



EXECUTION OF DEATH PENALTY IN NARCOTICS CRIME IN THE PERSPECTIVE OF NATIONAL LAW IN INDONESIA

Muhammad Nasir Sitompul¹, Ariman Sitompul²

¹ Faculty of Law , Universitas Muhammadiyah Sumatera Utara: nastompul@gmail.com

² Faculty of Law , Universitas Dharmawangsa: ariman.sitompul@dharmawangsa.ac.id

ARTICLE INFO

Keywords:

Narcotics, Criminal, Execution

Date received : 14 Mei 2022

Revision date : 17 Mei 2022

Date received : 24 Mei 2022

ABSTRACT

The abuse of illegal drugs is a threat to the sovereignty of the nation and the state of drug eradication requires the role of all parties to narrow the movement of drug dealers who are still trying to market the illicit goods in indonesia. The regulation on narcotics crime and death penalty is very important in regulating the law for the perpetrators of narcotics crime for the sake of national and state sovereignty. In Indonesia today, the imposition of criminal sanctions in the form of a death penalty by a judge for perpetrators of narcotics is one of the policies adopted in Law No. 35 of 2009 on narcotics and cannot be separated from the criminal law norms adopted by the criminal law so far, for example in Article 10 of the Criminal Code. Another thing in the other world is that there is a significant development of narcotics users by taking depenalization actions against users that aim to replace prison sanctions that are sometimes applied to other criminal sanctions such as Social Work sanctions. The research method used is juridical empirical meaning is to identify and conceptualize the law as a real and functional social institution in a patterned living system.

INTRODUCTION

Drugs have become a threat to the sovereignty of the nation and the state of drug eradication requires the role of all parties to narrow the movement of drug dealers who are still trying to market these illicit goods in indonesia. The regulation on narcotics crime and death penalty is very important in regulating the law for the perpetrators of narcotics crime for the sake of national and state sovereignty. Things that are regulated in the regulation on narcotics include the death penalty, life imprisonment, legislation that clearly contains legal

sanctions more firmly believed to narrow the space for drug trafficking, especially based on data from the National Narcotics Agency, currently Indonesian people who enter the phase of drug dependence almost reach six million people this figure does not include double users both dealers and people who are still trying.

With that number, the level of narcotics use in indonesia is the largest in Asia. Indonesia has been considered a drug emergency, the execution process of the death penalty does not give the effect of trepidation against the bandar or drug smuggling. This is evidenced by the still finding of

convicts with death sentences who carry out Drug Control from behind the decamped cell. In other words, they still dare to control the circulation of drugs from prison, the prison seems to be just a new comfortable post for the drug network so there is no need to worry about being chased or shot dead by law enforcement officers one example of death row convict Freddy Budiman as evidence of the fact that there is still power to control drugs from behind the prison, even though sentenced to death but not yet on the run.

The participation of law enforcers for a country is their involvement in a planning, system, process, of the objectives to be achieved by the government or state. A convict is a person convicted on the basis of a court that obtains a fixed law. The government is an organization that has the authority to make and apply laws and laws in a particular region. And all that is essential is contained in a country in order to create security and peace in keeping the community in it.

The state is an organization or supreme body that has the authority to regulate matters related to the interests of the wider community and has the obligation to prosper, protect and educate the nation.

The law is a very important and fundamental thing regulated in the regulations of a country because it maintains the state's own finances. In the punishment itself is divided into both administrative sanctions, maximum and minimum penajara punishment as well as life and death penalty, depending on the actions committed by the perpetrator of the crime itself. It is either light or severe that has a fixed law. The death penalty for pindana acts that are classified as extraordinary such as narcotics, terrorism, premeditated murder and others whose crimes are extraordinary.

According to Narcotics Law No. 35 of 2009 : Narcotics are substances or drugs derived from plants, both synthetic and semi-synthetic that can cause a decrease or change in consciousness, loss of pain and can cause dependence. The narcotics user is a drug abuser who has experienced dependence on one or more narcotics, psychotropic, and other addictive substances (drugs), both psychologically heavy and light. withdrawal symptoms depend on the type of drug, the dose used, as well as the length of use. In indonesia today, the imposition of criminal sanctions in the form of death penalty by judges for narcotics criminals is one of the policies adopted in the Narcotics Law and cannot be separated from the criminal law norms adopted by the criminal law so far, for example in Article 10 of the Criminal Code.

Another thing in the other world is that there is a significant development of narcotics users by taking depenalization actions against users that aim to replace prison sanctions that are sometimes applied to other criminal sanctions such as Social Work sanctions.

The punishment for narcotics cases is indeed punishable by a high criminal. For example, the Narcotics Law regulates any person who without the right or against the law to plant, maintain, possess, store, control, or provide Narcotics Group one is threatened with imprisonment for a maximum of 20 years and even the death penalty. Meanwhile, for groups II and III are threatened with imprisonment for a maximum of 10 years. "it is in principle that imprisonment is closely related to deprivation of Liberty which can give a malicious stamp and can reduce the degree and dignity of man if a person is sentenced to imprisonment"

Narcotics are a serious threat to the continuity of human development, especially in Indonesia. The threat of punishment for narcotics dealers is very heavy in Indonesia, but why do narcotics dealers never feel afraid and even foreign citizens have been arrested by the police for daring to bring narcotics to Indonesia. While the punishment for narcotics dealers in Indonesia is at least 4 years and a maximum death penalty, the Indonesian national law applies the death penalty and it is regulated in Article 10 of the Criminal Code.

Regulation of criminal sanctions in law no. 35 year 2009 on narcotics and Psychotropic very closely. In this law is also regulated on sanctions for narcotics abuse in order to cause a deterrent effect for the perpetrators of narcotics abuse, regulated on the penal sanctions, carried out based on the group, type, size, and amount of narcotics. Criminal liability for narcotics abuse is not only done by matching the defendant's actions with the elements of offense in the law, but the judge must also rely on the terms of punishment that have also been rigidly determined in the law.

Enactment Of Law No. 35 of 2009 on narcotics, psychotropic types of Group I and Group II as stated in the annex to law no. 5 of 1997 on psychotropic substances has been transferred to Narcotics Group I in law no. 35 of 2009 and annex on types of psychotropic Group I and Group II in law no. 5 of 1997 on psychotropic substances was revoked and declared invalid. Then no less interesting is the discovery of several Article formulations that indirectly try to put the status of the victim to the perpetrators of certain narcotics such as narcotics addicts. Narcotics users who are classified as narcotics abusers of class I basically

qualify as perpetrators of narcotics, but in certain circumstances narcotics addicts will be more domiciled towards the victim.

Indonesian government regulation issued Law no. 35 of 2009 on narcotics has encouraged the government to treat narcotics addicts specifically in order to get rehabilitation sanctions both medical and social as contained in Article 54 of the Narcotics Act, that drug addicts are obliged to undergo medical rehabilitation and social rehabilitation. With another meaning addicts are not placed in penitentiary or prison sanctions. Therefore the availability of medical and social rehabilitation facilities it is a must of the government for victims of narcotics addicts.

METHOD

The research method used in this paper is normative jurisi research method. Normative research requires the implementation of statutory approach and conceptual approach. Data collection techniques used are through the study of documents and literature on secondary data in the form of primary, secondary and tertiary legal materials. The analysis used is descriptive.

RESULTS AND DISCUSSION

A. The Death Penalty For Drug Offenders

Death penalty is the most severe criminal, known in the criminal law system either in Indonesia or other countries in the world. Death penalty has become a matter of pros and cons in accordance with the arguments of each party. Until now the death penalty problem is a problem that has not been solved and become a hot topic to talk about.

Rashid Khairani said: "Do not let the court wrongly establish the criminal, so he tried to fight for the abolition of the death penalty in the criminal law. J.E. Sahetapy said: people are beginning to realize the ugliness rather than the death penalty. The movement against criminal matiini spread to various countries. In 1847 in the state of Michigan the death penalty was abolished. Then in Venezuela in 1849 and in the Netherlands in 1870".

While pro against the death penalty also give their arguments based on the acceptance of the theory of retaliation in terms of punishment. Wirjono Prodjodikoro, in his book *The principles of Criminal Law in Indonesia* stated that the purpose of imposing and carrying out the death penalty is always directed to the public so that they with the threat of the death penalty, will be afraid of committing cruel acts that will result in them being sentenced to death. It is related to this that in ancient times the death penalty was carried out in public.

Criminal law in Indonesia is a legacy of the Dutch colonial government at the time of the establishment of the Criminal Code in 1918 deviated from its own country, and maintained the death penalty in Indonesia for serious crimes. Objection to the death penalty judgment by the general public against death row inmates, which can not be corrected if in the future revealed errors or evidence that turns out to be untrue or erroneous.

Arguments to justify the death penalty are as follows :

- a. More effective than any other kind of punishment, because it has a detrenous effect, in the crime of murder.
- b. More efficient than other penalties.
- c. To prevent public action against the criminal.
- d. The only punishment that can be determined with certainty, because murderers sentenced to life, often get pardons.

Even in the crime of narcotics as in Law No. 35 of 2009 in Article 113, 114, 116, 118, 119, 121, 133 the threat with the death penalty. The execution time of the death row sentence for drug cases in accordance with law no. 35 of 2009 on narcotics article 113, 114, 116, 118, 119, 121, 133. In Indonesia procedures for the execution of the death penalty, set in the Criminal Code, only regulated in Article 11 by R. Soesilo formulated as follows: the execution of the death penalty imposed by the court in the environment of public justice or military justice, carried out by being shot to death, according to the provisions of Law No. 2 (Pnps) of 1964.

Before the provisions of Law No. 2 (PnPs) of 1964, the death penalty was imposed by the executioner of the hanging place, using a noose around the neck of the condemned man and tying the noose to the gallows and dropping the board on which the man stood. The execution of the death penalty before Law No. 2/Pnps / 1964 is to hang the convicted person.

Satochid Kertanegara said bawha : "in the days of the Dutch East Indies it was determined that if the death penalty could not be carried out by a certain Executioner, The punishment must be carried out by shooting in front of the firing squad".

The execution of the death penalty imposed by the court in the environment of General justice or military justice, is carried out by being shot to death. This provision does not detract from the provisions existing in the code of Criminal Procedure on carrying out court decisions. Based on Law No. 35 of 2009 on narcotics, we can learn as follows :

- a. Article 113 paragraph (2) reads : in the case of the act of producing, importing, exporting, or distributing narcotics Group I as meant in Paragraph (1) in the form of plants weighing more than 1 (one) kilogram or exceeding 5 (five) tree trunks or in the form of non-plants weighing more than 5 (five) grams, the perpetrator shall be punished with death penalty, life imprisonment, or imprisonment of at least 5 (five) years and at most 20 (twenty) years and the maximum fine as meant in Paragraph (1) plus 1/3 (one third).
- b. Article 114 paragraph (2) reads in the event of an act of offering for sale, selling, buying, intermediary in the sale and purchase, exchange, handing over, or receiving Narcotics Group I as meant in Paragraph (1) in the form of plants weighing more than 1 (one) kilogram or more than 5 (five) tree trunks or in the form of non-plant weighing 5 (five) , or a minimum imprisonment of 6 (six) years and a maximum of 20 (twenty) years and a maximum fine as referred to in Paragraph (1) plus 1/3 (one third).
- c. Article 116 paragraph (2) reads in the case of the use of narcotics against another person or the provision of narcotics Class I for the use of another person as meant in Paragraph (1) resulting in another person dead or permanently disabled, the perpetrator shall be punished with death penalty, life imprisonment, or imprisonment of at least 5 (five) years and at most 20 (twenty) years and the maximum fine as meant in Paragraph (1) plus 1/3 (one third).
- d. Article 118 paragraph (2) reads in the event of the act of producing, importing, exporting, or distributing Class II narcotics as meant in Paragraph (1) weighing more than 5 (five) grams, the perpetrator shall be punished with death penalty, life imprisonment, or imprisonment of at least 5 (five) years and at most 20 (twenty) years and the maximum fine as meant in Paragraph (1) plus 1/3 (one third).
- e. Article 119 paragraph (2) reads in the event of an act of offering for sale, selling, buying, receiving, intermediary in the sale and purchase, exchange, or handing over narcotics Class II as meant in Paragraph (1) weighing more than 5 (five) grams, the perpetrator shall be punished with death penalty, life imprisonment, or imprisonment of at least 5 (five) years and at most 20 (twenty) years and the maximum fine as meant in Paragraph (1) plus 1/3 (one third).
- f. Article 121 paragraph (2) in the case of the use of narcotics against another person or the provision of Class II narcotics for the use of another person as meant in Paragraph (1) resulting in another person's death or permanent disability, the perpetrator shall be punished with death penalty, life imprisonment, or imprisonment of at least 5 (five) years and at most 20 (twenty) years and the maximum fine as meant in Paragraph (1) plus 1/3 (one third).
- g. Article 133 paragraph (1) Any person who enjoins, gives or promises something, gives an opportunity, advocates, provides convenience, compels with threats, compels with violence, commits a ruse, or persuades a child who is not old enough to commit a criminal act as referred to in Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117, Article 118, Article 119, Article 120, Article 121, article 122, Article 123, Article 124, Article 125, Article 126, and Article 129 shall be punished with death penalty or life imprisonment, or imprisonment of at least 5 (five) years and at most 20 (twenty) years and a fine of at least Rp2, 000, 000, 000.00 (two billion rupiah) and at most Rp20, 000, 000, 000.00 (twenty billion rupiah). Based on article in law 35 of 2009, no paragraph was found that regulates the timing of the execution of the death penalty for convicted narcotics. So many death row inmates who have not been executed.

B. The issue of execution of the death penalty

That the pros and cons in the implementation of the death penalty in Indonesia is still happening, this is because each party still maintains its argument. But what must be considered by law enforcement who carry out the excusi, which is not to let the death row inmates wait for their death execution for years. This will lead to psychological disorders or mental disorders.

Based on the data received that the death row in prison is already 538," said Head of Balitbang Kemenkumham Sri Puguh Budi Utami in a webinar broadcast on ICJRID's Youtube account. Of the 538 convicts, 4 have been awaiting execution for more than 20 years. Furthermore, waiting for the execution time for 16-20 years as many as 16 people, 11-15 years (37 people), 6-10 years (97 people), and 8 months-5 years (204 people).

The problem is the length of time the convicts are waiting for execution, it makes the convict to experience imprisonment and death sentences at the same time. this has a bad effect on the psyche and mentality of death row inmates.

Execution of court decisions that have permanent legal force in the case of death row should be carried out as soon as possible in order to create legal certainty for the community. The execution time of the death row sentence for drug cases in accordance with law no. 35 of 2009 on narcotics article 113,114, 116, 118, 119, 121, 133.

In law 35 of 2009 on narcotics in Article 113, 114, 116, 118, 119, 121 and 133 there is not a single verse that mentions the time for the execution of the death penalty for death row inmates who already have permanent legal force.

CONCLUSION

The reason for those who are pro-death penalty is because of the increase in the quality and quantity of crime from time to time, so that criminals are increasingly mengganas in Ganjar with shock therapy, in the form of capital punishment, especially for heavy criminals who harm people such as narcotics convicts. As for those who counter the death penalty they reason that people can still change for the better and if there is an error in punishing, if it has been executed then the convict does not get a chance to live.

The existence of a time lag that is not specified in Law No. 35 of 2009 on the execution of the death penalty since the death penalty has binding legal force, causing legal uncertainty, making the death row person experiencing psychological disorders or mental disorders because they have to wait for an unclear time.

REFERENCES

_____, *Sistem Pidana Dan Pemidanaan Indonesia Dari Retribusi Ke Reformasi*, Pradnya Paramitha, Jakarta, 1986.

Aksara Baru, Jakarta, 1987.

Hamidi, S Gayo, A Sitompul. (2021). Juridical Analysis on The Procurement Of Goods/Service Of The Government To Realize Good Governance (Research Studies In The Department Of Human Settlement and Layout Batam City). *International Journal Of Research and Review* 8 (11),

Hamzah, Andi, *Hukum Pidana Ekonomi*, Erlangga, Jakarta, 1973

Iswardhani, Nunik, *Masalah Hukum Mati Antara Dua Kutub Yang Tak*

Kartanegara, Satochid, *Hukum Pidana*, Balai Lektur Mahasiswa, TanpaTahun.

Moeljatno, *KUHP (Terjemahan)*, Bina Aksara, Jakarta.

Muladi, & Nawawi Badra, *Teori-Teori dan Kebijakan Pidana*, Alumni, Bandung, 1984. *Pekembangan Masyarakat*, Sinar Baru, Bandung, 1983.

Poernomo, Bambang, *Hukum Paidana Kumpulan Karangan Ilmiah*, BinaAksara, Jakarta, 1982.

Prodjodikoro, Wirjono, *Asas-Asas Hukum Pidana di Indonesia*, Eresco, Bandung, 1986.

Rasyid, Khairani, *Suatu Tinjauan Masalah Pidana Mati dalam Negara Pancasila*, Baladika, Jakarta 1977.

Sahetapy J.E., *Suatu Situasi Khusus Mengenai Ancaman Pidana Mati Terhadap Pembunuhan Berencana*, CV Rajawali, 1982.

Saleh, Roeslan, *Stelsel Pidana Indonesia*,

Shadily, Hassan, *Ensiklopedia Indonesia*,Ikhtiar Baru, Jakarta, 1980.

Sianturi S.R., *Azas-AzasHukum Pidana Indonesia Dan Penerapannya*, Alumn AHAEM-PETAHAEM,Jakarta, 1982.

Soejono D., *Hukum Dan Pembangunan Hukum Pidana*, Tarsito, bandung, 1974.

Sudarto, *Kapita Seleкта Hukum Pidana*, Alumni, Bandung, 1981.

Sugandhi R., *KUHP Dan Penjelasannya*,

Sugandhi R., *KUHP Dan Penjelasannya*,

Tim Penerjemah Badan Pembinaan Hukum Nasional Departemen Kehakiman Republik Indonesia, *KUHP*, Sinar Harapan, Jakarta, 1983.

Tim Penerjemah Badan Pembinaan Hukum Nasional Departemen Kehakiman Republik Indonesia, *KUHP*, Sinar Harapan, Jakarta, 1983.

Ultrect E., *Hukum Pidana I*, Penerbitan Universitas, Jakarta, 1958.

Sitompul, A, P Hasibuan, M Sahnun. (2021). The Morality Of Law Enforcement Agencies (Police, Prosecutor's Office, KPK) In Money Laundering With The Origin Of The Corruption. *European Science Review* 9 (10)

Sitompul, A. (2020). The Criminal Replacement Of Fine In Law Of Money Laundering Number 8

Of 2010 (Case Study In North Sumatera).
International Journal Of Creative Research
Thoughts, 8 (11).

Sitompul,A , & Sitompul, M. N. (2020, February).
The Combination Of Money Laundering Crime
With The Origin Of Narkotics Crime To Islamic
Law. In Proceeding International Seminar of
Islamic Studies (Vol. 1, No. 1).

Copyright holder :

Muhammad Nasir Sitompul, Ariman Sitompul

First publication right :

International Asia Of Law and Money Laundering

This article is licensed under:

