Article 3 it is stated (1) Every person is born free with equal and equal dignity and human dignity and conscience to live in a society, nation, and state in the spirit of brotherhood, (2) Everyone has the right to recognition, guarantee ,

protection and fair legal treatment and obtain legal certainty and equal treatment before the law, (3) Everyone has the right to the protection of human rights and basic human freedoms, without discrimination.

The Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia respects and upholds human dignity (Mangku, Itasari; 2015). Human rights as fundamental rights inherent in human nature are universal, need to be protected, respected and maintained, so that respect, protection and fulfillment of human rights against vulnerable groups.

Until now, Indonesia still enforces and applies the death penalty. The United Nations (UN) is noted to often protest the practice of capital punishment in Indonesia. Spokesman for the United Nations Human Rights Council (HAM) Rupert Colville expressed his disappointment when Indonesia carried out the execution on April 29, 2015 because "Indonesia firmly imposed executions for perpetrators of drug crimes, on the other hand Indonesia also submitted a request that its citizens threatened with death penalty can be saved ". Ahead of the government's plan to carry out the execution on July 29, 2016, the third execution under the leadership of President Joko Widodo, United Nations Head of Human Rights Zeid Ra'ad al-Hussein called on the Indonesian government to stop the death penalty for narcotics trafficking cases due to "increased execution in Indonesia is very worrying "and" unfair to human rights "(www.wikipedia.com).

In connection with the planned execution on 29 July 2016, the European Union in its written statement also asked the Indonesian government to stop the execution of 14 convicts to be executed and asked Indonesia to join around 140 other countries which had completely abolished the practice of execution. According to the written statement, "Death sentences are cruel and inhumane crimes, which do not cause a deterrent effect on crime, and degrading human dignity. While Ken Matahari, Amnesty International's staff in Sydney, stated his argument to support the abolition of death in Indonesia while comparing Singapore still applies the death penalty with Hong Kong which has abolished the death penalty since 1983. He delivered a study from the University of Hawaii in 2010 which stated that the two countries, which have very similarities in many respects, had very similar murder rates (www.wikipedia .com).

The practice of capital punishment in Indonesia is also often criticized by other countries, especially countries in Europe. Some countries have opposed the practice of executions in Indonesia such as the Netherlands, Britain, Australia and Brazil. Regarding the planned execution to be carried out by the government on July 29, 2016, Britain expressed additional disappointment at receiving a report stating that the four convicts to be executed previously had been "tortured and experienced negligence in the judiciary" (www.wikipedia.com). Based on the explanation above, the

writer will discuss regarding the Implementation of Death Penalty in Indonesia in the Perspective of Human Rights.

Discussion

Overview of the Death Penalty

The debate about capital punishment has been going on for a long time in criminal law in various parts of the world. It seems that the debate will not be finished and is not timeless by changing times. In various literatures it can be traced that the pros and cons of capital punishment have been started since the 18th century precisely since 1764 when Cicero Beccaria, said his opinion that the threat of capital punishment is inhumane and ineffective (Sahetapy, 2009). In the view of the legal community and the general public, the pros and cons of the threat of capital punishment are not new. Although it is temporary, the polemic on this matter will usually always appear every time there is a death sentence imposed by the Court or there is an execution of the criminal verdict (Kholiq, 2007).

In a historical perspective, the existence of capital punishment as a legal sanction is already well known in human life. Both in the days of Ancient Greece, Rome, Germany, and Canonism. At that time, especially in the era of the Roman empire, the execution of capital punishment was carried out in ways that according to the measure of humanity now really seemed very cruel. For example the convict was tied up and then pulled by four horses who ran in full force in different directions until the body of the convict was scattered, or drowned to the bottom of the sea and so on. However, around the end of the seventeenth century and the beginning of the eighteenth century, threats and implementation of capital punishment began to appear in some countries, because of sharp criticism from criminal law experts who opposed it (Hamzah, 1984).

In the 1980s, the death penalty imposed on Kusni Kasdut attracted such attention. Likewise, in the 1990s, the people seemed to be sucked into energy by discussing sadistic crimes by Karta Cahyadi and Tugiman which eventually encouraged the Surakarta District Court Judges to sentence them to death (Kholiq, Op.Cit. 188). The same situation occurred in 2000-2007, the legal experts and ordinary people were again involved in a long debate about the execution of Ayodya (convicted narcotics case), Astini (death row convicted of mutilation murder), Tibo (death row convict in Poso riot case) and case Bahar Mattar, who has been waiting and is uncertain about the execution of the death penalty for him for approximately 36 years at the Penitentiary (Ibid, pp. 187).

Still related to the debate over the regulation and execution of death row inmates, when Indonesian President Djoko Widodo rejected petition for clemency by the death row inmates. For the refusal of clemency, in 2015 eight convicts died of narcotics cases with the qualifications of the perpetrators as producers and dealers executed in Nusakambangan, Central Java. The convicted citizens of Australia, Brazil and Nigeria were

executed by firing squad after the execution of the death sentence was issued by the Indonesian Attorney General's Office. The government's move caused a strong reaction immediately shown by the Australian Government by attracting ambassadors from Jakarta. The Australian Government's actions are similar to those of Brazil and the Netherlands which first attracted their ambassadors from Indonesia. That is a form of protest over the arrangement and execution of the death row inmates for the first wave of citizens, with death row inmates Myuran Sukumaran (Australia), Martin Anderson (Ghana), Andrew Chan (Australia), Sergie Areski Atlouni (France), Rahem Akbaeje (Spain), Rodrigo Gularte (Brazil), Sylvester Nwolise (Nigeria) (Koran Tempo, 2015). This shows that the existence of the threat of capital punishment in the criminal law system in each country has never been in accordance with the debate to maintain or eliminate the norms of death penalty threats in the criminal law system of each country, including in the criminal law system in Indonesia (Faissal; 2018).

The debate about the existence of the threat of capital punishment is found in two main schools of thought, namely the existence of groups that want the abolitionist norms to be abolished as a whole and groups that want to maintain the existence of norms of death penalty based on the provisions of positive law.

Human Rights as Fundamental and Universal Rights

The concept of Human Rights (HAM) includes three main elements for human existence both as individual beings and social beings, namely human integrity, freedom and equality (Rosas, 1995). These three elements are conceptualized into understandings and understanding of what human rights are.

Understanding of this understanding becomes clear when recognition of these rights is given and is seen as a human process of humanization by other parties in a vertical context (individual with state) and horizontal (between individuals) both de facto and de jure. Thus, human rights values are fundamental and universal with the recognition, protection and promotion of integrity, freedom and human equality in key international human rights instruments (Mangku; 2012), both at the international, regional and national levels. Even though its values are universal, human rights can be distinguished into several normative academic groupings namely, first, personal rights or "personal rights". Second, economic rights or the right to own something (property rights). Third, the right to get equal and equal treatment in law and government or "right of legal equality". Fourth, political rights or "political rights". Fifth, social and cultural human rights or "social and cultural rights", such as obtaining and choosing education, develop the preferred culture. Sixth, the right to litigation and its protection or "procedural rights". Understanding and understanding of

human rights in terms of these substances becomes complicated and complex based on developments, existing realities and the complexity of other determinant factors.

The concept and values of human rights change and in line with time both through evolutionary and revolutionary processes from normative forces into the process of social and political change in the entire order of human life (Perwira, 2003). Thus, understanding and understanding of the meaning of human rights in terms of substance must be returned to the basic concept of why human rights exist. Human rights exist and arise because these basic rights are very basic or fundamental in the sense that their implementation is absolutely necessary so that humans can develop according to their talents, ideals, and dignity as human beings regardless of differences that cause discrimination based on nation, race, religion and gender. The principles of understanding human rights must be used as the main foundation so that the understanding and understanding of human rights from the substantive aspect becomes applicable. These principles are the application of the concept of the indivisibility and the interdependence of human rights values themselves (UNICEF, 1998).

According to the ontology, human rights are rights owned by humans that are obtained and carried along with their birth or presence in people's lives because they have a privilege which opens the possibility for them to be treated according to those features (Huijbers, 1990; 96). With a simpler understanding, human rights are the right of someone who if the rights are taken from him will result in the person becoming no longer human (United Nations, 1998; 4).

Human rights, as understood in the human rights documents that emerged in the twentieth century such as the Universal Declaration of Human Rights (UDHR), have a number of prominent features, namely (James W., 1987): First, so that we do not losing the notion that is already firm, human rights are rights. The meaning of this term is unclear, but at least the word indicates that it is certain norms that have high priority which is mandatory. Second, these rights are considered universal, which are owned by humans solely because they are human. This view implies that characteristics such as race, gender, religion, social position, and citizenship are not relevant to question whether a person has or does not have human rights. This also implies that these rights can be applied throughout the world. One special feature of human rights that is in force now is that it is an international right. Compliance with similar rights has been seen as an object of legitimate attention and international action.

Third, human rights are considered to exist by themselves, and do not depend on their recognition and application in customary systems or legal systems in certain countries. This right may indeed not be an effective right until it is carried out according to law, but that right exists as a standard of argument and criticism that does not depend on the application of the law.

Fourth, human rights are seen as important norms. Although not entirely absolute and without exception, human rights have a strong position as normative considerations to be applied in conflict with national norms that are contradictory, and to justify international actions carried out for human rights. The rights outlined in the Declaration are not arranged according to priorities; its relative weight is not called. It is not stated that some of them are absolute.

Thus the human rights described by the Declaration are something philosophers call prima facie rights. Fifth, these rights imply obligations for individuals and the government. The existence of this obligation, as well as the rights associated with it, is deemed not to depend on the acceptance, recognition or application of it. Governments and people everywhere are obliged not to violate someone's rights, even though the government of the person may also have the primary responsibility to take positive steps to protect and uphold the rights of that person. In the end, these rights set minimum standards for proper community and state practice. Not all problems born of cruelty or selfishness and ignorance are human rights problems. For example, a government that fails to provide national parks for its people can indeed be criticized as being incompetent or not paying enough attention to opportunities for recreation, but this will never be a human rights issue.

Death Penalty in Positive Law in Indonesia

Article 10 of the Criminal Code (KUHP) distinguishes two types of criminal: additional principal and criminal penalties, namely:

a. Basic Criminal: 1. Death sentence; 2. Prison sentences; 3. Sentencing sentence; 4. Fine penalty. b. Additional crimes: 1. Revocation of certain rights; 2. Appropriation of certain goods; 3. Announcement of Judge's decision. Thus, capital punishment in positive law in Indonesia constitutes a principal crime.

Crimes that are threatened with the death penalty in the Criminal Code for example; 1). Article 104 of the Criminal Code: Meaning to kill the head of state;

2). Article 111 paragraph (2) of the Criminal Code: Inviting Foreign Countries to attack Indonesia; 3). Article 124 paragraph (3) of the Criminal Code: Providing assistance to the enemy when Indonesia is in a state of war;

4). Article 140 paragraph (4) of the Criminal Code: Kill the head of a friendly country; 5). Article 140 paragraph (3) and Article 340 of the Criminal Code: Assassination planned in advance; 6). Article 365 paragraph (4) of the Criminal Code: Theft by violence by two or more allies at night by dismantling and so on, which results in a person being seriously injured or dying; 7). Article 444 of the Criminal Code: Piracy at sea, on the coast, on the coast and at times, resulting in people dying; 8). Article 124 bis of the Indonesian Criminal Code: During the war it was advocating riots,

rebellions and so on between workers in the national defense company; 9). Articles 127 and 129 of the Criminal Code: In a time of war deceiving when conveying the needs of the army; 10). Article 368 paragraph (2) of the Criminal Code: Extortion by weighting; As a comparative material while at the same time looking into the development of thought in regulating capital punishment in Indonesia, it is also a good idea to pay attention to the provisions of the new Criminal Code draft as Constituendum Juice, as follows:

1). Death Penalty is carried out by firing squad by shooting convicts to death;

2). Implementing capital punishment is not carried out in public;

3). Death penalty is not imposed on children under the age of eighteen;

4). The implementation of the death penalty for pregnant women or mentally ill people is postponed until the woman gives birth or the mentally ill person is cured;

5). The death penalty can only be implemented after the President's approval and President's Refusal of Pardon;

6). The implementation of capital punishment can be postponed with a probationary period of ten years, if;

a) The reaction of the public to death row inmates is too large;

b) The convict shows remorse and hopes to improve;

c) The position of the convicted person in the inclusion of a crime is not very important;

d) There are reasons for lightening

7). if the convicted person during the probationary period exhibits commendable attitudes and actions, then capital punishment can be changed to life imprisonment and a maximum of twenty years imprisonment with the decision of the justice minister.

8). if the convict during the probation period does not show commendable attitudes and actions there is no hope to improve the death row inmate can be carried out on the order of the Attorney General.

9). if after the Clemency application has been rejected, the execution of capital punishment is not carried out for ten years not because the convict escaped then the death row inmate can be converted into a life sentence by the Decree of the Minister of Justice. (Job; https://reference.elsam.or.id).

Implementation of Death Penalty in Indonesia in the Perspective of Human Rights

The imposition of capital punishment for criminals is based on criminal policies determined by the state administrators. Criminal policy (politics of criminal law) is part of the overall national political law (legal policy), and is part of social politics (social welfare policy and social defense policy). (M. Najih, 2013: 194-195). Criminal politics is essentially an integral part of social politics, namely policies or efforts to achieve social welfare,

criminal politics consists of reasoning policy and non-reasoning policy (Barda Nawawi Arief, 2014: 4- 5).

The application of capital punishment is a reasoning effort in overcoming crime. In deciding the application of capital punishment for certain perpetrators of crime will be influenced by law enforcement policies in general, and also influenced by social policies whose purpose is to achieve social welfare. Therefore, in imposing capital punishment on criminals must be considered the purpose of the imposition whether it has an impact on improving people's welfare, or even vice versa.

The imposition of capital punishment is a criminal policy with a means of reasoning (reasoning policy). In applying criminal law politics (reasoning policy) there are two central problems, namely: what actions should be used as criminal acts, and what sanctions should be applied to the violator (Barda Nawawi Arief, 2014: 30). Determination of these two things will be related to integral social policy determination as a way to achieve social welfare.

In order to achieve the country's goals, namely social welfare, criminal law also contributes to preventing crime. This effort is carried out by means of reasoning, namely by implementing capital punishment for offenders. Criminal law has goals and functions. The purpose of criminal law in general is to achieve justice, certainty, and usability, while specifically it is to impose criminal acts for perpetrators of crimes and prevent criminal acts against people, bodies and property. Achieving the objectives and functions of criminal law will contribute to the improvement of people's welfare.

To achieve this goal, criminal law seeks to impose capital punishment for certain criminal offenders. The concept of justification and the purpose of criminal imposition include 3 theories, namely: (1) Absolute Theory (Retributive) states that punishment is retaliation for crimes committed by the perpetrator. Sanctions imposed to satisfy demands for justice and in retaliation. (2) Purpose Theory (Doeltheorie) states that punishment is a means to achieve certain goals that are useful for protecting society (social defense), (3). Integrative theory states that punishment is seen in a multy perspective in a formal, so that the goal is plural (Muladi, 2002: 49-51).

The imposition of capital punishment raises diverse controversies. Basing on the concept of human rights that the right to life is a right that is nonderogable rights. International instruments support the existence of living rights stated in the Declaration of Human Rights and the ICCPR. Likewise, Article 28 A of the 1945 Constitution which affirms that every person has the right to live, and has the right to defend his life and life. Article 28 I states that the right to life is a human right that cannot be reduced under any circumstances. In Article 28 I requires people to pay attention to the right to life. However, in Article 28 J states that every person is obliged to respect the human rights of others and must comply with the restrictions stipulated by law to guarantee the 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 capital punishment.

The judge's consideration in the death penalty verdict is basically to defend human rights for victims who have been seized by convicts. The message to be conveyed is that everyone cannot take the lives of others and must respect each other's human rights. This refers to Article 28 J of the 1945 Constitution, where each person is obliged to respect the human rights of others and is obliged to submit to the restrictions set by law.

The controversy over the application of capital punishment in the form of rejection was submitted by the National Human Rights Commission, the Witness and Victim Protection Agency, and Contrast. This view is for 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, where many errors are found in Indonesian criminal justice practices.

Various political figures and community practitioners voiced their disapproval of the practice of capital punishment in Indonesia. The 3rd RI President Bacharuddin Jusuf Habibie firmly stated his refusal to the practice of capital punishment in Indonesia. He said, "I believe that people are born, meet their soul mates, die, are determined by God. So I do not want, have no right to determine (death sentence). Soedomo, the 3rd Republic of Indonesia Minister of Political and Social Affairs supports the abolition of the death penalty because it is not based on Pancasila. Todung Mulya Lubis argues that "there is no empirical evidence to show that the death penalty has a deterrent effect".

Muhammad Hafiz, Acting Executive Director of the Human Rights Working Group in Jakarta, considers that the execution on July 29, 2016 was "proof of the regime's decline in the enforcement and protection of human rights". In fact, according to Tri Agung Kristanto from Kompas, Indonesia has highly respected human rights since the 1998 reform, one of which was marked by "including provisions relating to human rights" in Article 28 of the 1945 Constitution.

A number of academics from various disciplines in the country noted that openly expressed rejection of executions in Indonesia. Some of them include Professor Sulistyowati Irianto, Antonius Cahyadi, Raafi Seiff and Frans Supiarso from the University of Indonesia, Beni Juliawan from Sanata Dharma University, Robertus Robet from Jakarta State University, and Ahmad Sofian from Bina Nusantara University. In general, the academics concluded that the practice of capital punishment was not effective in dealing with crime and did not provide the expected "deterrent effect". Professor Sulistyowati invites all parties to think more about one's right to

life, [20] and Frans hopes that the government "places compassion and forgiveness above all".

Antonius and Ahmad stated that the execution of capital punishment is a means of channeling "revenge" by the state without producing any impact on victims of crime. And therefore, according to Professor Sulistyowati, this practice "inherits a culture of revenge on our next generation. Ahmad also said that this practice has been used by those who really want to be put to death because the ideologies they embrace, Ahmad, Antonius, and Robet, confirm that capital punishment more accommodates political interests than victims and legal interests, even "used as a social and political instrument to show off power. For Robet and Frans, the practice of capital punishment is one of the practices of the "ancient" era applied by the state in modern times.

Robet and Beni argued that the implementation of the death penalty in Indonesia was only based on the results of surveys by several institutions, the results of which were "not credible. Beni claimed that the survey was only conducted in 17 provinces but the report mentions 33 provinces, so he felt there were irregularities. leaders from the religious community also expressed their rejection of the practice of the death penalty in Indonesia, Chairperson of the Indonesian Muslim Intellectuals Association Jimly Asshiddiqie said that the practice of capital punishment in Indonesia would be abolished, because he viewed it as incompatible with the first and second principles of Pancasila and called for "Muslims in Indonesia it does not interpret the tradition of criminal law in the Qur'an and hadith literally ".

Chairman of the Legal Aid Society of the Sharia Advocates Community, Irfan Fahmi, said that the attitude of a Muslim to reject slavery should be accompanied by refusing the death penalty. Because the right to life and rights are not enslaved including human rights qualifications (HAM). Chairperson of the Conference of the Guardians of the Indonesian Church and Bishop of the Archdiocese of Jakarta Mgr. Ignatius Suharyo reiterated his rejection of the practice of the death penalty because of potential errors in the legal system made by humans. According to him, there is no perfect legal system. And we all know that justice anywhere can go astray. The same thing was conveyed by Father Franz Magnis Suseno, a Catholic humanist and clergyman, who stated that "our judicial system has not guaranteed honesty. If someone dies with an institution that is not yet guaranteed, how is that. He claims that the execution of death sentences has no effect deterrent.

Penal punishment is an important part of criminal proceedings. Therefore, the implementation must be based on a humanistic perspective and the purpose of integrative criminal as well as a modern criminal conviction that prioritizes the protection of society. The humanistic perspective emphasizes criminal requirements which include criminal acts

(criminal act / actus reus) and criminal responsibility (mens rea). In criminal law it is commonly called criminal law that emphasizes actions (strafbaar heid van het feit) and criminal law that emphasizes people (strafbaar heid van de person). There are 3 things that become the point of discussion in criminal law, namely criminal acts, criminal responsibility, and criminal imposition / punishment. The application of the criminal in a humanistic perspective must be based on the wrongdoing of the perpetrator or known as the culpability principle (Barda Nawawi Arief, 2014: 58). This principle states that "Nulla Poena Sine Culpa" which means no criminal without the wrongdoing of the perpetrator. Errors are manifested in the inner attitude of criminal acts in the form of intentional or with negligence. With the application of dualism in studying the elements of criminal acts, there is no place for both forms of mental / mental attitudes to be a core part of criminal acts (Chairul Huda, 2006: 35).

The purpose of integrative punishment in imposing penalties, especially capital punishment, must pay attention to the factors concerning human rights of the convicted person, and make the criminal an operational and functional nature. Therefore a multi-dimensional approach can see the impact of individual and social punishment (Muladi, 2002: 53). The imposition of capital punishment can be calculated against its impact on public protection (social defense) and for convicts themselves. Basing on the aforementioned concept then in applying capital punishment to perpetrators of crime by prioritizing the criteria of criminal acts carried out as follows: (1) Exceeding humanitarian boundaries, (2) Harming and threatening many humans, (3) Destroying generations of people, (4) Damaging the nation's civilization, (5) Damaging the order on the face of the earth, (6) Harming and destroying the country's economy. These types of criminal offenses include: drugs, terrorism, premeditated murder, persecution resulting in sadistic and cruel deaths, and corruption.

Apart from the pro and contra debates about the threat of capital punishment that seem to never end, it is necessary to emphasize that in the current Indonesian criminal law system, the norms of the threat of capital punishment are still a type of legal sanction that applies both de yure and de facto. In de yure, the norm of the threat of capital punishment has not been revoked from various criminal law provisions both contained in the Criminal Code and outside the Criminal Code. As a criminal system, the existence of capital punishment is still legitimized by Article 10 letter a of the Criminal Code. Therefore, the threat of capital punishment remains as a sanction threatened for various serious crimes such as treason with the intention of killing the President or Vice President (Article 104); invites Foreign Countries to attack Indonesia (Article 111 paragraph 2); kill the Head of the Friend State (Article 140 paragraph 1); Planned Murder (Article 340); theft by violence which results in the death of the victim (Article 365 paragraph 4). Outside the Criminal Code, various laws and regulations also

show a tendency to maintain capital punishment. For example in Narcotics crime (Law Number 22 Year 1997 as amended by Law Number 35 of 2009), Law Number 5 Year 1997 concerning Psychoropics, Corruption Crime (Law Number 31 Year 1999 jo Law Number 20 of 2001), Serious Human Rights Crimes (Law Number 26 of 2000) and Terrorism Crimes as stipulated in Perpu No.1 of 2002 which were later passed into Law Number 15 of 2003 (Faissal; 2018).

Although the norms of the threat of capital punishment remain retained in the criminal law system in Indonesia as stated above, the actual politics of threatening and punishing laws is very selective. This selective policy is at least seen in the following (Faissal; 2018):

1. Death penalty is not threatened with a single criminal offense. However, it is always alternative to imprisonment for life or imprisonment for a maximum of 20 (twenty) years. Therefore, in legislation, if a crime is subject to the threat of capital punishment the sound of the threat is "threatened with capital punishment or a maximum life sentence of 20 years in prison".

2. The imposition of capital punishment in the Criminal Code is always a single principle. This means that they may not coincide with other principal penalties such as imprisonment, fines, confinement or cover. As for the legislation outside the Criminal Code, it has been regulated as a lex specialist, in criminal penalties it can be cumulative. For example in Law Number 35 of 2009 concerning Narcotics, and Law Number 31 of 1999 concerning Corruption.

3. The death penalty threat is only threatened and imposed for serious / very serious crimes, both in terms of mode and the impact it causes.

Whereas de facto, it cannot be denied that the threat of capital punishment is still being enforced through court verdicts and the execution of several death row inmates in various cases. For example in cases of narcotics, sadistic mutilation, and terrorism (Faissal; 2018).

From the explanation above, it illustrates that no matter how controversial the threat of capital punishment is in the criminal law system in Indonesia, it is absolutely juridical as a legal sanction that has strong legality and legitimacy in the criminal law system in Indonesia.

Conclusion

In the Indonesian Criminal Code (KUHP), the criminal code is regulated in Article 10 of the Criminal Code, which states that there are 2 types of crimes, namely: (1). Principal Crime, which consists of: (a). Death Penalty, (b) Prison Penalty, (c) Penalty Penalty, and (d) Penalty fine, (2) Additional Penalty, which consists of: (a) Revocation of certain rights, (b) Deprivation of certain goods, (c) Announcement judge's decision, (3). Pidana Tutupan, based on Law Number 20 of 1946 concerning Pidana Tutupan. Status death penalty as a principal, is a type of crime that contains

pros and cons. At the international level, this type of criminal is prohibited to be imposed on convicted persons. The United Nations (UN) is pushing for the elimination of the application of this type of crime based on the Universal Declaration of Human Rights adopted on December 10, 1948, by guaranteeing the right to life and protection against torture. Similarly, the right to life is guaranteed in Article 6 of the International Convenant on Civil and Political Rights / ICCPR) which was adopted in 1966 and ratified by Law Number 12 of 2005 concerning Ratification of the ICCPR.

The death penalty is still applied in Indonesia and is contained in Indonesian positive law, namely Article 10 of the Criminal Code and is included as a basic crime. It is also supported by qualifications of criminal acts which can be categorized or threatened with capital punishment, including treason, or inviting foreign countries to attack Indonesia. Likewise in the Draft Criminal Code there is also a regulation on capital punishment. The death penalty or often referred to as capital punishment contradicts the international provisions of human rights, especially Article 3 of the Universal Declaration, namely the right to life. However, there are exceptions to the Article, namely Article 4 paragraph (1) of the International Covenant on Civil Rights Politics, derogable right, which essentially means that the death penalty can be carried out with the qualification of the crime to endanger the public. Basing on the aforementioned concept then in applying capital punishment to perpetrators of crime by prioritizing the criteria of criminal acts carried out as follows: (1) Exceeding humanitarian boundaries, (2) Harming and threatening many humans, (3) Destroying generations of people, (4) Damaging the nation's civilization, (5) Damaging the order on the face of the earth, (6) Harming and destroying the country's economy. These types of criminal offenses include: drugs, terrorism, premeditated murder, persecution resulting in sadistic and cruel deaths, and corruption.

Bibliography

Andi Hamzah, 1984, *Sistem Pidana dan Pemidanaan*, Jakarta, Pradnya Paramita.

Ayub Torry Satriyo Kusumo, Hukuman Mati Ditinjau Dari Perspektif Hukum Dan Hak Asasi Manusia Internasional, https://referensi.elsam.or.id/wp-content/uploads/2015/07/Hukuman-Mati-Ditinjau-Dari-Perspektif-Hukum-Dan-Hak-Asasi-Manusia-Internasional.pdf

Bali Nine' Executed". CNN. 29 April 2015.

Barda Nawawi Arief. Bunga Rampai Kebijakan Hukum Pidana. Kencana. Jakarta. 2014.

Barda Nawawi Arief. Masalah Penegakan Hukum & Kebijakan Hukum Pidana dalam Menanggulangi Kejahatan. Kencana. Jakarta. 2014.

Buyung Nasution, Adnan, dan A. Patra M. Zen, 2006, Instrumen Internasional Pokok Hak Asasi Manusia, Yayasan Obor Indonesia, Jakarta.

Chairul Huda. Dari Pidana Tanpa Kesalahan Menuju kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan. Kencana. Jakarta. 2006.

Cormack, Lucy (17 Januari 2015). "Drug traffickers in Indonesia face firing squad of 12 in first executions of 2015". The Sydney Morning Herald. Diakses tanggal 17 Januari2015.

Eide, Asbjorn, Catarina Krause, Allan Rosas, 1995, *Economic, Social and Cultural Rights, A Textbook*, Martinus Nijhoff, Dordrecht.

Fadhli, Yogi Zul, Kedudukan Kelompok Minoritas dalam Perspektif HAM dan Perlindungan Hukumnya Di Indonesia, Jurnal Konstitusi, Volume 11, Nomor 2, Juni 2014.

Faissal Malik, 2018, Implementasi Pengenaan Ancaman Pidana Mati Terhadap Pelaku (Produsen dan Pengedar) Dalam Tindak Pidana Narkotika, Program Doktor S3 Fakultas Hukum, UGM, Yogyakarta.

Finlayson, Gregory. "Indonesian Death Penalty Mechanism". Greg Finlayson Lawyers. Greg Finlayson. Diakses tanggal 3 Maret 2015.

Hak Asasi Manusia.

Indonesia laksanakan eksekusi hukuman mati ketiga di bawah Presiden Jokowi, BBC Indonesia, 29 Juli 2016

Jakarta Globe. 15 Maret 2013. "Indonesia executes first convict in four years".

Kaelan, "Pancasila Sebagai Dasar Penjabaran Hak-Hak Asasi Manusia", Jurnal Filsafat Nomor 2 Tahun 1999, Fakultas Filsafat Universitas Gadjah Mada, Yogyakarta.

Kaelan, Pancasila Sebagai Dasar Penjabaran Hak-Hak Asasi Manusia, Jurnal Filsafat No. 2 Tahun 1992, Fakultas Filsafat UGM, Yogyakarta.

Karmini, Niniek (18 Januari 2015). "Indonesia executes 6 drug convicts, including 5 foreigners". Yahoo News. Associated Press. Diakses tanggal 18 Januari 2015.

Komisi Hukum Nasional. Problematika Pembaruan Hukum Pidana Nasional. KHN. Jakarta. 2013.

Komisi untuk Orang Hilang dan Korban Tindak Kekerasan (KontraS). 2007. "Praktik Hukuman Mati di Indonesia", Alumni. Bandung. 1992.

Koran Tempo, 2015, Edisi No.4908, Selasa 28 April.

Lubis, Todung Mulya & Alexander Lay. Kontroversi Hukuman Mati. Kompas. Jakarta. 2009.

M. Abdul Kholiq,2007, *"Kontroversi Hukuman Mati dan Kebijakan Regulasinya Dalam RUU KUHP (Studi Komparatif Menurut Hukum Islam)",* Yogyakarta, Jurnal Hukum Ius Quia Iustum, No.2 Vol.14.

Mujahid A. Latief, (Prawacana) Dalam J.E. Sahetapy, 2009, *Ancaman Pidana Mati Terhadap Pembunuhan Berencana*, Malang.

Muladi. Lembaga Pidana Bersyarat. Alumni. Bandung. 2002. Muladi & Barda Nawawi Arief. Teori dan Kebijakan Hukum Pidana.

Ni Kumara Santi Dewi (29 April 2015), PBB Sesalkan RI Tetap Lakukan Eksekusi Mati, Viva.co.id

Nickel, James W., 1987, *Making Sense of Human Rights: Philosophical Reflection on the Universal Declaration of the Human Rights,* The Regents of the University of California.

Panduan Rencana Aksi Nasional Hak Asasi Manusia Pendidikan Tingggi 2016 – 2019, Biro Hukum dan Organisasi Sekretariat Jenderal, Kementerian Riset, Teknologi, dan Pendidikan Tinggi, 2016, Lampiran 2.

Panduan Rencana Aksi Nasional Hak Asasi Manusia Pendidikan Tingggi 2016 – 2019, Biro Hukum dan Organisasi Sekretariat Jenderal, Kementerian Riset, Teknologi, dan Pendidikan Tinggi, 2016, Lampiran 2.

Peraturan Hukum Pidana. Republik Indonesia. Undang-Undang Nomor 39 Tahun 1999 tentang

Peraturan Presiden Nomor 75 Tahun 2015 tentang Rencana Aksi Nasional Hak Asasi Manusia (RAN HAM) Indonesia tahun 2015 – 2019 (Lembaran Negara Republik Indonesia Tahun 2015 Nomor 144).

Taihitu, Bonanza Perwira,2003, *Penaatan Indonesia pada Standar-Standar HAM Internasional Dalam Kurun Waktu 1991-2002,* Thesis pada Fakultas Ilmu Sosial dan Politik Departemen Ilmu Hubungan Internasional, Pasca Sarjana Universitas Indonesia.

The New York Times. 11 Juli 2008. "Indonesia widens use of executions".

Theo Huijbers, 1990, *Filsafat Hukum*, Penerbit Kanisius, Yogyakarta.

Undang-Undang RI Nomor 39 Tahun 1999 tentang Hak Asasi Manusia (Lembaran Negara Nomor 165 Tahun 1999, Tambahan Lembaran Negara Nomor 3886).

UNICEF, 1998, *A Human Rights Approach to UNICEF Programming for Children and Women : What It is and Some Changes It Will Bring.*

United Nations, 1998, *Human Rights, Questions and Anwers*, United Nations Department of Public Information, New York.

Warih Anjari, Penjatuhan Pidana Mati Di Indonesia Dalam Perspektif Hak Asasi Manusia, E-Journal WIDYA Yustisia, Volume 1 Nomor 2 Maret 2015.