

Death Penalty and Human Rights in Indonesia

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Abstract: The aim of the research was to investigate whether the applicable death penalty in the Criminal Laws of Republic of Indonesia violates the human rights or not. To achieve the objectives of the research, both legal research and social-legal research method were used. Then, the respondents of the research were the representative supreme courts, official commissions, law experts, religious leaders and non-governmental organization. Depth interview and document study were chosen as data sources of the research, then, interview guidelines, note-taking, and voice recorder were used to be the instruments of the research. Death penalty is not contradictory with human rights as stated in Presidential Regulation No 2 of 1964 discussing the death penalty in Indonesia is applicable for those who commit serious crimes, namely; murder, drug possession, terrorist, and corruption. It is also corresponding to International Covenant on Civil and Political Rights, Article 7 Verse (2) – (6), which is stated that death penalty must be performed in proper methodology without both imprisonment for years and mental suffering. Death penalty is legally stated in Indonesia law that it is not recognized as cruel action in which the death penalty have never been resulting both physical and psychological pain as well as stated in Covenant and Political Right.

Keywords: Death penalty, criminal law, Human Rights, Indonesia.

INTRODUCTION

The death penalty was actually started when Cesare Beccaria argued that death penalty execution was an extremely inhuman and ineffective decision (Sahetapy, 2009). It has been debated by all parties worldwide since 18th century in which some parties are going with this punishment, while others disagree with this case (Ichinose, 2017).

Some parties consider that death penalty is still reasonable to be undertaken because this kind of punishment absolutely protects allcitizens from any crimes occurred ahead. In addition, they also think that death penalty must be carried out not only for murder preventing among the masses but also for social ills preventing (Sayuti, 2006).

Furthermore, the death penalty execution is considered based on the theory of prevention which stated the death penalty is performed to prevent others doing the same crime in the different opportunity (Ali, 2008). Relating to this theory, the death penalty against murder is urgently needed to be undertaken in order to warn all people not doing any homicide for any reasons since it results a very terrible penalty for those who perform it, then, getting imprisonment will be never enough. In addition, the death penalty execution gives two great impacts for people who commit the crime, namely; first, this penalty makes them afraid of killing others, and second, the penalty warns all people that

the punishment is being the most serious penalty (Garrett *et al.*, 2017).

Argued Ali stated that if there are 50 Of 100 drug dealers get the death penalty, the number of drug dealers will be decreased rapidly. It means that the death penalty is not only for preventing others to undertake the crime, but also for granting the harmony among the citizens. Then, the ex-chairman of UK court stated that “Thou art to be hanging, not for having the horse but in other horse may not be stolen”. It shows that thief is not sentenced based on the amount of horses stolen, yet he is sentenced for warning others not doing so (Ali, 2008).

Besides, some death penalty cases had been showed by some countries. Firstly, The murder in South Africa was increasingly growing up when the death penalty was abolished in 1995. Secondly, Texas which had more than three million citizens showed a great dramatically decreasing, there were 44 of 100k citizens had performed a murder in 1981, yet, there were only 12 of 100k citizens in 2000 since the death penalty was decided to be the punishment against homicide in 1982. Thirdly, 38 countries of 50 countries in USA kept going on death penalty (Law No. 2-3 of 2007), then, Prof Citing elaborated that death penalty execution in America had been performed to prevent the other murders ahead with ratio 9:1 which supported by David Philip’s study. David Philip’s study explained that death penalty performance must be undertaken seven days after court judgment decided (Law No 2-3 of 2007).

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Human rights prospects in Indonesia are deeply affected by issues of poverty, culture, religion, national stability, and order, which all bear strongly on processes of democratic transition and consolidation (Eldridge, 2002). The concept of human rights in Indonesia has grown along with the occurrence of human rights violations are categorized as either gross human rights violations and human rights violations (Asmarani, 2015). Furthermore, the death penalty which was applied by Mac 2007 based on the data of General Law and Human Rights in Indonesia was derived from 95 different cases in which the most dominant cases were drug supplier and murder, thus, all the defendants had been executed for several times (Hertanti and Aurora, 2017). Then, the number of death penalty in 2012 was going up to 118 defendants. Unluckily, each defendant looked forward to be executed. Some defendants have been waiting for death penalty execution for five years, but some of them ironically waited for that day more than ten years (Pensra, 2007).

This kind of thing leads to the big question related to the defendants' feeling. It cannot be denied that the longer waiting period creates disquietude for defendants. They absolutely got two different punishments at the same time; imprisonment, and death penalty (Law No. 2-3 of 2007). All defendants must spend their life in jail while they are waiting for the day of death penalty execution. Surely, they feel being worried as long as they are sentenced in prison; it is a lot unfair for them. Tagiman who involved a murder of Utomo Kasidi Family had been found passed away through self-destruction by drinking some poisons in Kedungpane Jail Semarang in 2001. Tugiman felt extremely desperate while he had been waiting for death penalty execution since 1992. This kind of case is a real proof that shows a long death penalty procedure leading to excruciation for convicts (www.Liputan6.com)

Based on the background of study, the research problem was formulated as follows:

- a. How the procedures of death penalty in Indonesia's law?
- b. Does death penalty contradict with Human Right in Indonesia?

RESEARCH METHOD

Generally, law scholars use two kinds of law investigation practice. Firstly, it is recognized as legal

research. In this point, the entire investigations held occupy written laws by referring to the Court's decision and the deeds which is related to criminal justice and human right in Indonesia. In other words, this kind of investigation is also known as normative investigation, or law investigation (Jacobstein & Roy, 1998). Secondly, kind of investigation used by law scholars is socio-legal study (Soekanto & Mamudji, 1995). Socio-legal study is law investigation which uses social science-approach. It is applied to collect the data needed because the methodology of social science is appropriate for doing an investigation. There two studies of social science used in law investigation, namely; anthropology and sociology. Both anthropology and sociology are "the root of law which is developed and essential for socio-legal study" them according to Sulistiowati "the substances of law can be elaborated both clearly and fundamentally through sociology and anthropology approach (Irianto, 2010). In short, socio-legal study theoretically uses sociology and anthropology approach, yet keeps applying empirical written law investigation.

In addition, socio-legal study is usually used to examine different point of views, namely; law in book, and law in action. Law in book examines death penalty from criminal law and human right in Indonesia, while, law in action investigates death penalty from defendants' perception whether they are feeling worried a lot or not while they need to wait court's decision for a long time toward death penalty execution. Moreover, law in action also elaborates firmness, benefits, and justice against death penalty in Indonesia as Gustaf Radbruch's view that death penalty actually is an effort to protect the defendants from anger of citizens.

Data source and Data Collection

In this research, the data of the study is the interviews' transcription which was taken from different respondents. In details, the respondents of interview are visually shown in Table 1.

Based on the table above, the interview was carried out to get the data from different respondents chosen. Respondents were eight qualified subjects which were taken from center court to city court, they are; 1) three respondents from Supreme Court of Institutionalization in Jakarta, 2) three respondents from Supreme Court Medan, 3) three respondents from Supreme Court of Human Right in Medan, 4) five respondents from religious leaders in Medan and Jakarta, 5) five

Table 1: Respondents of the Research

No	Respondents	Total	Location
1	Supreme Court of Institutionalization	3	Jakarta
2	Supreme Court Medan	3	Medan
3	Supreme Court of Human Right	3	Medan
4.	Religious leaders	5	Medan& Jakarta
5.	Law experts	5	Jakarta and Medan
6.	Official Commission of Human Right	1	Jakarta
7.	Official Commission of Human Right State University of Medan	1	Medan
8.	Non-governmental organization	2	Jakarta

respondents from law experts in Jakarta and Medan, 6) one respondent from Official Commission of Human Right in Jakarta, 7) one respondents from Official Commission of Human Right State University of Medan, and 8) two respondents from non-governmental organization in Jakarta. Then, there were two data sources of the research, namely;

a. Depth Interview

In this depth interview, the researcher found out the points of view from different respondents in different levels in order to investigate the death penalty in Indonesia. All questions had been organized well; then, unorganized questions were also used to get the accurate information.

b. Document Study

In document study, both written and recorded data were collected in order to strengthen the data from depth interview.

Instrument of Data Collection

In order to gather the data, there were three instruments used in this research. All the instruments are elaborated as follows:

1. Interview Guideline

This interview guideline contained the collection of questions which would be asked by the researcher to the respondents of the research. Thus, the researcher orderly organized each question while interview was being carried out.

2. Note-Taking

Note-taking is kind of instrument created by the researcher in which the use of note-taking helped the researcher to note everything need to be considered while interview was being held.

3. Voice Recorder

The researcher used voice recording in order to record respondents' answer which occurred while interview was being undertaken, so, and then all data recorded would be transcribed into well-organized transcription.

Data Analysis

In order to achieve the objectives of the study, this research used qualitative method (Lincoln, 1994) by Verstehen approach. This approach used to figure the respondents out in more details. In analyzing data, this research attempted to find out whether death penalty applied in Indonesia based on criminal laws or not, then this research elaborated the relationship between criminal laws and human right in Indonesia as well. The defendants of death penalty were expected getting the fair decision in which they received the decision as soon as their pleading was rejected by the President so they did not want to wait for death penalty execution too long. Besides, the death penalty was expected to protect the defendants from citizen punishments.

RESULT AND DISCUSSION

After analyzing the data found, the result of the research showed some proofs, such as; human right in Indonesia had been developed very well both for negative side and positive side. For negative sides, it was found in civil and political rights in which there was no intervention from any countries (Saraswati, 2006). In addition, Indonesia gives the freedom of religion deciding for all citizens to choose the religion they believe in. In other words, there is no force in religion decision, while government takes part in social-economy matters. Based on the result, it can be inferred that human right is such a blessing from God in which it is owned by each individual in this entire earth.

Each individual has the same human rights since they were born without considering social class, gender, race, culture and religion.

In addition, Indonesia government has approved International Covenant on Civil and Political Right which was confirmed in Law No 12 of 2005 made for some reasons, such as;

Human right is the fundamental right owned by all citizens, thus, all citizens have the same protection based on laws established by governments. In other words, human right of each individual must be protected by laws. Then, human rights will not take issue from two essential ways of life, namely; five principles of Indonesia, and The Constitution of Republic of Indonesia by Law No 39 of 1999 discussed Human Right.

Relating to death penalty in Indonesia, there are 10 distinctive laws related to death penalty, and there are 5 legal laws which particularly referred to the past fifteen years death penalty. The latest five death penalty laws have been established since 1997 until now, such as; a) Law No 5 of 1997 examined that death penalty refers to drugs use and possession, b) Law No 22 examined corruption cases, d) Law No 26 of 2000 examined Right Human Court, and e) Law No 15 of 2013 discussed about death penalty for terrorism.

Obviously, these laws showed that Indonesia concerns a lot about the death penalty. There is no tendency to deny death penalty execution because it is considerably applicable for those who perform an extremely serious crime. Any serious crime occurred has the possibility to be sentenced as death penalty. Then according to Covenant on Civil and Political Rights, Indonesia will keep considering to narrow some crimes that are appropriate to have the death penalty because there are more serious crimes occurred recently in Indonesia. Thus, death penalty in Indonesia do not agree with monetarism as well as United Nation declared

Based on 10 distinctive laws relating to the death penalty, it is urgently needed to examine whether death penalty execution corresponding to Human Right principles in which it is discussed in Paragraph 6 of Covenant and Political Rights. Besides, death penalty was examined to reassure that death penalty is applied for extremely serious crimes, such as; drug use and possession, corruption, and terrorism.

In addition after analyzing the data found, it can be inferred that the performance of death penalty in

Indonesia is appropriate to human right principles, in other words, it is not human right violation. It is corresponding to Article 6 of Covenant and Political Right since the death penalty do not cause both physical and psychological pain for those who get this kind of death penalty. From data observation through witness, death penalty is performed by a group of superior firers in which the defendants will feel an extremely pain in 7-10 minutes.

Moreover, Lambrosso and Garofalo (1968) stated that death penalty is kind of punishment needed by society to prevent the felons to undertake another serious crimes twice even more ahead as all the felons are known as those who are impossible to do the good things anymore. Surely, their existences are a threat for all citizens who really need harmony and peace in their lives. In order to achieve life goals needed by society, Indonesia has signed and affirmed Covenant and Political Right No 12 Year 2005 in which Indonesia government's intention to give a protection all Indonesian citizens through Human Right, and the death penalty must not categorized as cruel. Death penalty will be undertaken after a long process. Thus, it clearly shows that death penalty is always going with Indonesian five principles which is as the applicable law reference in Indonesia. Since death penalty is legally stated in Indonesia law, death penalty would not be recognized as cruel action in which the death penalties have never been resulting both physical and psychological pain as well as stated in Covenant and Political Right.

Particularly, death penalty is regulated in Law No 2/PNPS/1964 which elaborates death penalty must be done by shooting to the defendant directly. In addition, Law of death penalty in Indonesiaregulates the right way of shooting the defendants by their hearts. In case, the defendants would not die yet, then the last option is shooting by their heads as regulated as Law No.2 Props Year 1964. All these things can be performed by the legal competent shooters. The legal competent shooters is the eligible troops chosen who have the right to perform the death penalty because death penalty methodology depends on the firers in which they really understand how to shoot the defendants right into both their hearts and their heads once. Death penalty have to undertaken once because it avoids having physical and psychological pain. Otherwise, if death penalty performance is not executed in the right way, it results unexpected excruciation.

Furthermore, Indonesia Human Right Commission stated that death penalty has disadvantage for those

who are sentenced as long as the process of death penalty in uncertain time. It surely led to the psychiatric disorders in which they are extremely being afraid as long as they are waiting for the execution. The worst thing occurred was they also had no right to keep both family relationship and spouse relationship because they were sentenced in prison. The data showed that, some defendants have been sentenced in jail for more than 40 years before death penalty execution. From Human Right perspective, this kind of thing certainly is not appropriate to the human right.

Yet, there are some factors affecting the lengthy sentence in prison before death penalty performance. Firstly, the defendants have right to propose their pleading from Court I and Court II (A supreme court of justice). Then, they create cassation appeal to be a legal pleading, and Supreme Court must study that pleading for several times. The decision fully depends on Supreme Court whether it is accepted or not, and it is a very long process to go. Secondly, the cassation appeal made will be submitted to The President who will decide the death penalty performance. Then, if the pleading is rejected by The President, they still have another opportunity to propose another pleading, and then it will be studied by Court, thus, submitting to the President to be analyzed then determined. This process takes a unlimited time until the decision is released.

As long as this length process, the defendants need to spend the rest of their life in prison. The defendants who are waiting for death penalty have no particular place in prison as they live with others who are sentenced in the same jail. It means that government keep guarantying all the defendants' cost living including those who are waiting for death penalty in unlimited time as stated in Law No 2-3 Year 2007. Based on the data found, the last time death penalty was performed is in 2012. It is caused by The President who had not decided any cassation appeal created by Supreme Court.

In addition, based on data analysis the researcher interpreted that death penalty is not human right violation, yet, it is undertaken to protect the entire society from any crime which possibly occurs in their life. It clearly shows that Human Right never speak up for serious criminals, such as; drug suppliers, corruptors, murderer and terrorist. As a matter of fact, death penalty needs to perform as soon as the cassation accepted by The President. The execution will not only lead to peace and harmony in social life, but it also leads to the law firmness in Indonesia.

L.M Friedman (1997) stated that death penalty must be efficiently carried out, because it affects to the society trustworthiness against the power of law. The efficiency of law makes the society keep trusting to the law, yet, ineffective law performance will decrease the citizens' belief toward law. It certainly create many more crimes to come because people are not afraid of law anymore as stated in Law No 2-3 Year 2007.

Then, both Tan Sri Hasany and Suruhanjaya (2012), stated that the defendants who are sentenced death penalty had been executed as soon as possible. They did not wait for so long because it was much fair for them for having death penalty as soon as the decision released. Each crime has their own consequences, so the most serious crimes deserve the death penalty. Moreover, Gustav Radburch elaborated three objectives of Law implementation namely:

- a. Law justice
- b. Law firmness
- c. Law advantage

While, Sumadiharja from Lega Assistance of Law in Jakarta stated that waiting period for the defendants who got death penalty was extremely too long because it resulted more serious pains for them both physically and psychologically. In other words, it did not meet Law decision because the law was not implemented efficiently. Then, Robert Johnson, Penology, had been spending his life to investigate death penalty in America for more than five years. He found that all the defendants who got death penalty were killed softly through waiting for so long in prison; they lost hope and got the more stressful pressure.

Cesare Beccaria, the reputable philosopher and politician in 18th century, explained the death penalty in his book titled "On Crimes and Punishment". He stated that all defendants were punished based on the crimes they are performed would be as Law firmness. The citizens would learn so much if law was implemented firmly. Thus, anyone would think million times before doing any crimes against others. Then, he also stated that the death penalty had to be carried out by the death penalty system so the death penalty could be executed as soon as possible,

It is believed that Indonesia must learn South Korea which had similar monetary experience with Indonesia in 1997, but South Korea has been solved this complicated case in which it affects to law system.

Currently, Prime Minister of RRC, Zhu Rongji, has been bravely implementing the law firmness through "orderly 100 coffins" (Muladi, 2009). It shows that the most essential law is to be implemented firmly through the real action, not only formally written law. There was no any consideration for those who performed a serious crime.

Relating to the implementation of death penalty against serious criminals, it is also found in Islam laws firmness. Islam Law concept firmly explains the consequences accepted must be corresponding to the crimes performed. If someone kills other, he deserves to be killed as the punishment, then, if someone undertakes any other crimes, he is worth to accept the sentence through cutting the part of body. Islam law is the fact that imprisonment is not enough for those who performed any crime, even someone just stolen in the public place. Islam believes that this kind of punishment would not be deterrent for them, yet it causes fair decision for family, so it does not result both revenues and crimes occurred in the future.

Based on data analysis, it is also found that homicide case in East Jakarta resulted the revenges because the unfair decision had been released. The murderer was not sentenced corresponding to the crime performed. In that case, a whole family which included mothers and her children were killed by Philipus who was their neighbor. The harmony of life would be achieved, if law was implemented as well as possible. Certainly, there was no revenge both two parties involved (Law No. 2-3 Year 2007).

According to Islam law, the death penalty comes from Almighty God who has the most sacred law for all people in this entire world. The purposes are to grant people's life, to protect people from any crimes, and to avoid upcoming crimes. In Islam, this kind of law is well-known as *Qishaash*. By implementing *Qishaash*, human would be more valuable than chicken.

CONCLUSIONS

Based on data analysis, it can be concluded that death penalty is not contradictory with human rights as stated in Presidential Regulation No 2 of 1964 discussing the death penalty in Indonesia is applicable for those who commit serious crimes, namely; murder, drug possession, terrorist, and corruption. It is also corresponding to International Covenant on Civil and Political Rights, Article 7 Verse (2) – (6), which is stated that death penalty must be performed in proper

methodology without both physical and psychological suffering.

SUGGESTIONS

In relation to the findings, there are three suggestions are offered as the following:

1. Government is expected to implement death penalty firmly based on Constitution of Republic of Indonesia without any too much consideration. It is clearly stated in criminal law that serious crimes deserve death penalty after both process and appeal have been analyzed by supreme courts, then it is decided by The President.
2. All convicts have the same right to propose appeal to the Supreme Court as an effort to make them waiting for death penalty in uncertain period. This decision is stated in Law No 5 of 2010.
3. Death penalty is applicable for serious crimes, such as; drug user and possession, murder, terrorism, and corruption. Absolutely, if the death penalty firmly implemented for those who are performing these serious crimes, the purposes of law will be achieved; justice, firmness, efficiency.

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Received on 28-10-2020

Accepted on 02-12-2020

Published on 07-12-2020

DOI: <https://doi.org/10.6000/1929-4409.2020.09.156>

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