

IMPLEMENTATION OF CRIMINAL ADMINISTRATION OFF THE CRIMINAL ACTION OF NARCOTICS IN INDONESIA

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ABSTRACT

The uncertainty of the provisions regulating when the execution time for death row inmates includes the convicted narcotics crime after a court decision has permanent legal force (inkracht van gewijsde), and other legal rights (PK and clemency). This is reflected in Article 271 of the Criminal Procedure Code "In the case of capital punishment, its implementation is carried out not in public and according to the provisions of the law". There is a lawsuit by human rights activists through formal mechanisms or through public discussion in rejecting the norm of death penalty sanctions to be removed in the Indonesian criminal law system, by submitting a legal proposition to the norm of death penalty sanctions in violation of Article 28I paragraph (1) which firmly states that "the right to life is a human right that cannot be reduced under any circumstances". For this reason, in order to be able to realize and maintain the social order of people's lives through legal mechanisms, they must be carried out based on values that function as directors and references in formulation and execution policies, namely legal certainty, legal justice and legal usefulness. Therefore, in order that executions of narcotics convicts can be carried out with a certain degree of justice and benefit, changes or improvements to the Criminal Procedure Code specifically concerning execution of death row inmates must be regulated in a separate chapter so that the procedure has a timetable for execution in the execution of death row inmates, including death row convicts for narcotics crime. .

Keywords: Narcotics, Criminal Law, Indonesia.

INTRODUCTION

In general, the purpose of criminal law is to protect the interests of individuals (individuals) or human rights, protect the interests of society and the state with harmonious considerations of crimes / despicable actions of one party and the actions of arbitrary authorities on the other (Kanter and SR Sianturi, 2002). The threat of capital punishment is imposed only on the perpetrators of serious crimes such as premeditated murder committed, perpetrators of genocide and crimes against humanity among others, "producers and dealers" of narcotics, as well as "acts of corruption in certain circumstances" and "terrorists".

Despite the fact that a criminal offense will always be there no matter how severe the crime is imposed on the perpetrators of a criminal offense, if there are 100 narcotics producers and dealers in Indonesia, 40 of them are sentenced to death, of course the number of producers and dealers is reduced to 60 people and there is a chain which is interrupted in narcotics distribution so that the impact on the narcotics reduction is distributed to users. Decreasing the number of producers and dealers to 60 people would certainly also reduce the percentage of threats to the lives of the people, especially the younger generation who became the narcotics market share when compared to the number of producers and dealers still remained 100 people (Supandji, 2008). The above description, if connected with the regulation of death penalty in Law Number 22 Year 1997 which as amended by Law Number 35 Year 2009 concerning Narcotics can be explained that the formulation of norms has been carried out carefully and carefully because it is not threatened to all narcotics offenders. The threat of capital punishment is only threatened by producers and dealers illegally and only for group I, such as cannabis and heroin. In addition, the threat of capital punishment is also accompanied by a minimum criminal threat, so that the crime is only dropped if there is very strong evidence.

Crime will always exist throughout human civilization. The rate of increase in the level of criminal acts will be restrained through strict and severe sanctions for serious crimes (serious crime) compared to the application of crimes that weighs unbalanced. Therefore, the elimination of the threat of capital punishment in Indonesia is still not possible. Because of crimes that threaten the safety of the country such as terrorism, treason, and narcotics, Indonesia will send the wrong message to the syndicates of narcotics producers and dealers if the norm of the threat of capital punishment is nullified in the Indonesian criminal law system.

It is undeniable that Indonesia with a population of around 250 million people is the largest market / consumer market share for international syndicates on illicit drug trafficking. The rise of cases of illicit trafficking in narcotics in Indonesia is influenced not only by a very large population, but also as a result of the weak justice system in Indonesia. Malaysia and Singapore firmly apply the death penalty for narcotics producers and dealers without being influenced by international appeals to eliminate the threat of capital punishment. Many foreign narcotics producers and dealers target Indonesia as a narcotics trade center because law enforcement in Indonesia is considered "soft". In the case of narcotics crime is a crime of humanity that aims to destroy humanity slowly but surely, so that it will allow lost generation.

Criminalization is indeed impossible to eliminate crime from the face of the earth, but at least the conviction causes the of justice of the victim to be realized. Today, the discussion on the threat of capital punishment is more focused on the "perpetrators of crime" without regard to aspects of justice for "victims". For "serious crime", the victim element must be considered first and then the perpetrator. The enforcement of human rights is not absolute without restrictions. Article 28A and I of the Second Amendment to the 1945 Constitution principally stipulates that every person has the right to live and has the right to defend his life and life, but is limited by the provisions of Article 28J of the Second Amendment to the 1945 Constitution which states that "In exercising their rights and freedoms, every person is obliged to submit to certain restrictions enacted by law, with 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”.

In narcotics crime some use the 1988 United Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to say that narcotics crime is a particularly serious crime. In Article 3.5 the UN Convention states that:

“The Parties shall ensure that their courts and other competent authorities having jurisdiction can take into account factual circumstance which make the commission of the offences established in accordance with paragraph 1 of this article particularly serious such as”:

- a) *The involvement in the offence of an organized criminal group to which the offender belongs;*
- b) *The involvement the offender in other international organized criminal activities;*
- c) *The involvement of the offender in other illegal activities facilitated by commission of offence;*
- d) *The use of violence or arms by the offender;*
- e) *The fact that the offender holds a public and that the offence is connected with the office in question;*
- f) *The victimization or use of minors;*
- g) *The fact that the offence is committed in a penal institution or in an educational institution or social service facility or in their immediate vicinity or in other places to which school children and students resort for educational, sports and social activities;*
- h) *Prior conviction, particularly for similar offences, whether foreign or domestic, to the extent permitted under the domestic law a Party”*

Postponement of execution of death row inmates of narcotics crime, of course, death row inmates suffer more than one criminal sanction. This is certainly contrary to the criminal system in Indonesia. To avoid violations against death row inmates including death row inmates on narcotics crimes that have permanent legal force to meet the legal interests of the death row inmates and the legal interests of the victim and the community. In addition, the execution delay that experiences legal uncertainty also deviates from the provisions of Article 28 letter d Paragraph (2) "That every person has the right to recognition, guarantee, protection, and legal certainty that is fair and equal treatment before the law." Explore the substance of the provisions in this, at least explains that basically everyone has the right to get a sense of justice and legal certainty, not least for convicts of narcotics crimes. Government actions that delay or hang death row inmates can be categorized in human rights violations. This has been explained in the Constitutional Court verdict as Number 2-3 / PUU-V / 2007, that for the sake of fair legal certainty, the Constitutional Court recommends that all death penalty decisions that have permanent legal force (in cracht van gewijsde) be carried out immediately.

DEFINITION OF NARCOTICS

Various limitations of the definition of narcotics in the literal sense and expert opinion, at least illustrate the complexity because narcotics issues have a broad dimension, both from the medical, psychiatric, mental and psychosocial aspects. Nevertheless, in order to obtain a description of the definition and definition of narcotics, it is necessary to put forward some definitions and definitions of narcotics both literally and according to experts, so as to facilitate understanding the definition of narcotics. Etymologically narcotics comes from English "narcose" or "narcosis" which means to sleep and anesthetize (Sadili, 1996). Narcotics comes from Greek, which is "narcotics" which means anesthetized so that it doesn't feel anything. In terminology, in the Large Indonesian Language Dictionary (KBBI) means narcotics is a drug that can calm nerves, eliminate pain, cause a feeling of drowsiness, or stimulate (Moelyono, 1988).

Different from the meaning in the literal sense, Smith Kline and French Clinical as quoted by Mardani, defines narcotics as follows:

Narcotic are drugs which produce incencibility or stupor due to their depressant effect on the central system. Included in this definition tire opium, opium derivatives (morphine, codeine, heroin) and synthetic opiates (meperidei, methadone) (Mardani, 2008).

Menurut Wiliam Benton:

Narcotic is general term for substance that producce lethargi or super or the relief of pain.

According to Soedjono Dirdjosisworo:

Narcotics are ingredients which mainly have the effect of anesthetic work or can reduce consciousness (Dirdjosisworo, 1997).

The definition and opinion of experts on the definition of narcotics as stated above shows that narcotics are substances or substances that can function as drugs that can affect consciousness, but if misused it can damage the physical (such as addiction) and mentally (loss of consciousness, behavior, encouragement wishes) of the wearer, both natural material and synthesis (results of laboratory processing).

The definition of narcotics, which is regulated in Article 1 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics, is substances or drugs derived from plants or plants that are both synthetic and semisynthetic which can cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain, and can cause dependence which is differentiated into groups as attached to the law.

REGULATION OF NARCOTICS CRIMINAL LAW IN INDONESIA

The problem of abuse of narcotics and illegal drugs (narcotics) in the past three decades has not only become a national and asean regional problem but also an international problem. Efforts to overcome the problem of narcotics abuse in the country must be synergized and integrated with narcotics problem management policies through regional and international cooperation (Nurjaya, 2005).

In Indonesia, arrangements have been made regarding efforts to address the problem of narcotics abuse. This is as contained in several laws and regulations specifically regulating narcotics crimes, or in other words special criminal laws, among others are :

a. Republic of Indonesia Law Number 9 Year 1976 concerning Narcotics (Republic of Indonesia State Gazette Year 1976 No. 36, Republic of Indonesia National TLN No. 3086)

Initially the global policy on combating narcotics crimes was outlined in The United Nation's Single Convention on Narcotic Drugs 1961. In this convention it was basically intended to:

1. Creating international conventions that can be accepted by countries in the world and can oversee regulations regarding international supervision of narcotics abuse which are separate in 8 material agreements;
2. Improve ways to supervise the circulation of narcotics and limit their use, especially for the benefit of medical treatment and development;
3. Ensure international cooperation in the supervision of drug trafficking to achieve the above objectives.

In addition, in the 1961 Single Narcotics Convention stipulated in New York, in Article 1 the definitions for the purposes of the convention included: Cannabis (marijuana), Cannabis plant (Cannabis plant), Cannabis resin (cannabis seeds), Coca bush (coca plant), Coca leaf (coca leaf), Medical opium (drug opium), Opium, Opium poppy (papaver plant), Poppy straw (straw papaver plant).

Indonesia as one of the countries that co-signed the convention, then ratified it through Law No. 8 of 1976 concerning Ratification of the Single Convention on Narcotics 1961 along with the Protocol amending it. Furthermore, the legal instrument which was later created by the government to combat narcotics crimes in the country was Law No. 9 of 1976 concerning Narcotics.

Law No. 9 of 1976 concerning Narcotics is a substitute for the Act on Drugs inherited from the Dutch colonial government, namely Verdoovende Middelen Ordonnantie 1927 (Stbl.1927 No. 278 jo No. 536) dated May 12, 1927. This ordinance consists of 29 articles which at Basically, it has regulated the problem of drug use and circulation. This ordinance regulates how narcotics exports and imports can be carried out. Besides this ordinance has also provided restrictions on the use of several types of narcotics. In the event of a violation, this ordinance has also been equipped with criminal rules (Dirjosisworo,1990).

Aside from being a substitute for the Drugs Act on the inheritance of the Dutch colonial government, Law No. 9 of 1976 was issued with consideration: That narcotics is a drug that is needed in the field of medicine and science and narcotics can also create a very harmful dependence on used without careful limitation and supervision. Making, storing, distributing, and using narcotics without strict limitation and supervision and contrary to applicable regulations constitutes a crime that is very detrimental to individuals, the community and is a great danger to human life and state life in the political, security, economic, social, cultural fields and the national resilience of the Indonesian people who are developing. Rules for the provision and use of narcotics for medical and / or scientific purposes as well as for preventing and overcoming the dangers that can be caused by side effects of narcotics use and abuse and rehabilitation of new narcotics addicts.

In the criminal provisions contained in Law Number 9 Year 1976 regulating the threat of capital punishment, life sentence, maximum 20 (twenty) years imprisonment and accumulated with criminal penalties ranging from Rp. 1,000,000 (one million rupiah) to Rp. 50,000,000 (fifty million rupiah).

b. Republic of Indonesia Law Number 22 Year 1997 concerning Narcotics (Republic of Indonesia Year 1997 No. 67, Indonesian National TLN No. 3698)

Indonesia has ratified the 1988 United Nations Convention on the Eradication of Illicit Narcotics and Psychotropic Circulation (United Nations Convention Against Illicit Traffic in Narcotics Drugs and Psycotropic Substance, 1988) with Act No. 7 of 1997. According to this convention, the state who have ratified the obligation to fight illicit drug trafficking and provide severe sanctions to the perpetrators (Kaligis dan Associates,2007).

Law No. 22 of 1997 was then issued on September 1, 1997 to replace Law Number 9 of 1976, while also considering that narcotics crimes were transnational in nature using high modus operandi and sophisticated technology, while regulations the existing legislation is not in accordance with the development of the situation and the conditions that develop to overcome the crime.

In Law Number 35 of 2009, there has also been a minimal criminal threat, in which the minimum criminal threat provisions in this law constitute an improvement from the provisions that have been previously in Law Number 22 of 1997. In other words, when invited Previously, namely Law Number 22 of 1997, the regulation of criminal threats is minimally only found in a number of articles in the criminal provisions, then in Law Number 35 of 2009, a minimum criminal threat is found in all Articles with criminal provisions. In addition, the minimum criminal threat in this law is not only intended for punishment and applied in certain circumstances, such as if the criminal act is preceded by a conspiracy agreement or if it is organized in an organized

manner, but also applies to the principal actions committed by everyone or every individual who acts as the perpetrator of a narcotics crime.

In an effort to protect the public from the dangers of narcotics abuse preventing and eradicating illicit drug trafficking, this law also regulates narcotics precursors, because narcotics precursors are substances or beginner substances or chemicals that can be used in the manufacture of narcotics. In addition, it also regulates criminal sanctions for the abuse of narcotics precursors for the manufacture of narcotics.

In order to create a deterrent effect on the perpetrators of abuse and illicit trafficking in narcotics and narcotics precursors, this law also regulates the imposition of criminal sanctions, both in the form of minimum criminal penalties, 20 (twenty) years imprisonment, life imprisonment, and capital punishment. The criminal charges are carried out based on the class, type, size and number of Narcotics.

IMPLEMENTATION OF NARCOTICS DEATH PENALTY ADMINISTRATION IN INDONESIA

The debate about capital punishment in Indonesia emerged as part of social discourse, especially in the field of criminal law, with the constitutionality testing of the death penalty in Law Number 22 of 1997 concerning Narcotics and testing of Law Number 02 / Pnps / 1964 concerning Procedures Execution of the Death Penalty. But actually the debate has long existed as part of the development of human debate, along with the practice of capital punishment.

The first argument, human rights activists who reject the threat of capital punishment in the criminal law system in Indonesia are based on Article 28I paragraph (1) which expressly states that "the right to life is a human right that cannot be reduced in any circumstance ". This argument has negated the existence of the death penalty in the Indonesian legal system. The birth of Article 28I paragraph (1) of the 1945 Constitution cannot inevitably result in the unconstitutionality of the death penalty. The logical consequence of this mindset is that all legislative products under the 1945 Constitution must undergo a change in the meaning of the death penalty articles that were born before the amendment to the 1945 Constitution should be expressly revoked and declared powerless in law. Furthermore, there are no more legislative products which only include the death penalty. For Indonesia it should have been since 2000, when Chapter XA was born, the debate over the death penalty was over (Lubis and Alexander Lay, 2009).

When the formulation of the right to life together with other human rights was stated in the 1945 Constitution many parties welcomed him happily. Many people welcomed him as a child of reform. This means that in the framework of reform, human rights must be comprehensively included in the 1945 Constitution. There is political euphoria. But, what is not less interesting is political fashion. Perhaps the desire to have comprehensive Human Rights Articles is related to the desire to enter into developed countries that are democratic and respectful of Human Rights. However, it was unthinkable that the 1945 Constitution which became a supremacy required all laws not to conflict with the 1945 Constitution. This opinion shows that the debate about Human Rights should be over.

The second argument, as part of the international community and a member of the United Nations (UN), Indonesia should have abolished the death penalty since Indonesia ethically and organizationally must submit to the Universal Declaration of Human Rights which in Article 3 says: "Everyone has the right to life, liberty and security of person ", meaning Article 3 according to Eleanor Roosevelt and Bene Cassin, said that the right to life knows no exceptions, and the purpose of the Article right to life is so that later the death sentence can be abolished.

Indonesia, also ratified the International Covenant on Civil and Political Right (ICCPR) which in Article 6 (1) reads: *Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

Indeed, the ICCPR still has room for the death penalty especially in countries that still impose the death penalty in the most serious crimes especially those related to genocide crimes. Only if Article 6 of the ICCPR is read in its entirety will it be seen that the right to life is the main spirit that must be respected until later it truly becomes an absolute human right, which is non derogable in any circumstance.

Indonesia has not ratified the Second Optional Protocol which explicitly prohibits the death penalty, but if it uses an authentic historical interpretation of the makers of human rights instruments, it will inevitably lead to a spirit against the death penalty. The theory of international law that has made all international human rights documents such as the Universal Declaration of Human Rights and the ICCPR is now binding because it has become an international customary law. The tendency to abolish capital punishment is the tendency of world civilization as a continuation of Cesare Beccaria's thought. In this connection, it is interesting to see UN Resolution No.2857 (1971) and UN Resolution 32/61 (1977) which take a firm stand towards abolishing the death penalty as a universal goal.

Today the number of countries included in the category of abolitionist on the death penalty has reached 129 with the breakdown of 88 countries that are abolitionist for all crimes (abolitionist for all crimes), 11 countries for ordinary crime (abolitionist for ordinary crimes only) and 30 countries that carry out a moratorium capital punishment (abolisionist in practice). Compare with the number of retentionist countries which number 68 countries. This data shows that the tendency of world civilization today is to respect the right to life above other rights, especially with respect to the death penalty.

The third argument, in many debates over the existence of capital punishment in the Indonesian criminal law system, which is understood in the perspective of a criminal philosophy, the author can describe the reasons established by opponents of the death penalty, as follows:

1. The philosophy of the death penalty is contrary to the philosophy of punishment in Indonesia. The rights of the convicted person are highly valued, because the punishment no longer emphasizes the aspect of retaliation, but is an attempt at rehabilitation and social reintegration for the perpetrators of criminal acts.
2. Criminal systems which emphasize the element of revenge are gradually seen as a system and means that are not in line with the concepts of rehabilitation and social reintegration. This concept aims to make prisoners aware of their mistakes, no longer willing to commit crimes and return to being citizens who are responsible for themselves, their families, and their environment.
3. Criminal philosophy in Law Number 12 of 1995 concerning Penal Institutions which emphasizes that prisoners are not objects but subjects that are no different from other human beings who at any time can make mistakes or errors that can be subject to criminal sanctions, so they do not have to be eradicated. Things that must be eradicated are factors that can cause prisoners to do something that is contrary to law, morality, religion, or other social obligations that can be subject to criminal acts.
4. Criminalization is an effort to sensitize prisoners to regret their actions, and return them to be good citizens, obey the law, uphold moral, social and religious values, so that a safe, orderly and peaceful community life is achieved.
5. Theoretically it can be said that the threat of capital punishment has a very high deterrent effect. The deterrent effect of the death penalty is an important factor in causing people to refrain from committing criminal acts. This in turn will reduce the number of related criminal offenses. Logically this argument makes sense, but there are no statistical data (empirical) and research data that conclusively support this conclusion. The reality that happened was just the opposite.
6. For example, the number of narcotics and psychotropic crimes in Indonesia actually increases from year to year even though the Narcotics and Psychotropic Law imposes the death penalty.
7. The regulation and implementation of the death penalty in Indonesia has drawn a lot of opposition from social groups that are concerned with humanitarian issues. As difficult as it is, the execution of the death penalty is discussed, debated, and discourse as an execution of punishment as well as good and bad. These two sides, give an assumption that capital punishment must be carried out, but also ready to be opposed. For most groups supporting human rights, the death penalty is a "violence" where when violence occurs then automatically there has also been a failure. However, for some groups who think that the death penalty must and should be carried out under the pretext of deleting a case without seeing the other dimensions behind the implementation of the sentence, then violence is no longer seen as violence because violence is necessary and fair.
8. Its regulation and execution, until this moment, has removed the goal of law and justice, as well as Human Rights, which is the responsibility of the state, and has instead become an instrument of power to respond to any serious social upheavals. This fact should be the basis for revoking all provisions that still regulate capital punishment.

CONCLUSION

The execution of death row inmates on narcotics crime based on data of 64 (sixty four) people have permanent legal force (*inkracht van gewijsde*) and have used other legal rights (PK and Clemency). Of the 64 (sixty four) death row inmates 16 (sixteen) death row inmates have been executed, with the grouping of countries of origin of death row inmates as follows: Indonesia the number of death row inmates 24, has been executed 3 death row inmates 21 not yet executed, Africa 17 death row inmates 7 inmates death has been executed and 10 death row inmates have not been executed, Europe 5 death row inmates 2 death row inmates have been executed, 3 death row inmates, Asia 14 death row inmates 2 have been executed, 12 death row inmates have not been executed and Latin America 4 death row inmates 2 have been executed, 2 death row inmates people have not been executed. From these data, it shows that the implementation of executions of narcotics convicts has been delayed for more than 10 years, and even 46 (fourty six) death row convicts have not yet been executed. This condition certainly causes the impact of legal uncertainty that violates the human rights of death row inmates in narcotics crime, victims of narcotics crime, and state interests. In addition, the inaccuracy in execution of convicted narcotics criminals as explained above, because there are several normative constraints, including:

- a. The uncertainty of the provisions regulating when the execution time for death row inmates includes the convicted narcotics crime after a court decision has permanent legal force (*inkracht van gewijsde*), and other legal rights (PK and clemency). This is reflected in Article 271 of the Criminal Procedure Code "In the case of capital punishment, its implementation is carried out not in public and according to the provisions of the law".
- b. Decision of the Constitutional Court Number 34 / PUU-XI / 2013, in Article 268 paragraph (3) of Law Number 8 of 1981 concerning the Criminal Procedure Code, the effect of this has an effect on the criminal justice system in Indonesia, where extraordinary legal remedies (PK) stated that Article 268 paragraph (3) of Law Number 8 of 1981 is not binding and has no permanent legal force, meaning that the Judicial Review (PK) may be submitted many times by death row inmates.
- c. The decision of the Constitutional Court (MK) Number 107 / PUU-XIII / 2015, has a legal consequence that the application for clemency to the President by death row inmates is not limited by a grace period.
- d. There is a lawsuit by human rights activists through formal mechanisms or through public discussion in rejecting the norm of death penalty sanctions to be removed in the Indonesian criminal law system, by submitting a legal proposition to the norm of death penalty sanctions in violation of Article 28I paragraph (1) which firmly states that "the right to life is a human right that cannot be reduced under any circumstances". For this reason, in order to be able to realize and maintain the social order of people's lives through legal mechanisms, they must be carried out based on values that function as directors and references in formulation and execution policies, namely legal certainty, legal justice and legal usefulness.

Therefore, in order that executions of narcotics convicts can be carried out with a certainty that is just and beneficial, changes / improvements to the Criminal Procedure Code specifically regarding executions of death row convicts must be regulated in a separate chapter so that the procedure has a timetable for execution in the execution of death row inmates, including death row convicts for narcotics crimes.

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