

**Review Article****THE EFFECTIVENESS OF THE THREAT OF THE DEATH PENALTY FOR PERSONS OF THE CRIME OF MURDER IN INDONESIA FROM A LEGAL AND HUMAN RIGHTS PERSPECTIVE;**¹ Maria Krispina Haloho, ²Muhammad Yusuf, ³Wahyu Simon TampubolonEmail : ¹. Mariakrispinahaloho@gmail.com, ². yusufsiregarshimh@gmail.com,
³. wahyu.tampubolon@yahoo.com**Article History**

Received: 29.01.2024

Accepted: 16.02.2024

Published: 30.02.2024

Journal homepage:<https://jurnalarjunajusticia.com/index.php/ijeck>**Abstract:**

The aim of the research is to determine the regulations regarding the death penalty that apply in Indonesia and the effectiveness of the threat of the death penalty for perpetrators of the crime of murder in Indonesia from a human rights perspective. Until now, the death penalty carried out in Indonesia is no longer visible, we can see this from the case of Ferdy Sambo, former Head of the Propam Division of the National Police Headquarters who was accused of the premeditated murder of his subordinate, Novriansyah Yosua Hutabarat or Brigadier J. In accordance with the decision The district court panel of judges imposed the death sentence, but on cassation, the death penalty was reduced to life imprisonment. This research uses Normative Law research. Discussion Results: first, the regulation of death crimes in Indonesia. Death penalties in Indonesia are regulated based on article 10 of the Criminal Code in conjunction with article 11. Article 10 of the Criminal Code states that there are 2 types of criminal acts, namely basic crimes and additional crimes. The main punishment consists of: death penalty, prison sentence, imprisonment and fine. Meanwhile, additional punishment consists of: Revocation of certain rights, confiscation of certain items and announcement of the judge's decision. Furthermore, Article 11 of the Criminal Code states: "The death penalty is carried out by the executioner at the hanging place by tying the rope tied to the gallows around the neck of the convict and then dropping the board on which the convict is standing." The procedures for carrying out the death penalty are regulated in Law no. 2/PnPs/1964. Updates in the Criminal Code (KUHP) Number 1 of 2023 concerning the latest Criminal Code which regulates a probation period of 10 years, if during the 10 year probation period the convict shows a good and commendable attitude then the sentence can be reduced to life imprisonment, however If the convict shows the opposite attitude, the death sentence will still be carried out. secondly, the threat of the death penalty for perpetrators of the crime of murder in Indonesia from a human rights perspective does not work effectively, considering that the death penalty is considered a cruel and inhuman punishment because it is contrary to human rights, namely the right to live longer. The right to life is clearly guaranteed in the 1945 Constitution Article 28A paragraph (1).

Keywords: *Efektifitas, Threat of Punishment, Death Penalty, Perpetrators, Crime of Murder, Human Rights.*

Hak Cipta © 2023 Penulis: This is an open access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC BY-NC 4.0) which permits unrestricted use, distribution, and reproduction in any media;

INTRODUCTION

The crime of murder is a crime that involves taking the life of another person. The maximum penalty given to perpetrators of murder is the death penalty. In Indonesia, the death penalty for perpetrators of murder still seems selective. However, if we examine it more deeply, taking another person's life through murder is a violation of human rights as well. Because life is a person's right, and death is God's right.

In fact, the definition of a criminal act is not found in the laws and regulations in Indonesia. Several definitions of criminal acts were born from the thoughts of legal experts in Indonesia. Experts put forward their theories regarding the definition of criminal acts. Criminal action is a translation of the word "Strafbaar Feit". Criminal acts can be interpreted as part of a reality that can be punished.¹ Wirjono Prodjodikoro gave the term "criminal incident" substantively, referring more to an event that can be caused by human actions or natural phenomena.²

Law enforcement is a real effort to uphold the function of legal norms in national and state life. Likewise, the application of sanctions is considered a real form of law enforcement. The application of legal sanctions must prioritize humanity with an attitude of mutual respect for the dignity of one's life as a human being. The relationship between the death penalty and human rights is very close, because the imposition of the death penalty is related to violations of human rights. The application of the death penalty against perpetrators of the crime of murder needs to be reviewed again, the death penalty is considered to eliminate or violate human rights to continue living life. By implementing the death penalty, the convict is deemed to lose his power to live. So, if we examine how the convict who, because of his actions, killed another person, did not receive a punishment commensurate with his actions. Murder victims actually also want to live, so the justification for convicts to get lighter sentences is inversely proportional to what they actually have to be responsible for.

Article 1 of Law Number 39 of 1999 concerning Human Rights, provides limitations regarding "Human Rights as a set of rights that are inherent in the nature and existence of humans as a set of rights that are inherent in the essence and existence of humans as creatures of God Almighty and are His gift. which must be respected, upheld and protected by the state, law, government and every person for the sake of honor and protection of human dignity."

The existence of the death penalty as a crime of deprivation of life has generated controversy among society. There are those who refuse but there are also those who accept. Is it necessary to continue applying the death penalty, or is it even better to abolish it? The real reason for rejecting the death penalty is usually humanitarian reasons. Because in essence the death penalty is a crime to take power over someone's life. However, although many countries oppose the imposition of the death penalty for convicts, these countries have not abolished the imposition of the death penalty. This means that some people assume that the death penalty is a violation of human rights, but on the other hand, the death penalty is a form of enforcement of human rights. The aim of this research is to determine the regulations regarding the death penalty that apply in Indonesia and the effectiveness of the threat of the death penalty for perpetrators of the crime of murder in Indonesia from a human rights perspective.

¹ P.A.F. Lamintang, Dasar-Dasar Hukum Pidana Indonesia, PT. Citra Aditya Bakti, Bandung, 1997, hlm. 181.

² Wirjono Prodjodikoro, Asas-Asas Hukum Pidana di Indonesia, Refika Aditama, Bandung, 2003, hlm. 33.

FORMULATION OF THE PROBLEM

The formulation of the problem related to this research is:

- 1) What are the regulations regarding the death penalty in Indonesia?
- 2) How effective is the threat of the death penalty for perpetrators of the crime of murder in Indonesia from a human rights perspective?

RESEARCH METHODS

Legal research is a process of discovering applicable legal rules, legal principles, and legal doctrines in order to answer the legal issues being faced. This research uses Normative Law research. Normative research is research that uses secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials, with systematic identification of applicable legal norms.

RESULTS AND DISCUSSION

1. Regulations regarding Death Crimes applicable in Indonesia;

The death penalty in Indonesia is regulated based on article 10 of the Criminal Code in conjunction with article 11. The death penalty in Indonesia is one of the main crimes which is still valid and maintained by the Indonesian Criminal Law. Article 10 of the Criminal Code states that there are 2 types of criminal acts, namely basic crimes and additional crimes. The main punishment consists of: death penalty, prison sentence, imprisonment and fine. Meanwhile, additional punishment consists of: Revocation of certain rights, confiscation of certain items and announcement of the judge's decision. Furthermore, Article 11 of the Criminal Code states: "The death penalty is carried out by the executioner at the hanging place by tying the rope tied to the gallows around the neck of the convict and then dropping the board on which the convict is standing." The procedures for carrying out the death penalty are regulated in Law no. 2/PnPs/1964 which is still in effect today.

The application of the death penalty in Indonesia is contained in the Criminal Code (KUHP). Apart from the Criminal Code, there are several laws and regulations that regulate the threat of the death penalty, including: Anti-Terrorism Law, Narcotics Law, Psychotropics Law, Corruption Eradication Law and others.

The new Criminal Code contained in Law Number 1 of 2023, starting in 2026, regulates the death penalty with an alternative threat, namely life imprisonment or a maximum prison sentence of 20 years as a last resort to prevent criminal acts and protect the community. The death penalty can only be carried out if the request for clemency is rejected by the President. The death penalty is imposed by the judge with a probation period of 10 years, taking into account: a. the defendant feels remorse and there is hope to improve himself; or, b. the defendant's role in the crime. Furthermore, the death penalty with probation must still be included in the court decision. During the 10 year probation period, if the convict shows a good and commendable attitude, the death penalty can be changed to life imprisonment. However, if the convict does not show good behavior within the 10 year probation period, the death penalty will still be carried out in accordance with applicable laws and regulations..

Pasal 4 Perkapolri Nomor 12 Tahun 2010 mengatur tentang tata cara pelaksanaan pidana mati dengan tahapan antara lain:

Article 4 of the Chief of Police Regulation Number 12 of 2010 regulates the procedures for implementing the death penalty with stages including:

1. Preparation;

Article 5 paragraphs 1-3 states that: "Preparations as referred to in Article 4 letter a are carried out after a written request from the Prosecutor's Office to the Regional Police Chief, in accordance with the jurisdiction of the court that handed down the decision; After receiving the written request as intended in paragraph (1), the Regional Police Chief orders the Head of the Regional Mobile Brigade Unit (Kasat Brimobda) to prepare the execution of the death penalty; "In the case of determining the time and place for the execution of the death penalty outside the jurisdiction of the court that handed down the decision, the Regional Police Chief and the local Prosecutor's Office coordinate with the Regional Police Chief and the Prosecutor's Office where the death penalty is carried out."

2. Organizing;

Article 7 paragraphs 1-2 states that: "The organization as intended in Article 4 letter b in the implementation of the death penalty consists of: a. firing squad; and b. support squad; "The shooting team and support team as intended in paragraph (1) come from members of the National Police Mobile Brigade.

3. Pelaksanaan;

4. Article 15 Implementation as intended in Article 4 letter c includes the following activities: a. the convict is given clean, simple and white clothes before being taken to the place or location where the death penalty is carried out; b. When being taken to the place or location where the death penalty is carried out, the convict may be accompanied by a clergyman; c. the support team is ready at the designated place, 2 (two) hours before the time of execution of the death penalty; d. the firing squad is ready at the location where the death penalty is carried out, 1 (one) hour before the execution and gathers in the preparation area; e. squad 8 e. the shooting team sets the position and places 12 (twelve) long-barreled firearms in front of the position of the death penalty execution pole at a distance of 5 (five) meters to 10 (ten) meters and returns to the preparation area; f. The Executive Commander reports the readiness of his team to the Executive Prosecutor with the words "REPORT, DEATH CRIME IMPLEMENTATION READY"; g. The Executing Attorney conducts a final examination of the death row inmates and the weapons used to carry out the death penalty; h. after the examination is complete, the Executing Attorney returns to the original place and orders the Executive Commander with the words "EXECUTE" then the Executive Commander repeats with the words "EXECUTE"; i. The Executive Commander ordered the Gunnery Team Commander to load ammunition and lock the weapons into 12 (twelve) long-barreled firearms with 3 (three) live bullets and 9 (nine) hollow bullets, each firearm containing 1 (one)) bullet points, witnessed by the Executing Attorney; j. The Executing Prosecutor orders the Commander of Team 2 with his team members to bring the convict to the shooting position and remove the handcuffs and then tie the convict's hands and feet to the pillar supporting the execution of the death penalty in a standing, sitting or kneeling position, unless otherwise determined by the Prosecutor; k. the convict is given a final opportunity to calm down for a maximum of 3 (three) minutes accompanied by a clergyman; l. Team 2 Commander covers the convict's eyes with a black cloth, unless the convict refuses; m. The doctor put a black mark on the convict's shirt right at the position of the heart as a shooting target, then the Doctor and Team 2 distanced themselves from the convict; n.

The Commander of Team 2 reported to the Executing Attorney that the convict was ready to be sentenced to death; o. The Executing Prosecutor gives a sign/signal to the Executing Commander to immediately carry out the shooting of the convict; p. The Executive Commander gives a sign/signal to the shooting team commander to bring the shooting team into position and take up weapons with the weapon in front of the weapon and facing the direction of the convict; q. The Executive Commander takes his place at the right front of the firing squad facing obliquely to the left of the firing squad; and take a rest position in place; at the moment the Executive Commander takes the perfect stance, the firing squad takes an upward salvo stance; s. The Executive Commander drew his sword as a signal for the firing squad to aim at the convict's heart; t. The Acting Commander raises the sword forward at chin level as a signal to the Firing Team to unlock the weapons; u. The Executive Commander jerks his sword down in a sword salute position as a signal to the firing squad to fire simultaneously; v. after the shooting is finished, the Executive Commander sheathes the sword as a signal to the firing team to take a stance at the front of the weapon; w. The Executive Commander, the Executing Attorney, and the Doctor examine the condition of the convict and if according to the Doctor that the convict still shows signs of life, the Executing Attorney orders the Executive Commander to carry out the final shooting; x. The Executive Commander ordered the firing squad commander to carry out the final shot by placing the tip of the handgun barrel against the convict's temple just above the ear; y. This final shooting can be repeated, if according to the doctor there are still signs of life; z. The execution of the death penalty is declared complete if the doctor states that there are no more signs of life in the convict; a. After completing the shooting, the firing squad commander orders his members to remove the magazine and empty their weapons; and bb. The Executing Commander reported the results of the shooting to the Executing Attorney with the words "Implementation of the Death Penalty is Completed".

5. Pengakhiran.

Article 18 Termination as intended in Article 4 letter d is carried out with the following activities: a. after the execution of the death penalty is completed, the Executing Commander orders the Shooting Team Commander to take the shooting team out of the shooting location for consolidation; b. The Executing Prosecutor ordered the Commander of Team 2 and his team members to carry and escort the body along with the medical team to the hospital and escort the body until the burial process; c. Team 1 collects tools and equipment used for carrying out the death penalty and cleans the shooting location; and D. All squads carry out consolidation led by their respective squad commanders.

2. The effectiveness of the threat of the death penalty for perpetrators of criminal acts of murder in Indonesia from a human rights perspective

We can see the normative definition of human rights in Indonesia in Article 1 point 1 of the Human Rights Law which reads: "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 and upheld. and protected by the state, law, government and everyone for the sake of

honor and protection of human dignity.”³ Human rights according to this article mean basic human rights which are a gift from God Almighty, are natural rights, and therefore human rights cannot be revoked by other human beings, fellow living creatures.⁴

Article 1 of the Universal Declaration of Human Rights (“UDHR”) states: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” The definition of human rights is also regulated in the preamble/consideration of the International Covenant on Civil and Political Rights (ICCPR) which has been ratified in Indonesia Law 12/2005, namely “... these rights derive from the inherent dignity of the human person” which means these rights (Human rights) originate from the inherent or inherent dignity of human beings.⁵

The UDHR Declaration is the first element of International Human Rights Legislation which indicates international opinion that agrees to respect each other's human rights when the country is bound by membership.

Article 3 of the UDHR states that: "Everyone has the right to livelihood, liberty and personal safety." The application of the death penalty in Indonesia can be classified as a form of punishment that is very cruel and inhumane. Thus, the death penalty in Indonesia is a violation of the Universal Declaration of Human Rights.

However, Article 3 of the UDHR according to the author still has weaknesses, because carrying out the death penalty in Indonesia has certain reasons behind it, if the death penalty is intended to violate a person's human rights, then what about the perpetrators of criminal acts who intentionally or unintentionally , both take away other people's lives in which there is a human right to life, so this is very unfortunate because there is no balanced justice.

The death penalty in Indonesia has only occurred a few times in Indonesia. According to data compiled by Amnesty International, during the January-December 2021 period there were at least 114 people sentenced to death in Indonesia. Of this number, 94 death sentences were handed down to narcotics crime defendants, 14 murder defendants and 6 terrorism defendants. Meanwhile, for the 2023 case which was going viral at that time, it was Ferdy Sambo, former Head of the Propam Division at National Police Headquarters who was accused of the premeditated murder of his subordinate, Novriansyah Yosua Hutabarat or Brigadier J. Who was initially sentenced to death, but in the end he was submitted His appeal was granted, and in the end the death penalty was not carried out, Ferdy Sambo even received a reduced sentence to life imprisonment. In fact, in the decision at the South Jakarta District Court, chaired by the Panel of Judges Wahyu Iman Santoso, it was stated that Ferdy Sambo was legally proven to be the mastermind behind the murder of Brigadier J. In the case of the criminal act of murder committed by Ferdy Sambo, it was deemed that there was no justification or excuse that could be justified. resulted in Ferdy Sambo's sentence being reduced. However, in reality, the Supreme Court in Ferdy Sambo's cassation reduced the sentence from the death penalty to life imprisonment. On the other hand, Amnesty International opposes the death penalty for all types of crimes. Cruel and inhumane punishment is considered unable to reduce crime rates and even provide a deterrent effect on criminals.

So, the conclusion is that the death penalty for perpetrators of criminal acts of murder in Indonesia from a human rights perspective is not effective at this time. This is because the death penalty which has previously been carried out in Indonesia is no longer carried out for several cases that have occurred in all regions in Indonesia against perpetrators of criminal acts of murder. This is because the death penalty is cruel and inhumane behavior and violates human

³<https://www.hukumonline.com/klinik/a/pengertian-ham-menurut-para-ahli-hukum-nasional-dan-internasional-lt6331716e60d8d> diakses pada tanggal 21 Desember 2023 pukul 15.30 wib.

⁴ Firdaus Arifin, 2019, Hak Asasi Manusia: Teori, Perkembangan dan Pengaturan, Yogyakarta: Thafa Media. hlm.3

⁵ Firdaus Arifin, Op.cit

rights to survive, and the 1945 Constitution guarantees this in Article 28A paragraph (1) which clearly states that: "Everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law."

CONCLUSION

Regulations regarding death crimes in Indonesia The death penalty in Indonesia is regulated based on article 10 of the Criminal Code in conjunction with article 11. Article 10 of the Criminal Code states that there are 2 types of criminal acts, namely basic crimes and additional crimes. The main punishment consists of: death penalty, prison sentence, imprisonment and fine. Meanwhile, additional punishment consists of: Revocation of certain rights, confiscation of certain items and announcement of the judge's decision. Furthermore, Article 11 of the Criminal Code states: "The death penalty is carried out by the executioner at the hanging place by tying the rope tied to the gallows around the neck of the convict and then dropping the board on which the convict is standing." The procedures for carrying out the death penalty are regulated in Law no. 2/PnPs/1964. Updates in the Criminal Code (KUHP) Number 1 of 2023 concerning the latest Criminal Code which regulates a probation period of 10 years, if during the 10 year probation period the convict shows a good and commendable attitude then the sentence can be reduced to life imprisonment, however If the convict shows the opposite attitude, the death sentence will still be carried out. From a human rights perspective, the death penalty for perpetrators of the crime of murder in Indonesia does not work effectively, considering that the death penalty is considered a cruel and inhuman punishment because it violates human rights, namely the right to live longer. The right to life is clearly guaranteed in the 1945 Constitution Article 28A paragraph (1).

BIBLIOGRAPHY

A. BOOKS ;

Eko Riyadi, 2018, Hukum Hak Asasi Manusia: Perspektif Internasional, Regional dan Nasional, Depok: PT RajaGrafindo Persada.

Firdaus Arifin, 2019, Hak Asasi Manusia: Teori, Perkembangan dan Pengaturan, Yogyakarta: Thafa Media.

Moeljatno, 2009, Kitab Undang-Undang Hukum Pidana (KUHP), Jakarta: Bina Aksara

P.A.F. Lamintang, 1997, Dasar-Dasar Hukum Pidana Indonesia, PT. Citra Aditya Bakti, Bandung.

Wirjono Prodjodikoro, 2003, Asas-Asas Hukum Pidana di Indonesia, Refika Aditama, Bandung.

Undang-undang Dasar Republik Indonesia tahun 1945

Kitab Undang-Undang Hukup Pidana (KUHP)

Undang-undang Nomor 1 Tahun 2023 Tentang KUHP

Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia

<https://www.hukumonline.com/klinik/a/pengertian-ham-menurut-para-ahli-hukum-nasional-dan-internasional-lt6331716e60d8d> diakses pada tanggal 21 Desember 2023 pukul 15.30 wib.

<https://databoks.katadata.co.id/datapublish/2023/02/13/berapa-banyak-orang-yang-divonis-hukuman-mati-di-indonesia> diakses pada tanggal 21 Desember 2023 pada pukul 16.16 wib.