

## The Death Penalty from A Sociological Perspective and Human Rights Enforcement

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### Abstract

The death penalty is one of the most controversial types of punishment globally, with many opinions supporting and opposing its implementation. Supporters of the death penalty often base their arguments on conventional reasons, claiming it is necessary to eliminate individuals deemed dangerous to public or state interests and irredeemable. Opponents argue that the death penalty violates human rights and is an irreversible form of punishment, especially if errors in judgment are discovered post-execution.

**Keywords :** *Death Penalty, Human Rights Enforcement*

## INTRODUCTION

### 1.1 Background

Capital punishment is one of the oldest types of punishment, as old as human life itself, and it is the most controversial of all penal systems, both in Anglo-Saxon countries with common law systems and in continental European countries with civil law systems. Historical research on the death penalty has proven that nowadays, countries around the world continuously debate its application. In Indonesia, the death penalty has been in effect since January 1, 1918, as stipulated in the Wetboek Van Strafrecht (Criminal Code), which was established by the Dutch colonial government based on K.B.v. October 15, 1915, No. 33. S. 15-732 jis. 17-497, 645, i.e., the W.v.S which had already been in effect in the Dutch East Indies. The review of the death penalty was nationalized with Law Number 1 of 1946, whose provisions are found in Article 10 of the Criminal Code and in some offenses outside the Criminal Code in the form of laws. This provision has been transformed into an explanatory

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memorandum (Memorie van Toelichting), stating that the state has the right to enforce all these regulations, including the death penalty, as a necessity with the aim that the state can fulfill its obligations to maintain legal order and public interest (A. Hamzah and A. Sumangelipu, 1984).

The implementation of the death penalty in several countries around the world has indeed experienced pros and cons, especially since the publication of the book "Dei Delitti E Delle Pene" by Cesare Beccaria (1764). The influence of his writings resurfaced and had a significant impact between the World War I and II periods, prompting the rise of humanism. Essentially, it recognizes the existence of human dignity and the demand for the respect of human rights, particularly the right to life and other social rights. The retentionists (pro) typically formulate the death penalty as being transcendental, built from conceptual abstraction, attempting to view the death penalty solely from the perspective of absolute theory, with its retributive aspects and destructive elements.

In the specific understanding of absolute theory, the death penalty is not retribution but rather a reflection and manifestation of society's disgust towards criminals and crime. Thus, juridical suffering in the form of the death penalty must be utilized to maintain balance in legal order. Meanwhile, abolitionists (contra) argue that the state does not have the right to take a person's life. The emergence of the abolitionist movement has led many countries to reduce the types of crimes punishable by death (Todung Mulya Lubis, 2009: 225). The debate over the implementation of the death penalty in Indonesia is currently emerging, especially as news about the execution of drug criminals is rampant. Some people agree with the death penalty, while others do not. Various perspectives are used to strengthen their arguments about the legitimacy of the death penalty, ranging from religious, human rights, legal, socio-cultural aspects to the ideology adopted by a country.

## 1.2 Problem Formulation

Based on the above discussion, several issues arise:

1. How does the sociological aspect of Indonesian society view the implementation of the death penalty?
2. How does the implementation of the death penalty relate to the enforcement of human rights? Does it cause pros and cons?

## METHOD

The research method used is qualitative, which involves studying the validity of land sale and purchase agreements, collecting data using case studies, and producing analytical data from the collected information. Since the type of research conducted is normative juridical research, the approach used is the statute approach. This approach involves examining legislation related to the central theme of the research.

## **RESEARCH RESULTS AND DISCUSSION**

### **1. Sociological Aspect of Death Penalty Implementation in Indonesia**

From a sociological perspective, punishment has a specific social meaning because the strength of a sanction depends on people's perceptions of the sanction/punishment. Durkheim linked the type of sanction to the type of social solidarity in society. In mechanical solidarity, which is based on the sameness and total loyalty of individuals, the sanctions applied are repressive. The imposition of sanctions aims to punish crimes or acts that violate the accepted social norms. Thus, sanctions/punishments can be seen as tools to satisfy collective consciousness.

In a society with organic solidarity, which is based on differentiation among individuals, sanctions/punishments are restitutive. Therefore, what is needed is an accommodative punishment that aims to maintain these differences so they do not become disintegrative. Besides people's perceptions of sanctions, individuals also have varying levels of tolerance for suffering as a consequence of violations. Socio-economic status also influences the imposition of the death penalty on an individual.

As revealed in studies in America, it is mentioned that the death penalty has a significantly greater impact on poor and minority communities compared to those from the white majority. This is related to legal assistance for defendants. They are also more likely to be sentenced to death if represented by court-appointed lawyers compared to being represented by private attorneys (Satjipto Rahardjo 2009: 27).

The most crucial factor of the death penalty is death itself. From a medical perspective, death is indicated by physical death. However, the death that might occur is not only physical death but also social death. From a sociological standpoint, a person can be physically alive but simultaneously experience social death. This occurs when someone is in such a social condition that their freedom to engage in social activities is entirely taken away. Social death can be an important alternative form of punishment to

replace the death penalty. One can imagine how someone sentenced to two life terms without the possibility of parole, while physically alive, might suffer more severely and for a longer time, especially in terms of social suffering. This convict is isolated from their social life routines, which is a heavy blow, particularly having to be separated from their close family (Satjipto Rahardjo 2009: 28). According to Satjipto Rahardjo (2009: 29), the term "civil death" is actually known in law. It is said that such a death befell several people during the New Order regime. Because they were considered dangerous to those in power, they were civilly killed without going through a judicial process. Those who experienced civil death were still physically healthy, but many aspects of their social life were terminated. For instance, they could no longer conduct business as usual and faced restrictions on various social activities.

Social death punishment can essentially provide an extraordinary deterrent effect while also serving as an appropriate evaluation of a court sentence, determining whether the court's verdict is indeed correct or erroneously contrary to the factual truth. For those who have been sentenced to death and the execution has been carried out, there is nothing that can be rectified.

If it turns out later that there was a mistake and a condemned person who was sentenced to death did not commit the accused act, they cannot be brought back to life, even though their reputation can be restored. In mechanical solidarity, which is based on the sameness and total loyalty of individuals, the sanctions applied are repressive. The imposition of sanctions aims to punish crimes or acts that violate accepted social norms. Thus, sanctions/punishments can be seen as tools to satisfy collective consciousness. The inclination of experts who support maintaining the existence of the death penalty is generally based on conventional reasons, namely that the death penalty is necessary to eliminate individuals deemed to endanger public or state interests and are perceived as beyond rehabilitation. Conversely, opponents of the death penalty commonly argue that it violates human rights and is a form of punishment that cannot be rectified once an execution has been carried out and errors in the judge's verdict are discovered (A. Hamzah and A. Sumangelipu, 1984: 25). According to The Indonesian Human Rights Watch in (Waluyadi, 2009: 58), there are three main reasons why courts often impose the death penalty, including:

1. Historically, it was used by the colonial regime and continued by the authoritarian New Order regime to instill fear and eliminate political opponents, as seen in the application of political crimes under Article 104 of the KUHP
2. Some laws incorporate the death penalty as a political compensation for an inability to reform a corrupt legal system, despite its ineffectiveness in reducing crime rates, including drug-related offenses.
3. Rising crime rates are seen as individual responsibility.

Pro and contra arguments regarding the implementation of the death penalty in Indonesia are not only debated among legal experts but also extend to societal levels and proceed to the Constitutional Court. For instance, some death row inmates in drug-related cases have through their legal representatives filed a Request for Material Testing of Law Number 22 of 1997 concerning Narcotics against the 1945 Constitution, concerning the constitutionality of the death penalty as stipulated in Law Number 22 of 1997 concerning Narcotics.

However, based on the Constitutional Court's ruling, it is explicitly stated that the death penalty provision in Law Number 22 of 1997 concerning Narcotics is not contrary to the Constitution. By analogy, it can be concluded that the death penalty is not an unconstitutional act (Nata Sukam Bangun, 2014: 8). Some sectors of society who support the death penalty argue that for crimes such as narcotics offenses categorized as Extraordinary Crimes, it is appropriate for offenders to face severe penalties, including the death penalty, considering that such crimes can devastate entire generations of the nation. This perspective aligns with the views of Hartawi AM as expressed in (Djoko Prakoso and Nurwachid, 1985: 14), who see the threat and implementation of the death penalty as a form of social defense.

The death penalty serves as a social defense to prevent the general public from disasters, dangers, or significant criminal threats that may occur and affect societal well-being, disrupting order and public safety. When dangers and major crimes threaten communities, society has the right to defend against such crimes using measures like capital punishment. Support for the death penalty often contends with increasing opposition, reflecting differing perspectives on its necessity in maintaining social order. Additionally, according to J.E. Sahetapy (1978, p.29), the purpose of punishment is not merely to retaliate against wrongdoing, as the deed itself cannot be undone and the victim has already suffered. This

perspective suggests that punishment serves more as a symptom of behavior, involving not only the perpetrator but also the relationship dynamics between perpetrator and victim, where the victim may share some responsibility. Therefore, any form of retaliation may not restore balance but might only satisfy the impulse that the perpetrator has suffered as retribution.

## **2. The Death Penalty Reviewed from the Human Rights Enforcement Process in Indonesia.**

In Indonesia, the Criminal Code (KUHP), enacted by the Dutch government since January 1, 1918, still includes the death penalty in its core sanctions under Article 10, despite the fact that the Netherlands itself abolished the death penalty in 1870. This disparity arises because Indonesia faces unique circumstances where the most serious criminals are deemed necessitating capital punishment to combat them (Andi Hamzah and A. Sumanglipu, 1984: 15). Drawing from the Dutch legal system, Indonesia has retained the death penalty as a principal means to address various crimes such as murder

Unfortunately, Indonesia's legal journey has not been as smooth as expected. Several contentious issues have colored the position of the death penalty in Indonesia. One of these is the anti-death penalty movement that gained traction in 1958 under the leadership of Prof. Mr. Roeslan Saleh, a pioneer of the abolitionist movement in Indonesia. This movement was further supported by Vice President of the Republic of Indonesia, Adam Malik, in 1978 (Andi Hamzah and A. Sumanglipu, 1984: 15). From an international perspective, provisions regarding human rights related to the right to life can be found in the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right to life. Article 6, paragraph 1 of the ICCPR states that every human being has the inherent right to life and shall be protected by law, and no one shall be arbitrarily deprived of this right. Furthermore, Article 6, paragraph 2 specifies that for states that have not yet abolished the death penalty, it should be limited to the most serious crimes under the law in force at the time, and not contrary to the Covenant and the Convention on the Prevention and Punishment of the Crime of Genocide. Such penalties can only be carried out pursuant to a final judgment rendered by a competent court (Todung Mulya Lubis: 2007). Internationally, there have been significant efforts towards the abolition of the death penalty worldwide. One example is the Universal Declaration of Human Rights (UDHR), which explicitly states that the death penalty violates two fundamental human rights principles: the right not to be arbitrarily deprived of life, and the right not to be subjected to cruel, inhuman or degrading treatment or punishment (Todung Mulya Lubis: 2007). Furthermore, in the explanation of Article 9 of the Human Rights Law, it is stated that everyone has the right to life, to defend life, and to improve living standards. The right to life also extends to unborn babies or individuals facing the death penalty.

In exceptional circumstances, such as to save the life of the mother in abortion cases or based on a court decision in death penalty cases, these actions may still be permitted. Only in these two specific situations can the right to life be restricted. From the explanation of Article 9 of the Human Rights Law above, it is understood that in certain conditions like the death penalty, the right to life can be limited. The debate over the death penalty resurfaced in relation to the constitutional review of articles in the Narcotics Law in July 2007. The Chief Justice of



the Constitutional Court (MK) at that time examined two cases, No. 2/PUU-V/2007, filed by four individuals: Edith Sianturi and Rani Andriani, both serving sentences at the women's penitentiary in Tangerang, and Myuran Sukumaran and Andrew Chan, both Australian citizens serving sentences at Kerobokan prison, Kuta Bali, represented by their legal counsel, Todung Mulya Lubis.

The petitioners were death row inmates who had undergone trial processes from the District Court to the Supreme Court in cases related to drug offenses under the Narcotics Law (Todung Mulya Lubis, 2009). The Constitutional Court (MK) rejected the petition for a constitutional review of the Narcotics Law, stating that the law does not violate the right to life guaranteed by the 1945 Constitution because human rights guarantees in the Constitution do not adopt absolute principles. According to the MK, constitutional human rights must be exercised while respecting the rights of others for the sake of public order and social justice. Therefore, human rights must be limited by legislative instruments, meaning the right to life cannot be diminished except by a court decision.

Another consideration for the Constitutional Court's decision is that Indonesia is bound by international conventions on narcotics and psychotropic substances, which have been ratified into national law under the Narcotics Law. Therefore, according to the Constitutional Court's decision, Indonesia is obligated to combat the threats posed by international drug trafficking networks, including by implementing effective and maximum penalties. By imposing severe penalties such as the death penalty for serious crimes like narcotics offenses, the Constitutional Court argues that Indonesia does not violate any international agreements, including the International Covenant on Civil and Political Rights (ICCPR), which recommends the abolition of the death penalty. In fact, the Constitutional Court emphasizes that Article 6, paragraph 2 of the ICCPR itself allows the retention of the death penalty for participating states, specifically for the most serious crimes. In the view of the Constitutional Court, the legislative decision to apply the death penalty aligns with the 1960 UN Convention on Narcotics, the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Article 3 of the Universal Declaration of Human Rights, and human rights law, because the threat of the death penalty under the Narcotics Law has been carefully and precisely formulated, not applied to all drug offenses covered by the law. Furthermore, under human rights law, the Constitutional Court considers that the law also acknowledges the limitation of individual rights by recognizing the rights of others for the sake of public order.

In this regard, the Constitutional Court considers the death penalty as a form of state protection for its citizens, especially the rights of victims. Several experts, both academics and law enforcement practitioners, were brought in during the constitutional review of the Narcotics Law. Various opinions were expressed, all of which were equally strong and logical. There were two streams of thought: first, those against the death penalty argue that imprisonment or death sentences for drug crimes are often ineffective in achieving deterrence. Despite numerous death sentences being handed down, the number of drug cases has not decreased and may have even increased. On the other hand, proponents of the death penalty argue that it is still necessary and must be maintained. The threat of the death penalty is seen as crucial for deterrence, aiming to prevent more serious offenses, especially in drug cases. They believe that the only way to break the chain of narcotics is by imposing the death penalty on drug offenders, thus protecting the interests of the state and society from the dangers of

narcotics. After hearing these various opinions, the Constitutional Court also listened to the drafting team of the Indonesian Criminal Code (RUU KUHP), represented by Mardjono Reksodiputro. According to him, while the draft law still adopts the death penalty, it should be a special penalty applied carefully, selectively, and specifically to dangerous cases, and it should be decided unanimously by a panel of judges (Todung Mulya Lubis: 2009).

### **3. Implementation of Legislation Regarding the Death Penalty in Indonesia.**

The law that governs acts punishable by law and where these penal regulations are embodied is called criminal law. Therefore, criminal law is referred to as Special Sanction Law. Imposition of punishment as suffering for offenders is only a last resort (*Ultimum Remedium*) that is only carried out if other efforts such as prevention are no longer effective. One of the most severe forms of punishment is the Death Penalty. (Andi Hamzah and A. Sumangelipu, 1984: 11).

## **CLOSING STATEMENT**

### **Conclusion**

1. Sociologically, punishment carries specific social meanings because the strength of a sanction depends on human perception of that sanction. The imposition of sanctions aims to punish crimes or actions that violate societal norms. From a sociological perspective, the application of the death penalty in Indonesia generates both support and opposition. Supporters (proponents) of the death penalty typically argue for conventional reasons, stating that it is necessary to eliminate individuals deemed to endanger public or national interests and who are considered beyond reform. Conversely, opponents (critics) of the death penalty often argue that it violates human rights and constitutes an irreparable form of punishment, especially if errors in the court's verdict are discovered after execution."
2. Regarding human rights enforcement, the application of the death penalty also generates pros and cons. Opponents argue that the death penalty violates human rights, citing the International Covenant on Civil and Political Rights (ICCPR). In Indonesia, the right to life is clearly stated in Article 9 of Law No. 39 of 1999 on Human Rights, which affirms that every person has the right to life, to defend life, and to improve living standards. Those against the death penalty argue it constitutes a violation of the constitution (unconstitutional), referring to Article 28A of the 1945 Constitution which states: 'Everyone has the right to life and the right to defend life and their lives.' On the



other hand, proponents argue that the threat of the death penalty is still necessary to deter crime, particularly in narcotics cases where they believe it is the only way to break the narcotics chain. Supporters of the death penalty regarding human rights violations argue that while the right to life is guaranteed in the Indonesian constitution, it can be restricted by legislative instruments. The constitutionality of the death penalty has been regulated in several laws, including the Narcotics Law, and has been reinforced by decisions of the Constitutional Court.

### **Recommendation**

**Based on the conclusion outlined, the researcher wishes to provide a recommendation to law enforcement officials to apply the law based on legislation, thereby achieving the ideals and ensuring justice.**

### **THANK YOU**

In preparing this writing, the researcher faced various challenges, yet these difficulties served as motivation to strive for higher aspirations. Therefore, on this occasion, the researcher sincerely expresses gratitude to all parties, unnamed but deeply appreciated, who have provided valuable input for this proceeding and have supported and encouraged the researcher throughout the completion of this study."

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