

RESEARCH ARTICLE

# Capital Punishment for Drug Abuse Crime: Legal Limitations and Requirement

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## Abstract

I write this paper about the death penalty for narcotics dealers, many countries still apply the death penalty like one of them is Indonesia, although many criticize the execution of capital punishment for drug dealers, but the death penalty is still done in Indonesia, because it is believed to be the most appropriate step for the drug dealers who have damaged this generation of Indonesian nation, and in this paper I justify or approve if the drug dealer is sentenced to death because the drugs damage the young generation and damage the nation's morale.

**Keywords:** *Capital Punishment; Death Penalty; Drug Abuse; Narcotic Crimes; Legal Limitation*

## 1. INTRODUCTION

The death penalty is one of the oldest punishments in the world. Historically, there are several ways in which executions can be executed, such as the punishment of punishment by cutting heads as applied in Saudi Arabia. Electric shock: punishment by sitting in a chair which is then subjected to high voltage electricity as applied in America. Hanging: punishment by hanging on some gallows as applied in Iraq, Egypt, and Malaysia. Injectable death, punishment by injection drug that can kill ever applied in America. Penalty shootings, punishment by shooting a person's heart, as applied in Indonesia. *Rajam*: punishment

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by stoning to death for adulterers as applicable in Saudi Arabia. Formerly, in the Revolution period France also executed the death penalty by using a head cutting tool called *guilotine*. The Indonesian government has several times executed the execution of death penalty against certain criminal actors. In general, the perpetrators of the criminal offenses imposed on the death penalty are related to narcotics, murder, terrorism, and rebellion (Solihah & Masyhar, 2021).

The community also often proposes that perpetrators of criminal acts of drug abuse are also sentenced to death, especially high schools, as is often done by a number of countries such as Malaysia and Singapore that punish the perpetrators (dead). But the government seems to also hesitate, so many of them are just punished lightly. As a result, narcotics crimes in Indonesia remain high. With regard to this issue, this article attempts to criticize some of the death penalties that have been implemented, also highlighted a number of death penalty demands, but the government is still reluctant to commit, such as corruption and narcotics crimes. But Cesare Beccaria in the decade of the 1780s ever opposed this type of crime because considered inhuman and ineffective (Zulva, 2011; Siregar, 2021).

Capital punishment is considered counter-productive when comparing it with legal objectives as part of the concrete face of the concept of morality of citizens. The most important and interesting issue is the effectiveness of the imposition of capital punishment itself, whether the imposition of capital punishment can suppress the rate of development and the extension of crime which is classified as extraordinary crime and whether it is true the formulation of capital punishment in the provisions of the Act as well as the execution of the death row is against the Right Human Rights, especially to the fulfilment of the right to life (Ahmad, 2021; Chandra, 2019; Rifqi & Bangun, 2020).

## 2. METHOD

The research method used in this research is documentation technique with research type Literature Study. This research uses qualitative and analytic approach. The death penalty by the Indonesian government resulted in a positive and negative reaction from the community. The positive reaction of the community based on Pancasila and the 1945 Constitution which respects the right to life of drug traffickers while the negative reaction of the community based on the UN statement that protects the right of life for any reason and the inconsistency of the RI government that has signed the ICCPR agreement to respect the right of life of a drug dealer. The Government of Indonesia's policy in executing drug traffickers is said to be appropriate to create a human rights presence that is the right of victims of drug users to obtain a state life and state that is orderly and safe for the sake of the state of Indonesia in the future.

## 3. RESULT AND DISCUSSION

The procedure of execution of capital punishment or capital punishment as regulated in Law no. 35 of 2009 on Narcotics and other laws at the level of law is regulated in Law no. 2 / PNPS/1964 on the Procedures for the Criminal Implementation Done by Courts in the General and Military Courts ("Law 2 / PNPS / 1964").

Article 1 of Law 2 / PNPS / 1964 states among other things that the execution of capital punishment, imposed by a court in the general court or military court, is executed by shooting to death. The execution of capital punishment is carried out by firing squads of Mobile Brigade (*Brimob*) Head of the Regional Police in the territory of the court of justice who imposed the death penalty. The firing squad consisted of a Bintara, 12 Tamtama, under the leadership of an officer (see Article 10 paragraph [1] of Law 2 / PNPS / 1964). In Law 2 / PNPS / 1964 it is also stipulated that if the convicted prisoner is pregnant, then the execution of capital

punishment can only be done 40 days after the child is born (see Article 7).

More technical arrangements concerning the execution of capital punishment are regulated in National Police Regulation no. 12 of 2010 on the Procedure of Criminal Implementation ("Perkapolri 12/2010"). In Article 1 number 3 of the 12/2010 Police Chief stated that the death penalty is one of the main punishments imposed by the judge to the convicted person who has obtained permanent legal force.

Then, in Article 4 Perkapolri 12/2010, the procedure for the execution of capital punishment consists of the following stages:

- 1) preparation;
- 2) organizing;
- 3) implementation; and
- 4) termination.

The main purpose of applying the death penalty in Indonesia, including for narcotics crime, is to create a deterrent effect. Regarding the effectiveness of the death penalty in a deterrent effect has long been a debate among lawyers and human rights activists. The debate, among others, we can see in the case of testing the article about the death penalty in the old Narcotics Act is Law No. 22 of 1997 at the Constitutional Court ("MK") in 2007. The Court in the verdict of the case finally retained the death penalty for narcotics crimes including *"extraordinary crimes against humanity (extra ordinary) so that enforcement needs special treatment, effective and maximum"*.

One of the special treatments, according to the Court, among others, by applying heavy penalty namely capital punishment. More on the debate about the death penalty in narcotics case. Is it true that the view that death penalty does not cause a deterrent effect? A death sentence against the perpetrators of narcotic crime in fact does not necessarily make people leave the crime. The list of people caught on drug cases continues to increase, the latest being the arrest of the Cisarua Police Chief, Bogor. One who considers the

death penalty does not automatically incur a deterrent effect is Jeffrey A. Fagan. Professor of Law and Public Health of the Columbia Law School argues that there is no scientific evidence to suggest the death penalty has a deterrent effect on narcotics criminals.

The opinion he presented when appearing as an expert in the judicial review of Law No. 22 of 1997 on Narcotics, in the Constitutional Court, Wednesday (02/5) yesterday. Deputy Director of Center for Crime, Community and Law added that the death penalty not only cannot create a deterrent effect, on the contrary it can increase the erroneous punishment of innocent people. A person who has been executed cannot make corrections to the court's decision, even though the verdict is in error. According to research, it often happens, he said.

Citing the United Nations Office of Drugs and Crime (UNODC) research, Fagan concludes that economic theory of the deterrent effect predicts that drug prices will rise in line with the increased threat of punishment is not proven. It is precisely that care and rehabilitation is more effective in reducing narcotic demand than the threat of severe or cruel punishment ([Elpina & Purba, 2021](#); [Meiriantony, 2017](#); [Ma'ruf, 2018](#)).

According to the editor of *The Changing of Juvenile Justice: Waiver of Adolescents to the Criminal Court* (2000), there are still many ways to protect people from narcotics. They are respecting human rights, increasing freedom of drug dependence, and strengthening the community order. The death penalty is not an alternative he has to offer. Fagan's view is ignored by the Chief Executive of the National Narcotics Agency (BNN), I Made Mangku Pastika. Fagan's statement was judged not by research or surveys, but rather personal views and opinions. According to Pastika, the purpose of punishment is not just a matter of deterrent effect. There is still a question of justice, the problem of protecting the nation and the state, and then the matter of causing a deterrent effect or not. The expert

consultant of BNN, Jeane Mandagi even reverses Fagan's question: is there any survey or research proving that if there is no death penalty then narcotic crime will decrease.

The reasons for the importance of the imposition of capital punishment to apply to the convicted narcotics include the following:

- 1) If the death penalty is not applied to the convicted narcotics, it is feared that the development of narcotic drug dealer network cannot be restricted because illicit drug trafficking can damage the society order, damaging the young generation, so it is natural to be sentenced to death (Sianturi & Panggabean, 1999).
- 2) Capital punishment is needed in the era of development of those who hamper the development process, the distribution of narcotics can be interpreted inhibit the development because of its disadvantage and is a very big danger to human life, society, nation and state and national resilience of Indonesia.
- 3) Capital punishment is an important tool for the good application of criminal law because of its usefulness as a tool of authority so that the legal norms are obeyed

The provision of capital punishment, if viewed from the orientation of the purpose of the criminal law itself as emphasized by Arief (2009), namely:

- 1) Strengthen moral or moral networks and build social responsibility.
- 2) Protecting the public order and constitutional order from harassment or evil deeds.
- 3) Educate community law awareness.
- 4) To build a proper attitude towards the rules of living together or community.

According to Bambang Poernomo as quoted by Bakhri (2009), the death penalty is still subject to the following reasons:

- 1) Both in the execution of capital punishment and imprisonment, in the event of a verdict of judgment, in fact it is not easy to fix it.

- 2) Based on the foundation of Pancasila associated with the development of legal science should be drawn lines of thought benefits in the public interest for society more precedence and then for individual interests. When there is a conflict between two patterns of interest, then using the way of thinking that the workings of efficient law order better start to the interests of society that is based on other interests, in the sense there is no law, then other interests cannot be implemented. And besides that, the basis of justification for the prevention of injustice inflicted by crime is the reason subscale is a common interest for people who have a higher nature.
- 3) In the case of talking about the culture and civilization of the Indonesian nation it is impossible to bounce soared beyond the reality of the civilization of other nations, especially against neighboring countries that in reality civilization does not become low because it is still threatening and imposing capital punishment.
- 4) Knowledge of the purpose of criminal law and punishment cannot completely abandon the criminal alternative attitudes of elements in the form of retaliation, general purpose, special purpose, education, frightening and destructive to certain crimes, each of which is used selectively and is effective according to the need according to the event.

Thus, the provision of the death penalty itself cannot be confronted in a diametrically (entirely contradictory way) with the right to life (Article 28 A jo Article 28 I of the 1945 Constitution and Article 9 paragraph (1) jo Article 4 of Law No 39 of 1999 on Human Rights) and the right to be free from the disappearance of life (Article 33 of Law No. 39 of 1999 on Human Rights). Statements in the 1945 Constitution and Law No. 39 of 1999 on Human Rights that "every person shall have the right' to live "is identical to Article 6 Paragraph (1) of the International Covenant on Civil and Political Rights (ICCPR) which states that" every human being has the right to life "but in Article 6 Paragraph (1) of

ICCPR (International Covenant on Civil and Political Rights), the statement followed by a "no one shall be arbitrarily deprived of his life" sentence. So, although Article 6 Paragraph (1) of the ICCPR states that "every human being has the right to life" but does not mean that his right to life shall not be confiscated, which shall not be "arbitrary deprivation of his life, even in Article 6 Paragraph (2) otherwise, capital punishment can still be possible for "the most serious crime." Regarding the procedure of the execution of the capital punishment itself with due regard to the clause of Article 10 letter (a) jo. Article 11 of the Criminal Code jo. Law No. 2/PNPS/1964 on the procedures for the execution of capital punishment imposed by the Courts within the General and Military jurisdiction jo. No Chief of Police Regulation No. 12/2010 on the procedure of execution of capital punishment.

The decision on capital punishment which already has permanent legal power must be stated by the President's decision (*fiat execution*), although the convict refuses to ask for pardon from the President, he is still authorized to grant pardons to overcome the possibility of a judge's mistake. In this case the intervention of the President, it can be interpreted that the death penalty is not arbitrary because it takes a series of thought processes and considerations deep enough both in the level of judgment by the Judiciary and in its implementation first through the approval of the President as Executive. The death penalty is viewed from the idea of the mono-dualistic equilibrium (Arief, 2009) and individualization of the criminal itself, cannot be classified as a cruel *stelsel* form, since the exceptional execution shall have the following provisions:

- 1) The execution of the death row in the least possible way does not cause prolonged pain (dying of life), in the sense of executing the execution while still paying attention to the human side to the convicted person.
- 2) The execution of capital punishment shall not be done publicly; it is humane considering that the convicted



person in this case is still regarded as an individual whose rights are recognized in a limited way.

- 3) The death penalty is never threatened in isolation and has never been threatened alternatively only with life imprisonment.
- 4) The death penalty must not be given in conjunction with other principal criminal (prison, cover, confinement, fine).
- 5) The death penalty is only granted to crimes classified as serious crimes (Rare crime) and extraordinary crimes.
- 6) Article 56 of the Criminal Procedure Code stipulates, among other things, that in the case of a suspect or defendant committing an act threatened with capital punishment, the official concerned to examine the case shall be required to appoint a legal counsel to them free of charge.

#### **4. CONCLUSION**

Narcotics and drugs (Narcotics) or narcotics, psychotropic substances, and additives (NAPZA) are substances that can affect a person's psychological psychology (thoughts, feelings and behaviors) and can cause physical and psychological dependence, as set out in UU RI No 22/1997. In Islam Drugs are very forbidden because it has adverse effects on health and damage a person attitude. In the Qur'an there is no texts that explain the prohibition of drugs, but scholars agree that something that can be intoxicating someone then the law is haram. Islam is also very supportive with the enactment of the death penalty against drug dealers, because of this drug dealer easy to obtain so it can damage the morale and the next generation of the nation. In Law No. 35 of 2009 there are several articles that regulate the punishment of the perpetrators of drugs with maximum death penalty. So, there is no reason for the government not to execute drug traffickers because in terms of positive law has been regulated sanctions and Islamic law is very supportive of it. Therefore, drug traffickers in Indonesia

must be in law in accordance with the actions committed against the young generation of the nation that has been morally destroyed and threaten the

## 5. DECLARATION OF CONFLICTING INTERESTS

The Author declares that there is no potential conflict of interest in the research, authorship, and/or publication of this article.

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## 8. REFERENCES

- Ahmad, I. F. (2021). Why Indonesia Mantain Capital Punishment. *Fiat Justicia Jurnal Ilmu Hukum Fakultas Hukum Universitas Lampung*, 15(1), 25-38.
- Arief, B. N. (2009). *Bunga Rampai Hukum Pidana Indonesia*. Semarang: Universitas Diponegoro.
- Arief, B. N. (2009). *Tujuan dan Pedoman pemidanaan Perspektif Pembaharuan Huum Pidana dan Kajian Perbandingan Beberapa Negara*. Semarang: Universitas Diponegoro.
- Bakhri, S. (2009). *Perkembangan Stelsel Pidana Indonesia*. Yogyakarta: Total Media.
- Chandra, E. M. (2019). Victimless Crime in Indonesia: Should We Punished Them?. *Padjadjaran Journal of Law*, 6(2), 216-232.
- Elpina, E., & Purba, M. S. (2021). The Narcotics Abuse Term Weaknesses in Criminal Law Enforcement Of Indonesia. *Jurnal Pembaharuan Hukum*, 8(1), 34-47.
- Ma'ruf, U. (2018). Effectiveness of Death Penalty Against Crime of Abuse of Narcotics Agents or Statutory R Number 35 of 2009 Concerning. *Jurnal Daulat Hukum*, 1(3).
- Meiriantony, M. (2017). The Implementation of Article 127 of Law of Indonesia Republic Number 35 2009 for Judge's Sentence about Rehabilitation for Drug Abuse Crime. *Muhammadiyah Law Review*, 1(2), 27-32.

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- Rifqi, M., & Bangun, E. (2020). Drug Crime as a Threat to Indonesia's National Security. *Jurnal Pertahanan*, 6(3), 386-402.
- Sianturi, S.R., & Panggabean, M. (1999). *Hukum Penitensier di Indonesia*. Bandung: Alumni.
- Siregar, M. T. (2021). *Judges Consideration in Imposing Capital Punishment to Narcotics Offender in Indonesia* (Doctoral Dissertation, Universitas Gadjah Mada).
- Solihah, E. N., & Masyhar, A. (2021). The Implementation of Capital Punishment in Indonesia: The Human Rights Discourse. *Journal of Law and Legal Reform*, 2(2), 321-328.
- Zulfa, E. A. (2011). *Pergeseran Paradigma Pemidanaan*. Bandung: Lubuk Agung.

Capital  
punishment is  
our society's  
recognition of  
the sanctity of  
human life.

**Orrin Hatch**