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The Implementation of Death Sentences in the Indonesian Legal System

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This study examined the implementation of the death sentence in the Indonesian legal system. The implementation of capital punishment has sparked mixed reactions with proponents noting its significance in the maintenance of law and order while the opponents cite its violation of the right to life. A normative research design enabled its investigation into the research problem from multiple perspectives. The literature examined included secondary research journals and books published within the past five years. The findings reveal that, while the death penalty has elicited increased opposition across the social scene, the Indonesian legal system still embraces the practice with the primary objective of curbing crimes and protecting the rights of citizens. The key areas upon which the death penalty law has been applied comprise murder and drug trafficking cases, which the government seeks to quell. Opponents on the other hand argue that the implementation of the practice constitutes a violation of inalienable human rights and should be stopped. The study concludes that despite the strong opposition against the implementation of the death penal code, it enables the state to contain crime, and shield the citizens from practices that could have adverse effects.

Key words: *Death sentence, Capital punishment, amnesty laws, human rights, drug trafficking, murder, inalienable rights.*

Introduction

Capital punishment remains a highly contentious issue in Indonesia, eliciting acceptance and opposition in equal measures. The proponents of the law consider it useful in streamlining various issues within the social setting, while the opponents deem it a violation of human rights. Nonetheless, cases such as corruption have been known to befit capital punishment as they



amount to various social vices. Multiple rulings have been used to set precedents on the issue of capital punishment; for instance, in the Constitutional Court (NIK) in 2007, a group of persons were convicted for narcotics cases and sentenced to death (Kramer, 2017). However, upon appeal, the MK pointed out that the capital punishment does not amount to the constitutional violation; the dissenting opinions from the three judges on the other side noted that the capital punishment was unconstitutional because the applicants lacked the legal standing to enable them to make applications.

Despite stating that the death sentence remained constitutional, the Supreme Court in case No. 39 PK/Pid.Sus/2011 held in August 2011 suspended the death sentence and instead awarded the convict, Hanky Gunawan, a 15-year jail term. Relatively, the Supreme Court has in most occasions failed to exercise the death sentence; in a different instance involving Colonel M Irfan Jumroni in case No. 85K/Mil/2006, the martial court had awarded a death sentence due to the murder of his ex-wife (Widodo, 2016). The Supreme Court, however, overturned the decision and handed the Colonel life imprisonment. In the case of Hanky Gunawan, the Supreme Court observed that the primary reason for changing the death sentence to 15 years was the fact that capital punishment violated the Constitution, as stated in article 28, section 1, which protected human rights and considered the case non-derogable (Sander & Lines, 2018). On 5th July 2012, the Supreme Court failed to issue a death sentence to Very Idham H alias Ryan, who was accused of murder. The case was decided by Dr. Artidjo Alkotsar alongside other members without a death sentence, an indication that it is still considered unconstitutional within any social scene (Widodo, 2016). Such aspects limit the knowledge on the suitability of the law and the grounds for justifying the application.

A close examination of the decision made in the Hanky Gunawan case reveals the manner in which the judges had handled initial cases relating to capital punishments. According to the information regarding the history of the judges, at least two of the sitting judges had presided over cases that directly related to the death sentence. In one of the cases, a suspect, Irfan Djumroni, had received a death sentence in 2007 from the Pengadilan Militer Tinggi III Surabaya at first level, which was confirmed by the court-martial Pengadilan Milieter Utama (Kramer, 2017). The decision was, however, appealed and the Supreme Court failed to issue a death sentence, noting that the application should be selective and only cover unusual crimes causing danger to the general population. In the case of the Colonel, the charges included the murder of the ex-wife, and, unfortunately, the magistrate that spiritedly defended the plaintiff failed to meet the criteria for the Supreme Court decisions (Rifai, 2017). Also, one the magistrates presented a dissenting opinion; each of the judges presented distinct ideas, for example, Tan Duc overturned the death sentence to life imprisonment, Hillary K. Chimeze delivered 12-years imprisonment instead of a death sentence, while Meirika Franola preferred a life sentence to the death penalty (Pascoe, 2015). Other judges in history, such as Matthew James, transformed the death sentence into lifetime imprisonment, while the already mentioned



Gunawan lifted the death sentence and issued a 15-year jail term. The above cases depict instances where controversies have arisen over the application of the death sentence.

On a different note, certain cases have exhibited support for the death sentence with only a few dissenting opinions. One such case featured Herri Darmawan who was accused of murder. The court denied the accused appeal, holding that the death sentence befitted the case. During the rejection of the appeal, one of the judges in presenting a dissenting opinion refuted the application of the death sentence in such cases, arguing that it was irrelevant. The remaining judges, however, noted that the death sentence befitted the crimes committed by the accused and that its application fell within the confines of the law (Pascoe, 2015). Thus, the distinction in the application of the death sentence, in this case, presents certain contentions regarding suitability in various court decisions similar to that in the Hanky Gunawan case. The other landmark ruling comprised case No. 38 PK/Pid.Sus/2011 involving Myuran Sukumaran. The accused earned a death sentence after conviction in a narcotic case. The court of cassation aided in the interpretation of the Constitution pertaining to the application of the given case. During the cessation process, the law regarding the death sentence was interpreted in the context of the crime. The court held that the laws relating to the right to life and the ICCPR, as stated in the Constitution, did not permit the application of the sentence (Pascoe, 2019). Based on the above argument, strong evidence suggests that variations exist in the applicable laws relating to a death sentence in Indonesia. The judges in both the Supreme Court and the lower courts seem to exhibit inconsistencies in applying the death sentence. While one portion of the judges consider the law as unconstitutional and not applicable within the contemporary context, the others exhibit support for the law, terming it as befitting the context of the issues raised in the different cases, especially where life is involved (Heriyanto, Setiawan, & Gui, 2016). The presence of such variations in law interpretation not only causes confusion to the public but also to the members of the judicial system, as impartiality seems to loom in the application of the laws (Qc, Harré, Naibaho, Muraszkievicz, & Boister, 2018). This research study illuminates various facts pertaining to the application of the death sentence and further justifies its existence within the social scene. It is envisaged that the outcome of the analysis will provide a clear perspective of the law to enable different parties to apply the legal concept.

Methods

The current research falls under the auspices of legal studies and requires a systematic approach to improve understanding of the legal procedures surrounding the application of the law. The preferred research approach comprises the normative-empirical perspective, which has been used in various legal studies. The approach has been cited for offering a critical and effective approach in research (Standaert, Hanitzsch, & Dedonder, 2019). The selection of the research approach was pegged on various assumptions by the researcher regarding its applicability; the first assumption relates to the application of the death sentence in cases involving non-



derogable rights. On the other hand, the researcher aimed to utilise empirical study methods to examine Indonesian laws and offer insight on the issue.

Aside from the above-selected design, the study integrated other research methods to augment the quality of findings and enable a more critical view of the research problem (Ganguli-Mitra, 2017). The methods comprise analytical, statute, conceptual, and philosophical approaches. The analytical approach provides a basis upon which the various legislations and constitutional provisions were analysed and placed within the right context (Salloch, Wäscher, Vollmann, & Schildmann, 2015; Sander & Lines, 2018). The statute method, on the other hand, aids in the investigation of regulations related to non-derogable rights that in most cases, show certain conflicts with the laws relating to the implementation of the capital punishment clause. The conceptual method elucidates the various themes associated with non-derogable rights (Budiman et al., 2017). The philosophical approach was equally perceived to offer an in-depth perspective of the statutes through a deeper understanding of non-derogable rights as stated in the statute. Through the philosophical approach, a comprehensive and solid understanding of the statute is obtained.

Considering the above materials, it is evident that the researcher comprehensively utilised primary and secondary research data. Based on the above attribute, the primary data will include the statutes directly associated with the concept of a death sentence. The statutes in this context comprise the laws associated with issues such as human rights that directly relate to the concept of capital punishment (Pascoe, 2017). The secondary study materials, on the other hand, include various journals, books, internet materials, and news publications from reputable sources and directly explain the concept of capital punishment. Given the contentious nature of the research problem, it is envisaged that the majority of research will offer multifaceted perspectives, thus enabling the researcher to draw a wide range of conclusions regarding the subject.

The Non-Derogable Rights in Perspective

The term non-derogable rights constitute conditions that cannot be either overturned or suspended even during tragedies. Non-derogable rights ensure the protection of citizens and shield them from any legal exploitation. Over the past few years, Indonesian law has featured statutes such as the International Covenant on Economic, Social and Cultural Rights (EROSOSBUD), and the International Covenant on Civil and Political Rights (SIPOL). The SIPOL covenant emphasises various rights relating to life and freedom. The key statutes covered in this context include slavery, humane treatment, the rights to life, freedom of faith and thinking, among others (Azmi, 2015). The application of the above rights in the civil code ensures the protection of the citizens and enable the implementation of various relevant legal procedures. The SIPOL covenant makes explicit statements regarding individual rights, such



as entitlement to life, which cannot be snatched by any other person whatsoever. Arbitration has further been exhibited not to bear the capacity to form the basis for denying the right to life.

Nations still practicing capital punishment apply the law only in cases where the crimes committed seem serious and exceed the existing legal requirements. Notably, most crimes punishable by death often contradict the provisions made in the Prevention and Criminal Law of Genocide (Azmi, 2015; Budiman et al., 2017). Thus, the rulings of this nature can only occur in cases where the presiding court has absolute authority to preside over the cases. The article lacks provisions, which give legal grounds to any individual to control the legal authorities issued by the right (Rade, Holland, Gregory, & Desmarais, 2017). For instance, persons facing capital punishments have an entitlement to amnesty. The amnesty law provides that the individuals can substitute the death sentence for other options that do not violate human rights. Similarly, legal provisions state that persons below 18 years old or pregnant women cannot undergo execution through the death penalty.

The premises of applying capital punishment tend to differ significantly between countries. The precepts surrounding the use of the law attempts to justify the various means for implementation. The countries facing contentions regarding the legal matters offer solutions to the issues and, in some cases, certain interventions can be used to ensure the fair implementation of the statutes (Zhang, 2017). Thus, countries may lack the capacities to engage in activities that limit the implementation of laws, especially translating the precepts to suit the context of different studies. In cases where the legal restrictions are exercised, the provisions specified in contractual terms are fulfilled (Byrne, 2015). The provisions specifically involve cases where urgency is needed to ensure quick interventions, especially in instances where the security of the nation at stake. The persons charged with the legal responsibilities of interpreting the law can consider the weight of the issues at hand and make sound judgments perceived to befit the scenario. In addition, the restriction of the law cannot be done in cases where there is an apparent case of discrimination pertaining to gender, race, or ethnic differences, among others. The 4th article of the SIPOL covenant provides that during cases of emergencies perceived to exhibit national threats, state obligations can be reduced to ensure adequate measures are put in place and the parties affected are not discriminated against based on gender, race, or ethnic backgrounds (Rifai, 2017). The covenant of EKOSOSBUD constitutes the second set of laws that apply in the individual rights context. The key rights prescribed in this case include the rights to proper working conditions, education, and participation, among others (Purwantoro, 2016). Any limits imposed on the above legislation should be within the country's legal premise.

The two covenants relate to the international bill of rights that has remained binding to different countries over the past years. It would, therefore, be imprudent for nations to fail to offer



adequate protection to the citizens but attempt to fulfil the requirements of the bill of rights. The laws of the country must be prioritised, followed by international law. Further, cases, where the SIPOL rights get fulfilled, may not guarantee the imposition of limitations in the interpretation (Rifai, 2017A). Inalienable human rights directly correlate to non-delegable provisions seeking to ensure the proper application of the limitations. It is noteworthy that human rights are legal in both international and local perspectives. While they may lack strong grounds for applications, they remain relevant to augment overall case outcomes. The history of implementation of human rights reveals that they have been enacted since the 18th century by a team of scholars (Tanjaya, Prasetyo, Muhadar, & Mulyadi, 2017). The rights have been considered inalienable since they emanate from the creator, and no person whatsoever can take away such rights. The advent of human rights emerged during the age of authoritarian governments, where leaders exercised absolute authority over the citizens.

Studies have equally exhibited cases where certain human right groups have engaged in spirited disagreements with countries to ensure the enactment of certain laws. One such instance comprises the case of HAM which stemmed from the increased struggle with the government to make provisions for certain terms. The Universal Declaration leading to the formation of HAM was enacted in 1948 and came with certain provisions that limited the use of capital punishment on criminals. The first provision in the declaration dwelt on the notion that human rights are binding and need to be recognised. The recognition of human rights remains a key factor in any national constitution. International human laws attempt to liberate people from any form of exploitation that would otherwise emanate from inconsistencies or exaggerations from state laws (Siregar, 2015). One of the major factors that most countries take into account includes the belief that internal laws supersede international laws. Whereas both regulations depict a firm basis for maintenance of law and order, certain ambiguities may exist which, if not properly observed, would demean human rights. In certain cases, factors such as gender, race, or ethnicity tend to dictate the extent to which the laws are applied within the social context (Siku, 2016). For instance, the interpreters of the law may consider favouritism to shield certain genders from harm; women may receive preferential treatment compared to men and vice versa. Race and ethnicity, on the other hand, could apply in the context of countries where the laws define strict terms that largely affect members.

The concept of human rights commenced after the French Revolution when bourgeoisie groups colluded with certain church figures to take away people's rights. The cases of collusion and discrimination continued, thereby prompting the people to engage in rebellion to coerce kings into giving in to their demands. In the wake of increased rebellion and conflicts, the then king, John, made a solemn announcement that, indeed, the rights of the people had to be provided. Over the years, other countries, such as the United States, adopted and utilised the term in the legal system. The term human rights have since evolved and developed into various, constitutions causing the countries to implement certain provisions (Kramer, 2017). Given the



rise of human rights, the subject of the death penalty has become an issue of contention within the social scene. The Indonesian government, similar to other states, faces the influence of human rights, which affects the implementation of the death penalty. The legal instruments and bodies take into account the laws and regulations that must be applied to affect the case outcomes. The cases previously addressed revealed the inconsistent application of different laws in cases of the death penalty (Rahmita, 2017). The opponents and proponents seem to present conflicting information about the nature of offenses that befit the application of the death sentence. With increased changes in the social scene, the implementation of the death sentence among civilians contradicts various value systems that have been held among the population groups. Understanding the implementation of international laws and creating awareness of the various legal principles influenced by human rights activities can enable the different legal teams to make sound doctrines.

Results

Indonesian law presents numerous controversies on the death sentence, which is still marred with numerous contentions. The death sentence exists but is surrounded by numerous regulations that govern the implementation of non-derogable rights. The legal system seems to present the capital sentence but with many clauses and sections that seek to minimise the applicability of the law. This section presents the findings on the existence of the death sentence in the Indonesian book of the law. The literature examined reveals multiple perspectives on the death penalty as used in Indonesia over the past years. One of the key findings dwells on the notion that despite the death sentence existing in the Indonesian legal system for many decades, the first-ever execution occurred in 1973 (Widodo, 2017). Some of the key factors that have led to the death sentence include murder, terrorism leading to death, aggravated gang robbery, drug trafficking, treason, drug possession, and certain economic crimes.

Murder remains among the key factors that have led to the death sentence. The case of murder is often considered as going against the inalienable rights given only by the creator. The legal systems upon determination of the cases often seek to unveil instance of premeditated murder. The penal code of Indonesia prescribes death for murder offenses. The law requires the prosecutor to prove beyond a reasonable doubt that indeed, the offense occurred, and the persons be charged according to the law (Leo, 2017). Studies have cited numerous cases of people being convicted of murder charges through capital punishment. Capital punishment has also been administered in cases of terrorism, leading to death (Darmawan & Harkrisnowo, 2018). The penal code of Indonesia requires that persons found to have engaged in a conspiracy to bring terror upon the nation and leading to the death of citizens should be handed capital punishment (Kato, 2016). The premise of the decision centres on the notion that the conspiracy led to the taking away of innocent lives.



Aggravated gang robbery leading to death has also been cited among the cases worthy of the death penalty. Robbery, in this case, constitutes using force or coercion to take away the property of another party. Robbery cases that lead to death have been punished by the death sentence as they take away the inalienable right³ to life that has been handed over to every individual by the creator. A cross-examination of the death penalty conviction in Indonesia also reveals drug trafficking. From a legal perspective, drug trafficking constitutes an engagement in activities leading to the circulation of drugs from within and without the nation (Johnson, 2019). Drugs have become a major threat to the health of many citizens, and at the same time have adverse an impact on the citizens. Notably, the death sentence in Indonesia has often been applied to both foreigners, and residents found to have engaged in such activities. The current Indonesian law offers zero tolerance to drug trafficking, and therefore persons found to have engaged in the same will be accorded heavier sentence²⁰ to prevent any future occurrence of the crimes (Novak, 2016). Up to the recent past, cases of the death sentence due to drug trafficking have become rampant in the Indonesian legal system. Aside from drug trafficking, possession of the same could attract heavier punishments of up to death. The zero-tolerance policy for persons found with drugs spells harsh punishment to the citizens and foreigners found to be in possession of the drugs (Rahmita, 2017). According to the law, even parents covering up for their children dealing with drugs will be considered culpable and subject to the harsh punishments of the law. Treason also attracts the death penalty and constitutes a conspiracy or an attempt to kill¹⁰ the head of state (Bradley, 2019). The penal code requires that such persons be subjected to the death penalty. The head of state, also regarded as the commander in chief of the armed forces constitutes a higher authority, and any threat to his life is considered a threat to the nation.

Considering the existence of the above cases of capital punishment, data on the number of death executions that have occurred over the past years have become scarce. The few findings, however, reveal that as of 2013, about 130 persons had been sentenced to death in Indonesia. Similarly, about 10 persons every year are sentenced to death in Indonesian law courts. The majority of charges leading to the death sentence based on statistics are murder and drug trafficking (Thamrin & Liao, 2018, August). The enactment of laws restricting the use of drugs has made the majority of citizens culpable of the crime. Notably, the majority of prisoners awaiting execution after sentencing tend to spend over 10 years in jail. This accounts for the few executions that have occurred despite having approximately 10 people sentenced to death annually. For instance, statistics show that in 2013 four people were executed since 2008. In January 2015, approximately 6 people were executed for cases related to drugs (Primadianti & Zuhro, 2018). The years 2017 and 2018 did not have any cases of execution; however, the number of inmates on death row has significantly increased.



Controversy Surrounding Death Sentence

The death sentence has been marred with numerous controversies stemming from international laws and agencies on human rights. Despite the existence of the death sentence, certain laws have increasingly contradicted the application of the death sentence and as a result, led to the enactment of many regulations to govern the individual's right to life. The non-derogable rights have been put in place to protect the right to life and further limit the cases of state executions. Despite the numerous controversies surrounding the application of the death penalty, it remains in force and operational since the year 1918 (Santoso, 2016). In defending the existence of the death sentence, proponents of the law stated that certain special circumstances required the application of the death sentence to prevent people from engaging in certain acts. For instance, murder cases often occur, and the innocent die at the hands of criminal (Abdillah, 2017, November). The implementation of the death penalty causes citizens to become weary of such conduct and in the long run, increases safety levels within the social paradigm. Relatively, drug trafficking issues have become increasingly common among the people; given the impacts of harmful drugs on citizens, the nation introduced a zero-tolerance policy for persons found using or trafficking drugs (Arafa, 2016). Cases of this nature have been known to attract harsh penalties, with the majority of the offenders handed death penalties.

The controversy facing the death sentence was also quelled by the argument that the state needed such regulations to enable the execution of legal orders. The argument pointed out that the lack of such punishments would lead to the state not having the proper approaches to handling various issues within the legal system (Nicholson, 2017). Authors of the KUHP strongly believed that the death sentence would prevent citizens from engaging in activities considered a threat to the citizens. The nature of death sentences has been considered to bring about a threatening effect, which causes many people to reform and become responsible citizens (McRae, 2017). Notably, Indonesia has been known as a nation comprising many ethnic groups and therefore, prone to conflicts between the groups (McLeod, 2017). Such perceptions necessitated the enactment of the death sentence on the penal code to ensure that the citizens do not engage in such acts. The death sentence, therefore, remained a key prerequisite in the establishment of law and order within the social system.

Further arguments about death sentence have indicated that its main purpose was to eliminate persons that have proven incapable of rehabilitation. Rehabilitation centres have been used to bring about reforms to the citizens, making them become responsible. Nonetheless, in cases where the criminals exhibit resilience in transforming, capital punishment were put in place to limit the extent of their actions (Hendrianto, 2018). The government holds the mandate for ensuring that law and order prevail among all citizens. Besides, the primary role of the government is to protect its citizens. Given the weight of this role, the government is obligated to establish strict laws that would prevent people from engaging in acts that would deprive



others of their inalienable rights (Yustikaningrum, 2019; Purwantoro, 2016). International communities have passed several laws to limit or lower the impact of the death sentence; however, national laws in most cases, tend to supersede the international laws thereby limiting their applicability in most contexts.

The opponents of the death sentence have equally cited various factors to justify its abolishment within the legal system. One of the prominent leaders that openly opposed the sentence includes Becceria, who argued that the practice of the death sentence sharply went against the social order. According to Becceria, the death sentence took away life, which cannot be taken away legally but only through the natural order (Fleetwood & Seal, 2017). The opponents of the death penalty have peddled the idea that only God has the ultimate authority to take life rather than the state or other people. Aside from Becceria's argument, the death sentence has faced criticism due to the execution of innocent persons. The majority of people executed in most cases tend to be innocent and are only proven as such after their death. The majority of the sentences occur quick and witnesses are not allowed to argue their cases adequately. This has led to increased opposition of the penal code for lesser punishments that can easily be handled by citizens.

Given the above controversies, it is evident that capital punishment in Indonesia remains in force despite the opposition from numerous parties. The data collected above presents perspectives of both the proponents and opponents of the law. While no position is explicitly given in the results concerning the implementation of the death penalty, the literature examined proves that a wave of controversy regarding the legality and constitutionality of the capital punishment is strongly sweeping across the country (Leviza, Sirait, & Devi, 2016). The next section discusses the above results and presents a conclusion on the issue to justify or refute the existence of the death penalty code.

Discussion

The subject of the death penalty in Indonesia has raised numerous contentions over the past years with proponents and opponents of the law presenting different ideas on the issue. The analysis of the literature above proves that despite the heated debate on the legality of the law, the government of Indonesia still practices the death sentence. The statistics regarding the cases of death sentence in the region prove that indeed, the nation still subjects citizens to the death penalty, and the inmates on death row are increasingly rising. In attempting to justify the existence of the law in the Indonesian constitution, this discussion will compare the ideology from the opponents and proponents, alongside the impacts that each could have on the social wellbeing.



The death penalty was established to deal with cases considered to have an extreme impact on the citizens. The cases as established in the literature include murder, drug trafficking, robbery with violence causing death, treason, and economic crimes. In cases of murder, the response to hand the criminals death penalties often stem from the notion of showing the citizens that indeed the government is taking action against people found to cause death to the others (Faiz, 2016). The right to life remains a key element in the penal code, and every individual is entitled to the right of life. Taking such rights away from people compels the state into doing the same to bring about justice (Priyatno, 2017). Instances such as terrorism often result in the murder of many innocent population members, and such cases compel the governments to enact strict measures that would prevent perpetrators from engaging in similar acts (Leviza, Sirait, & Devi, 2016). Propagation of the notion that certain crimes are punishable by death prevents people from plotting to engage in the same. Other crimes such as drug trafficking have equally drawn the punishment of the death sentence. The primary reason for the harsh punishments of drug traffickers stem from the effects of the substance on the population (Handayani & Jainah, 2018). Most drugs include psychotropics and narcotics that brings about addiction and health complications to the citizens (Yustikaningrum, 2019). The notion that such drugs render the population as incapable of being productive and shortening their lives makes the government spell harsh punishments for the offenders. With the majority of the population at risk of suffering the influence of drugs, the death sentence was introduced to prevent perpetrators from engaging in the crimes (Hidayat, 2018). From the findings, the Indonesian government has punished many citizens for engaging in the same.

²
The preliminary analysis of the application of the death sentence revealed that judges in the current legal system in Indonesia are equally conflicted on whether the penal code is applicable. The judges in both consenting and dissenting opinions expressed differences and attribute the factors to certain human rights issues as influencing their opinions. The majority of the consenting judges cited factors such as the right to life as influencing their decision to issue capital punishment. Besides, the judges stated that their objective was to prevent people from engaging in similar acts in the future. The dissenting judges, on the other hand, referred to factors such as the sacredness of life and the strong opposition from human rights groups (Sina, 2016). Furthermore, the opponents of the deaths sentence consider it to have led to the prosecution of innocent people. The literature analysed above has revealed that certain cases involving the death sentence were rushed and the investigations were not properly conducted. As a result, innocent persons were convicted and executed, only to be found innocent later. Such instances have compelled human rights groups to gang up against the penal code and establish spirited fights against the government to abolish the law.

Support for the implementation of the death sentence penal code is overwhelming despite the gross opposition from various legal agencies. The laws supporting the crime gives the state authority to execute persons found to be a threat to the wellbeing of other groups of people



(Arifin & Melenia, 2019). The number one priority of the law in every nation centres on protecting the citizens and minimising any threat within national boundaries (Emmers, 2017). The majority of cases concerning the death penalty target the improvement of civilian wellbeing. For instance, in cases involving drug trafficking, the nation established that the majority of citizens would adversely suffer if the perpetrators of drug trafficking activities are permitted to continue their trade (Adhijoso & Gusti, 2016; Mullins, 2015). The drugs have been perceived to cause mental disorders, which in the long run, culminates in serious health complications (Handayani, Prasetyo, Seregig, & Tegan, 2018). Besides, the overall quality of life by the population is increasingly diminished. In light of the above challenges, the government has insistently pushed for the implementation of the death sentence to ensure that law and order is maintained.

The opponents, on the other hand, have considered the death penalty a gross violation of the human rights code. The laws protecting human rights are international in scope, and mostly advocate for simple alternatives to the death sentence. The activists supporting the human rights law have constantly condemned the government for failing to protect the citizens they have a mandate over (Prahassacitta, 2016). The implementation of international human rights has, however faced the challenge of states prioritising their laws over internal regulations. Therefore, in Indonesia, the judges tend to first examine the laws of the country before examining the demands of international law.

Conclusion

Based on the above arguments, it is evident that various facets of the legal system support the existence of the death sentence in Indonesia. The country in a bid to maintain laws and order has accepted capital punishment to prevent people from engaging in crimes, especially those in violation of human rights. The framers of the constitution considered human rights as absolutely important and something that should be protected. Besides, the inalienable rights of every citizen should form the utmost priority for any state to restore peace and harmony. Notably, the death sentence law affects crimes such as murder, drug trafficking, and treason, which in most cases pose significant levels of threat to the population (Primadianti & Zuhro, 2018). The country, therefore, has the absolute responsibility to protect its members from any harm resulting in the breach of the laws. Considering the arguments from both the proponents and the opponents, it is evident that the social and legal framework shields the implementation of the death penalty. Although reforms have been proposed to ensure that alternative punishments are granted to the offenders, the death penalty remains as the most effective approach to prevent the propagation of certain social behaviours.



Recommendations

Considering the above outcomes, certain recommendations can be made regarding the implementation of the death sentence in Indonesia. They are listed below:

- First, the primary mandate of ³the government is to protect the rights and interests of the citizens; the key rationale of the death sentence is to prevent perpetrators from engaging in activities that extremely violates the rights of the citizens. Capital punishment should be upheld, and the public educated on the factors that could lead to punishments of that nature.
- Secondly, international amnesty seems not to have any significant impact on human rights activities. The Indonesian legal system should establish clauses that would make certain provisions during trials on cases likely to attract the death penalty.



REFERENCES

- Abdillah, M. (2017, November). Islam and human rights: Theoretical and practical framework in Indonesia. In *1st International Conference of Law and Justice-Good Governance and Human Rights in Muslim Countries: Experiences and Challenges (ICLJ 2017)*. Atlantis Press. <https://doi.org/10.2991/iclj-17.2018.15>
- Adhijoso, B. D., & Gusti, M. D. (2016). Indonesia's war on drugs: Due process of law in capital punishment for drug Traffickers in Indonesia. *ALSA*, 189. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/alsacdmj4&div=21&id=&page=>
- Arafa, M. A. (2016). Insights on divine (Islamic) law: Islamophobia versus terrorism, death penalty, and transitional justice. *CALUMET: Intercultural Law & Humanities Review (Law & Religion, ISSN 2465-0145 (Online))*. doi:10.4172/2169-0170.1000186
- Arifin, R., & Melenia, A. (2019). Penal policy of capital punishment for narcotics crime in Indonesia (a study of law and human rights). *Jurnal Pembaharuan Hukum*, 6(1), 109-110. <http://jurnal.unissula.ac.id/index.php/PH/article/view/3944>
- Azmi, A. (2015). Indonesia's death penalty execution from the realist view of international law. *Humanus*, 14(1), 9-16. DOI: 10.24036/jh.v14i1.5396
- Bradley, S. (2019). Political audiences and the abolition of capital punishment in the Asia Pacific. *Asia-Pacific Journal on Human Rights and the Law*, 20(1), 1-59. <https://doi.org/10.1163/15718158-02001001>
- Budiman, A. A., Kamilah, A. G., Napitupulu, E. A., Rahmawati, M., Eddyono, S. W., Dirga, S., ... & No, J. S. I. (2017). Overcoming the execution in limbo: Review on the death penalty policy in Indonesia in 2017. *Institute for Criminal Justice Reform*. http://icjr.or.id/data/wp-content/uploads/2017/11/Overcoming-the-Execution-in-Limbo_6.11.17.pdf
- Byrne, P. J. (2015). International affairs: Advancing Indonesia should abolish death penalty. *News Weekly*, (2947), 7. <https://doi.org/10.1086/599200>
- Cook, E. (2018). State of the death penalty in Southeast Asia. *Eureka Street*, 28(22), 13.



- Darmawan, I., & Harkrisnowo, H. (2018). Review of the principles of the criminal law on the ancient archipelago law book: The study of the Book of Kutara Manawa Darma Sastra of the Majapahit Kingdom and the Laws on Simbur Tjahaja of the Sultanate of Palembang in the context of criminal law development and condemnation in Indonesia. In *Law and Justice in a Globalized World* (Vol. 229, No. 234, pp. 229-234). Routledge in association with GSE Research. <https://www.oopen.org/download?type=document&docid=638610#page=241>
- Emmers, R. (2017). Securitizing small arms and drug trafficking in Indonesia. In *Non-Traditional Security in Asia* (pp. 105-123). Routledge. <https://www.taylorfrancis.com/books/e/9781315247878/chapters/10.4324/9781315247878-13>
- Faiz, P. M. (2016). The Protection of civil and political rights by the Constitutional Court of Indonesia. *Indon. L. Rev.*, 6, 158. DOI : <http://dx.doi.org/10.15742/ilrev.v6n2.230>
- Fleetwood, J., & Seal, L. (2017). Women, drugs and the death penalty: Framing Sandiford. *The Howard Journal of Crime and Justice*, 56(3), 358-381. <https://doi.org/10.1111/hojo.12215>
- Ganguli-Mitra, A. (2017). Empirical bioethics: Theoretical and practical perspectives. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/scripted14&div=8&id=&page=>
- Handayani, G. A. K. R., Prasetyo, T., Seregig, K., & Tegnan, H. (2018). Retributive justice theory and the application of the principle of sentencing proportionality in Indonesia. *Journal of Legal, Ethical and Regulatory Issues*, 21(4), 1-8. <https://www.abacademies.org/articles/Retributive-justice-theory-and-the-application-of-the-principle-of-sentencing-proportionality-in-Indonesia-1544-0044-21-4-240.pdf>
- Handayani, I. G. A. K. R., & Jainah, Z. O. (2018). Death Pplty for drugs dealers and traffickers from the perspective of Islamic law. *AL-'ADALAH*, 15(1), 17-36. <https://doi.org/10.24042/adalah.v15i1.2657>
- Hendrianto, S. (2018). *Law and politics of constitutional courts: Indonesia and the search for judicial heroes*. Routledge. <https://doi.org/10.4324/9781315100043>
- Heriyanto, N., Setiawan, D., & Gui, H. (2016). Death Penalty Legislation in China and Indonesia Under International Human Rights Law Perspective. *Ius Quia Iustum Law Journal*, 23(4), 576-592. DOI: [10.20885/iustum.vol23.iss4.art3](https://doi.org/10.20885/iustum.vol23.iss4.art3)



- Hidayat, M. (2018). Juridical review of decriminalization on efforts to cut drugs users' addiction in Indonesia. *YURISDIKSI: Jurnal Wacana Hukum dan Sains*, 11(2), 1-12. <http://www.yurisdiksi.org/index.php/yurisdiksi/article/view/8>
- Johnson, D. T. (2019). A factful perspective on capital punishment. *Journal of Human Rights Practice*. <https://doi.org/10.1093/jhuman/huz018>
- Kato, H. (2016). Philanthropic aspects of Islam: The case of the fundamentalist movement in Indonesia. *Comparative Civilizations Review*, 74(74), 8. <https://scholarsarchive.byu.edu/cgi/viewcontent.cgi?article=1987&context=ccr>
- Kramer, E. (2017). Reflections on academic activism against the death penalty for drug traffickers in Indonesia. *Critical Asian Studies*, 49(3), 451-454. <https://doi.org/10.1080/14672715.2017.1339454>
- Leo, R. P. (2017). Trigger factors of nonlegitimized discretion practices in the criminal law enforcement by police department in Indonesia. *JL Pol'y & Globalization*, 65, 114. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/jawpglob65&div=18&id=&page=>
- Leviza, J., Sirait, N. N., & Devi, T. K. (2016). Legal instruments for the protection of migrant workers by ASEAN and Indonesia national law. *Proceedings of AICS-Social Sciences*, 6, 390-394. <http://www.jurnal.unsyiah.ac.id/AICS-Social/article/view/10803/8507>
- McLeod, F. (2017). Human rights: Ambassadors for abolition: Ending the death penalty in our region. *LSJ: Law Society of NSW Journal*, (31), 80. doi:10.1177/00220094020370040501.
- McRae, D. (2017). Indonesian capital punishment in comparative perspective. *Bijdragen tot de taal-, land-en volkenkunde/Journal of the Humanities and Social Sciences of Southeast Asia*, 173(1), 1-22. <https://doi.org/10.1163/22134379-17301002>
- Mullins, M. (2015). Accommodating Indonesia's capital punishment barbarism. *Eureka Street*, 25(1), 40. <https://search.informit.com.au/documentSummary;dn=223432088772807;res=IELAPA>
- Nicholson, P. (2017). *The death penalty and its reduction in Asia: An overview*. Asian Law Centre, Melbourne Law School, University of Melbourne. https://law.unimelb.edu.au/_data/assets/pdf_file/0010/2675386/Nicholson-EN_final.pdf



- Novak, A. (2016). The role of legal advocates in transnational judicial dialogue: The abolition of the mandatory death penalty and the evolution of international law. *Cardozo J. Int'l & Comp. L.*, 25, 179.
<https://heinonline.org/HOL/LandingPage?handle=hein.journals/cjic25&div=12&id=&page=>
- Pascoe, D. (2015). Three coming legal challenges to Indonesia's death penalty regime. *Indon. J. Int'l & Comp. L.*, 2, 239.
<https://heinonline.org/HOL/LandingPage?handle=hein.journals/indjic2&div=18&id=&page=>
- Pascoe, D. (2017). Drugs law and legal practice in Southeast Asia: Indonesia, Singapore and Vietnam.
<https://heinonline.org/HOL/LandingPage?handle=hein.journals/meljil18&div=12&id=&page=>
- Pascoe, D. (2019). *Last chance for life: Clemency in Southeast Asian death penalty cases*. Oxford: Oxford University Press.
- Prahassacitta, V. (2016). The concept of extraordinary crime in Indonesia legal system: Is the concept an effective criminal policy? *Humaniora*, 7(4), 513-521.
<https://journal.binus.ac.id/index.php/Humaniora/article/view/3604/2984>
- Primadianti, H., & Zuhro, F. (2018). a gap between right to live protection and death penalty in indonesia (judge's decision on cases threatened death penalty). In *SHS Web of Conferences* (Vol. 54, p. 02005). EDP Sciences.
<https://doi.org/10.1051/shsconf/20185402005>
- Priyatno, D. (2017). The alternative model of corporate criminal sanction management in Indonesia. *Journal of Legal, Ethical and Regulatory Issues*.
<https://www.abacademies.org/articles/the-alternative-model-of-corporate-criminal-sanction-management-in-indonesia-6769.html>
- Purwanto, K. F. (2016). Regulation capital punishment criminal acts of terrorism based on law number 15 of 2003 and Islamic law. *JL Pol'y & Globalization*, 52, 51.
<https://heinonline.org/HOL/LandingPage?handle=hein.journals/jawpglob52&div=8&id=&page=>
- Qc, F. G., Harré, T., Naibaho, N., Muraszkievicz, J., & Boister, N. (2018). Is the law an ass when it comes to mules? How Indonesia can lead a new global approach to treating drug traffickers as human trafficked victims. *Asian Journal of International Law*, 8(1), 166-188. DOI: <https://doi.org/10.1017/S2044251316000230>



- Rade, C. B., Holland, A. M., Gregory, J. B., & Desmarais, S. L. (2017). Systematic review of religious affiliations and beliefs as correlates of public attitudes toward capital punishment. *Criminal Justice Studies*, 30(1), 63-85.
<https://doi.org/10.1080/1478601X.2016.1248962>
- Rahmita, F. (2017). Capital punishment for drugs trafficking in southeast Asia: A violation of human rights law? *JATI-Journal of Southeast Asian Studies*, 22(1), 158-169.
<https://doi.org/10.22452/jati.vol22no1.11>
- Reckless, W. C. (2017). The use of the death penalty: A factual statement. In *Capital Punishment* (pp. 38-62). Routledge.
<https://www.taylorfrancis.com/books/e/9781315081809/chapters/10.4324/9781315081809-4>
- Rifai, A. (2017). Pro cons the existence of death penalty in corruption act of 1999 in Indonesia. *The 2nd Proceeding "Indonesia Clean of Corruption in 2020"*.
<http://jurnal.unissula.ac.id/index.php/the2ndproceeding/article/view/1154/890>
- Rifai, E. (2017). An analysis of the death penalty in Indonesia criminal law. *Sriwijaya Law Review*, 1, 191-200.
DOI: <http://dx.doi.org/10.28946/slrev.Vol1.Iss2.44.pp191-200>
- Rifai, E. (2017A). An analysis of the death penalty in Indonesia criminal law. *Sriwijaya Law Review*, 1, 191-200. <https://media.neliti.com/media/publications/181731-EN-an-analysis-of-the-death-penalty-in-indo.pdf>
- Salloch, S., Wäscher, S., Vollmann, J., & Schildmann, J. (2015). The normative background of empirical-ethical research: First steps towards a transparent and reasoned approach in the selection of an ethical theory. *BMC medical ethics*, 16(1), 20.
<https://bmcmmedethics.biomedcentral.com/articles/10.1186/s12910-015-0016-x>
- Sander, G., & Lines, R. (2018). The death penalty for drug offences: Pulling back the curtain to expose a flawed regime. In *Collapse of the Global Order on Drugs: From UNGASS 2016 to Review 2019* (pp. 49-63). Bingley: Emerald Publishing Limited.
<https://doi.org/10.1108/978-1-78756-487-920181002>
- Santoso, M. I. (2016). The pros and cons of the death penalty for the drug abuse in Indonesia. *JL Pol'y & Globalization*, 55, 43. doi: 10.1163/22134379-17301002



- Siku, A. S. (2016). Implementation of death penalty in Indonesia on human rights' perspective. *JL Pol'y & Globalization*, 50, 13.
<https://heinonline.org/HOL/LandingPage?handle=hein.journals/jawpglob50&div=4&id=&page=>
- Sina, L. (2016). Implementation of the death penalty in the perspective of human rights in Indonesia. *Hasanuddin Law Review*, 2(3), 385-397.
DOI: <http://dx.doi.org/10.20956/halrev.v2i3.695>
- Siregar, F. E. (2015). Indonesia constitutional court interpretation methodology (2003-2008). *Constitutional Review, published by Constitutional Court of the Republic of Indonesia, Forthcoming*. <http://dx.doi.org/10.2139/ssrn.2647192>
- Standaert, O., Hanitzsch, T., & Dedonder, J. (2019). In their own words: A normative-empirical approach to journalistic roles around the world. *Journalism*, <https://doi.org/10.1177/1464884919853183>
- Sumarno, S. (2018). Juridical review of the imposition of additional penalties for perpetrators of corruption in Indonesia. *The 4th International and Call for Paper*, 1(1).
<http://jurnal.unissula.ac.id/index.php/pdih4/article/view/3519/2551>
- Suryawan, I. (2017). Death penalty in constitutional dimensions and human rights in Indonesia. doi: 10.1163/22134379-17301002
- Tanjaya, W., Prasetyo, T., Muhadar, M., & Mulyadi, L. (2017). The legal certainty of execution of the death penalty in Indonesian criminal justice system. *The Southeast Asia Law Journal*, 1(1), 33-44. <https://www.neliti.com/publications/233632/the-legal-certainty-of-execution-of-the-death-penalty-in-indonesian-criminal-jus>
- Thamrin, H., & Liao, Y. M. (2018, August). Drug-related crimes and control in Indonesia and Taiwan: Cooperation regarding narcotics smuggling prevention and countermeasures from the point of view of international law. In *International Conference on Knowledge Management in Organizations* (pp. 312-323). Springer, Cham.
<https://doi.org/10.1108/13639510610684674>
- Widodo, I. G. (2016). Controversy over death sentence in Indonesian legal system (Human Rights Perspective). *The Social Sciences*, 11(5), 557-561.
<http://docsdrive.com/pdfs/medwelljournals/sscience/2016/557-561.pdf>



- Widodo. (2017). Suspension of the death penalty execution to anticipate adverse effect of miscarriage of justice in Indonesia. *JL Pol'y & Globalization*, 63, 46. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/jawpglob63&div=6&id=&page=>
- Yustikaningrum, R. Y. (2019). Death penalty in Indonesia: What and why? Is it not against universal human right principle? *Challenges of the Knowledge Society*, 825-830. <https://search.proquest.com/openview/b7263590414dba48ee0831ddfdc8b08a/1?pq-origsite=gscholar&cbl=2036059>
- Yustikaningrum, R. Y. (2019). DEATH PENALTY IN INDONESIA: WHAT AND WHY? IS IT NOT AGAINST UNIVERSAL HUMAN RIGHT PRINCIPLE? *Challenges of the Knowledge Society*, 825-830. <https://search.proquest.com/openview/b7263590414dba48ee0831ddfdc8b08a/1?pq-origsite=gscholar&cbl=2036059>
- Zhang, Y. (2017). Reconsidering the legitimacy of capital punishment in the interpretation of the human right to life in the two traditional approaches. *World Academy of Science, Engineering and Technology, International Journal of Social, Behavioral, Educational, Economic, Business and Industrial Engineering*, 11(3), 529-540. <https://pdfs.semanticscholar.org/31a1/120997697e7c23268921b70f9e83a1527d19.pdf>

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