

The Death Penalty in Legal Literature: A Study of Indonesian Law and International Human Rights

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Abstract: The use of the death penalty in criminal law to achieve the aims of criminal law has sparked much controversy among criminal law professionals. The advantages and disadvantages of adopting death punishment to meet the aims of criminal law, such as providing a sense of security, justice, and so on. In the hierarchy of rules and regulations in Indonesia, the 1945 Constitution is the highest source of legislation. Article 28 (a) of the Indonesian constitution guarantees the right to life and provides that everyone has the right to survive and defend his or her life and existence. As a result, the right to life is a constitutional guarantee. Thus the right to life is a constitutional right. The United Nations also issued a guide entitled Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty through UN Economic and Social Council Resolution 1984/50, dated 25 May 1984. This guide clarifies discussions on the practice of the death penalty under the International Covenant on Civil and Political Rights.

Keywords: *Death penalty, Laws and Regulations, International Human Rights*

Abstrak: Mempersoalkan hukuman mati dalam hukum pidana sebagai sarana mencapai tujuan dari hukum pidana itu sendiri telah banyak menimbulkan perdebatan antar sesama ahli hukum pidana. Pro dan kontra terhadap penggunaan sarana pidana mati sebagai sarana untuk mencapai tujuan hukum pidana, yaitu memberikan rasa aman memberikan keadilan dan sebagainya. Undang-Undang Dasar 1945 adalah sumber hukum tertinggi dalam tata urutan Peraturan Perundang-undangan di Indonesia. Konstitusi Indonesia mengatur ketentuan tentang hak hidup, pasal 28 (a) konstitusi Indonesia melindungi hak hidup dan menyatakan bahwa setiap orang berhak untuk hidup serta mempertahankan hidup dan kehidupannya. Dengan demikian hak hidup merupakan hak konstitusional. PBB juga mengeluarkan sebuah panduan berjudul jaminan perlindungan bagi mereka yang menghadapi hukuman mati (Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty) melalui Resolusi Dewan Ekonomi Sosial PBB 1984/50, tertanggal 25 Mei 1984. Panduan ini memperjelas pembahasan praktik hukuman mati menurut Kovenan Internasional Hak-Hak Sipil dan Politik

Kata Kunci: *Hukuman mati, Peraturan Perundang-Undangan, Hak Asasi Manusia Internasional*

Introduction

Death penalty is a type of punishment in the old age of human life and the most controversial of all criminal systems, both in countries that adhere to the common law system and in countries that adhere to civil law. Questioning the death penalty in criminal law as a means of achieving the goals of criminal law itself has generated a lot of debate among criminal experts.¹ Among them there are those who are against, there are those who are pro against the use of capital punishment as a means to achieve the goals of criminal law, namely to provide a sense of security, provide justice and so on.²

In Indonesian criminal law, the use of the death penalty is felt to be very effective in preventing crimes that can be classified as serious crimes.³ This can be seen from the national Criminal Code which still places the death penalty as the main punishment. In addition, there are also regulations on criminal law outside the Criminal Code that still place the death penalty as a sanction for violations committed.⁴

In history, the practice of the death penalty in Indonesia was enforced when Indonesia was still called the Dutch East Indies.⁵ At that time, the codification of criminal law had been enacted in the form of *Wetboek van Strafrecht voor Inlanders* (Indonesia) or *WvSlnl* on January 1, 1873.⁶ Then due to a new development, namely the birth of the first codification of criminal law in the Netherlands, the *WvSlnl* was then adapted to carry out the unification of

criminal law in all parts of Indonesia.⁷ So that in 1915 the *Wetboek van Strafrecht voor Indoensie*, (*WvSI*) was invited and it came into effect on January 1, 1918. Unlike the Netherlands, in the Dutch East Indies the *WvSI* still included the death penalty. In the Netherlands itself in 1870, three years before *WvSlnl* came into effect in the Dutch East Indies, the death penalty was abolished.⁸ The death penalty was maintained in the Dutch East Indies because it was seen as an emergency law as an application of punishment that was considered the most severe by the colonial government. These serious crimes against the death penalty in the Dutch East Indies were limited to crimes of state security, murder, theft and extortion by weighting, robbery, piracy of coastal and river beaches.⁹

Several criminal acts classified as extraordinary crimes, among others, terrorism, narcotics, corruption, and illegal logging were deemed deserving of the death penalty. Not only because the *modus operandi* of the crime was highly organized, but the widespread and systematic negative access became the point of pressure that the public felt the most. In Islam, it is known as what is said *kisas*. *Kisas* is giving the same treatment to criminals as he does to victims. *Kisas* is set against the perpetrator of the murder. The basis for the validity of this story is based on the word of God in *surah al-Baqarah* verse 178, and other explanations in the same letter verse 179.¹⁰

This verse shows that Allah determines

¹ Ali Imron, "Filsafat Politik Hukum Pidana," *Tribakti: Jurnal Pemikiran Keislaman* 25, no. 2 (2014): 119–230.

² Slamet Tri Wahyudi, "Problematisa Penerapan Pidana Mati Dalam Konteks Penegakan Hukum Di Indonesia," *Jurnal Hukum Dan Peradilan* 1, no. 2 (2012): 207–34.

³ Rosa Kumalasari, "Kebijakan Pidana Mati Dalam Perspektif HAM," *Jurnal Untidar* 2, no. 1 (2018).

⁴ Supriyadi Widodo Eddyono et al., *Hukuman Mati Dalam R KUHP: Jalan Tengah Yang Meragukan* (Institute for Criminal Justice Reform, 2015).

⁵ DARI MASA K E MASA, "HUKUMAN MATI DI INDONESIA," n.d.

⁶ Dede Kania, "Cita Politik Hukum Pidana Mati Di Indonesia," *Jurnal Ilmu Hukum* 5, no. 2 (2014): 137–48.

⁷ Eddyono et al., *Hukuman Mati Dalam R KUHP: Jalan Tengah Yang Meragukan*.

⁸ MASA, "HUKUMAN MATI DI INDONESIA."

⁹ Saharuddin Daming, "Konfigurasi Pertarungan Abolisionisme Versus Retensionisme Dalam Diskursus Keberadaan Lembaga Pidana Mati Di Tingkat Global Dan Nasional," *Yustisi* 3, no. 1 (2016): 37.

¹⁰ Zikri Darussamin, "Qisas Dalam Islam Dan Relevansinya Dengan Masa Kini," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 48, no. 1 (2014).

that the death penalty is an appropriate punishment for the crime of murder because of the impact of the murder. However, there are several conditions for this qisas, ¹¹:

1. The perpetrator is amukallaf, that is, he is old and wise
2. The murder was committed on purpose
3. There is no doubt about the intentional element in this fulfillment.
4. The perpetrator of the murder was committed voluntarily, without coercion from others.

In the event of a murder involving the perpetrator and the victim who are related by heredity, the kisas cannot be enforced. Regarding this kisas, there are many differences of opinion among Islamic religious leaders themselves, including regarding how to implement kisas. The first opinion says that kisas can only be done with a sword or gun. Regardless of the murder that had been committed using a sword or not. The second opinion says that the kisas was carried out in accordance with the method and tools used by the killer when he committed the murder. However, there is an agreement among Islamic religious experts that if there are other tools that can kill the convict more quickly, then they may be used, so that the suffering and pain felt by the convict is not too long.¹²

For law enforcers in Islam there is a principle "it is better to forgive than to wrongly punish".¹³ This principle shows that Islam is very careful in imposing punishments, especially the death penalty. If someone admits the mistakes he has made and sincerely repents, then based on the letter al-Maidah verse 34, he will be forgiven for his actions by Allah. Islamic law enforcers are also guided by this verse in enforcing Islamic law. In this case, if a criminal commits

himself and then admits his actions and repents, it should be a consideration for law enforcers in the sentencing process.¹⁴ Departing from the several studies above, the author considers it appropriate to then discuss the issue of death penalty in Indonesia in the literature on Indonesian legislation and international human rights.

Literature Review

Examination of No Norms from the Perspective of Legislation.

The 1945 Constitution is the highest source of law in the order of legislation in Indonesia. The Indonesian constitution adheres to provisions regarding the right to life article 28 a of the Indonesian constitution protects the right to life and states that "everyone has the right to live and has the right to defend his life and existence". Thus the right to life is a constitutional right. The Indonesian Constitution states that the right to life is a right that cannot be reduced under any circumstances (non-derogable rights).¹⁵ Article 28 paragraph 1 states that the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to have a religion, the right not to be enslaved, the right to be recognized as an individual before the law, and the right not to be prosecuted on the basis of retroactive law are rights Human rights cannot be reduced under any circumstances.

Law number 39 of 1999 concerning human rights also contains provisions regarding the right to life. Article 9 of Law No.39/1999 states that everyone has the right to live and maintain life and improve their standard of living. Article 4 of Law Number 39 of 1999 concerning Human Rights states: the right to life, the right not to be tortured, the right to personal freedom, thoughts and conscience, the right to religion, the right not

¹¹ FITRI FITRI WAHYUNI, "Hukum Pidana Islam" (PT NUSANTARA PERSADA UTAMA, 2018).

¹² Hanafi Hanafi, "Konsep Pidana Mati Dalam Hukum Islam Sebagai Upaya Pembangunan Hukum Pidana Nasional," *VOICE JUSTISIA: Jurnal Hukum Dan Keadilan* 3, no. 2 (2019): 52–72.

¹³ Abnan Pancasilawati, "Penegakan Hukum Dalam Syari'at Islam," *Mazahib*, 2013.

¹⁴ Normanita Rizky Ardhiarini, "Tinjauan Hukum Pidana Islam Terhadap Penjatuhan Pidana Dalam Tindak Pidana Perdagangan Orang: Studi Putusan Nomor: 141/Pid. Sus/2018/PN. Kwg" (UIN Sunan Ampel Surabaya, 2019).

¹⁵ Suparman Marzuki, "Perspektif Mahkamah Konstitusi Tentang Hak Asasi Manusia," *Jurnal Yudisial* 6, no. 3 (2013): 189–206.

to be enslaved, the right to be recognized as a person and equality in legal life, and the right not to be prosecuted on the basis of a law that applies retroactively is a human right that cannot be reduced under any circumstances by anyone.¹⁶

Thus it can be stated that the right to life is protected by national law. Indonesian national law confirms this right as a right that cannot be reduced under any circumstances. This is in line with international provisions governing similar provisions. Does it mean that the right to life is absolute in Indonesian law? Does the imposition and provision of the death penalty regulated by several laws violate the constitution?

Through decision number 2-3/PUU-V/2007, the Indonesian Constitutional Court is of the opinion that life is not absolute. Whereas the imposition of the death penalty in the narcotics law number 27 of 1977 as long as it involves the threat of death penalty does not violate the 45th Constitution. The establishment of the Constitutional Court is based on several opinions, namely that all rights contained in the constitution can be restricted, including the right to life.¹⁷

In addition, the Constitutional Court is of the opinion that the placement of Article 28J as a closing gives an interpretation that the preceding Article 28A-I is subject to the provisions on the limitation of rights contained in Article 28J of the Indonesian Constitution. The establishment of the Constitutional Court is consistent with the establishment of the Constitutional Court in the Abilio Suarez case. Whereas, according to the Constitutional Court, the right to life is not absolute, it is also based on the argument that international instruments contain the absolute right to life, among the International Covenants on civil and political rights which contain provisions regarding the execution of the death penalty but with

certain limitations.¹⁸

In this case, the constitutional court is of the opinion that the imposition of the death penalty for narcotics crimes does not violate the provisions on the limitations in the international Covenant on civil and political rights. Regarding the imposition of the death penalty which is reserved only for the most serious crimes. The Constitutional Court is of the opinion that the sense of the most serious crime should be read with the next phrase, in accordance with the law in force at the time of the commission of the crime.¹⁹

In this case, the Constitutional Court then stated that whether the provisions containing crimes with the death penalty in law number 22 of 2007 concerning narcotics are included in the most serious crimes must be linked to the laws that apply to these crimes, both nationally and internationally. The Constitutional Court then stated that at the international level the law that applies is the UN convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Narcotics and Psychotropic Substances Convention) where Indonesia is a party to the Convention.²⁰

The convention states that narcotics crimes are included in the most serious crimes (particularly serious). Based on the provisions of the Convention, the Constitutional Court is of the opinion that the fact that narcotics are declared as crimes as narcotics crimes are very serious (particularly serious) in the Convention can be included with the most serious crimes (the most serious crimes) according to the provisions of Article 6 of the International Covenant on Rights -civil and political rights. Furthermore, the Constitutional Court is of the opinion that Indonesia has violated no international obligation by imposing the death penalty in

¹⁶ Eva Achjani Zulfa, "Menelaah Arti Hak Untuk Hidup Sebagai Hak Asasi Manusia," *Lex Jurnalica* 2, no. 2 (2015): 17975.

¹⁷ Mei Susanto and Ajie Ramdan, "Kebijakan Moderasi Pidana Mati," *Jurnal Yudisial* 10, no. 2 (2017): 193–215.

¹⁸ Rosihan Anwar, *Sejarah Kecil "Petite Histoire" Indonesia*, vol. 1 (Penerbit Buku Kompas, 2004).

¹⁹ Arie Siswanto, "Pidana Mati Dalam Perspektif Hukum Internasional," 2009.

²⁰ Anton Sudanto, "Penerapan Hukum Pidana Narkotika Di Indonesia," *ADIL: Jurnal Hukum* 8, no. 1 (2017): 137–61.

the narcotics law.²¹

Thus, in contrast to the decisions of the Constitutional Courts of several other countries, according to the Indonesian Constitutional Court, the right to life is not absolute and can be limited. The death penalty does not violate the 1945 Constitution. The death penalty provision in law number 22 of 1997 concerning narcotics thus, according to the Constitutional Court, also does not violate the provisions regarding the right to life as a non-derogable right in the constitution. Indonesia. In this case it is also important to remember that the Constitutional Court's interpretation of the most serious crime in the decision is different from the interpretation according to the Covenant and the Committee which does not include drug crimes as the most serious crime.²²

Method

The type of research used in this article is library research.²³ The approach used by researchers is normative.²⁴ Primary data comes from The the International Covenant on Civil and Political Rights.

Result and Discussion

Review Of The Death Penalty From An International Human Rights Perspective

The death penalty is one of the most controversial issues in the international covenant on civil and political rights that has been ratified by the Indonesian government (International covenant on Civil and Political Rights). Even though the right to life is

recognized as non-derogable rights (rights that cannot be reduced). Article 6 paragraph 1 states that every human being has the right to life which is inherent in him. This right must be protected by law. No one can be deprived of the right to life arbitrarily, in article 6 states (2) that in countries that have not abolished the death penalty. Sentences of the death penalty can only be imposed for some of the most serious crimes in accordance with the law in force at the time the activity was committed, and are not contrary to the provisions of the Covenant and Convention on the Prevention and Law of the Crime of Genocide.²⁵

Such punishment can only be carried out on the basis of a final decision rendered by a competent court. Everyone who has been sentenced to death has the right to ask for pardon or commutation of the sentence. Amnesty, pardon or commutation of the death penalty may be granted in all cases where the death penalty may not be imposed for a crime committed by a person under the age of 18 and may not be carried out against a woman who is pregnant. Textually stated that the death penalty is still permissible. Meanwhile in Article 6 paragraph 6 states that nothing in this article may be used to delay or prevent the abolition of the death penalty by a state that is a party to this Covenant, it is again emphasized that there is a spirit of this game to gradually and progressively abolish the practice of the death penalty.²⁶

This is based on the argument that at the time of the drafting of this Covenant, the majority of countries in the world were still practicing the death penalty, but more and

²¹ Mardenis Pakian and Iin Maryanti, "Pemberlakuan Hukuman Mati Pada Kejahatan Narkotika Menurut Hukum Ham Internasional Dan Konstitusi Di Indonesia," *Masalah-Masalah Hukum* 48, no. 3 (2019): 312–18.

²² TUGAS KARYA AKHIR, "EFEKTIFITAS HUKUMAN MATI PADA KEJAHATAN," n.d.

²³ Larry Crump, 'Conducting Field Research Effectively', *American Behavioral Scientist*, 64.2 (2020) <<https://doi.org/10.1177/0002764219859624>>.

²⁴ Zulfi Diane Zaini, 'Implementasi Pendekatan Yuridis Normatif Dan Pendekatan Normatif

Sosiologis Dalam Penelitian Ilmu Hukum', *Pranata Hukum*, 6.2 (2011).

²⁵ Doortje D Turangan, "Tindakan Kejahatan Genosida Dalam Ketentuan Hukum Internasional Dan Hukum Nasional," 2011.

²⁶ Nurul Komalasari, "Pidana Mati Dalam Sistem Hukum Indonesia (Studi Tentang Efektivitas Sanksi Pidana Mati Dalam Peraturan Perundang Undangan No. 1 Tahun 2002 Jo Undang-Undang No. 15 Tahun 2003 Tentang Erorisme Dan Undang-Undang No. 35 Tahun 2009 Tentang Narkotika)," 2011.

more countries are imposing abolition or (abolition) of the death penalty. Even today, the majority of countries in the world are abolitionist groups. In the decade of the 1950s, countries that abolished the death penalty for all types of new crimes amounted to 10 or around 12.4%. Countries that abolished the death penalty only for ordinary crimes amounted to 19 or around 23.6%. Meanwhile, until June 2006, the total number of countries that had abolished the death penalty in various forms was 129 or 65%. While the number of countries that still apply the death penalty is 68 or 35%.²⁷

Previously, in the 1950 European Convention on Human Rights, the European convention of mental rights/ convention for the Protection of Human Rights and Fundamental Freedoms, Article 2 emphasized the prohibition of the death penalty. This European regional convention is the oldest human rights treaty and the idea of abolishing the death penalty departs from this convention. The provisions on the death penalty were later abolished in various mechanisms of the international human rights court even though its jurisdiction covers the most serious and serious crimes under international law. Statute of the ad hoc International Criminal Tribunal for the countries of the former Yugoslavia (Statute of International Criminal Tribunal for the Former Yugoslavia/ICTY) and Rwanda (Statue of International Criminal Tribunal for Rwanda/ICTR). Likewise, this provision is abolished in the Rome Statute of the International Criminal Court, which is a permanent human rights court.²⁸

To understand the text on the international convention on civil and political rights on the death penalty, the United Nations also issued a guide entitled Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty

through UN Economic and Social Council Resolutions. 1984/50, dated May 25, 1984). This guide clarifies the limitations of the international covenant on civil and political rights even though the death penalty conventions in 6 international covens on civil and political rights are still being debated. However, there are other interpretations which consider the death penalty a violation of this article. 7 international covenants on civil and political rights .

Although the controversy over the death penalty in Article 6 of the international Covenant on Civil and Political Rights is still being debated, there are other interpretations which consider the death penalty a violation of Article 7 of the International Covenant on Civil and Political Rights concerning degrading and inhumane practices. This includes the Convention against torture and other cruel, inhuman and degrading treatment or punishment which was adopted by UN general assembly resolution 3946 dated 10 December 1984. This interpretation is based on the argument that a death row convict who is facing execution will experience mental stress/ extraordinary psychic nature which is the scope of this Convention against Torture. Another additional provision is the application of the principle of non-refoulement both for countries that have abolished and those that still stipulate the death penalty for this issue. This principle of non-refoulement is the principle that a country must refuse a request for extradition from another country if the person can receive death threats in the requesting country.²⁹

As previously stated, Indonesia has not yet abolished the death penalty. It should be remembered, as previously mentioned that Indonesia has ratified international conventions on civil and political rights

²⁷ T Mulya Lubis, *Kontroversi Hukuman Mati: Perbedaan Pendapat Hakim Konstitusi* (Penerbit Buku Kompas, 2009).

²⁸ Mufti Makarim, "Beberapa Pandangan Tentang Hukuman Mati (Death Penalty) Dan Relevansinya

Dengan Perdebatan Hukum Di Indonesia," *ELSAM, Referensi Hukum*, 2014, 1–7.

²⁹ DEWANTO T R Y HUTOMO, "I PERANAN UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR) TERHADAP PERLINDUNGAN PENGUNGSI ROHINGYA DI INDONESIA," 2018.

without reservation. Thus, Indonesia is legally bound by all provisions contained in the Covenant. As previously mentioned, a thorough reading of the provisions of Article 6 states that the Covenant essentially calls for the abolition of the death penalty. The thing that must be answered is whether Indonesia is in an effort to abolish the death penalty and thus is on the way of fulfilling its obligations as a state party fulfilling its obligation to abolish the death penalty or vice versa.³⁰ In addition, Indonesia actually increases the types of activities that carry the death penalty. Criminal punishments that are threatened are actually not included in the group of crimes that are serious (the most serious crimes) according to the International Covenant on civil and political rights. Here it can then be stated that there is no indication that Indonesia has abolished the death penalty or made efforts to limit the types of crimes that carry the death penalty.

In connection with the limitation of the death penalty only for the most serious crimes (the most serious crimes). Regarding the phrase for the most serious crimes as mentioned above that in this case the death penalty cannot be applied to crimes such as property crimes, economic crimes, political crimes or acts of resistance that do not use violence and must also be abolished for activities related to drugs. The UN human rights commission also stated that the death penalty should not be enforced for non-violent crimes such as financial crimes or non-violent expressions of religious beliefs and practices. As mentioned above the decision of the UN Human Rights Committee through the state reporting mechanism states that the term of the most serious crimes in Article 6 paragraph 2 is limited only to premeditated killings and premeditated acts that cause heartbreaking physical suffering.

With regard to the limitation of the phrase not contradicting the belief as stated above, this phrase essentially stipulates that death penalty decisions must be based on fair

national law and based on the rule of law. Death penalty is not permitted based on unjust law. As explained above, this provision also limits the use of the death penalty by the government whose President is part of its repression. From the list of crimes described above, the death penalty is also imposed for political crimes, including treason. It can be stated that this activity is political in nature and very open to the possibility of being used by the government to carry out repression. The provisions of Article 104 of the Criminal Code which regulate the crime of treason is a legacy from the Netherlands which was used by the Dutch government to perpetuate the politics of repression in the occupied areas. It can be assumed that this provision opens up the possibility of being used by the authorities to carry out their repression and thus is not based on the spirit of the rule of law. It can be stated that these provisions are not in line with the provisions of article 6 of the international Covenant on civil and political rights.³¹

As explained above, in this case it must also be remembered that a death penalty can be declared in accordance with the provisions of Article 6 paragraph 1 of the international Covenant on civil and political rights if regulated by national law. That the national law is valid/legal and also fair/just which does not contain elements of capriciousness and unreasonableness. If this is not fulfilled then the death penalty regulated by national law which does not comply with this matter can be included in the class of arbitrary killings.³²

Based on this provision, various statutory regulations related to treason which carry the death penalty, can also be suspected of being a violation of this Article 6. The phrase does not conflict with the Covenant and also requires that the death penalty method must not cause physical or psychological suffering. Methods that cause physical and psychological suffering are violations of article 7 of the international

³⁰ Andi Hamzah, *Hukum Pidana Indonesia* (Sinar Grafika, 2017).

³¹ Lubis, *Kontroversi Hukuman Mati: Perbedaan Pendapat Hakim Konstitusi*.

³² Extrix Mangkeprijanto, *Hukum Pidana Dan Kriminologi* (Guepedia, 2019).

Covenant on civil and political rights. Provisions regarding the implementation of the death penalty in Indonesia are regulated in law number 2/PNPS/964. This provision states that the death penalty is carried out by shooting the convict to death. The law states that the method of shooting is to shoot the convict in the heart, while it does not stipulate provisions for the implementation of the death penalty which states that the execution of the death penalty is carried out by shooting the convict to death by firing squad which is not carried out in public. Execution of the death penalty by shooting does not include methods that cause physical and psychological suffering.³³

However, this also depends on the method of shooting and the accuracy of shooting at the target. In the hearing to review law number 2/ Pnps/ 1964, it was revealed in the testimony of expert witnesses and witnesses the fact that the death penalty has made the convict suffer for 7-10 minutes because the execution of shootings is often not on target, namely the heart of the convict. This testimony provides clues about the possibility of violating the provisions of article 7 of the International Covenant on civil and political rights. Thus, even though the method of shooting to death is not included in the method that causes physical and psychological harm, the execution of shooting that is not accurate opens the possibility of suffering. It can be stated that there is a need for an improvement in the death penalty procedure which truly guarantees that physical and psychological suffering is inevitable.³⁴

Regarding the phrase the death penalty can only be executed on the basis of a final decision handed down by a competent court. As emphasized above, because Article 6 paragraph 2 also contains a provision stating that the death penalty is prohibited from violating other provisions of other covenants or conventions, this phrase must be linked to

the provisions of articles 14, 15, 2 and 26. Thus this phrase must be read that sentence of death penalty can only be carried out by a court that is fair and competent, independent and impartial which is governed by law and through a non-discriminatory process, based on the principle of the presumption of innocence and the presence of minimum guarantees for the suspects as stipulated in Article 14(3) ICCPR. The most basic question related to this provision is whether the Indonesian legal process has reflected the fulfillment of this provision?

Conclusion

There are three different attitudes towards the death penalty. First, adherents of the ideology of rehabilitation. This understanding completely rejects the implementation of the death penalty. Whatever the reason, if justice is considered as the reason for carrying out the death penalty, that is, punishing the person who kills is commensurate with the guilt he committed. This is contrary to the aim of justice, not to punish but to reform. Because of this, the death penalty is seen as an unfair act against criminals who need to be given the opportunity to change, repent and improve themselves. Both adherents of the reconstructionist ideology, which holds that the death penalty is appropriate for those who have committed major crimes. According to them justice aims to avenge the mistakes made by someone. This understanding is based on the classic Lex talionis (law of revenge) which exists in almost all classical cultures and religions known as the "law of tooth for tooth, eye for eye". In general, the adherents of reconstruction believe that society must be reorganized (reconstructed) on the basis of religious law. So this understanding is also commonly referred to as understanding because they refer to God's law. Third, followers of the ideology of retribution,

³³ Krisnanda Etika Putri, Eko Soponyono, and R B Sularto, "Rekonstruksi Kebijakan Hukum Pidana Terhadap Eksekusi Pidana Mati," *Diponegoro Law Journal* 5, no. 3 (2016): 1–14.

³⁴ Ruslan Renggong, "PENGANTAR HUKUM PIDANA INDONESIA," 2015.

adherents of this view hold that the main purpose of the death penalty is to punish the perpetrators of crimes so that the person will no longer commit crimes and other people will become afraid of committing the same crimes. Adherents of this understanding believe that God gave the right to the government to carry out justice by imposing the death penalty

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