

The Effectiveness of Death Penalty as an Effort to Counter Serious Crimes: A Literature Review

Ach. Safi'e Ferdinandta, Rio Saputra, Didi Darmawan

Universitas Sunan Giri Surabaya

Email: dr.diditdarmawan@gmail.com

ABSTRACT – This study aims to explore the effectiveness of the death penalty as a legal instrument in tackling serious crimes in Indonesia, including corruption, narcotics, and terrorism. The literature review shows that the death penalty has potential as a deterrence tool, but its effectiveness is often affected by inconsistencies in law enforcement, lack of transparency in the judicial process, and criticism from a human rights perspective. On the other hand, public support for the death penalty reflects the desire for strict law enforcement. This study recommends regulatory revisions, strengthening judicial transparency, and penal alternatives as steps to improve the effectiveness of the death penalty in Indonesia's criminal law system.

Keywords: death penalty, effectiveness, serious crimes, drugs, corruption, judicial transparency, human rights.

A. INTRODUCTION

The death penalty as one of the criminal sanctions has long been debated in various countries, including Indonesia. The application of this punishment poses a dilemma between the need to provide a deterrent effect against serious crimes and the commitment to respect for human rights. In serious crimes such as narcotics, terrorism, and corruption, the death penalty is often considered an extreme measure needed to overcome the widespread impact of these criminal acts. For example, drug trafficking cases in Indonesia continue to increase, with destructive effects on society that cannot be ignored (Sumanto, 2017). The imposition of the death penalty for drug traffickers aims to provide a significant deterrent effect.

Corruption as an extraordinary crime has also led to the discourse on the application of the death penalty. As a country with a relatively low corruption perception index, Indonesia faces great challenges to eradicate this crime. Some argue that the death penalty can be a powerful

instrument to reduce the level of corruption in the public sector (Devi & Rotanza, 2023).

However, the implementation of the death penalty is often criticized from a human rights perspective. International organizations such as Amnesty International state that the death penalty is contrary to the universal principle of respect for the right to life. Istighfar et al. (2017) Serikat (2017) argued that the death penalty is still a contradiction in countries that recognize human rights as a pillar of their national law.

In Indonesia, regulations regarding the death penalty are contained in several laws, including Law Number 35 Year 2009 concerning Narcotics and Law Number 31 Year 1999 concerning Eradication of Corruption. However, the implementation of this penalty is often seen as inconsistent. Several major cases of corruption have not been accompanied by the application of the death penalty even though it has been regulated in the regulations.

In a global perspective, research by Donohue III and Wolfers (2009) found that the death penalty does not always correlate with a decrease in crime rates. On the contrary, several countries that have abolished the death penalty actually show a significant decrease in the crime rate. This shows that the effectiveness of the death penalty as an effort to prevent serious crimes is still a topic that requires further research.

The debate on the death penalty also includes ethical, political, and sociological issues. Ethically, there are those who question the morality of the state taking the lives of its citizens. Politically, the death penalty is often used as a tool to show the government's firmness to deal with serious crimes, but its long-term effects on the legal system are often questioned (Pattimahu et al., 2024). Sociologically, the effect of the death penalty on the family of the convicted person and the wider community is a concern.

In the Indonesian criminal law framework, the death penalty is seen as the last resort (ultimum remedium). However, this concept is often not accompanied by a clear monitoring mechanism for the application of the death penalty. Ridwan and Subroto (2022) underline that the development of death row inmates in correctional institutions is still far from the expected standard.

In the midst of these various debates, the effectiveness of the death penalty as a legal instrument remains a relevant issue for further research. Therefore, this literature review aims to explore in depth the effectiveness of the death penalty to tackle serious crimes, with a focus on the scope of Indonesia.

This research offers a new perspective by analyzing the effectiveness of the death penalty through a multi-dimensional approach, which includes legal, social, and ethical aspects, as well as comparing Indonesia's practice with other countries that have similar regulations. This research aims to evaluate the effectiveness of the death penalty as a legal instrument to prevent serious crimes in Indonesia and identify the main challenges and strategies to optimize its implementation.

B. METHOD

This research uses a normative juridical approach that focuses on analyzing laws and regulations, court decisions, and legal literature related to the application of the death penalty in Indonesia. This research was conducted using the literature study method to identify, evaluate, and analyze the effectiveness of the death penalty to tackle serious crimes. The type of research used is descriptive-analytical. This research aims to describe in detail the implementation of the death penalty in Indonesia and analyze its effectiveness through theoretical and empirical approaches based on relevant literature sources.

The data used in this research is secondary data, including legal documents such as laws, government regulations, court decisions, and various academic literature. Data sources are obtained from legal journals, books, scientific articles, and reports of international organizations related to the death penalty. Data collection was conducted through document studies and electronic literature searches using trusted legal databases.

The validity of the data in this research is guaranteed through source triangulation techniques. Data obtained from various sources were compared to ensure consistency and validity of information. Critical analysis of regulations and legal literature was conducted to ensure the relevance and accuracy of the data used.

The data was analyzed using a qualitative method with a descriptive-analytical approach. The analysis process involved three main steps: data organization, data interpretation through criminal law theory, and synthesis of findings to answer the problem formulation. This technique aims to provide a comprehensive overview of the effectiveness of the death penalty in the Indonesian legal system as well as the implications of its application.

The regulations used as the basis for this research include Law Number 35 Year 2009 concerning Narcotics, Law Number 31 Year 1999 concerning Eradication of Corruption, as well as various international conventions relevant to the application of the death penalty. This research also examines comparisons with regulations in other countries as material for evaluating the legal system in Indonesia.

C. RESULTS AND DISCUSSION

The death penalty in Indonesia has become a legal instrument used to tackle various serious crimes, including narcotics offenses, corruption, and terrorism. Law Number 35 Year 2009 on Narcotics provides for the death penalty for perpetrators of large-scale narcotics trafficking. This policy is expected to have a deterrent effect on the perpetrators and prevent massive drug trafficking. However, according to Sumanto (2017), although the death penalty has been imposed, the number of drug trafficking cases continues to increase. This raises questions regarding the extent to which the effectiveness of this punishment to achieve prevention objectives.

The effectiveness of the death penalty to tackle serious crimes can also be seen from its use in corruption crimes. Law Number 31 Year 1999 on the Eradication of Corruption allows the death penalty for perpetrators of corruption committed under certain conditions, such as national disasters. Major cases such as social assistance corruption revealed during the COVID-19 pandemic were not accompanied by the application of the death penalty. Falevi et al. (2023) highlighted that the imposition of the death penalty is often influenced by political factors and is less consistent in its implementation.

Empirical studies show that the deterrent effect of the death penalty is not always significant. The Donohue III and Wolfers (2009) study revealed that the death penalty does not have a direct relationship with a decrease in the crime rate in countries that apply it. In Indonesia, research by Pattimahu et al. (2024) confirmed that inconsistent law enforcement reduces the effectiveness of the death penalty as a preventive instrument.

The social effects of the death penalty are an important issue. Ridwan and Subroto (2022) highlighted that the guidance of death row prisoners in correctional institutions is often inadequate. This not only impacts on the rights of convicts, but also reflects the weakness of the justice system to provide fair treatment for those facing the death penalty.

From a human rights perspective, the death penalty is often seen as contrary to the basic principles of the right to life. Yolanda (2022) argues that although the death penalty is legally valid, its application must still consider humanitarian aspects and the principle of proportionality. In this regard, many criticisms point to the lack of transparency in the judicial process for defendants facing the death penalty.

Opposition to the death penalty has also emerged from various international organizations. Amnesty International, for example, has long stated that the death penalty is not in line with international norms on human rights. However, on the other hand, support for the death penalty is still strong among Indonesians, especially in cases of serious crimes such as drug trafficking and corruption. Devi and Rotanza (2023) argued that the death penalty is often considered an effective way to show the government's assertiveness.

A major challenge in the application of the death penalty in Indonesia is the lack of consistency in law enforcement. Research by Sihombing and Ismaidar (2023) shows that the decision to impose the death penalty often depends on the subjective interpretation of the judge, which can lead to legal uncertainty. Political factors and public pressure also often influence the judicial process.

Another challenge is the lack of international standards in death penalty execution procedures. Wahid (2022) highlights that many countries, including Indonesia, do not yet have a clear mechanism to ensure that the death

penalty is applied fairly and non-discriminately. This is further exacerbated by the lack of access of convicts to adequate legal assistance.

To optimize the application of the death penalty, strategic steps are needed that involve revising regulations and increasing the capacity of the judicial system. One of the proposed measures is to ensure that the death penalty is only imposed in cases that truly meet the criteria of extraordinary crimes. Cahyani et al. (2023) underline the importance of a selective approach in the application of the death penalty to reduce the risk of legal error.

Transparency in the judicial process is a crucial aspect in realizing a fair and accountable justice system. Jagadhita and Winatha (2024) emphasized the importance of external oversight of the judicial process, particularly in cases involving the death penalty. This opinion is in line with the basic principles of judicial power stipulated in Law Number 48 of 2009 concerning Judicial Power.

Statute 2 Clause (4) of Law Number 48 Year 2009 states that the judiciary shall be conducted in a simple, speedy and low cost. This principle can be realized through increased transparency of the judicial process. As stated by Rosadi and Pratama (2018), judicial transparency is not only a public need, but also a need for all members of the judiciary. Through transparency, accountability, professionalism and integrity in the judicial system will be strengthened.

External oversight of the judicial process, especially in cases involving the death penalty, is very important given the final and irreversible nature of the decision. This is in line with the opinion of Suharto (2015) who emphasized that accountability must be able to encourage the creation of good decisions, carried out according to the law, with transparent and fair decision-making methods. The involvement of civil society in monitoring the judicial process is a manifestation of the principle of public participation in law enforcement. As stated by Warzuk et al. (2024), public participation can increase legitimacy and public trust in the justice system. However, this involvement must be done carefully to maintain a balance between transparency and judicial independence.

With the death penalty, external oversight becomes even more crucial. Ali et al. (2024) assert that death penalty decisions must be

based on strong evidence and fair legal considerations. External oversight can help ensure that these principles are consistently applied at every stage of the judicial process.

The implementation of transparency and external oversight in the Indonesian justice system still faces various challenges. Yani and Djanggih (2023) identified several barriers, including resistance from some law enforcement officials and limited infrastructure. However, efforts to improve transparency continue, one of which is through the implementation of an e-court system that allows greater public access to judicial information.

Increased transparency in the judicial process and the involvement of external oversight, including from civil society, are important steps in realizing a fair and accountable justice system in Indonesia. This is in line with the principles set out in the Judicial Power Law and can contribute to increased public confidence in the justice system, particularly in cases involving the death penalty.

Restorative approaches can also be considered as an alternative in dealing with serious crimes. Although the death penalty remains a last resort, the application of more rehabilitation-oriented sanctions can help reduce the social impact of serious crimes. This initiative has been implemented in several countries with quite positive results, such as a decrease in the recidivism rate among serious offenders.

In Indonesia, the strategy to optimize the death penalty must take into account local and international dimensions. Kurniawan (2024) proposed that the Indonesian government adopt a hybrid approach that combines national legal principles with international standards to ensure that the death penalty remains relevant in the modern legal system.

D. CONCLUSIONS

The death penalty as a form of criminal sanction in Indonesia aims to tackle serious crimes, such as narcotics trafficking, corruption, and terrorism. However, the effectiveness of this punishment is still being debated. From this study, it can be concluded that the death penalty has potential as an instrument of deterrence, but its application is often characterized by various challenges, including inconsistencies in law enforcement, weak transparency, and criticism from a human rights perspective.

The main challenges in the application of the death penalty are the lack of consistent standards to determine which crimes deserve the death penalty, as well as the influence of political factors and public pressure in the judicial process. Nevertheless, the death penalty continues to gain public support as a symbol of firmness to deal with extraordinary crimes.

To increase the effectiveness of the death penalty, several strategic steps need to be taken. First, regulations related to the death penalty must be revised to ensure that it is only applied to extraordinary crimes that truly meet the criteria. Second, the judicial process must be carried out with greater transparency, including the involvement of civil society in oversight. Third, other sentencing alternatives, such as rehabilitation or life imprisonment, can be considered to replace the death penalty in certain cases, in order to balance legal and humanitarian interests.

The government also needs to raise public awareness and support further research into the social and legal impacts of the death penalty, so that policies taken can be based on scientific evidence and fulfill the principles of justice. This strategy is expected to provide a more comprehensive and sustainable solution in Indonesia's criminal justice system.

REFERENCES

Ali, M. K. I., M. Maulina, A. M. Nurrahman, T. A. Ahmad, & L. Angrayni. 2024. Efektivitas dan Tantangan Pelaksanaan Restoratif Justice dalam Komponen Sistem Peradilan Pidana Indonesia. JIMMI: Jurnal Ilmiah Mahasiswa Multidisiplin, 1(3), 309.

Cahyani, G. T., S. B. Sholehah, D. N. Salsabillah, M. A. Ramandhana, R. A. Pratama, & H. Antoni. 2023. Hukum Pidana Mati di Indonesia Berdasarkan Perspektif Hak Asasi Manusia dan Alternatif Penegakan Hukum. Al-Qisth Law Review, 7(1), 167-184.

Devi, R. P. C. & Y. Rotanza. 2023. Efektivitas Ancaman Pidana Mati bagi Pelaku Tindak Pidana Korupsi di Indonesia dari Sudut Padang Hukum, HAM, dan Psikologi. Kertha Wicaksana, 17(2), 147-155.

Donohue III, J. J. & J. Wolfers. 2009. Estimating the Impact of the Death Penalty on Murder. American Law and Economics Review, 11(2), 249-309.

Falevi, Y., M. A. Zain, N. G. Bhaswara, M. Rafli, & A. S. Putra. 2023. Implikasi Penjatuhan Hukuman Mati Terhadap Pelaku Tindak Pidana Korupsi di Indonesia. *Jurnal Hukum, Politik dan Ilmu Sosial*, 2(3), 105-113.

Fanny, F., T. E. Kumala, & G. M. Saragih. 2023. Analisis Hukuman Mati Sebagai Pencegahan Tindak Pidana Korupsi Berdasarkan Prespektif Efektivitas Hukum. *Jurnal Pendidikan dan Konseling (JPDK)*, 5(2), 4881-4894.

Istighfar, W. A., N. Serikat, & Pujiyono. 2017. Efektivitas Pidana Mati Bagi Pelaku Tindak Pidana Narkotika dalam Praktek Pemidanaan di Indonesia ditinjau dari Sudut Hak Asasi Manusia. *Diponegoro Law Journal*, 6(2), 1-18.

Jagadhita, I. K. S. & I. G. M. Y. Winatha. (2024). Pidana Penjara Seumur Hidup Sebagai Alternatif Pidana Mati dalam Perspektif Penologi. *Kultura: Jurnal Ilmu Hukum, Sosial, dan Humaniora*, 2(10), 286-290.

Kurniawan, A. 2024. Pengedar Narkotika Sebagai Pelaku Tindak Pidana diberikan Sanksi Pidana Mati. *Indonesian Journal of Law*, 1(2), 21-59.

Lestari, S. 2022. Analisis Hukuman Mati Sebagai Pencegahan Tindak Pidana Korupsi Berdasarkan Prespektif Efektivitas Hukum. *Jurnal Pendidikan dan Konseling*, 4(31), 1349-1358.

Pattimahu, S. F., A. D. Putri, M. Kurniasih, A. O. Prajatantri, M. T. Setiyorini, M. T., N. C. Supriantoro, & N. S. Najmitha. 2024. Analisis Pidana Mati Terhadap Korupsi Dana dalam Keadaan Darurat. *Jurnal Anti Korupsi*, 4(1), 36-49.

Republik Indonesia. 1999. Undang-undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi. Lembaran Negara Tahun 1999 Nomor 140. Sekretariat Negara, Jakarta.

Republik Indonesia. 2009. Undang-undang Nomor 35 Tahun 2009 tentang Narkotika. Lembaran Negara Tahun 2009 Nomor 143. Sekretariat Negara, Jakarta.

Republik Indonesia. 2009. Undang-undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman. Lembaran Negara Tahun 2009 Nomor 157. Sekretariat Negara, Jakarta.

Ridwan, M. & M. Subroto. 2022. Pembinaan Terpidana Hukuman Mati di Lapas Perempuan Nusantara. *Jurnal Ilmu Pengetahuan Sosial*, 9(4), 1124-1129.

Rinaldi, K. & R. Tutrianto. 2023. Polemik Pengendalian Sosial, Kejahatan dan Hukuman Mati (Studi pada Diskursus Pemberlakuan Penghukuman Mati terhadap Pengedar Narkotika di Indonesia). *Jurnal Pembangunan Hukum Indonesia*, 5(3), 523-536.

Rosadi, S. D. & G. A. Pratama. 2018. Perlindungan Privasi dan Data Pribadi dalam Era Ekonomi Digital di Indonesia. *Veritas et Justitia*, 4(1), 88-110.

Sihombing, Y. M. & I. Ismaidar. 2023. Politik Hukum dalam Penegakan Hukuman Mati Terhadap Pelaku Peredaran Narkotika di Indonesia. *Innovative: Journal Of Social Science Research*, 3(6), 9810-9820.

Suharto, G. R. 2015. Restorative Justice Peradilan Pidana Anak di Indonesia. *Lex Crimen*, 4(1), 35-45.

Sumanto, A. 2017. Efektifitas Pidana Mati dalam Proses Penegakan Hukum Tindak Pidana Narkotika. *Perspektif: Kajian Masalah Hukum Dan Pembangunan*, 22(1), 21-31.

Wahid, A. 2022. Design of The Death Penalty as a Legal Instrument for Combating Corruption Crimes. *Legal Brief*, 11(2), 628-640.

Warzuk, D. Suprijatna, & M. Aminulloh. 2024. Penerapan Restorative Justice dalam Sistem Hukum Pidana Indonesia. *Karimah Tauhid*, 3(3), 3512-3536.

Yani, R. & H. Djanggih. 2023. Efektivitas Penerapan Restorative Justice dalam Tindak Pidana Ringan. *Journal of Lex Philosophy (JLP)*, 4(2), 314-332.

Yolanda, A. 2022. Analisa Mengenai Pidana Mati Terhadap Pelaku Tindak Pidana Narkotika dalam Persepektif Hukum dan Hak Asasi Manusia. *Dissertasi*, Universitas Kristen Indonesia.