

RESEARCH ARTICLE

THE CAPITAL PUNISHMENT FOR
NARCOTIC CRIME: PROS AND CONS IN
INDONESIAN LEGAL SYSTEM

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The implementation of the death penalty to the perpetrators of narcotic crime lately has been widely applied, it aims to give deterrent effect. The government has made many laws to prevent the narcotics crime. However, narcotic crime can be immediately lost from this country, because there are still many violate this law with still a lot perpetrators of narcotics caught by the authorities shows that the law in this country is still very weak. There needs to be a good law enforcement because it is well known to many that police and soldiers are also involved in drug trafficking as a “backing” for drug kingpin. This is certainly is very embarrassing thing because the police who are supposed to eradicate crimes are secretly involved in the crime itself, this is certainly very worrying because if the police are involved in this crime let alone ordinary people. Certainly a lot of things we need to improve, the first is a legislation that should be more stringent and more strict punishment such as the death penalty itself, because with strict rules and firmly then then the perpetrators will think repeatedly to commit the crime. Secondly, need for self awareness in law enforcement like the police, they must realize that they are the key to eradication of drug trafficking in this country, they must be able to work well and professionally to keep their good name and combating this narcotics crime.

Keywords: *Narcotics Crime; Capital Punishment; Death Penalty*

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I. INTRODUCTION

Punishment in crime must have a deterrent effect. because if the punishment does not have a deterrent effect then the punishment is futile and will have no meaning, because surely the perpetrators of the crime will not be deterred and will certainly do the crime again, therefore it takes a very strict law that has a very firm punishment the criminals are afraid to commit crimes again. Because with a law that is threatening against an act of crime, the state has fulfilled its duty in maintaining the rules and discipline that it should be there and in obedience.¹

with such a crime can at least be reduced. Especially if we talk about narcotics crimes would be very horrible, because the crime of narcotics can be spelled more terrible than murder, because the crime of narcotics can attack many people, who can kill lives and lead to a dependence on its users. The current criminal narcotics tend to be transnational in a way that is very smooth and with a variety of modes, the technology provides a very influential development of the narcotics trade process and with the network now spread in various places and countries of course narcotics trade is increasingly difficult to tracked and stopped, which has resulted in a large number of victims, most of whom are children and adolescents. The crime of narcotics crime is an extraordinary crime which should be handled also with extraordinary.² Which the community is questioning is actually about whether the death penalty can be a solution to the recent drug crimes, whether the death penalty is rightly imposed on the perpetrators of narcotics crime as a deterrent effect and step in combating narcotics crime or it can be a violation ham and eliminate the sense of humanity, so the punishment used to combat crime can actually be a crime. indeed, a careful study of the effects of punishment on narcotics criminals is required, because in making a rule and punishment we should think about the good effects and bad effects for the future, with a regulation and a punishment that can then eradicate a crime without causing something controversial, so the law can be as useful as crime eradication.

II. THE CAPITAL PUNISHMENT AND HUMAN RIGHTS

Lately the death penalty has been regarded as something wrong and incorrect in overcoming a crime that is considered by giving the death penalty to the perpetrator, we are considered to repeat the mistake that

¹ Syahrudin Husein, *Pidana Mati Terhadap Hukum Pidana di Indonesia*. North Sumatera: TP Printing, 2003.

² Eva Achjani, *Pergeseran Paradigma Pemidanaan*. Bandung: Lubuk Agung, 2011.

has happened that is eradicating the offender with a crime. Because Human Rights contain a philosophy of the right to life which is a right that all human beings and living beings who are from God who in article 3 of the Declaration of Human Rights declare that every human being has the right a free life and entitled to the protection of a crime. this shows that no one can be deprived of their right to life.³

To know about the number of times the execution of the death penalty, the researchers have found some data about the execution of the death penalty against the perpetrators of narcotics crime, the researcher found the result in Fig.1

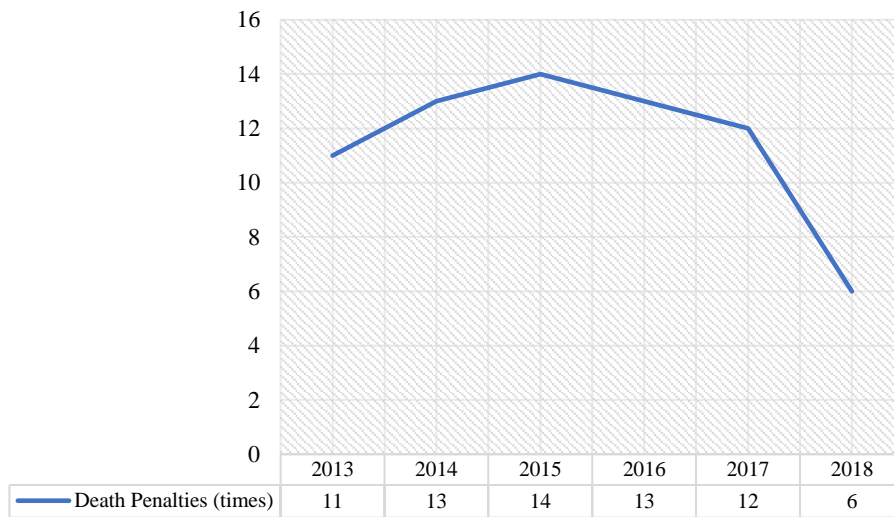


Figure 1. Execution of Death Penalty in Indonesia to Perpetrators of Narcotic Crime (2013-2018)

With the Fig.1 above has been able to show us about how the rampant circulation of narcotics in Indonesia, it becomes very worrying because the drug nowadays is not only attacking adults but has attacked children and adolescents, where many cases about teenagers who already use narcotics, not to mention from the actress who recently caught many by the police are using narcotics, this can certainly show that narcotics have penetrated into all circles. This penalty should be enforced as a step in stopping this narcotics crime, because the future of this nation will be at stake if this narcotics crime continues, there are still many people who think that the imposition of the death penalty is perceived to have tarnished human rights, but if this punishment is not done then it is the same we are allowing more lives lost due to this narcotics, we better lose

³ Okky Cahyo, “Kajian-Kajian HAM,” *Jurnal HAM Masyarakat*. vol.3, No. 2, p.31, 2012.

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those who want to destroy our nation than we lose the prospective successor of our nation, we better lose some people to save many person.⁴

The principles of human rights in Indonesia have been guaranteed for its sustainability. the guarantee can be categorized in the social defense and social welfare arrangements that the state wants to realize, but it can be seen also that the concept of human rights implementation in Indonesia certainly has a different character from other countries. The difference lies in the Indonesian national wisdom depicted in Pancasila and the purpose of the country.⁵

The right to life itself is guaranteed by its severity in the 1945 Constitution, which in its implementation is not contrary to public order and law, so that the right to life can not subordinate the rights of others, especially in the large-scale rights of the people. This is the basic reason that the limitation of the right to life lies in the obligation to respect the right to life belonging to others. Based on the mentioned facts on the one hand the existence of capital punishment is still maintained although reaping the opinion of the pros and cons on the implementation.⁶

To prevent and overcome the crime of narcotics better and more effective, has been done by the state officials namely the Parliament by replacing Law No. 22 of 1997 with Law No. 35 of 2009 on narcotics, with the threat of capital punishment in the Law this shows a seriousness of the government and the House of Representatives To combat narcotics crime. In agreeing a capital punishment for the perpetrators and as a means to deal with narcotics crime is essentially an appropriate option.⁷

III. THE IMPLEMENTATION OF CAPITAL PUNISHMENT IN INDONESIA

The death penalty in Indonesia has long been taking place, since the Indonesian nation was colonized by the Dutch, until now it is still enforced even though the Netherlands. The Criminal Code (*Wetboek Van Strafrecht*). According to experts at the time, the retention of capital punishment because of the special circumstances in Indonesia demanded that the greatest criminals be countered with capital punishment.⁸

⁴ Nunung Kurniawan, "Hak Asasi Manusia di Indonesia : Democratic Governances," *Jurnal Ilmu Sosial dan Politik*. vol.8, No. 1, p.19, 2005.

⁵ Atet Sumanto, "Efektifitas Hukuman Mati Dalam Proses Penegakan Hukum Tindak Pidana Narkotika," *Refleksi*. vol.22, January, No. 1, pp.8, 2017.

⁶ Lubis Elmar, "Perkembangan Isu Hukuman Mati di Indonesia," *Opinio Juris*. vol.4, January-April, pp. 29, 2012.

⁷ Arie Siswanto, "Pidana Mati dalam Perspektif Hukum Internasional," *Refleksi Hukum*. April, pp. 44, 2009.

⁸ Winandi, Woro and Indra, "Penjatuhan Pidana Mati dalam Tindak Pidana Narkotika," *Law Journal*, vol. XIX, October, No. 19, pp.52, 2010.

Although the death penalty is still ongoing and has not been abolished in Indonesia, the public has different opinions in response to the number of countries that abolished the death penalty. On the one hand, there are community groups expressing their support that the death penalty is still needed in Indonesia even more so juridically still admitted. Meanwhile, on the other hand there are groups of people who want the death penalty to be abolished. They argue that the terms of the death penalty are applicable in Indonesia.

According to the results of the Indo Barometer national survey held on March 15-25, 2015, the majority of the public in Indonesia, which is about 84.1 percent, agrees with the death penalty for drug dealers. "For those who agree, the most common reason is that drugs damage the young generation (60.8%), and can cause a deterrent effect (23.7%)." As for the disagreeing public, the reason that many are expressed is that according to them there is still another kind of punishment that is more humane (36, 2%), while the death penalty is actually a violation of human rights (28, 4%).⁹

Differences of opinion about the death penalty also occurred within the members of the National Commission on Human Rights (KOMNASHAM). Their attitude towards the death penalty is also divided into two, there are pro and there is also a cons. The death penalty in Indonesia must be maintained or abolished. For the pros, the heaviest sentence handed down by the Judge of the convicted person is still required, especially the criminal offense. For the cons, death penalty is considered unconstitutional or contrary to the constitution

IV. DEATH PENALTY FOR NARCHOTIC CRIMINAL PERPETRATORS IN INDONESIA ON PROS AND CONS OF CRIMINAL EXECUTION FOR NARCHOTIC CRIME PERPETRATORS.

Some countries in the world differ in applying the death penalty. Almost the same as the debate on the procedures of execution of death penalty,

⁹ Andy Rezky Juliarno. *Tinjauan Yuridis Terhadap Penjatuhan Pidana Mati Terhadap Tindak Pidana Pengeedaran Narkotika*, [Thesis]. Makassar (ID): Hassanuddin University. *Please also compare with* Anwar, Umar, and D. P. K. W. K. Hukum. "Penjatuhan Hukuman Mati Bagi Bandar Narkoba Ditinjau Dari Aspek Hak Asasi Manusia (Analisa Kasus Hukuman Mati Terpidana Kasus Bandar Narkoba; Freddy Budiman)." *Jurnal Legilasi Indonesia* Vol. 13 No.3 (2016): 241-251; Kolopita, Satrio. "Penegakan Hukum Atas Pidana Mati Terhadap Pelaku Tindak Pidana Narkotika." *Lex Crimen* Vol. 2 No. 4 (2013).

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the existence of punishment matipun also experiencing dynamics. There are countries that refuse execution and therefore the state abolishes the death penalty, while some other countries still apply the execution of death penalty as it is deemed necessary.

Responses for Several Countries

For both groups, both supportive and opposing, both based their opinions on both normative and sociological reasons. Indonesia for example, the public majority or about 84.1 percent agreed with the death penalty given to drug dealers. For those who agree, the most common reason is that drugs destroy young people (60, 8%), and can cause a deterrent effect (23.7%). While the public who disagreed, the reason that many revealed is there are other types of punishment more humane (36, 2%) and the death penalty is a violation of human rights (28, 4%).¹⁰

Table 1. Countries that agree and disagree to use the death penalty punishment for perpetrators of narcotics crime

No	Response for Capital Punishment	
	Agree	Disagree
1	USA	United Kingdom
2	China	Canada
3	Japan	France
4	Thailand	Spain
5	Saudi Arabia	Germany
6	India	Sweden
7	Islamic Republic of Iran	Belgium
8	Iraq	Italy
9	Vietnam	Portugal
10	Malaysia	Australia

From the table above we can see that countries in the European region tend to have not used the death penalty, while countries in the Asian region still tend to use capital punishment for narcotics criminals.¹¹

¹⁰ Andy Rezky Juliarno. Tinjauan Yuridis Terhadap Penjatuhan Pidana Mati Terhadap Tindak Pidana Pengeedaran Narkotika, [*Thesis*]. Makassar (ID): Hassanuddin University.

¹¹ Ferawati, "Kajian Hukum dan Ham Terhadap Penjatuhan Pidana Mati Bagi Terpidana Narkotika," *Law Journal*, Vol. 4, September 2014- January 2015, No. 3, pp.11, 2014-2015. Also see Purnomo, Agus. "Hukuman Mati Bagi Tindak Pidana Narkotika di Indonesia: Perspektif Sosiologi Hukum." *De Jure: Jurnal Hukum dan Syari'ah* Vol. 8 No.1 (2016): 15-23; Istighfar, Wildan Akbar, and Pujiyono Nyoman Serikat. "Efektivitas Pidana Mati Bagi Pelaku Tindak Pidana Narkotika Dalam Praktek Pemidanaan Di Indonesia Ditinjau Dari Sudut Hak Asasi Manusia." *Diponegoro Law Journal* Vol. 6 No.2 (2017): 1-18.

In addition to the normative standpoint of the diverse existence of capital punishment, disagreements in society as well as legal authorities (lawmakers, courts and prosecutors) are influenced by various factors, such as: an understanding of religious teachings, cultural backgrounds, philosophy and ideology adopted by the public, and the legal authority. Similarly, individual backgrounds such as gender, race, religious adherence, age groups and personal views of a particular crime also affect the position of support or opposition to the death penalty. The national interests or needs of each region to continue to keep the death penalty for a crime or a particular crime must also vary. In the case of Indonesia, when national interests and needs in the views and beliefs of the people require the death penalty to be retained and implemented or removed and terminated, both must be objectively addressed. When a voice calls for the abolition of the death penalty from Indonesia's positive law, those who speak it need to convince or even prove empirically that the majority of Indonesians share their views. However, when the majority of the people voiced the opposite, that the death penalty still needs to be maintained in Indonesia's positive law for certain crimes that threaten the interests of the wider community, such as terrorists, drug dealers and assassins who eliminate some human lives. Reality like this should be acceptable, as well as stop noting Indonesia as a country that does not respect human rights because it still retains the death penalty.

Based on the above description, it can be stated that the different views on the execution of the death penalty, especially for the perpetrators of drug crimes are caused by multi-interpretive regulations. However, the formal death penalty is still recognized its validity in Indonesia although from time to time attempted to minimize its implementation. In addition, factors outside the law, such as the saturation of the people against drug crime that lacks strict punishment, community religious background, and social conditions of society are other aspects that greatly affect the community and different law enforcers in viewing the death penalty for perpetrators of action drug crime in Indonesia.

V. FORMULATION OF EFFECTIVE CRIMINAL FOR NARCHOTICS CRIME PERPETRATORS IN INDONESIA

Based on BNN data above, it appears that the negative impact of drug use is now quite serious. This phenomenon will have implications for the attitude of the people who see it. By using the perspective of rational choice theory-which is the exemplar of behaviourism-the actions of the government and the Indonesian people firmly against drug offenders by imposing the death penalty can be explained. Facing

the impact of drug crimes committed by irresponsible people, the Indonesian people will choose the right punishment to be given to the perpetrators of drug crimes that have been very harmful to society

The death penalty for a drug criminal is one of the punishments still applied in Indonesia in addition to some other types of punishment. Although controversial, the death penalty in this country is not a prohibited sentence. Therefore, in the view of legal sociology, especially the rational choice theory, the attitude and actions of the people of Indonesia choose to apply the death penalty for the perpetrators of drug crimes can be justified, even if in other countries capital punishment has been abolished or abolished.

In the theory of rational choice, it is explained that humans will choose something rational among the options available. In the field of public law may choose a provision between the provisions that exist as long as all of them are legal. In the case of smoking behavior for example, that smoking is detrimental to health. However, due to smoking, there are cigarette factories that absorb a lot of manpower and provide taxes to the country. Therefore, the government made a rational choice to impose limits on smoking even if it did not prohibit it. The public attitudes towards capital punishment for drug offenders can also be explained from the perspective of frustrated regressive theory of Anthony Giddens, which is closely related to behaviorism. In theory it is explained that a society can be emotionally irritable and trigger aggressive behavior when a person is punished for his actions, or is not rewarded or rewarded but not enough. This means that a person should be rewarded or comparable.¹²

In the context of the application of capital punishment to drug crime, the community will be emotional when witnessing the punishment to the drug offender is not worth it. Meanwhile, drug crime is believed to have harmed many Indonesians. Therefore, agreeing to give a severe punishment in the form of capital punishment for drug offenders is an emotional peak of citizens in response to the phenomenon.

VI. JUDGE CONSIDERATION IN CRIMINALLY OFFERING AGAINST NARCOTICS CRIME ACTORS

Judge based on Law Number 48 Year 2009 regarding Judicial Power in the criminal justice process acts as a party that gives criminal

¹² Giddens, Anthony, et al. *Introduction to sociology*. New York: Norton, 1991, p. 672. Also see Giddens, Anthony. "On rereading the presentation of self: Some reflections." *Social Psychology Quarterly* Vol. 72 No.4 (2009): 290-295.

punishment by not ignoring the law or norms and rules that live in society, as regulated in Article 5 of Law Number 48 Year 2009 on Judicial Power which states that Constitutional Justices and Judges shall explore, follow and understand the values of law and sense of justice that are alive and developed in the community. Criminal imposition is the power of the judge, but the judge in the imposition of a criminal must hold on to the evidence supporting his proof and belief.¹³

Article 183 of the Criminal Procedure Code stipulates that a judge shall not impose a penalty on a person except where, with at least two valid evidences, he / she obtains the conviction that a crime is actually committed and that the defendant is guilty of doing so. Law Number 48 Year 2009 affirms the duty of judges is to uphold law and justice based on Pancasila, so its verdict reflects the sense of justice of the Indonesian people. The task of the judge is to pass judgments that have legal consequences for others. The judge can not refuse to hand down the verdict when his case has already been examined. Even if the case has been filed against him but has not yet begun to be examined it is impossible for the judge to reject it.

VII. ERADICATION OF NARCOTIC CRIME IN INDONESIA AIMS AS A DETERRENT EFFECT

Eradication of narcotics crime in Indonesia is already very firmly shown by our law enforcers. The application of capital punishment for the perpetrators of narcotic criminal acts that can not be tolerated anymore already meet the elements justice and expediency, since the perpetrators of narcotic criminal acts who have been imprisoned have not been able to provide a deterrent effect. Repressive action in the form of capital punishment in the eradication of narcotic crime is an alternative sanction to really give a deterrent effect, so that Indonesia is a sovereign country to guarantee the protection of human rights, especially for those who become victims of drug abuse.

In addition to the very concrete and repressive actions described above, the Government, law enforcers, and related parties such as BNN also ceaselessly undertake preventive efforts among the community, especially those of the younger generation both in educational institutions and state / private institutions. Such preventive efforts to create a society that is aware of the dangers of drug abuse and its impacts.

¹³ Article 5 of Law Number 48 Year 2009

This preventive effort can be done through extension efforts as a form of preventive aspects. This counseling is for those who have never consumed narcotics in order not to consume narcotics. So BNN expects that there is immunity from the public so that they know the dangers of narcotics medically, socially, and legally for them. However, the extension sometimes still reap the barriers to the practice in the field. The constraint is due to the low understanding of the public about the dangers of narcotics and sometimes people do not care about the environment, so if in the environment known to have used narcotics do not want to report to the authorities. Conditions like this will cultivate the illicit trafficking of narcotics. And it can be said that rarely there are reports from the public who informed the existence of the circulation of narcotics in the environment. After approaching why people do not report there is an element of fear in it, people are afraid to report if they can be the target of the syndicate. Narcotics network is a unique and unique network, the crimes that exist there are somewhat different from other conventional crimes, so this narcotics network is a broken network, meaning here is between the perpetrators sometimes buyers and dealers do not know each other, they often use the nickname for the big dealers, they just communicate via SMS or phone and the names in circulation is not the real name. So at the time of the arrest of small dealers do not know who the narcotics bandar or big dealer. The pattern used often uses the pattern which in fact can complicate our law enforcers in uncovering the movement of narcotics circulation. But actually the scope of the narcotics circulation is the same and predictable network.

Based on the above explanation related to the eradication of narcotics crime in Indonesia can be done with two efforts; both preventive and repressive efforts. Preventive efforts are carried out by means of socialization or extension programs in the community about the dangers and impacts of drug abuse. While repressive efforts can be done in two ways namely rehabilitation and criminal. Rehabilitation itself is done as a therapeutic attempt for those who become victims or heavy drug addicts Crimes are dropped for those who become dealers or drug dealers. In the criminal narcotics law can be imprisonment and capital punishment. The death penalty itself is often imposed for those who become big drug dealers. In addition to imprisonment, the death penalty also serves as the ultimate tool (*ultimum remedium*) in order to provide a deterrent effect, since the prison itself can not meet the aspect of harassment, but can be a place to control the circulation of narcotics in Indonesia. So it is expected that the effectiveness of capital punishment in the process of law enforcement of narcotic crime can reduce the circulation of narcotics in Indonesia.

Narcotics Law by imposing capital punishment using judicial and non-judicial considerations. Juridical Considerations, Judicial

considerations are the judge's judgment based on the factors revealed in the proceedings and by law has been established as contained in the decision. Non-Juridical Considerations

In addition to judicial considerations in the judgment of making judgments that are non juridical.

VIII. INFLUENCE ON FUTURE LAW ENFORCEMENT

In terms of pro-capital punishment, the reasons are generally stated as follows, The death penalty guarantees that the Criminals will not move again. The public will not be disturbed again by this person. Capital punishment is a powerful tool of repression for the government, especially in governing the Dutch East Indies.

If we adhere to the principles and norms of human rights, the death penalty must be rejected or abolished because it is against the principle or norm. Regardless of the severity of the criminal offenses charged against a person, this life is strongly emphasized to be respected and protected, as stated in Article 28A of the 1945 Constitution and Article 4 of Law No.39 / 1999 on Human Rights.¹⁴

The consequence of the law is that the judge's decision should reflect justice, but the question of justice will not stop with legal considerations solely, but the question of justice is usually linked to the interests of the individual seekers of justice and that means justice according to law is often interpreted by victory and defeat by seekers justice.

The imposition of capital punishment on the perpetrators of narcotics traffickers has been considered very appropriate but did not achieve the general purpose of prevention that is for people in general who aim to frighten not to do the Narcotic Illicit Drugs.

Based on the above description, it can be said that based on global trends in the application of capital punishment-including for the perpetrators of drug crime-should be abandoned or at least minimized. However, at the same time establishing a legal norm in a country, it should consider the will of the community as a form of respect for democracy. capital punishment for the perpetrators of narcotics crime this certainly shows that the government and this nation is not kidding in terms of eradication of narcotics crime. Thus it can show a strict and strong legal system and be respected and obeyed by all citizens, as well as to enforce the law and combat drug crime to the root.

¹⁴ 1945 Constitution and Article 4 of Law No.39 / 1999 on Human Rights

IX. CONCLUSION

Narcotics crime is a very horrible crime for all circles around the world, especially Indonesia, where Indonesia is known as a land of paradise for the perpetrators of narcotic crime, because Indonesia is considered to have a less stringent legal system and punishment that is less assertive. Surely it is used by the perpetrators of narcotics crime, this is what should be followed up and repaired by the government and all law enforcers, with the application of death penalty is certainly a very good thing in Indonesia's legal system in order to combat acts of narcotics crime for the perpetrators the narcotics crime is aware that what it does is a big mistake, and that the perpetrators of narcotics crime in the presence of capital punishment can make them feel fear and think repeatedly to commit acts of narcotics crime in the country of Indonesia. The execution of the death penalty against the perpetrators of narcotics crime is certainly expected to reduce and even expected to eliminate the crime of narcotics in this country Indonesia. The government certainly has worked optimally and certainly has done everything the best way to combat the crime of narcotics crime. Our law enforcement must continue to implement the eradication of drug crime both with preventive efforts in the form of counseling and socialization of the society as well as repressive efforts such as the execution of capital punishment for the perpetrators of narcotic criminal acts that cannot be tolerated anymore. The death penalty for narcotics crime is not contradictory to human rights, because Article 28J of the 1945 Constitution is free to be freed but can be restricted and the basis of Judge's consideration to impose capital punishment on the perpetrators of narcotic crime by using judicial and non-judicial considerations. Public participation is also needed in the framework of preventive efforts and repressive efforts against the eradication of narcotics crime. So that people know about the circulation of narcotics or drug abuse victims in the surrounding environment to immediately report to law enforcement agencies.

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