

Death Sentences for Criminal Acts of Narcotics in a Juridical Review

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Abstract

Narcotics crime is an extraordinary crime, also known as extraordinary crime, which can endanger or even kill the lives of others. Therefore, law enforcement must also be done in an extraordinary way so as to provide a deterrent effect to the perpetrators of narcotics crimes. The purpose of this study is to discuss the juridical review of the implementation of the death penalty for narcotics criminals, human rights views on the death penalty for narcotics criminals, as well as the factors that influence judges in deciding the death penalty for narcotics criminals. The research method used is normative legal research by collecting library data. The results of this study are the determination of the death penalty for narcotics criminals who are without rights or against the law to possess, store, control, or provide, produce, import, export, or distribute narcotics and exceed 1 (one) kilogram or exceed 5 kilograms. (five) tree trunks or in the form of non-plants weighing 5 (five) grams are valid and expressly regulated in Chapter XV concerning Criminal Provisions, especially in article 113, article 114, article 116, article 118, article 119, article 121, and Article 133 of Law Number 35 of 2009 concerning Narcotics. Human rights views on the death penalty also cannot be categorized as a violation, because there are other human rights that must be protected from the dangers of narcotics abuse which can endanger the lives of others. Judges in deciding the death penalty have had strong considerations based on the principles of justice, legal certainty and expediency in each of their decisions.

Keywords

narcotics crime; death penalty;
human rights



I. Introduction

Narcotics abuse is a danger that can hinder the progress of the Indonesian nation in carrying out development in every sector of life (Sitepu, D., & Purba, N., 2019). Article 1 paragraph 3 of the 1945 Constitution clearly states that "the State of Indonesia is a State of Law", meaning that everything related to the life of society, nation and state is regulated according to the applicable laws and regulations. Therefore, it is the obligation of the community to uphold the applicable laws and regulations without exception, thus the next task of the State is to provide a sense of security, order and peace to the entire community.

Within the scope of the law, if someone commits a crime, then that person must comply with the positive legal procedures (Friska Tumanggor, Muazzul Muazzul, Rizkan Zulyadi, 2019). Law Number 35 of 2009 concerning Narcotics explains that the goal of the State of Indonesia is to create a prosperous, just and prosperous Indonesian society that is materially and spiritually evenly distributed based on Pancasila and the 1945 Constitution of the Republic of Indonesia. A national development capital needs to be maintained and improved continuously, including the degree of health (Law Number 35 of 2009 concerning Narcotics).

Today all kinds of social problems continue to occur in Indonesia which can actually hinder productivity in national development efforts. One of the social problems that occurs is the abuse of narcotics. Narcotics abuse is no longer a new thing, but with its presence, it seems as if the drug problem does not stop. Etymologically, narcotics comes from the English language, namely narcotics which means an anesthetic, which means the same as narcosis in Greek which means to put to sleep or anesthetize (Hasan Sadly, 2000) The United Nations Office on Drugs and Crime (UNODC) as the world body that deals with narcotics problems, records that at least 271 million people worldwide or 5.5% of the global population of the world's population with an age range between 15 and 64 years have consumed drugs, at least the person had consumed narcotics in 2017 (United Nations Office on Drugs and Crime (UNODC), World Drugs Report, 2019).

Meanwhile, the National Narcotics Agency (BNN) noted that the narcotics problem in Indonesia is still in a condition that requires continuous high attention and vigilance from all elements of the Indonesian nation. Due to the high rate of drug abuse, the Government of Indonesia has enacted Law Number 35 of 2009 concerning Narcotics as a regulation to eradicate drug abuse. Law Number 35 of 2009 concerning Narcotics explains the type of punishment that will be received for perpetrators of narcotics crimes. The type of punishment starts from a minimum imprisonment of 5 years and a maximum of 20 years, or life imprisonment, or a fine of at least one billion rupiah and a maximum of ten billion rupiah, and there is even a death penalty. According to Bryan and Pujiyono in Ainun *et al* (2017) Criminal law policy is part of criminal law policy and legal policy, both of which are part of a broader policy, namely social policy.

The death penalty is applied in Indonesia for narcotics cases aimed at providing a deterrent effect to the perpetrators. Although the debate about the application of the death penalty has arisen among legal experts because it is considered a violation of human rights. However, in 2007 when the Constitutional Court conducted a review of the old Narcotics Law, namely Law Number 22 Year 1997, the Constitutional Court in its decision retained the death penalty. The death penalty is also included in the new Law, namely Law Number 35 of 2009 concerning Narcotics.

The Constitutional Court is of the opinion that the death penalty is carried out on the grounds that narcotics crimes are included in extraordinary crimes, which can seriously threaten human survival. So that in law enforcement requires special treatment, one of which is by applying the death penalty decision. Departing from the description of the background above, the researcher is interested in conducting research on whether the death penalty can be regarded as a violation of the law or not. Therefore, this research is entitled "Death Sentence for Narcotics Crime Perpetrators in a Juridical Review".

Based on the background of the problems that have been described, the problem formulation in this study is as follows:

1. How is the juridical review of the implementation of the death penalty for narcotics offenders in Indonesia?
2. Can the implementation of the death penalty for narcotics criminals in Indonesia be categorized as a violation of human rights?
3. What factors influence Judges in deciding the death penalty for narcotics offenders in Indonesia?

The purpose of this study is in accordance with the formulation of the problem that has been stated. Therefore the research objectives are:

1. Knowing and analyzing the juridical review of the implementation of the death penalty for narcotics criminals in Indonesia.

2. Knowing and analyzing human rights views on the implementation of the death penalty for narcotics offenders in Indonesia.
3. Knowing and analyzing the factors that influence the judge in deciding the death penalty for narcotics criminal offenders.

II. Research Methods

The research method used in this study is a normative legal research method. Normative legal research is legal research conducted by examining library materials or secondary data (Soerjono Soekanto & Sri Mamudji, 2003). In addition to using library materials, researchers also use statutory provisions relating to narcotics. According to Peter Mahmud Marzuki, normative legal research is a process to find a rule of law, legal principles, and legal doctrines in order to answer the legal issues at hand (Peter Mahmud Marzuki, 2010). In this type of legal research, law is often conceptualized as what is written in the regulations. Legislation or law is conceptualized as a rule or norm which is a benchmark for human behavior that is considered appropriate (Amiruddin and H. Zainal Asikin, 2006).

III. Results and Discussion

3.1 Juridical Review on the Implementation of the Death Penalty for Narcotics Offenders in Indonesia

Handling narcotics cases, the investigation process is the most important process in eradicating narcotics abuse such as determining the punishment to be imposed on the perpetrators of criminal acts (death penalty) (Munthe, I., & Siregar, M., 2019). The implementation of the death penalty for narcotics criminal offenders in terms of juridical review is contained in Chapter XV concerning Criminal Provisions, particularly in article 113, article 114, article 116, article 118, article 119, article 121, and article 133 of Law Number 35 Year 2009 About Narcotics. In Law Number 35 of 2009 concerning Narcotics, there are various kinds of actions that can be subject to capital punishment, such as those without the right or against the law to possess, store, control, produce, offer, carry.

Owning, storing, importing and exporting Narcotics and those weighing more than 1 (one) kilogram or exceeding 5 (five) trees or in non-plant form weighing 5 (five) grams. Therefore, if it has fulfilled the elements and types of criminal acts of narcotics, the death penalty that has been regulated by law must be implemented. However, execution of death row inmates must consider several factors such as execution of death row inmates must be carried out after a court decision imposed on him has permanent legal force and the convict has been given the opportunity to submit all legal remedies, such as appeals, cassation, reconsideration and requesting clemency to the president One of the threats of capital punishment against narcotics offenders is regulated in article 114 paragraph 1 and 2 of Law Number 35 of 2009 concerning Narcotics which reads:

- (1) Any person who without rights or against the law offers for sale, sells, buys, receives, becomes an intermediary in buying and selling, exchanging or delivering narcotics class I, shall be sentenced to life imprisonment or a minimum imprisonment of 5 (five) years and a maximum of 20 (twenty) years and a minimum fine of Rp. 1,000,000,000 (one billion rupiah) and a maximum of Rp. 10,000,000,000 (ten billion rupiah).
- (2) In the event that the act of offering for sale, selling, buying, being an intermediary in the sale and purchase, exchanging, delivering, or receiving narcotics group I as referred to in paragraph (1) which in the form of plants the weight exceeds 1 (one)

kilogram or exceeds 5 (five) tree trunks or in non-plant form weighing 5 (five) grams, the perpetrator is sentenced to death penalty, life imprisonment, or imprisonment for a minimum of 6 (six) years and a maximum of 20 (twenty) years and a fine maximum as referred to in paragraph (1) plus 1/3 (one third).

In addition to Law Number 35 of 2009 concerning Narcotics which regulates the death penalty for criminal acts, especially narcotics, the existence of the death penalty is also confirmed as in the Criminal Code (KUHP) contained in article 10, namely that there are types of criminal sanctions that the perpetrator will accept. criminal offenses which consist of basic criminal sanctions including capital punishment, imprisonment, imprisonment, fines and additional criminal sanctions which include revocation of certain rights, confiscation of certain items, and announcement of a judge's decision.

One example of a narcotics criminal case with a death penalty decision by a judge can be seen from the Lubuk Pakam District Court Decision Number 1416 / Pid.Sus / 2019 / PN Lbp dated 28 October 2019 which occurred in the jurisdiction of the Lubuk Pakam District Court, North Sumatera as a level court. In its decision, the Panel of Judges who examined and tried narcotics crime cases at the first level gave a verdict that the defendant Ibn Hajar Bin Muhammad Ali Alias Benu was legally and convincingly proven guilty of committing a crime. Ibn Hajar Bin Muhammad Ali Alias Benu with "Without the right to commit evil intentions to become an intermediary for the sale and purchase of Narcotics Group I (one) not plants weighing more than 5 (five) grams". In addition, the decision of the Panel of Judges also sentenced the Defendant Ibn Hajar Bin Muhammad Ali Alias Benu to the death penalty.

However, because of this decision, the defendant Ibn Hajar Bin Muhammad Ali Alias Benu filed an appeal at the second level court. As for the decision of the panel of judges who examined and tried the narcotics crime case with the Defendant Ibn Hajar Bin Muhammad Ali Alias Benu at the Medan High Court on Monday, January 6, 2020, one of the rulings stated "Strengthening, Lubuk Pakam District Court Decision Number 1416 /Pid.Sus/2019/PN Lbp dated October 28, 2019, for which the appeal is being filed".

Because of the appeal decision, the defendant Ibn Hajar Bin Muhammad Ali Alias Benu again filed an appeal to the Supreme Court. On Tuesday, September 9, 2020, the cassation decision was final and binding, which the Panel of Judges decided that the verdict read: "Rejecting the appeal from Cassation Petitioner I/Public Prosecutor at the Deli Serdang District Attorney and Cassation Petitioner II/Defendant IBNU HAJAR bin MUHAMAD ALI aka BENU; and Imposing court fees at all levels of the judiciary and at the level of cassation to the State". From the juridical review and one of the case examples, this indicates that the Panel of Judges who enforce the law does not play by giving a death sentence against the accused in a narcotics crime because this narcotics crime is considered an extraordinary crime or also known as an extraordinary crime that can hinder and stop human life.

3.2 Human Rights Views on the Implementation of the Death Penalty for Narcotics Offenders in Indonesia

Indonesia is one of the countries that upholds human rights, it is proven that in the 1945 Constitution it regulates human rights and with the issuance of Law Number 39 of 1999 concerning Human Rights. Human Rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, government, and everyone for the sake of honor and protection of human dignity. Every human being has a human right to live and live. However, one human right is limited by other human rights. One example is in the

case of narcotics sentenced to death on behalf of Freddy Budiman, that Freddy Budiman has human rights, namely the right to life. However, Freddy Budiman's right to life is limited by the rights of other people. Moreover, Freddy Budiman's right to life as long as he lives is used by threatening the lives of others by illegally circulating drugs that will kill many other people's lives.

Therefore, the view of human rights on the death penalty for narcotics criminals who are without the right or against the law to possess, store, control, or provide, produce, import, export, or distribute narcotics and exceed 1 (one) kilogram or more 5 (five) tree trunks or in non-plant form weighing 5 (five) grams are valid and expressly regulated in Chapter XV concerning Criminal Provisions, particularly in Article 113, Article 114, Article 116, Article 118, Article 119, Article 121, and Article 133 of Law Number 35 Year 2009 concerning Narcotics is appropriate and does not violate human rights.

The death penalty is imposed on the perpetrators of drug crimes, the death penalty for narcotics criminals who are without the right or against the law to possess, store, control, or provide, produce, import, export, or distribute narcotics and exceed 1 (one) kilogram or more than 5 (five) tree trunks or in non-plant form weighing 5 (five) grams is valid and expressly regulated in Chapter XV concerning Criminal Provisions, particularly in Article 113, Article 114, Article 116, Article 118, Article 119, Article 121, and Article 133 of Law Number 35 of 2009 concerning Narcotics.

The death sentence handed down to one person who corrupts and destroys many people is better than him staying alive but the destruction is getting bigger for other people in a country. The Constitutional Court through Decision Number: 23 / PUU-V / 2007 concerning Judicial Review of Law Number 22 of 1997 in conjunction with Law Number 35 of 2009 concerning Narcotics against the 1945 Constitution also rejected the petitioners' petition to abolish capital punishment not only in narcotics cases but from the Indonesian criminal system. Therefore, the Constitutional Court considers that the death penalty for the perpetrator or dealer of narcotics crime cannot be categorized as violating human rights.

However, the Constitutional Court later in the decision gave directions so that the construction of the death penalty in the future should pay attention to the following matters:

1. Death penalty is no longer a principal punishment, but rather a special and alternative punishment;
2. The death penalty may be imposed with a probationary period of 10 years which if the convict behaves commendably can be changed to life imprisonment or 20 years;
3. The death penalty cannot be imposed on minors;
4. The execution of the death penalty against a pregnant woman and a mentally ill person is suspended until the pregnant woman gives birth and the mentally ill convict recovers.

In addition, international conventions because killing one person is better than destroying many people due to their actions and actions. It is also stated in international treaties and conventions on civil and political rights that the death penalty is not prohibited. The actions of perpetrators of illicit drug trafficking or also drug dealers destroy the greater human race, so it is appropriate to be given the death penalty to eradicate the crimes they have committed and save more people.

3.3 Factors Affecting Judges in Deciding the Death Penalty for Narcotics Offenders

In the event that the judge decides on the type of drug case, there must have been a series of factors that influence the decision on whether narcotics crime is appropriate or not sentenced to death. For this reason, the judge must have wise considerations so that the

decision is in accordance with the principle of justice. Each judge's decision is one of the following three possibilities (Hartono Hadisoeparto, 1999):

1. Punishment or imposition of punishment and/or order, namely the conviction of a defendant if the defendant's guilt in an act that has been committed and the act is a criminal act according to law and sufficiently proven.
2. Free verdict, that is, the defendant is acquitted if according to the results of the examination of the defendant's guilt according to law and belief is not proven.
3. The verdict is free from all lawsuits, that is, if the guilt of the defendant according to law and belief is sufficiently proven, but what the defendant did is not a criminal act.

In addition, the judge in deciding a case must also have a minimum of two pieces of evidence. Leden Marpaung (1992) argues that the judge's consideration in deciding a case is based on "the persuasive of precedent" which according to this principle judges are given the freedom to decide a case without being bound by the previous judge's decision, and adheres to the principle of "the binding force of precedent" where a judge can make decisions based on conviction, so that it can be concluded that every decision made by judges in Indonesia is not bound by jurisprudence.

Therefore, the decision made by the judge against the accused of narcotics crime is the full right of the judge. The factors considered by the judge in deciding the death penalty for drug carriages were to provide a deterrent effect to the accused and to the whole community so as not to play with narcotics abuse that endangers the lives of many people. Here the authors present some of the judges' considerations regarding the death penalty verdict in the Narcotics case:

Table 1. Judges' Considerations on Death Penalty Decisions in Narcotics Case

No	Number Verdict	Judge's Consideration
1	Supreme Court Decision No. 37 PK/PID.SUS/2011	The judge's consideration in rejecting PK and still imposing capital punishment on narcotics traffickers in decision No.37 PK / PID.SUS / 2011, is based on the provisions of Article 82 paragraph (3) and Article 78 paragraph (1) of Law Number 22 of 1997 on Narcotics. The Judge's decision in decision No.37 PK / PID.SUS / 2011, besides aiming to ensnare the defendant, also aims to punish the defendant for his actions and to warn the perpetrator other narcotic crimes.
2	Decision No. 901 / PID.SUS / 2012 / PN. DPS.	Denpasar District Court Decision No. 901/PID.SUS/2012/PN. Dps it is decided by a verdict which is legally enforceable and remains legally and convincingly proven guilty of committing a criminal act of importing narcotics class I in non-plant form weighing more than 5 (five) grams. Judging from the judge's decision in deciding this case, the panel of judges decided the defendant based on Article 113 paragraph (2) of Law Number 35 of 2009 concerning narcotics by imposing the death penalty. The judges' considerations in imposing the death penalty on the case of Decision No. 901 / PID. SUS / 2012 / PN. DPS. It is seen from the law that regulates it where the defendant's actions have fulfilled the

		elements of the article where the crime can be sentenced to death, the evidence of narcotics crimes committed by narcotics criminals must really be proven so that there is no doubt about imposing the death penalty or in this case is about conviction judges to impose the death penalty on perpetrators of extraordinary crimes. The judge's next consideration is about protecting the community from the effects of the narcotics crime, the law exists to protect the community from crime, not only to retaliate against the perpetrators of criminals.
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In addition, the author has also summarized a list of death row convicts that have been implemented throughout 2020 as follows:

Table 2. Death Penalty Sentences

Number	Year	Quantity Death Penalty Sentence
1	2015	46
2	2016	60
3	2017	47
4	2018	37
5	2019	90
6	2020	100

Source: Amnesty International Indonesia

Based on this table, it can be seen that the number of death penalty sentences has increased from year to year. This indicates that narcotics crime is still high in Indonesia. So that there is a need for collaboration between institutions and the community to provide counseling about the dangers of drugs in their respective institutions (Rizkan Zulyadi, 2020).

IV. Conclusion

Juridically, the death penalty has been regulated. The death penalty itself is contained in Article 10 of the Criminal Code (KUHP). In addition, specifically, the death penalty for narcotics criminals is clearly explained to narcotics criminals who do not have the right or are against the law to possess, store, control, or provide, produce, import, export, or distribute narcotics and more than 1 (one) kilogram or more than 5 (five) trees or in non-plant form weighing 5 (five) grams is valid and expressly regulated in Chapter XV concerning Criminal Provisions, particularly in Article 113, Article 114, Article 116, Article 118, Article 119, Article 121, and Article 133 Law Number 35 Year 2009 concerning Narcotics.

The execution of the death penalty for narcotics criminal offenders or dealers does not contradict human rights, besides that it also does not contradict the International Convention on Civil and Political Rights (ICCPR) so that the death penalty can be applied in Indonesia and the death penalty is regulated in the Criminal Code and Laws. Law Number 35 of 2009 concerning Narcotics. Likewise, the decision of the Constitutional Court which explains that the death penalty must remain in Indonesia because narcotics crime is an extraordinary crime so that it requires extraordinary enforcement in order to create a deterrent effect.

The factors considered by the judge in deciding the death penalty are based on at least 2 pieces of evidence and the judge's conviction. In addition, judges also have the principle of "the persuasive of precedent" which according to this principle judges are given the freedom to decide a case without being bound by the decision of the previous judge, and adheres to the principle of "the binding force of precedent" where a judge can make decisions based on belief, so that It can be concluded that any decision making by judges in Indonesia is not bound by jurisprudence.

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