
THE RELEVANCE OF THE DEATH PENALTY TO PERPETRATORS OF SERIOUS CRIMES IN THE LEGAL AND SOCIO-POLITICAL CONTEXT IN INDONESIA

Arrisman¹, Gunawan Widjaja^{2*}, Hotmaria Hertawaty Sijabat³

¹ Universitas Nasional.

² Universitas Pancasila.

³ Universitas Bhayangkara Jakarta Raya.

Email: widjaja_gunawan@yahoo.com

Abstract

This paper discusses the relevance of the death penalty for perpetrators of severe crimes in the legal and socio-political context in Indonesia. Many studies have been conducted to find common ground between the death penalty and serious crimes. However, no research discusses the death penalty for the perpetrators, which is considered severe in Indonesia's legal and socio-political context. To address this issue, the researcher has conducted a literature search on several sources of relevant data and information to address legal and political issues and the death penalty for serious criminals. After receiving approximately 50 material hats, both books and scientific papers, the researcher examines, evaluates, and interprets the data to be able to draw conclusions and answer problems. Discussion proves that the death penalty still applies to several crimes, such as premeditated murder for severe drug cases and terrorism. The death penalty is sentenced to protect the public from the actions of those evil people. Thus, hopefully, these results will be helpful for both academicians and policymakers in the future.

Keywords: Relevance, death penalty, Serious Crimes, Law and Politics.

Introduction

According to experts, there are two current ideas in Indonesian policies regarding the death penalty that are relevant to the development of law enforcement in order to achieve justice. According to Rusito & Suwardi (2019), this group believes that the death penalty is appropriate for imposing criminal sanctions on those who commit serious crimes. This first group supports the death penalty (pro-capital punishment). According to Yanto (2016), it is hoped that the imposition of the death penalty will deter the perpetrators, maintaining its relevance. Naturally, this relates to the parliament's majority vote. Benjamin Mangkudilaga, a former supreme judge, stated: "as long as the provisions for the death penalty are still regulated in the law, the death penalty is constitutional and must still be implemented." It became one of the supports for the enforcement provisions regarding the death penalty. The second group includes those who support abolishing the death penalty. They are people that against the provisions of the death penalty. They argue that the death penalty violates the right to life in violation of Article 28, paragraph (1) of the 1945 Constitution. Such is the debate regarding Indonesia's use of the death penalty (Suartha, 2020). The researcher will conduct a further comprehensive study to get a more in-depth discussion of this.

The Genoveva clause, which states that the death penalty not only violates the right to life but also other human rights, such as the right not to be subjected to torture or cruel and inhuman treatment (Yanto, 2016), is used as the main argument by those who oppose the use of the death penalty. Additionally, they claim that the sentence violated Article 28 of the 1945 Constitution of the Republic of Indonesia, also referred to as the 1945 Constitution. According to Steiker & Steiker (2015), this is consistent with Hendarji's assertion, "In addition," that "the death penalty is contrary to human rights as regulated in Article 28 of the 1945 Constitution, that it turns out that the death penalty for many groups of people can provide a deterrent effect is not proven." This is in response to the assertion made by Hendarji. The death penalty is opposed by those who argue that it violates Pancasila's principles of just and civilized humanity and it is cruel and inhuman. However, drug dealers cannot be eliminated solely through the death penalty.

Every nation that ratifies the International Covenant on Civil and Political Rights (ICCPR) must abide by all of the terms outlined in Article 2. As a result of Indonesia's ratification of the ICCPR Provisions, Indonesia is obliged to observe and comply with all ICCPR conditions. This means that every state party to the agreement agrees to respect and guarantee that all individuals residing on its territory and subject to its jurisdiction will be able to recognize the rights outlined in the current Covenant. This applies to all individuals, regardless of race, color, sex, language, religion, political or another opinion, national or social origin, property, or birth. Even though the benefits and drawbacks of criminal deaths have been debated for a considerable amount of time in this nation, Indonesia's growth continues. It acknowledges that the execution of criminals is permissible (Lewis, 2020).

Even the death penalty will continue to be used in Indonesia in the future because Law No.1 of 2023 regarding the Criminal Code (the New Criminal Code) includes it as one of the penalties for punishing criminals. The death penalty is governed by several articles in the New Criminal Code. Under Article 67 of the New Criminal Code, the death penalty is considered as sentencing for special crimes in special laws. The death penalty was used as a last resort to protect society. According to Rusito & Suwardi (2019), the application for the death penalty violates international human rights law. The New Criminal Code itself will become enforceable in 2026. The current applicable criminal law is the one inaugurated as law based on Law No.1 of 1946 regarding the Criminal Law and *Wetboek van Strafrecht uoor Nederlandsch-Indie* known as Criminal Code.

Provisions of international human rights law make it clear that criminals who were sentenced to die are in violation of the International Covenant on Civil and Political Rights (ICCPR). Article 6 paragraph (1) of ICCPR stated that: "People reserve the right to live and receive legal protection, and no one can give up their freedoms." However, as long as the offense in question falls under the category of serious crimes and human rights violations as stipulated in paragraph (2), it may warrant the death penalty. It is therefore, the imposition of the death penalty may be permitted under Article 6 paragraph (2) of the International Covenant on Civil and Political Rights (Wicaksono, 2016).

According to records made available by Hands Off Cain Info, there are approximately 155 nations that must either abolish the death penalty as a policy or implement it in their legal systems. In contrast, 99 nations must abolish the death penalty for all serious crimes, and 44 states are de facto abolitionists because they have implemented the policy (Gallahue & Lines, 2010). Five nations have imposed a moratorium on on-the-spot executions, and seven have eliminated penalties for routine crimes. The right to life is essential for every human being, which is one of the reasons the state abolished the death penalty regulation out of respect for fundamental human values. One of the non-delegable rights is a happy life. That is because the right to life is fundamental; everyone must own this absolute right. True, but it also means that no one else has the right to kill him; everyone has the right to live (Dworkin, 2011).

According to O'Flaherty (2012), criminal enforcement in the form of the death penalty constitutes a grave violation of human rights because an act punishable by the death penalty must constitute a grave violation of human rights. However, not all types of criminal acts are subject to the death penalty, making it the only crime that can be classified as a serious crime. According to Jetschke (2011), the definition of "gross violation" of fundamental human rights includes genocidal killing, murder, arbitrary or extrajudicial extra judicial killings (arbitrary/extrajudicial extra-judicial killing), torture, enforced disappearances, slavery, and systematic discrimination. This definition is strengthened by Article 104 paragraph (1) of Law Number 39 of 1999 concerning Human Rights. The controversy does not only occur in the design of the debate at the level of thought about the substance of whether the death penalty provisions are contrary to naked human rights or not and is the death penalty the best and the only solution to eradicate crime. However, controversy also occurred over the government's policies, which caused unrest among the wider community. Several policies from the Government and the Prosecutor's Office are considered disturbing to the public, including 1. The Supreme Court's Civil Request Decision on the drug case with the defendant Hengki (Tindaon et al., 2013). In Civil Request Decision No:39PK/Pid.Sus/2011, the Civil Request's Judges chaired by Judge Imron Anwari with members Judge Ahmad Yamanie and Judge Nyak Pha turned out to be controversial; because the decision nullified the decision of the First Instance Court, Court of Appeal, and Supreme Court in Cassation which sentenced the defendant to the death penalty to become 15 years in prison. In the decision, the three judges stated that the death penalty was contrary to Article 28, paragraph 1 of the 1945 Constitution and violated Article 4 of Law Number 39 of 1999 concerning Human Rights (Jufri, 2017).

In the final two-year, President Susilo Bambang Yudhoyono (SBY) has given clemency to four convicted dead case drugs, namely, among others (Pascoe, 2015). Merika Pranola alias Olaalias Tania, with Presidential Decree No:35/G/2012 of September 26, 2011; Schapelle Leigh Corby, an Australian citizen with Presidential Decree No:22/G Year 2012 of May 15, 2012; Peter Achim Franz Grobmann, German citizen with Presidential

Decree No:23/G of 2012; and Deni Setia Maharwan, with Presidential Decree No:7/G/2012, of January 25, 2012. As for the underlying reason, President Susilo Bambang Yudhoyono gave clemency to Deni Setia Maharwa because the defendant entangled the problem economy. Chairman, the District Court Judges who sentenced punishment dead Defendant Deni Setia Maharta, Asep Irwan state that the reason stated by President Susilo Bambang Yudhoyono is not relevant (Butt, 2021).

Asep Irwan added that in a trial at the District Court of the defendant Deni Setia Maharta in 2000, there was the fact judge good in the form of a description witness nor evidence of another supporter who stated that the defendant had smuggled drugs abroad several times. Because of that decision, President Susilo Bambang Yudhoyono gave clemency to the convict's deadly case of drugs (Kurniawan, 2020). Delay Application Death Penalty in reality until the end year then, specifically in December 2011, a total of 113 convicts were waiting for criminal execution dead (number from whole institutional prisons collected in Indonesia). As many as 113 convicts have submitted clemency to President, and all have been rejected, which means they are waiting for did execution dead (Muhammad et al., 2021).

Policy about the delay in application criminal dead causes impact or potential effect that cause the violation to suitable basic human, as for several effects related with delay execution the including the occurrence of uncertainty the law that resulted in convict dead no can use his rights for treated by fair in the eyes law, existence discriminatory treatment that is with vary the sentence among convict one die with others, apart from that too indication torture to convict dead that is with enforcing criminal dead added with criminal prison (in a period no time determined (Kim & Sikkink, 2010). From some of these problems above, the author is interested in in-depth research on the complex application of criminal death in context enforcement law in Indonesia. Studying this want to try to explain the polemic about criminal policy death reviewed in perspective theory, then also review the implementation problems of criminal death in law enforcement in Indonesia (Cunneen, 2020).

Methods and Materials

This section describes the method of conducting a study aimed at obtaining the relevance of the death penalty for severe crimes in the socio-political context in Indonesia (Bell Holleran et al., 2016). We begin this study with the problem of rationalization seeking the relevance of the death penalty for serious criminals. Furthermore, we searched the data on the literature related to the death penalty and the context of its application related to social politics in Indonesia. In the end, we try to report a summary after the discussion and review of various sources that we did electronically, assisted by the Google Search application and scholar (Leechianan & Longmire, 2013). The review process involves a strategy data coding system, evaluation of comprehensive data integration, drawing conclusions, and adhering to the principles of validity and liability of peer data. Our search is done online by pinning keywords on Google, such as the relevance of punishment, predator, criminal, criminal, socio-political culture in Indonesia, etc. We designed this study as a descriptive qualitative study. Thus, among other things, in the process of implementing this literature review, we started with the formulation of the problem and ended with concluding (Egger et al., 2022).

Results and Discussion

• The Death Penalty in Indonesia

The debate regarding the benefits and disadvantages of the death penalty appears to be ongoing. Gallahue & Lines (2010) predicts that advocates for human rights and legal professionals will likely offer their perspectives. Consequently, whether or not the death penalty should be applied to everyone has always been contentious among members of the community, the legal profession, the clergy, and the government. One of the most fundamental human rights violated by the death penalty is the right to live and improve one's life. Because it requires human souls to defend their lives, the death penalty is the most severe of all crimes. Additionally, the death penalty is a heinous punishment that deters criminals. Unfortunately, this punishment violates the right to life, as stated in the Universal Declaration of Human Rights (UDHR) (Pascoe, 2013). According to researcher Balitbangkumham Firdaus, national law also governs the right to live stipulated in the Indonesian Constitution. Law No.39 of 1999 regarding Human Rights (the Human Rights Act) provides

many basic human rights, such as the right to practice their religion, the right not to be shackled, the right to life, the right not to be tortured, and the right to be free in one's mind, heart, and body. Concerning this issue, community members continue to disagree regarding the application of the death penalty in violation of human rights (Sine & Fransiska, 2022).

• Legal Basis and Implementation of the Death Penalty in Indonesia

The death penalty is not a new punishment, according to the presentation of a research proposal on the Implementation of the Death Penalty Policy from the Human Rights Aspect. People have known about the death penalty ever since the Indonesian kingdom. The death penalty, which can be handed down by a court or carried out without a trial, is the most severe punishment a person can receive for their actions. Legal Basis: In Indonesia, "The executioner carries out the death penalty by hanging by tying the neck of the convicted person with a noose on the gallows and dropping the board from below," stated Article 11 of the Criminal Code. His feet Law or law Number 2/PNPS/1964 explained the article's modifications. The death penalty, carried out by shooting to death, was applied to civilians. According to Rifai (2017), the death penalty is one of the most severe offenses in article 10 of the Criminal Code.

The following are crimes that are punishable by death under Article 104 of the Criminal Code: "The President is killed by Makar." Article 111, Section 2 of the Criminal Code: "inviting other nations to attack Indonesia", and Article 124 paragraph 3 of the Criminal Code: "assisting the adversary during the conflict in Indonesia". Article 140 of the Criminal Code, Section 4: killing the leader of a friendly nation (Santoso, 2016). Article 340 of the Criminal Code reads murder with a purpose. Article 365, Section 4 of the Criminal Code: "When two or more people commit theft or violence, one suffers serious injuries or dies."

Additionally, several articles in Law No.35 of 2009 regarding Narcotics (the Narcotics Act) dealt with drugs. According to Article 118 paragraph 2 of the Narcotics Act, the maximum punishment for violators is death. Also read: Criminologist Says Herry Wirawan Can Oppose PT Bandung's Death Penalty Corruption offenders are also eligible for the death penalty, as outlined in Article 2 paragraph 2 of Law No.31 of 1999 regarding Eradication of Corruption (the Corruption Act), which addresses corruption-related criminal acts (Rafsanjani, 2022).

Implementation of the Death Penalty The procedure for carrying out the death penalty follows Law No.2/PNPS/1964: "The convict is informed three times about the planned death penalty 24 hours before execution. If the inmate is pregnant, the death penalty can be carried out forty days after the child is born" (Purba et al.,2020). Under the direction of an officer, the Regional Police Chief, or Kapolda, organizes a firing squad with a non-commissioned officer and 12 enlisted members. The guard commander covered the prisoner's eyes with a cloth when he got to where the death penalty was being carried out. The convict can stand, sit, or kneel to serve their sentence. The distance between the convict's location and the firing squad should not be less than five meters or more than ten meters. The firing squad's commander signaled his members to aim for the prisoner's heart with a sword (Sitompul & Sitompul, 2022).

If the prisoner still shows signs of life, the firing squad fires the last shot by pressing the end of the gun barrel just above the ear. Everyone has the right to live and to defend themselves, according to the Second Amendment to the 1945 Constitution. The "Death Penalty Controversy" refers to this. The Indonesian government recognizes and upholds the right to life as a fundamental natural law principle. Because it keeps the death penalty as a punishment, the law is against the Constitution.

According to Nugraha (2015), as a result, many parties want to change the law that still applies to the death penalty. Until 2022, 111 nations had expressed opposition to the death penalty, as documented by Amnesty International. Only 84 nations still employ the death penalty today. This demonstrates that the death penalty is no longer appropriate or pertinent to international law development. International law, shifting philosophical perspectives, and societal shifts in numerous debates influence the death penalty issue. The debate over the death penalty involves three interconnected aspects: the Constitution, which was adopted as the highest law, and the form of government. Social dynamics, politics, and international law influence social relations in a society. It also impacts how old values still hold in today's more advanced times. Legal certainty—laws in line with the Constitution, the laws, and the needs of society—is one of the most critical aspects of the Indonesian legal system (Muhammad et al.,2021).

The social and political context of the death penalty in Indonesia The Dutch East Indies government did not carry out this form of punishment in Indonesia. Before the arrival of European colonial powers, the kings and sultans of the archipelago executed their subjects (Hilmy, 2013). In 1808, Indonesia's Governor-General Herman Willem Daendels directed the consolidation of the death penalty. They controlled the use of the death penalty because they were the Governor-General of the Dutch East Indies. During this time, the British used the death penalty to defend Java and end the resistance of the colonized population. Without the use of the death penalty to pacify the colonized population, the mission of the French government in power in the Netherlands to defend Java from British attacks would have been challenging. The second and most significant consolidation occurred when the *Wetboek van Strafrecht voor Inlanders (Indonesiers)* became law on January 1, 1873 (Sujatmiko, 2012). Subsequently, in 1915, *Wetboek van Strafrecht voor Indonesia (WvSI)* was promulgated and came into force on January 1, 1918. Racial prejudice and maintaining public peace are the main motives for the death penalty. Even after the reform, in less than eighteen years, at least five laws included the death penalty as a criminal sanction. However, in the post-amendment Indonesian constitution (1999-2002), the right to life has been firmly guaranteed. Although only five laws contained the death penalty after the Reformation, if we compare the number of articles that regulate the death penalty offense as a sanction, the number has more than doubled compared to the entire article that regulated the death penalty from 1945-1998 (Pascoe et al., 2016).

This anomaly is a severe concern for many human rights activists and other countries that have abandoned this inhumane practice. Mainly when referring to United Nations (UN), Resolution No. 29 on December 18, 2007, asked all countries to implement a moratorium on the use of the death penalty in their legal system as a step towards abolishing it. As a country member of the international community, the UN Resolution is one of the international legal instruments that Indonesia cannot ignore (Pascoe, 2019). At this point, it is essential to conduct a study to map out the main argument that criminal sanctions in the form of the death penalty are still included in several regulations in Indonesia. Tracking this argument is very important to determine the rationalization and background of the public policy on using the death penalty in the Indonesian legal system. Without understanding the roots and background and the arguments that the death penalty is still maintained in Indonesia in several laws, the more open the death penalty is as a part of criminal sanctions that will continue to be maintained and used (Duraesa & Ahyar, 2019).

The death penalty in the case of Ferdy Sambo

The Dutch East Indies government did not implement the death penalty in Indonesia as part of this type of punishment. The archipelago's kings and sultans used the death penalty on their subjects before European colonial powers arrived. On the directive of Governor-General Herman Willem Daendels, the consolidation of the death penalty as a whole took place in Indonesia in 1808. (Shatz & Shatz, 2012). They regulated the provision of the death penalty as the authority of the Governor-General of the Dutch East Indies. At this time, the death penalty was maintained as a strategy to silence the resistance of the colonized population as well as an effort to defend Java from British attacks. Without efforts to pacify the colonized population through the death penalty instrument, the mission of the French government in power in the Netherlands to defend Java from British attacks would have been challenging to realize (National Research Council et al., 2012).

The second and most crucial consolidation was when *Wetboek van Strafrecht voor Inlanders (Indonesiers)* was enacted on January 1, 1873. Subsequently, in 1915, *Wetboek van Strafrecht voor Indonesia (WvSI)* was promulgated and came into force on January 1, 1918. Racial prejudice and maintaining public peace were — the primary motive for implementing the death penalty (Chen, 2017). Indonesia's various laws still use the death penalty after independence. The legislation was passed for various reasons tailored to the political and sociopolitical circumstances. Indonesian legislative politics have produced the death penalty as one of the most critical criminal geniuses ever since independence. Even after the reform, in less than eighteen years, at least five laws included the death penalty as a criminal sanction. However, in the post-amendment Indonesian constitution (1999-2002), the right to life has been firmly guaranteed. Although only five laws contained the death penalty after the Reformation, if we compare the number of articles that regulate the death penalty offense as a sanction, the number has more than doubled compared to the entire article that regulated the death penalty from 1945-1998 (Chalfin et al., 2013).

Several human rights activists and nations that have abandoned this inhumane practice are deeply concerned about this anomaly. In particular, UN Resolution No.29 called on all nations to impose a moratorium on the use of the death penalty in their legal systems on December 18, 2007, as a first step toward abolishing it (Hood & Hoyle, 2015). Indonesia cannot ignore the UN Resolution as one of the international legal instruments

because it is a member of the international community. At this point, it is essential to carry out a study to outline the main argument that the death penalty is still included in several Indonesian regulations. In order to ascertain the justification and background of Indonesia's public policy regarding the use of the death penalty in the legal system, it is crucial to follow this argument. The more open the death penalty is as a component of criminal sanctions that will continue to be maintained and used if the roots, background, and arguments that the death penalty is still maintained in Indonesia in several laws are not understood (Nesse, 2012).

Death Penalty on Sambo case and political pressure

The results of the Indicator survey explained that most respondents wanted the former Head of the Program Division, Inspector General of Police, Ferdy Sambo, to be sentenced to death. Ferdy Sambo is an intellectual actor as well as a suspect in the alleged murder of Brigadier J. The Political Indicator surveyed 11 to August 17, 2022, with 1,229 respondents (McRae, 2012). The survey questioned several issues related to the case of Brigadier J's murder, one of which was related to the sentence for Ferdy Sambo. The results of the Indicator survey explained that most respondents wanted the former Head of the Program Division, Inspector General of Police, Ferdy Sambo, to be sentenced to death. Ferdy Sambo is an intellectual actor as well as a suspect in the alleged murder of Brigadier J. The Political Indicator surveyed 11 to August 17, 2022, with 1,229 respondents. The survey questioned several issues related to the case of Brigadier J's murder, one of which was related to the sentence for Ferdy Sambo. Likewise, when asked whether or not they agreed if Sambo was sentenced to death, 76 percent agreed. Only 14.2 percent of respondents said they disagreed (Liebman & Clarke, 2011).

Meanwhile, the remaining 9.7 percent chose not to answer or did not know. In addition, the majority, or as many as 66.3 percent of respondents, also stated that they knew that Sambo was threatened with the death penalty; according to the article, he was charged as a suspect in the murder of Brigadier J. The remaining 33.7 percent said they did not know. The Indonesian public was shocked by the murder case of Brigadier Jushua Hutabarat involving his superior, Inspector General Ferdy Sambo. According to a survey by Indonesian Political Indicators, most people think Ferdy Sambo deserves the death penalty. Noted, 49.4% of respondents said Sambo needs to be sentenced to death. Then, residents assess the appropriate punishment as life imprisonment with a percentage of 36.5% and life imprisonment with 7%. The percentage of respondents who said Ferdy Sambo deserved the death penalty in September 2022 decreased from 50.3% the previous month (Novak, 2014).

Meanwhile, the public's assessment of the 20-year prison term increased from 5% in August 2022. This survey also revealed that the public believed the National Police Chief's promise to resolve this case. However, the level of trust has decreased significantly; the distrust has increased from 59.7% in August to 53% in September 2022. The National Police Chief, General Listyo Sigit Prabowo, confirmed that the former Head of the Propane Propam Division, Ferdy Sambo, was no longer a member of the National Police. Ferdy Sambo has been dishonorably dismissed by the National Police and determined through a Presidential Decree. "The status of the next Fedy Sambo is officially no longer a member of the National Police. The list is also committed to taking corrective measures and evaluating internally within the National Police (Sambo, 2022).

Conclusion

After a series of studies to find the relevance between the death penalty for perpetrators of severe crimes in Indonesia's legal and socio-political context. We can conclude that a review of several related works of literature and data analysis is valid. The results that we have collected show that the death penalty for criminals in Indonesia is still a source of income between the pros and cons with very comprehensive and academic reasons, respectively. Furthermore, we find that the implementation of the death penalty is supported by legal standing, where several existing regulations have made it possible to carry out the death penalty for serious criminals. Likewise, the death penalty in Indonesia in this socio-political context is still overshadowed by the actual conditions in Indonesia. A country left by Dutch colonialism, all applicable laws and regulations are a socio-political picture of what was meant by the Dutch era and what is happening today in Indonesian society.

Regarding various issues that demand serious crimes, such as liaison and other perpetrators in Indonesia, there are still conflicts between the interests of the community and the state apparatus, which are still influenced by

legal content and the political will of law enforcement. We realize that this finding has many advantages and limitations. Therefore we hope for help and criticism for future studies' improvement.

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