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The Problems of Legal Protection for the Right to Life
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The Problems of Legal Protection for the Right to Life of Death Penalty Defendants in Indonesia

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Abstract. The death penalty evolved in conjunction with the arrival of humans on earth according to the history of punishment, and a legal culture of retaliation discipline based on theory of final punishment applied the death penalty just as a wolf eats a wolf. The study's method of research is the legal-normative research method. The legal approach is based on applicable laws and regulations, legal theory and expert opinion. A secondary-library information study is the normative system. Analyzing that study shows that it is essentially the state that takes away its citizens' rights to life to violate human rights that impose the death penalty. It can, however, be justified as long as its application is based on the defense of other people's human rights and a legally positive state regulation tends to decrease and ultimately eliminate them.

Keyword: *Death penalty, Right to Life, Human Rights.*

1. Introduction

This method of capital punishment is well-known throughout the world, though many countries have abolished it since the early twentieth century. Additionally, some countries have not abolished the death penalty but have never implemented it, such as Belgium's de facto abolition (Ambler, 2007). Additionally, some countries are attempting to limit the application of the death penalty by instituting a suspended death penalty, as China has done (Bymes, 2007). Developed countries such as the Netherlands, Germany, Italy, Portugal, Austria, and Switzerland maintain it, as do developing countries such as Indonesia, Malaysia, Singapore, Thailand, the Philippines, Pakistan, China, and Vietnam (Choudhury, 2015).

The judge has the authority to impose a crime on the perpetrator of a crime after considering it legally and sociologically to ensure that the sentence imposed benefits both the convict and the community (Dzhuska, Kaminska & Makarukha, 2021). As a result, the concept of deterrence is replaced with the idea of coaching in the administration of prison sentences. As a result, the application of criminal law must consider the *soort, straf, and modus straf* (Faiz, 2016). The Republic of Indonesia's Constitution Article 28A-28J of the 1945 Constitution guarantees Human Rights. The constitution declares that the human rights of each decent person are recognized greatly. The criminal regime under Article 10 of the Indonesian Criminal Code is subject to two kinds of offenses (KUHP): (1) basic penalties, including death penalties, (b) imprisonment, (c) jail and (d) acceptance, and (2) extra penalties, including withdrawal of certain rights, (b) confiscation of certain property (Fajrin, Purnamasari & Maulidiyah, 2020)

The death penalty has both its pros and cons, and is a sort of crimes that is a capital crime. It is globally unlawful to impose such a crime on the convict. The UN is calling for the end of illegal activity pursuant The 1948 UNHR, which assures the law on the protection of life and the protection of torture (Finlay, 2011). In accordance with Article 6 enacted in 1966 and confirmed by ICCPR Act No 12 of 2005, the ICCPR also guarantees the rights to life. The death penalty is essentially a foundational offense and

an alternate punishment with a death penalty reserve (Gunawan & Pamintory, 2020). In Indonesia it is difficult to respect death sentence (death), as a country with historical regard for the Pancasila worldview many lawyers continue to challenge it (between proponents and disadvocates). Partly because of variances and modifications (Golder & Williams, 2006).

Human rights against the death penalty are violated by people (Hood & Hoyle, 2009). For example, when you check the situation of the draft death penalty new criminal code before the House, your struggles are obvious (Kelly, 2003). Under Article 66 of the Proposed Criminal Code, the death penalty is an extreme substitution. This offense is due to the death of the prisoner and is not saved explicitly (Koh, 2011). The death penalty violates an individual's right to life (Hadipriyanto, 2010). All of them have the right to life and to defend it (Article 28A of the 1945 Constitution). Those who oppose capital punishment say that promotion of human rights no longer coincides. Each country has a concept of human rights and Indonesia must participate as a member of the international community to its execution. They argued that the Republic of Indonesia's official legal system must eliminate the death penalty (Heyns & Srivisan, 2013). Human rights are considered inalienable, in particular the right to life. Article 28I, paragraph (1) 28J of the Constitution of 1945, paragraph 1; and (2) Article 4 of the Human Rights Act No 39 of 1999.

The punitive imposition of a crime is meant to disincarnate and intimidate the criminals. It is a criminal measure. The disincentive is the ongoing implementation of the fundamental doctrine of extreme punishment and the Indonesian classical sentencing school (Kramer & Stoicescu, 2021). Indonesian criminal law, besides dissidence, respects the core idea of proportional punishment and the current flow of sentences by implementing action and restoring conditions damaged by criminal activities. The implementation of criminal law is harmonized and harmonized with national or international standards by using a multidimensional integrative theory (Kravchenko, 2007).

Article 10 of the Indonesian Criminal Code regulates the criminal system (KUHP). Two sorts of crimes exist: a. Criminal principles, consisting of: (a) (b) a confiscation of specific things; and (c) announcement of a ruling by the judges. (iii) (c) a supplementary punishment. (2) In French available (3). Crime coverage is provided by the Coverage Crime Act of 1946. The death penalty has both its pros and cons, and is a sort of crimes that is a capital crime. It is globally unlawful to impose such a crime on the convict. In accordance with the Universal Declaration of Human Rights of 1948 which protects the law on life and torture protection, the UN calls for the ceasefire of illegality (McMahon, 2008). Likewise, the rights to life are safeguarded under Article 6 ICCPR, introduced in 1966 and affirmed by ICCPR Law No 12 of 2005 (Leechainan & Longmire, 2013).

Imposing capital punishment involves removing the right to life of an individual. Everyone has the right to live and protect themselves (Article 28A of the 1945 Constitution). Even the rise of human rights has not brought about the death penalty. Every country has a concept of protection of human rights. Indonesia has shown that human rights are legally regulated as a world country (Pascoe, 2015). Human rights are considered inalienable, in particular the right to life. Article 28I, paragraph (1) and 28J of the Constitution of 1945, paragraph (2) Article 4 of Human Rights Act No 39 of 1999.

The Indonesian criminal law system aims to divorce the sentencing from the original (Nopriandi & Ardhiyansyah, 2020). The death penalty has been downgraded to a particular punishment and not an immediate penalty. Because death is a violation of human rights (Novak, 2014).

2. Method

The juridical-normative research method was used to review this research. The juridical approach is guided by pertinent laws and regulations, legal theory, and expert opinion. At the same time, the normative practice is accomplished through the use of secondary library materials.

3. Result and Discussion

Criminal, Criminal and Human Rights Policy

The death penalty is imposed on criminals following criminal policies established by state administrators. Criminal policy (criminal law politics) is an integral part of a country's overall legal politics and social politics. Criminal politics is fundamentally a subset of social politics, that is, policies or efforts to achieve social welfare; criminal politics encompasses both penal and non-penal policies (Ramcharan, 1985). The death penalty is a punitive measure used to combat crime (Rifai, 2017). When determining whether to apply the death penalty to certain criminals, it will be influenced by general law enforcement policies and social policies to achieve social welfare. Therefore the goal of imposition should be considered and the effects on the well-being of the community or even vice versa when evaluating whether to impose the death penalty onto criminals (Purba, Tanjung, Sulistyawati & Purwanto, 2020).

Imposing the death penalty is a criminal policy carried out through a penal system. When it comes to applying criminal law politics, there are two central issues to consider: What steps should be taken and what consequences should be imposed on violators?. These two points will be determined concerning the determination of integral social politics to achieve social welfare (Santoso, 2016). Criminal law also contributes to crime prevention to further the state's objective, which is social welfare. This effort is accomplished by using a penalty, precisely the imposition of the death penalty on criminals. Criminal law serves a purpose and fills a sense. Criminal law's overarching goal is to achieve justice, certainty, and utility, emphasizing punishing perpetrators of criminal acts and preventing unlawful acts against people, bodies, and property (Schabas, 1997). The accomplishment of the criminal code's objectives and functions will contribute to the enhancement of public welfare.

Criminal law seeks to accomplish this goal by imposing the death penalty on certain criminal acts. The fundamental concept of justification and the purpose of setting a crime is comprised of three theories: (1) Retributive states that punishment is meted out in retaliation for the perpetrator's crimes. Sanctions imposed in response to demands for justice and retribution; (2) Doeltheorie asserts that punishment is a tool for achieving specific goals necessary for community protection; and (3). According to integrative

theory, sentencing is viewed from a multi-dimensional perspective, with multiple objectives. The right to life is an intrinsic right under the notion of human rights and can in no way be destroyed. The country is also responsible for ensuring the continuation of this right. The rights of non-torture, the right to free conscience and mind, not enslavement, not acceptance before the law, not to be trialed retroactively are the rights to the same status as those of life. Article 281 of the Constitution of 1945 gives the right to life and self-defence for all (Article 28A of the 1945 Constitution).

In Article 6 of the ICCPR, the international instrument does not prohibit the death penalty but restricts the application of it (Short, 1998). It is stated in this provision that non-Death Penalty countries can still apply the death penalty but can use it only for the most serious crime and a competent court enforces the sentence.

2. Death Penalty Imposition and Human Rights

The method by which criminals are dealt with to achieve a deterrent effect on the community and the convict himself to avoid committing another crime (preventing the repetition of a crime). The emphasis is on anti-crime efforts. Along with punitive measures, non-penal measures can be used to combat corruption (Sina, 2016). This facility is carried out continuously, making it more sociologically appealing because it takes a long time. Its implementation places a premium on the preventive aspect (prevention) of crime.

Historically, Human rights (HAM) have arisen in order to safeguard the community against State arbitrary action and the imbalance between state and society. The UNDP banned the death penalty, A World Declaration on Human Rights (UDHR). The UNDR stipulates in Article 3 that "Everyone shall have the right to life, freedom and security." In accordance with Article 4, this is done. Through the 1989 International Convention banning the death penalty, The UN Convention on Human Rights was subsequently reaffirmed and considerably enhanced in particular Article 6(1) and Article 7 of the International Covenant on Civil and Political Rights.

Article 6 of the International Pact on Civil and Political Rights contains the following detailed text: All people have a right to life that is not refused. Legislation must be protected. Death penalty cannot be used until the Convention and the Convention on Genocide Prevention and Punishment apply in countries that do not get a capital punitive abolishment when their offense is committed; (Leipzig, 2000). 3. Nothing above will be regarded to allow any State Party to waive all the requirements of the Convention when a death sentence is a genocide; only the competent court may give a final verdict; 4) any person convicted must be able to seek forgiveness or redress. (5) Nothing in this document should be construed as delaying or preventing any of the States parties to the Convention from abolishing the death penalty; (5) no death sentence shall be imposed on anyone under the age of 18 years and on pregnant women; and the death penalty shall not apply on those persons under the age of 18 years. (Finance Division, 2019).

Various crimes under Indonesian criminal law are liable to death, such as: (1) the murder in Article 104 of the President or vice-Criminal President's Code; and (2) promoting war in non-US countries; and (2) the premeditated and deliberate murder of a

person in Article 340 of the Criminal Code; (2) criminal corruption referred to in Article 2; 4) Law No. 35 on Drug Crime (2009) Articles 114, 116, 118, 119 and 121. Crime with drugs. In essence, Article 89 of Law no. 23 of 2002 on protection of children says that child abuse and production is knowingly committed and the offence is committed. the tender, sale, purchase, receipt, intermediary for the purchase and sale, exchange or delivery of drugs; and 5) child-mobilization offences in illegal drug trafficking Also, some laws that are still in effect in Indonesia are punishable by the death penalty, as presented in the following label:

Table 1 Provisions Regarding the Death Penalty

No.	Rules	Terms
1.	KUHP	Article 104; Article 111 paragraph (2); Article 124 paragraph (3); Article 140; Article 340; Article 365 paragraph (4); Article 444 Article 1368 paragraph (2).
2.	Military Criminal Code (KUHPM)	Article 64; Article 65; Article 67; Article 68; Article 73 to 1, 2, 3 and 4; Article 74 to 1 and 2; Article 76 paragraph 1; Article 82; Article 89 to 1 and 2; Article 109 to 1 and 27; Article 114 paragraph (1); Article 133 paragraphs (1) and (2); Article 135 paragraph (1) to 1 and 2, paragraph; Article 137 paragraphs (1) and (2); Article 138 paragraphs (1) and (2); and Article 142 paragraph (2)
3.	Law Number 12/DH/1951 concerning Firearms	Article 1 paragraph (1)
4.	Presidential Decree No 5 of 1959 on the General/Army Procurator's Authority to compound the threat of punishment for offences which threatens the use of clothing and food supplies	Article 2
5.	Perppu Number 21 of 3959 concerning Aggravating the Threat of Punishment against Economic Crime	Article 1 paragraph (1) and section (2)
6.	Law Number 31/PNPS/1964 concerning Basic Provisions for Atomic Energy	Article 23
7.	Law No. 4 of 1976 concerning amendments and additions to some of the Articles in the Criminal Code concerning the Extension of the Criminal Law Aviation and Aviation Crime/Infrastructure Provisions	Article 479 letter k paragraph (2)
8.	Law Number 5 of 1997 concerning	Article 59 paragraph (2)

	Psychotropics	
9.	Law Number 35 of 2009 concerning Narcotics	Article 74; Article 113 paragraph (2); Article 114 paragraph (2); Article 119 paragraph (2); Article 118 paragraph (2); Article 119 paragraph (2); Article 121 paragraph (2); Article 132 paragraph (3); Article 133 paragraph (1); Article 144 paragraph (2)
10.	Law No. 31/1999 on Corruption Eradication	Article 2 paragraph (2)
11.	Law No. 26/2000 on Human Rights Court	Article 36; Article 37; Article 41; Article 42 paragraph (3)
12.	Law Number 15 of 2003 concerning Eradication of Criminal Acts of Terrorism	Article 6; Article 8; Article 9; Article 10; Article 14; Article 15; Article 16
13.	Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection	Article 89 paragraph (1)

Source: (Kramer, 2021)

3. Criteria for Imposing the Death Penalty That Is Not Contrary to Human Rights

Sentencing is a component of the criminal court process. As such, its implementation must be guided by a humanistic perspective, integrative criminal objectives, and modern sentencing schools that place a premium on community protection. The humanistic perspective emphasizes the circumstances surrounding the commission of a crime, including illegal acts (criminal act/ actus reus) and criminal responsibility (criminal responsibility/men's rea). Criminal law is frequently divided into criminal law emphasizing actions (strawbale held van de feit) and criminal law emphasizing people (strafbaar controlled van de person). Criminal law is defined by three concepts: illegal acts, criminal responsibility, and punishment. From a humanistic perspective, the application of crime must be based on the perpetrator's errors or on what is known as the principle of culpability (Barda Nawawi Arief, 2014:58). This principle states that "Nulla Poena Sine Culpa," or "There is no crime committed without the perpetrator's fault." Errors manifest themselves in the mental attitude of criminal acts, whether they are committed intentionally or negligently. With a dualistic approach to reviewing the elements of a crime, there is no room for either of these two mental attitudes to become a central component of the crime.

It is the court's responsibility as the frontline in enforcing a crime that, in imposing the death penalty, it must genuinely establish the convict's guilt or innocence through a fair trial process and factual evidence consistent with the law. Integrative punishment's purpose in imposing criminal penalties, particularly the death penalty, is to consider factors relating to the convict's human rights and make the discipline operational and functional. As a result, assessing the impact of

individual and social punishment requires a multi-dimensional approach. The death penalty's imposition can be weighed against its impact on community safety and on the convict himself. The current flow of punishment emphasizes the doctrine of determinism, according to which humans lack free will but are influenced by the perpetrator's character and the motives of the environment.

According to the concept outlined above, the death penalty should be applied to criminals based on the following criteria: (1) Transgressing the bounds of humanity, (2) Harming and threatening a large number of people, (3) damage to the civilisation of the nation, (4) damage the order of the earth, and (5) harm and destruction to the economy of the country. Drugs, terrorism, premeditated murder, persecution resulting in a sadistic and cruel death, and corruption are all examples of these types of crimes.

The following factors must be considered when imposing the death penalty: (1) the judicial process is conducted fairly and based on factual evidence; (2) the convict's guilt or mental state must be established in court; (3) the court that processes are the competent court; (4) the law used must be valid; (5) the death penalty is imposed selectively and has permanent legal force.

4. Conclusion

As a result of the analysis above, it is clear that: (1) Imposing the death penalty is essentially the state taking away the citizens' right to life, which violates human rights. However, it can be justified as long as its application is justified by defending the human rights of other citizens and legally positive regulation by the state results in a tendency to reduce and eventually eliminate the death penalty; and (2) the death penalty can be applied only for criminal acts that violate the bounds of humanity, endanger the lives of numerous people, or cause significant property damage. Capital offenses include premeditated murder, terrorism, drug trafficking for dealers and dealers, and corruption.

References

- Ambler, L. (2007). The people decide the effect of introducing the quasi-jury system (Saiban-In Seido) on the death penalty in Japan. *Nw. UJ Int'l Hum. Res.*, 6, 1.
- Byrnes, A. C. (2007). The right to life, the death penalty, and human rights law: an international and Australian perspective. *Confronting The Death Penalty People, Politics And Principle*, 26-45.
- Choudhury, F. (2015). Due process and the death penalty in the Asia-Pacific region. *Austl. Int'l LJ*, 22, 15.
- Dzhuska, A. V., Kaminska, N. V., & Makarukha, Z. M. (2021). Modern Concept Of Understanding The Human Right To Life. *Wiadomosci Lekarskie (Warsaw, Poland: 1960)*, 74(2), 341-350.
- Faiz, P. M. (2016). The Protection of Civil and Political Rights by the Constitutional Court of Indonesia. *Indon. L. Rev.*, 6, 158.

- Fajrin, Y. A., Purnamasari, A. P., Rosyida, R. I., & Maulidiyah, D. F. (2020). Death Penalty for Corruptors in Indonesian Human Rights Perspective. *Union Law Journal*, 6(2), 287-404.
- Finlay, L. (2011). Exporting the Death Penalty-Reconciling International Police Cooperation and the Abolition of the Death Penalty in Australia. *Sydney L. Rev.*, 33, 95.
- Golder, B., & Williams, G. (2006). Balancing national security and human rights: assessing the legal response of common law nations to the threat of terrorism. *Journal of Comparative Policy Analysis*, 8(01), 43-62.
- Gunawan, R., & Pamintori, R. T. (2020). 11 The death penalty in Indonesia. *Crime and Punishment in Indonesia*, 276.
- Hadiprayitno, I. I. (2010). Defensive enforcement: Human rights in Indonesia. *Human rights review*, 11(3), 373-399.
- Heyns, C., & Srinivasan, S. (2013). Protecting the right to life of journalists: The need for a higher level of engagement. *Hum. Rts. Q.*, 35, 304.
- Hood, R., & Hoyle, C. (2009). Abolishing the death penalty worldwide: The impact of a "new dynamic." *Crime and Justice*, 38(1), 1-63.
- Kelly, M. J. (2003). Cheating Justice by Cheating Death: The Doctrinal Collision for Prosecuting Foreign Terrorists-Passage of Aut Dedere Aut Judicare into Customary Law & (and) Refusal to Extradite Based on the Death Penalty. *Ariz. J. Int'l & Comp. L.*, 20, 491.
- Koh, H. H. (2001). Paying Decent Respect to World Opinion on the Death Penalty. *UC Davis L. Rev.*, 35, 1085.
- Kramer, E., & Stoicescu, C. (2021). An uphill battle: a case example of government policy and activist dissent on the death penalty for drug-related offenses in Indonesia. *International Journal of Drug Policy*, 103265.
- Kravchenko, S. (2007). Right to carbon or due to life: human rights approaches climate change. *Vt. J. Envtl. L.*, 9, 513.
- Leechaianan, Y., & Longmire, D. R. (2013). The death penalty for drug trafficking in the United States, Singapore, Malaysia, Indonesia, and Thailand: A comparative legal analysis. *Laws*, 2(2), 115-149.
- McMahon, J. (2008). Death row in Bali: an update on the Bali 6. *Precedent*, (84), 32-36.
- Nopriandi, T., & Ardiansyah, R. F. (2020). Paradigm Of Death Penalty (Comparative Study In Indonesia, Saudi Arabia And China). *Lampung Journal of International Law (LaJIL)*, 2(1), 49-58.
- Novak, A. (2014). The future of the mandatory death penalty in Malaysia and Singapore: Asian values and abolition in comparative perspective, with implications for Indonesia. *Indon. J. Int'l & Comp. L.*, 1, 303.
- Pascoe, D. (2015). Three Coming Legal Challenges to Indonesia's Death Penalty Regime. *Indon. J. Int'l & Comp. L.*, 2, 239.
- Purba, N., Tanjung, A. M., Sulistyawati, S., Pramono, R., & Purwanto, A. (2020). Death Penalty and Human Rights in Indonesia. *International Journal*, 9, 1357.
- Ramcharan, B. G. (Ed.). (1985). *The right to life in international law* (Vol. 3). Martinus Nijhoff Publishers.
- Rifai, A. (2017). Pro Cons The Existence Of Death Penalty In Corruption Act Of 1999 In Indonesia. *The 2nd Proceeding "Indonesia Clean of Corruption in 2020"*.
- Santoso, M. I. (2016). The Pros and Cons of the Death Penalty for the Drug Abuse in Indonesia. *JL Poly & Globalization*, 55, 43.

- Schabas, W. A. (1997). International Law and Abolition of the Death Penalty: Recent Developments. *ILSA J. Int'l & Comp. L.*, 4, 535.
- Short, C. A. (1998). The Abolition of the Death Penalty: Does Abolition Mean What You Think It Means. *Ind. J. Global Legal Stud.*, 6, 721.
- Sina, L. (2016). Implementation of the Death Penalty in the Perspective of Human Rights in Indonesia. *Hasanuddin Law Review*, 2(3), 385-397.
- Suartha, I. D. M. (2020). Criminal Policy Formulation on Regulation of Death Penalties for Criminal Actors. *Journal of Morality and Legal Culture*, 1(1), 12-17.
- Tran, K., & Vu, C. G. (2019). The changing nature of death penalty in Vietnam: A historical and legal inquiry. *Societies*, 9(3), 56.