

## Death Penalty For Drug Traffickers: A Legal and Human Rights Perspective

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### ABSTRACT

*The increase in drug abuse cases in Indonesia has placed the death penalty for dealers as one of the instruments of criminal law policy. Although the death penalty aims to provide a deterrent effect and justice, this policy has drawn criticism because it is considered contrary to the principles of human rights (HAM) and has the potential to create disparities in its application. This research analyses the application of the death penalty from the perspective of absolute, relative, and combined punishment theories, as well as evaluating its effectiveness in handling narcotics cases. The results show that the application of the death penalty needs to be reconsidered, especially for non-violent offenders, by prioritising rehabilitation and prevention approaches. A combination of legal and rehabilitation strategies is needed to minimise the use of the death penalty, accompanied by continuous monitoring and evaluation to ensure transparency and accountability in law enforcement. This research recommends more sustainable policy alternatives, in line with human rights values and social justice.*

**Keywords:** Death penalty, narcotics, human rights.

### Introduction

The increase in drug abuse cases in Indonesia is a serious concern, especially as drugs have been categorised as an extraordinary crime (Heltaji, 2021; Andito, Sahari, & Erwinsyahbana, 2022; Sudjadi & Harahap, 2022; Pratama, 2023). Data from the National Narcotics Agency (BNN) shows that the prevalence of drug users continues to increase significantly (Lubis & Siregar, 2020; Hamidah et al., 2023; Saputra & Widiensyah, 2023; Riswanda & Romadhan, 2024). This condition worsens the social impact and threatens the sustainability of the younger generation in Indonesia. The regulation of narcotics in Indonesia is regulated in Law No. 35/2009, which divides narcotics into three groups based on the level of danger and potential dependence. Class I drugs, such as heroin and cannabis, have a very high addictive potential and are only allowed for research purposes (Yunus et al., 2022; Arfiansyah & Aida, 2023; Kelvinanda & Syafrida, 2024). However, despite the strict regulation, drug trafficking is increasingly widespread, both in urban and rural areas, influenced by technological advances and the weak economic conditions of the community (Sulastiana, 2021; Kartika, Lubis & Wahyuni, 2022; Nuralim, 2023)..

In response to this crisis, the Indonesian government implemented various policies, including the death penalty for drug traffickers. However, this policy raises debates in the context of human rights. Normatively, human rights are recognised as fundamental rights that must be protected by the state, especially the right to life, as stated in Article 28A of the 1945 Constitution of the Republic of Indonesia and the Universal Declaration of Human Rights (UDHR). Opposition arises because the death penalty is considered contrary to the principle of non-derogable rights, which are rights that cannot be reduced under any circumstances. This research focuses on an in-depth analysis of the application of the death penalty for drug traffickers from a human rights perspective, by considering aspects of justice and the legitimacy of punishment. While the death penalty policy aims to tackle drug crimes decisively, this research identifies a gap between the application of the death penalty sanction and the state's obligation to guarantee the right to life. In addition, this research examines the

relevance of the policy to the values of Pancasila, which emphasises respect for humanity and justice. With a focus on human rights, this research seeks to fill the void of more specific studies related to the protection of the right to life in drug eradication policies in Indonesia. This analysis is expected to provide critical insight into the challenges and implications of the application of the death penalty, as well as offer policy alternatives that are more in line with the principles of human rights and the values of Pancasila.

The purpose of this research is to analyse the perspective of law and human rights in the application of death penalty in narcotics crime. Through this research, it is hoped that it can contribute to the discourse on law enforcement that is just and respects the right to life, as well as provide policy recommendations that are more effective in dealing with the problem of narcotics abuse in Indonesia. In the context of Indonesian law, the application of the death penalty for drug-related crimes has become one of the most controversial and debated issues. As part of the state's efforts to eradicate the increasing drug abuse, the death penalty is seen as a strict solution to this crime. However, on the other hand, it also raises deep questions about justice and the protection of human rights.

From a legal perspective, the laws governing narcotics, particularly Law No. 35/2009, stipulate the death penalty for certain drug traffickers. Although this measure aims to prevent drug trafficking and protect the public, there are many criticisms stating that the application of the death penalty is not always in line with human rights principles, including the right to life. The question that arises is, is the application of the death penalty really effective in reducing the rate of drug abuse, or does it create injustice for offenders who may be victims of an unfair social and economic system? In the context of human rights, it must be considered whether the death penalty is in accordance with universally recognized human values. Many countries have abolished the death penalty as a form of criminal sanction because it is considered contrary to the right to life and human dignity. Therefore, it is necessary to question the extent to which the implementation of the death penalty in narcotics cases in Indonesia is in line with the basic principles of human rights and social justice. Thus, the hypothesis of this research can be formulated: The application of the death penalty in narcotics crimes in Indonesia not only has an impact on law enforcement, but also poses serious challenges in the context of fulfilling human rights and social justice. This research aims to examine the relevance and effectiveness of the death penalty in the context of narcotics countermeasures, as well as its implications for the protection of individual rights in Indonesia.

The contribution of the results of this research is expected to provide a valuable contribution in the discourse of criminal law, especially regarding the application of the death penalty sanction for narcotics traffickers. Theoretically, this research is expected to be a reference and source of knowledge that enriches the study of the application of the death penalty in the context of narcotics crimes. With an in-depth analysis of the legal and human rights aspects, this research will contribute to the development of theories relating to criminal justice, sanction effectiveness, and the protection of individual rights. The discussion arising from this research is expected to spark constructive debate among academics, legal practitioners, as well as policy makers, encouraging them to more critically consider the impact and implications of the death penalty sanction. Practically, the results of this study are expected to provide valuable recommendations for stakeholders in the field of criminal law, including judges, prosecutors, and lawyers, in considering the imposition of the death penalty in drug cases. With a better understanding of the social, economic and human rights impacts of the death penalty, relevant parties can make more informed and fair decisions in the judicial process. In addition, this research can serve as a reference for the government in formulating

a more comprehensive and humane policy in handling drug problems, which not only prioritizes law enforcement but also the protection of individual rights.

The conceptual framework in this study explains the relationship between four main concepts: criminal offenses, narcotics, the death penalty, and human rights. A criminal offense is defined as an act prohibited by law, where the act of trafficking narcotics falls into this category because it can harm society. Narcotics, in accordance with Law Number 35 of 2009, is a substance that can cause dependence and changes in consciousness, so its distribution and use are highly regulated and threatened with severe sanctions. The death penalty, as the heaviest sanction in the Indonesian legislative system, is stipulated in the Criminal Code (KUHP) and is still in force today, leading to debate over the fairness of its application. Finally, human rights, which are regulated in Law No. 39/1999, emphasize the importance of respecting the dignity of the individual. By linking these four concepts, this research aims to answer the question of how the perspectives of law and human rights interact with each other in the application of the death penalty against drug traffickers, so as to provide new insights into criminal law policy in Indonesia as well as recommendations for the development of more just and humane regulations.

Crime, known in Dutch as "strafbaar feit," (Wahyuni & Marwenny, 2020; Baehaqi, 2022) refers to an act that is prohibited and threatened with punishment, either based on the Criminal Code (KUHP) or as a violation of the norms of justice. This term is often equated with offense, derived from the Latin word "delictum" (Anwar, 2022). In the context of Indonesian law, criminal acts can be interpreted through various terminologies such as punishable acts, criminal events, or criminal acts themselves. To establish an act as a criminal offense, there are several elements that must be present, including the existence of a subject, fault, unlawful act, action prohibited by law, and implementation in a certain time and place (Siagian, 2023; Sumarlin, (2023)). These elements are divided into subjective elements related to the perpetrator and objective elements related to the conditions and consequences of the act. With this understanding, criminal acts can be categorized into various types, such as crimes and violations, formal and material offenses, as well as intentional and negligent offenses (Sari, 2020). This classification is very important for the law to regulate and sanction actions that harm society, maintain social order, and uphold justice.

The process of determining and imposing sanctions in criminal law, known as punishment, includes material and formal criminal law (Zulkarnain et al, 2024). Material criminal law contains rules regarding criminal offenses, sanctions, and offense criteria, while formal criminal law regulates the procedures for implementing the criminal law itself. In the context of punishment, there are three main theories that are often used as references (Fardha, 2023). First, retribution theory, which focuses on retaliation against offenders; second, utilitarian theory, which sees punishment as a crime prevention tool; and third, combined theory, which integrates both approaches. The main purpose of punishment is to correct the offender, prevent future crimes, and secure society from the potential threats posed by criminal acts. In practice, criminal liability involves elements of guilt (*mens rea*) and action (*actus reus*), which require valid evidence to determine whether a perpetrator can be held accountable. The process of proof in criminal law aims to seek material truth, in contrast to civil law which emphasizes formal truth. In Indonesia, the evidentiary system is regulated in the Criminal Procedure Code, which requires two valid pieces of evidence to reach the judge's confidence.

Meanwhile, narcotics are substances derived from plants such as *Papaver somniferum*, *Erythroxylum*, and *Cannabis sativa* (Sulistomo, et al, 2023), which can affect the central nervous system and potentially relieve pain, and even cause dependence. Etymologically, the term "narcotics" comes from the Greek word *narke*, which means drugged. In Law Number

35 of 2009 concerning Narcotics, narcotics are defined as substances or drugs that can cause a decrease or change in consciousness, loss of taste, and can cause dependence. Narcotics are categorized into three groups based on their level of danger and usefulness. Class 1 is the most dangerous and can only be used for research, class 2 has strong addictive power but is useful for treatment, while class 3 has mild addictive power and is also useful for treatment. In addition, narcotics can be divided into natural, semi-synthetic, and synthetic narcotics based on how they are made, all of which have the potential to cause addictive effects and affect individual health.

### **Methods Research**

This research method is designed to ensure that the research can achieve the set objectives with a systematic scientific approach. This research uses the normative method, which focuses on the study of written legal regulations through literature study (Tan, 2021). In this context, desk research is defined as a research method that relies on documents and sources of library materials, often referred to as secondary data. This data includes two main categories: primary legal materials and secondary legal materials. Primary legal materials referenced in this research include the 1945 Constitution, the Criminal Code (KUHP), as well as Law No. 35/2009 on Narcotics and Law No. 39/1999 on Human Rights. Meanwhile, secondary legal materials consist of literature such as books, journals, and online information sources that provide further explanation of primary legal materials. In terms of approach, this research uses a normative juridical approach method, which focuses on analyzing the current laws in Indonesia. This method allows researchers to examine in depth how the law regulates issues related to the death penalty for drug traffickers in the existing legal context. To collect data, this research applies the literature study method, by searching for relevant legal literature and analyzing it to obtain a comprehensive understanding. The data analysis method used in this normative legal research is qualitative analysis, which is carried out through interpretation or interpretation of existing legal data. Systematic interpretation is one of the techniques applied, where researchers compare articles in different laws to find relationships and consistency between existing legal provisions. Thus, this research method is expected to contribute significantly to the understanding of the application of the death penalty in the context of law and human rights in Indonesia..

### **Result and Discussion**

#### **Implementation of Death Penalty in Indonesia**

The implementation of death penalty in Indonesia has a death penalty implementation procedure further regulated in the National Police Chief Regulation No. 12/2010 on Procedures for the Implementation of Death Penalty, which divides the implementation process into four main stages: preparation, organization, implementation, and termination.

##### **1. Preparatory Stage**

In the preparation stage, in accordance with Article 5, the Public Prosecutor's Office submits a written request to the Kapolda based on the jurisdiction of the court that handed down the verdict. The Kapolda then orders the Head of the Regional Brimob Unit to prepare for the execution of the sentence. The details of this preparation include the provision of personnel, material and training, as stipulated in Article 6. The personnel involved must meet the requirements of physical and mental health, not have a family or close relationship with the convicted person, and have adequate shooting ability. Required materials include firearms, ammunition, and other equipment for execution. In addition, training is conducted, which includes basic shooting and rehearsals for the execution of the death penalty.

##### **2. Organizing Stage**



The organizing stage, stipulated in Article 7, involves the formation of a shooting squad consisting of 14 members as well as a support squad with various teams that have specific tasks, ranging from site surveys to escorting convicts. The firing squad is responsible for preparing the location as well as ensuring the readiness of weapons and personnel formations.

### **3. Execution Phase**

The execution of the death penalty is regulated in Article 15, which sets out the procedure from the dressing of the convicted person to the final inspection before the execution. The firing squad must be on site two hours before the time of execution, while the final inspection takes place one hour before the sentence is handed down. The execution process is carried out in a structured manner, including an examination by a doctor to ensure there are no signs of life after the execution.

### **4. Termination Stage**

The execution of the death penalty according to Article 18, After the shooting is completed, the Executing Commander and the Executing Attorney check the condition of the convict. If the convict still shows signs of life, the termination shooting will be carried out based on the order of the Executing Attorney.

### **Death Penalty in the Criminal Code**

Juridically, the death penalty is contained both in the Criminal Code (KUHP) and in various laws outside the KUHP. In the Criminal Code, there are eight criminal offenses that are punishable by death. In addition, at least six other laws also include the death penalty, such as the Law on Corruption, Narcotics, Psychotropic, Terrorism, and Human Rights. The death penalty is exceptional, meaning that it is only imposed on certain criminals. History records that the death penalty has existed since the kingdom period in Indonesia, before this country was formed. Several criminal offenses that can be sentenced to death according to the Criminal Code include: Treason against the President and Vice President (Article 104); Persuading a foreign country to be hostile (Article 111); Assisting the enemy during war (Article 124); Treason against the King or head of a friendly country (Article 140); Aggravated murder (Article 340); Theft with violence resulting in serious injury or death (Article 365); Extortion with violence resulting in serious injury or death (Article 368); Piracy resulting in death (Article 444).

### **Death Penalty in Law No. 35/2009 on Narcotics**

Law Number 35 Year 2009 on Narcotics also includes arrangements related to death penalty. Several articles in this law, such as Articles 113 and 114, regulate the death penalty for offenders involved in narcotics trafficking. For example, Article 113(1) states that any person who unlawfully produces, imports, exports, or distributes Class I Narcotics may be sentenced to death in certain cases. Article 114(1) also includes the death penalty for those who unlawfully offer, sell, buy, or receive Class I Narcotics.

### **Death Penalty in the Constitutional Court Decision**

Constitutional Court (MK) Decision Number 065/PUU-II/2004 rejected the abolition of death penalty and emphasized that all death penalty decisions that have permanent legal force must be implemented without delay. The Constitutional Court stated that in order to achieve justice, all death penalty decisions that have permanent legal force must be implemented immediately. In Constitutional Court Decision Number 107/PUU-XIII/2015, it was pointed out that clemency applications that have no time limit often hamper the execution of the death penalty, creating a "death row" phenomenon where death row inmates wait for execution for a very long time. Constitutional Court Decision Number 2-3/PUU-V/2007 states that the death penalty is not contrary to the right to life guaranteed by the 1945 Constitution, provided that its implementation is carried out based on applicable law. The

Constitutional Court's decisions have left a strong imprint on the debate on the application of the death penalty for drug offenses in Indonesia. Although the Court did not abolish the death penalty, its impact on sentencing and execution practices demonstrates the tension between the government's commitment to uphold the law and international pressure to respect human rights. The increase in the number of death sentences following the Constitutional Court's decision and the death row phenomenon reflect the challenges faced in the practice of death penalty implementation.

### **International Response to the Execution of Death Penalty for Narcotics Crimes in Indonesia**

The international response to the increase in executions in Indonesia reflects global concerns about human rights violations. Countries such as Australia, France, and Brazil have condemned Indonesia's death penalty policy, especially against its citizens involved in drug cases. This condemnation considers the action as a violation of the right to life and urges the Indonesian government to grant clemency to convicts, illustrating the challenges faced in upholding human rights in the context of law enforcement in Indonesia.

### **Analysis Based on Theory**

The implementation of the death penalty for drug traffickers in Indonesia can be analyzed using three theories of punishment: absolute theory, relative theory, and combined theory. Each theory provides a different perspective regarding the legitimacy of this policy and its impact on law enforcement efforts and the protection of human rights.

#### **1. Absolute Theory: Equitable Retribution**

According to absolute theory, the death penalty is justified as an appropriate retribution for serious crimes, such as large-scale drug trafficking. In the Indonesian context, traffickers proven to have trafficked significant amounts of drugs, such as the cases of Freddy Budiman and Cai Changpan, were sentenced to death as a form of retributive justice. The state emphasizes that such action is a fitting retribution for the great harm caused to society, especially the younger generation.

However, the application of this absolute theory faces criticism regarding the risk of legal error. A number of cases have shown that some death row prisoners have been proven innocent after years of legal proceedings. For example, the case of Zulfiqar Ali, a Pakistani national sentenced to death on drug charges, led to protests from the international community after irregularities were found in the legal process. These concerns underscore that retribution through the death penalty does not always fulfill a sense of justice if there is the potential for wrongful conviction.

#### **2. Relative Theory**

The relative theory emphasizes that the death penalty has a preventive purpose, namely to provide a deterrent effect, both to the perpetrators and the wider community. The Indonesian government often claims that the execution of drug traffickers is a firm step to reduce the number of drug trafficking. However, empirical evidence shows that countries that have abolished the death penalty, such as Portugal and Norway, have actually succeeded in reducing the level of drug crime with a rehabilitative approach. This challenges the assumption that the death penalty is effective as a deterrent to crime. In Indonesia itself, the prevalence of drug cases is still high despite the implementation of the death penalty, suggesting limitations in achieving the expected deterrent effect.

#### **3. The Combined Theory**

The combined theory proposes an integration between retribution and deterrence, emphasizing that the death penalty can function as a just sanction as well as an instrument to deter crime. However, the Indonesian Constitutional Court in several of its decisions, such as Decision Number 2-3/PUU-V/2007, emphasized that the application of the death penalty

must be in line with human rights principles and should only be carried out as an "*ultimum remedium*" (last resort). This shows the pressure to find a balance between justice and respect for human rights.

### **Psychological and Social Impact for Death Row Convicts**

The *death row* phenomenon or the psychological condition of convicts awaiting execution has not received serious attention in Indonesian policy. Research from Amnesty International and Human Rights Watch shows that death row prisoners often experience severe mental anguish due to the uncertainty of execution timing. This effect was seen in the case of Cai Changpan, who eventually chose to commit suicide after years of waiting for his execution. This shows that the death penalty not only affects the perpetrator, but also creates a psychological and moral burden on the family and community.

### **Disparities in the Application of the Death Penalty**

Further analysis reveals disparities in the application of the death penalty in Indonesia. The data shows that individuals with low economic status or without access to adequate legal aid are more vulnerable to being sentenced to death compared to offenders from the middle and upper economic classes. In some cases, there are inequalities in the judicial process, where access to competent lawyers and legal resources play an important role in determining the outcome of the trial. This exposes inequalities in the application of the death penalty and raises questions about the fairness of the legal system.

### **Comparative Analysis with Countries that Abolish the Death Penalty**

Comparative studies with countries such as Portugal and Norway, which have abolished the death penalty and replaced it with rehabilitation programs for drug users and offenders, show that a social recovery-based approach can be more effective in reducing crime. In addition, these countries have proven that law enforcement that focuses on rehabilitation has a long-term positive impact on society. Indonesia could consider a similar strategy, especially in dealing with people who use drugs, to ensure that policies are more humane and effective.

### **Conclusion**

This study found that the application of the death penalty for drug traffickers in Indonesia involves various dimensions of law and human rights. First, from a legal perspective, the application of the death penalty is one of the government's efforts to tackle the increasing narcotics trafficking. Although regulations regarding narcotics have been stipulated in Law Number 35 of 2009, the application of the death penalty still faces challenges regarding the sustainability of its effectiveness in preventing narcotics crimes. Second, in the context of human rights, this study shows that the death penalty can have a negative impact on human rights violations. There is significant debate regarding the legitimacy of the death penalty in the context of protecting the right to life, which is one of the most fundamental human rights. The research also found that although the death penalty is faced with many criticisms, there are arguments in its favor as a necessary preventive measure to protect society from the dangers of narcotics.

### **Suggestion And Recommendation**

Based on the results of this study, it is recommended that the government combine punishment with a rehabilitation approach in handling drug cases, especially for non-violent offenders through a diversion system and structured rehabilitation programs. The government needs to establish a coordinating institution between BNN, the Ministry of Law and Human Rights, and the Ministry of Social Affairs to ensure access to rehabilitation and transparent law enforcement. In addition, pilot projects are needed in areas with high levels

of trafficking to evaluate the effectiveness of rehabilitation as an alternative to the death penalty, with indicators such as recidivism rates and compliance with human rights standards. Education and socialization to the community must also be strengthened to prevent the involvement of young people in drugs, while increasing transparency and accountability in the judicial process to minimize disparities in the application of the death penalty. Continuous policy monitoring and evaluation are needed to measure the impact and improve policy implementation to be in line with the principles of justice and human rights.

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