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## Problems of Imposing the Death Penalty from the Perspective of Human Rights and Criminal Law

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**Abstract:** The imposition of the death penalty is an issue that continues to be debated in the realm of criminal law and human rights (HAM). On the one hand, the death penalty is seen as a form of maximum punishment to provide a deterrent effect on perpetrators of serious crimes, such as premeditated murder and drug crimes, and to provide a sense of justice for victims. However, on the other hand, this practice is often criticized because it is considered a violation of the most fundamental right, namely the right to life, as regulated in the Universal Declaration of Human Rights. In addition, the application of the death penalty often raises legal problems, ranging from the potential for judicial errors to discrimination in the trial process. By examining the perspective of human rights and criminal law, this paper aims to analyze the problems that arise in the imposition of the death penalty and explore the possibility of a balanced solution between justice, humanity, and law enforcement. This study uses a normative legal method (legal research) that focuses on the analysis of laws and regulations, legal doctrine, and human rights principles related to the application of the death penalty. Normative legal research aims to understand legal norms and analyze their conformity with human rights principles.

**Keywords:** Death Penalty, Criminal Law, Human Rights

### INTRODUCTION

The death penalty, a punishment that raises pros and cons, is a global phenomenon. Legal experts, human rights activists, and other related individuals always base their arguments on the institution of the death penalty, using logical and rational reasoning. Indonesia is one of the countries that consistently enforces the death penalty in its national law (Kumalasari, 2018). The legality of the death penalty has been recognized through various articles in the laws and regulations that are still in force, including the Criminal Code, Law Number 35 of 2009 concerning Narcotics, Law Number 5 of 1997 concerning Psychotropics, Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, Law Number 26 of 2000 concerning the Human Rights Court, Law Number 23 concerning Child Protection, Law Number 15 of 2003 concerning the Stipulation of Government Regulation instead of Law Number 1 of 2002 concerning the

Eradication of Criminal Acts of Terrorism into Law, all of which are extraordinary crimes that endanger the lives of the nation and state.

At the international level, the imposition of the death penalty on convicts is prohibited. The United Nations (UN) advocates for the abolition of its application, as stated in the Universal Declaration of Human Rights (UDHR) adopted on December 10, 1948, which guarantees the right to life and protection against torture (Daming, 2016). Likewise, the right to life is stated in Article 6 of the International Covenant on Civil and Political Rights (ICCPR), adopted in 1966 and ratified by Law Number 12 of 2005 concerning the Ratification of the ICCPR (Zulfa, 2007). The Indonesian criminal law system aims to remove the death penalty from the main criminal category by regulating it as an alternative punishment. The death penalty is no longer the main criminal penalty but becomes a special punishment (Arief, 2019).

In Indonesia, many opinions have developed in society regarding the death penalty, a form of punishment that is considered to violate human rights (Asnawi, 2012). This is expressly stated in Article 1 Paragraph (6) of Law Number 39 of 1999 concerning Human Rights. Based on this Article, human rights violations are defined as any unlawful act intended to limit, hinder, reduce, or revoke human rights that have been guaranteed by law, whether committed individually or in groups, including acts committed by state officials. The relationship between the death penalty and human rights is very closely related. The application of the death penalty directly violates the human right to life and the right to defend life, which are considered the most basic human rights (Roring, 2023). In Indonesia, the death penalty is still in effect and has not been abolished (Purnomo, 2016). If the death penalty is seen as by the principles of the Indonesian state, Pancasila, a philosophy of life that emphasizes the upholding of humanitarian values and efforts to realize a just and civilized society, its continued application is questionable (Hamdani, 2024).

Nevertheless, the death penalty remains in force in Indonesia, although many developed countries have stopped implementing it (Shola, 2023). As a consequence of evaluating both the advantages and disadvantages from a societal and legal perspective, the death penalty is seen as a law enforcement instrument that protects the rights of the community (Muslikin, 2022). On the other hand, the death penalty is considered a denial of human rights because it inherently deprives a person of the right to life (Setiawan, 2024).

Based on Article 28A of the 1945 Constitution, everyone has the right to live and the right to defend their life and livelihood. All nations recognize the importance of upholding human rights, and as part of the countries in the world, Indonesia is obliged to actively participate in realizing these rights (Kolopita, 2013). Questions arise regarding the positive legal attitude towards the death penalty in Indonesia and the interaction between the principles of human rights and the death penalty. This study will provide a comprehensive analysis of the implementation of the death penalty in Indonesia, by examining it from the perspective of positive law and human rights.

## **METHOD**

The research method used in this study is the normative legal method. This study focuses on the analysis of laws, legal doctrines, and principles of human rights. Normative legal research aims to understand legal norms and analyze their conformity with the principles of human rights. The approaches used are the statutory approach and the conceptual approach. The statutory approach examines laws related to the death penalty and human rights. The conceptual approach examines the concept of the death penalty from the perspective of criminal law theory and human rights. The data sources used are relevant laws and regulations, as well as other data sources such as books and scientific journals.

## RESULT AND DISCUSSION

### Pidana Mati dalam Sistem Hukum Pidana Indonesia

The death penalty has been an integral part of the Indonesian criminal law system since the colonial era of the Dutch East Indies (Wahyu, 2014). The regulations governing the death penalty are codified in the Criminal Code (KUHP) and supplemented by various special laws and regulations, such as the Law on Narcotics, Terrorism, and Corruption. Although regulated by law, the application of the death penalty often faces moral, legal, and political challenges (Efendi, 2023). As stipulated in Article 10 of the Criminal Code, the death penalty is the main form of punishment. The debate surrounding the death penalty has increased along with the development of the Human Rights (HAM) perspective. The Constitutional Court has issued several decisions affirming the constitutionality of the death penalty, but the death penalty must be applied wisely and subject to strict limitations (legal protection) as a last resort. As an example, the Supreme Court Decision on November 11, 2014, sentenced Wawan to death for the murder of Sisca Yofie. The judge considered that the defendant's actions were very heinous and sadistic. The punishment is imposed to provide a deterrent effect for potential perpetrators and to enforce the community's commitment to respecting and appreciating the right to life of others (Arief, 2019).

Some crimes in Indonesia that are threatened with the death penalty include the following:

- a. The crime of treason, regulated in Article 104 of the Criminal Code, is killing the president and vice president; Article 111 paragraph (2) is conducting relations with foreign countries that result in war.
- b. The crime of premeditated murder is regulated in Article 340 of the Criminal Code in the form of an act of taking the life of another person intentionally and with prior planning.
- c. The crime of corruption, regulated in Article 2 paragraph (2) of Law Number 31 of 1999 in conjunction with Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, in the form of corruption in certain circumstances
- d. The crime of genocide and crimes against humanity, regulated in Law Number 26 of 2000 concerning Human Rights. Article 36 regulates genocide, namely any act committed to destroy or exterminate all or part of a national group, race, ethnic group, religious group, Article 37 regulates crimes against humanity, namely acts committed as part of a widespread or systematic attack aimed directly at the civilian population
- e. Narcotics crimes, regulated in Articles 114, 116, 118, 119, and 121 of Law Number 35 of 2009 concerning Narcotics. In essence, the article states that bargaining, selling, buying, receiving, being an intermediary in buying and selling, exchanging, or handing over narcotics
- f. The crime of Mobilizing Children in the Illicit Narcotics Trade, regulated in Article 89 of Law Number 23 of 2002 concerning Child Protection, which states intentionally involving children in the abuse, production, or distribution of narcotics and/or psychotropics.

The death penalty in Indonesia has become a controversial issue that has sparked debate in various circles of society (Putri, 2024). From a national legal perspective, the death penalty remains legally valid, as regulated in Article 28J paragraph (2) of the 1945 Constitution. This provision emphasizes that human rights can be legally limited in the interests of security and public order. However, from an international legal perspective, Indonesia often faces pressure from international organizations such as Amnesty International and the United Nations (UN) to repeal the death penalty, especially in cases involving drug crimes (Hatta, 2012).

The debate heats up considering various religious, social, and cultural perspectives. While some support the death penalty as a deterrent and a means of justice for victims, others see it as an irreparable violation of the right to life if something goes wrong. The new Criminal Code (KUHP) passed in December 2022 (Law No. 1 of 2023) introduces several new regulations related to the death penalty that prioritize human rights. One of these provisions regulates the application of a 10-year probationary period, which is regulated in Article 100 paragraph (1). If the convict shows good behavior during the probationary period, the death penalty can be changed to life imprisonment or a sentence of 20 years. It is a paradigm shift in the Indonesian criminal law system, which has shifted from an emphasis on retributive justice to a more restorative and rehabilitative approach (Manoppo, 2023).

### **Death Penalty from a Human Rights Law Perspective**

The death penalty is a controversial issue from a Human Rights (HAM) perspective because it conflicts with the basic principle of the right to life. The right to life is a fundamental right guaranteed in various international instruments, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (Nurchayani, 2024). Article 3 of the UDHR states that "Everyone has the right to life, liberty and security of person," while Article 6 of the ICCPR states that the right to life cannot be reduced, except in limited situations. In this context, the death penalty is considered an irreparable violation of human rights, especially if there is a judicial error.

In addition to the potential violation of the right to life, the death penalty is often associated with inhumane practices and cruel treatment of prisoners. The protracted execution process, years of confinement in death row cells, and legal uncertainty can cause significant psychological distress to prisoners. International organizations such as Amnesty International have consistently advocated for the abolition of the death penalty because the death penalty not only violates the right to life but also contradicts the principle of the prohibition of torture as stated in the Convention against Torture (CAT).

In Indonesia, the debate on the death penalty from a human rights perspective continues. While Article 28I, paragraph (1) of the 1945 Constitution affirms the inviolability of the right to life, Article 28J, paragraph (2) also allows for restrictions on human rights through laws aimed at maintaining public order and security. Arguments in favor of the death penalty often emphasize its role in ensuring justice for victims and its potential deterrent effect on perpetrators of heinous crimes. However, from a human rights perspective, the application of the death penalty remains a controversial issue due to inherent weaknesses in the Indonesian legal system, which have the potential to cause irreparable violations of individual rights (Darwis, 2018).

From a human rights perspective, the rejection of the death penalty is rooted in the principle of rights that cannot be diminished or ignored under any circumstances, including the fundamental right to life. Many countries have abolished the death penalty because they recognize that the legal system is imperfect and carries an inherent risk of error. The irreversible nature of executing an innocent individual underscores the profound consequences of such an act (Suardana, 2014). The application of the death penalty is often closely related to discrimination and social injustice. In many countries, including Indonesia, individuals sentenced to death disproportionately tend to come from economically disadvantaged backgrounds who do not have access to adequate legal assistance. Their inability to obtain qualified legal counsel often results in unfair legal processes and biased decisions. This situation is further exacerbated by the inherent bias in the justice system, particularly in cases involving minority or vulnerable groups. From a human rights perspective, the death penalty is considered a mechanism that perpetuates systemic injustice rather than providing true justice (Ashri, 2018).

At the international level, the global community is increasingly fighting for the abolition of the death penalty through various resolutions adopted at the United Nations General Assembly. Many countries have taken proactive steps to impose a moratorium or completely remove the death penalty from their legal frameworks. Although Indonesia has not completely abolished the death penalty, it has begun to implement a more humane approach through Law No. 1 of 2023 concerning the Criminal Code. This law changes the mandatory nature of the death penalty, changing it to a last resort with a ten-year probationary period. This initiative demonstrates a desire to strike a balance between strict law enforcement measures and adherence to human rights principles.

## CONCLUSION

The death penalty in Indonesia has sparked a heated debate between law enforcers and human rights advocates. Legally, the death penalty is still recognized and regulated in various laws and regulations for serious crimes such as drug trafficking, terrorism, and corruption. However, its implementation deviates from the principle of the right to life guaranteed by Article 28A of the 1945 Constitution and international instruments such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). At the international level, the death penalty is increasingly being abolished, while in Indonesia, this punishment continues to be enforced, although it is regulated as a special and alternative punishment in the latest Criminal Code. The debate around the death penalty covers various aspects, including justice, public security, and human rights, so it requires careful evaluation to ensure the implementation is in line with the principles of humanity enshrined in the Pancasila and the Indonesian constitution.

Although the death penalty is often considered a step to uphold justice and provide a deterrent effect, from a human rights perspective this punishment is seen as a violation of fundamental rights and have a high risk to cause injustice, especially for vulnerable groups who do not have access to adequate legal assistance. Internationally, calls for the abolition of the death penalty continue to grow, while in Indonesia. Although the punishment is still in force, a more humane approach has begun to be implemented through the 2023 Criminal Code, where the death penalty was changed to a conditional sentence with a probationary period. This step shows an effort to balance strict law enforcement with respect for human rights principles.

## REFERENCES

- Arief, A. (2019). Problematika Penjatuhan Hukuman Pidana Mati Dalam Perspektif Hak Asasi Manusia Dan Hukum Pidana. *Kosmik Hukum*, 19(1).
- Ashri, M. (2018). *Hak Asasi Manusia: Filosofi, Teori & Instrumen Dasar*. Makassar: CV. Social Politic Genius (SIGn).
- Asnawi, H. S. (2012). Hak Asasi Manusia Islam dan Barat: Studi Kritik Hukum Pidana Islam dan Hukuman Mati. *Supremasi Hukum: Jurnal Kajian Ilmu Hukum*, 1(1).
- Daming, S. (2016). Konfigurasi Pertarungan Abolisionisme Versus Retensionisme dalam Diskursus Keberadaan Lembaga Pidana Mati di Tingkat Global dan Nasional. *Yustisi*, 3(1), 37.
- Darwis, N. (2018). ANALISA YURIDIS TERHADAP PENERAPAN PIDANA MATI DI INDONESIA BERDASARKAN APLIKASI ECONOMIC ANALYSIS OF LAW. *JURNAL ILMIAH HUKUM DIRGANTARA*, 8(1).
- Efendi, S. (2023). Analisis Sanksi Pidana dalam Hukum Islam Pendekatan Teoritis dan Pustaka. *MAQASIDI: Jurnal Syariah Dan Hukum*, 151-162.
- Hamdani, A. F. (2024). Implementasi Sila “Kemanusiaan yang Adil dan Beradab” di Kehidupan Sosial Masyarakat. *Indonesian Research Journal on Education*, 4(4), 1722-1726.

- Hatta, M. (2012). Perdebatan hukuman mati di Indonesia: Suatu kajian perbandingan hukum Islam dengan hukum pidana Indonesia. *MIQOT: Jurnal Ilmu-Ilmu Keislaman*, 36(2).
- Kolopita, S. (2013). Penegakan Hukum Atas Pidana Mati Terhadap Pelaku Tindak Pidana Narkotika. *Lex Crimen*, 2(4).
- Kumalasari, R. (2018). Kebijakan Pidana Mati Dalam Perspektif HAM. *Literasi Hukum*, 2(1), 1-14.
- Manoppo, G. A. (2023). Analisis Pidana Mati Berdasarkan Pasal 100 Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana. *Lex Administratum*, 12(1).
- Muslikin, J. I. (2022). Tinjauan Umum Pidana Mati Bagi Sistem Penegakan Hukum Pidana Di Indonesia Melalui Perspektif Hak Asasi Manusia. *Lex Privatum*, 10(5).
- Nurchayani, D. (2024). Hak Asasi Manusia Dalam Perspektif Hukum Internasional Dan Nasional. *Jurnal Ilmu Pendidikan Pancasila, Kewarganegaraan, dan Hukum*, 1(1), 7-13.
- Purnomo, A. (2016). Hukuman Mati Bagi Tindak Pidana Narkoba di Indonesia: Perspektif Sosiologi Hukum. *De Jure: Jurnal Hukum dan Syar'iah*, 8(1), 15-23.
- Putri, D. M. (2024). Hukuman Pidana Mati dalam KUHP Baru dan Perspektif Abolisionalis serta Retensionis. *Eksekusi: Jurnal Ilmu Hukum dan Administrasi Negara*, 2(4), 01-13.
- Roring, F. R. (2023). Penerapan Hukuman Mati Di Indonesia Dalam Sudut Pandang Pelanggaran Hak Asasi Manusia. *Lex Privatum*, 11(4).
- Setiawan, D. &. (2024). PENGATURAN PELAKSANAAN PIDANA MATI DALAM PERSPEKTIF HAK ASASI MANUSIA. *Prosiding Mewujudkan Sistem Hukum Nasional Berbasis Pancasila*, 1, 173-188.
- Shola, F. A. (2023). Tinjauan Hukum Positif dan Hak Asasi Manusia Terhadap Pemberlakuan Hukuman Mati di Indonesia. *LEX et ORDO Jurnal Hukum dan Kebijakan*, 1(1), 97-104.
- Suardana, I. W. (2014). HUKUMAN MATI DALAM SISTEM HUKUM INDONESIA SUATU KAJIAN KRITIS. *Kertha Widya*, 2(1).
- Wahyu, Y. (2014). Perkembangan Penegakan Hukum Pemberantasan Tindak Pidana Korupsi Di Indonesia. *ADLIYA: Jurnal Hukum dan Kemanusiaan*, 8(1), 107-126.
- Zulfa, E. A. (2007). Menakar Kembali Keberadaan Pidana Mati (Suatu Pergeseran Paradigma Pemidanaan Di Indonesia). *Lex Journalica*, 4(2), 93-100.