

THE ROLE OF PROSECUTORS IN IMPLEMENTING THE DEATH PENALTY IN INDONESIA

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Abstract

This research is motivated by the conditions of the implementation of the death penalty in Indonesia, if we look at the practical order, there are still various problems related to the phenomenon of the delay in the implementation of the death penalty for so long and without any legal certainty which of course must be improved immediately, especially in terms of the time of execution or implementation of the death penalty. This study aims to discuss the basic idea of the implementation of the death penalty, the causes of the waiting period in the implementation of the death penalty, and the steps of the prosecutor's office in realizing legal certainty in the implementation of the death penalty. This research is a type of normative legal research or doctrinal research using the Legislative, Conceptual, Historical, and Philosophical Approaches which are analyzed using qualitative descriptive legal methods so that the level of synchronization of laws and regulations can be found. This research covers the scope of research that describes, examines and analyzes and finds general legal theories and laws and regulations on the Role of Prosecutors in the Implementation of the Death Penalty in Indonesia. The results of this study indicate that the government can maintain the death penalty in the Criminal Code to provide a higher preventive effect from disturbances to legal order. Several reasons that can be the cause of the waiting period in the implementation of the death penalty, namely the prisoner has made a request for the convict while pregnant, clemency and extraordinary legal efforts. The formulation of the probationary period regulated in Article 100 of Law Number 1 of 2023 is part of the government's solution to overcome legal certainty regarding the phenomenon of the waiting period for the death penalty in Indonesia. The suggestion that the author can provide from this study is that there needs to be legal clarity in regulating the waiting period before the death penalty is carried out. When the last legal effort has been implemented, the government must be limited by the maximum time. In addition, we hope that the regulations related to the death penalty need to be moderated with the existence of a new Criminal Code (KUHP) which may be a middle ground for the polemic of the waiting period for the death penalty.

Keywords: Role of Prosecutors, Death Penalty.

INTRODUCTION

Indonesia is a country that still adheres to the death penalty in its positive law. Related to the application of the death penalty, the starting point is the death penalty as a criminal sanction by seeing that what is intended is a projection of its effectiveness as a means of prevention or repression. This needs to be highlighted, because regarding the death penalty regarding whether or not it needs to be applied, it should also be seen whether the death row convicts can provide an influence on the purpose of punishment, namely to reduce crime.

In relation to the existence of the death penalty, it must be realized that the legal content contained in both the Criminal Code (KUHP) and other laws and regulations containing the threat of the death penalty is actually an effort to provide substantial changes, so that both philosophically, sociologically, and juridically it is expected to be able to provide strong force

in the effort to realize the supremacy of law based on justice, benefit and legal certainty. In essence, the law that exists in the midst of society cannot be separated from the contemplation and formulation of values that are essential to the law itself. This effort is made in order to provide solutions to legal problems that will arise later, both in terms of application and interpretation of legal language in its later application.

Therefore, in implementing the death penalty for perpetrators of criminal acts, law enforcement is needed, which according to Satjipto Rahardjo, law enforcement essentially contains the supremacy of substantial values, namely justice. Law enforcement is a series of processes to describe values, ideas, and ideals that are quite abstract which are the objectives of the law. The objectives of the law or legal ideals contain moral values, such as justice and truth. These values must be able to be realized in real reality when an officer enforces the law in various criminal acts, including narcotics and psychotropic drugs, terrorism, and corruption. (Satjipto Rahardjo, 2009)

Basically, the application of the death penalty in criminal law enforcement in Indonesia has been going on for quite a long time. It even existed before the independence of the Republic of Indonesia, with the existence and application of several legal systems at that time, namely: 1). Customary law; 2). Islamic law; 3). Hindu law; and 4) Laws applied by the Dutch colonial government. All legal systems in force at that time recognized the threat of the death penalty, so the death penalty had long existed and taken place in the legal system in force in Indonesia before the arrival of the Dutch. ((Mompang L. Panggabean, 2005)

One of the pillars of law enforcement in Indonesia is the prosecutor's office which has a very difficult task in upholding the supremacy of law in Indonesia comprehensively. (Supriadi, 2006) This is one of the reasons the Government of the Republic of Indonesia is increasingly emphasizing the legal basis of the prosecutor's office in the field of prosecution by enacting Law Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia which replaces Law Number 16 of 2004. In one dictum of considerations of the Law concerning the Prosecutor's Office, it is stated that the Unitary State of the Republic of Indonesia is a state of law that guarantees an independent judicial power to carry out trials in order to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

On the other hand, in practical terms, if we look at the implementation of the death penalty in Indonesia, there are still various problems that certainly must be fixed immediately, especially in terms of the time of execution or implementation of the death penalty, namely regarding the length of time between the death sentence being handed down and the execution being carried out. This is related to the phenomenon of delays in the implementation of executions which often cause legal uncertainty for convicts, victims' families, and the public in general. This uncertainty can have an impact on justice itself because it gives the impression that the process is being dragged out without any clarity regarding the time of execution.

This is what then gave rise to problems in the implementation of the death penalty because the government did not provide certainty to determine the time of execution of the death penalty which was expressly and explicitly stated in the laws and regulations, thus creating a lack of

legal certainty in determining the time of execution of the death penalty, so the author is interested in researching the Role of Prosecutors in the Implementation of the Death Penalty, with the following problem formulations: What is the basic idea of implementing the death penalty decision; What is the cause of the waiting period in the implementation of the death penalty; What are the steps taken by the prosecutor's office in realizing legal certainty in the implementation of the death penalty.

RESEARCH METHODS

The type of research used by the compiler is normative research or doctrinal research. Normative legal research is legal research that places law as a building of normative systems. The normative system in question is about the principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings). (Mukti Fajar ND & Yulianto Ahmad, 2013)

In this type of legal research, law is often conceptualized as what is written in legislation (Law in book) or law is conceptualized as rules or norms that are benchmarks for human behavior that are considered appropriate.

In this case, the author conducted a study of primary data sources, namely data obtained by studying laws and regulations, and also secondary data, namely data obtained by searching and collecting data in print media, electronic media, literature books, and in addition, opinions or other notes related to the research object, using the Legislation approach, Conceptual Approach, Historical Approach, and Philosophical Approach.

The legal materials that have been collected will be analyzed thoroughly normative with a qualitative descriptive legal method while still paying attention to the content of various related laws and regulations so that the level of synchronization of laws and regulations can be found vertically and horizontally. This research uses a deductive method of drawing conclusions, namely assessing an event that is general in nature towards a specific nature.

DISCUSSION

1. Basic Ideas of the Death Penalty Implementation

In Indonesia, in the context of developing the death penalty, it is maintained for reasons including the existence of special circumstances, namely that the disturbance of legal order here is greater than in the Netherlands. Another reason is because our region and its population consist of various groups that are prone to clashes while the police apparatus is not that strong. (Roeslan Saleh, 1987)

In the context of legal development, where the law must develop in accordance with the development of society, the government can maintain the death penalty in the Criminal Code to provide a higher preventive effect from disturbances to legal order, and it is hoped that with the threat of the death penalty for certain crimes in the Criminal Code, it will scare everyone from committing these crimes. Even in the crimes contained in the Criminal Code, the death

penalty is threatened, for certain reasons such as in Law Number 7 of 1955 concerning the Investigation, Prosecution and Trial of Economic Crimes, where the main criminal threat is only imprisonment, confinement and fines and with Law No. 21 / Prp / 1959, against economic crimes are threatened with the death penalty.

The execution of a death row convict must be carried out after the court decision imposed on him has permanent legal force and the convict has been given the opportunity to file a pardon to the President. The execution can be carried out by first going through fiat executie (Statement of agreement to be executed). (Kansil, CST & Kansil Christine ST, 2004) The criminal system that places the death penalty according to the author can be seen from the purpose of the death penalty. There is a purpose of the death penalty based on the absolute theory. According to the absolute theory, punishment is something that must absolutely be imposed for the existence of a crime. Muladi and Barda Nawawi Arief argue that "punishment is an absolute consequence that must exist as a retaliation for people who commit crimes. So the basis for justifying punishment lies in the existence or occurrence of the crime itself". (Muladi & Barda Nawawi Arief, 2005) This is in line with what was conveyed by Andi Hamzah that punishment is something that must absolutely be given as retaliation for a crime. (Andi Hamzah, 1993) This theory assumes that the punishment given to the perpetrator of a crime is a fair retribution for the losses caused, the imposition of punishment is basically the suffering of the criminal is justified because the criminal has caused suffering to others. (Prasetyo & Abdul Halim Barkatullah, 2005)

This absolute theory views that punishment is retribution for a mistake that has been made, so it is oriented towards the act and lies in the crime itself. Punishment is given because the perpetrator must accept the sanction for his mistake. According to this theory, the basis for punishment must be sought from the crime itself, because the crime has caused suffering to others, in return the perpetrator must be given suffering. (Leden Marpaung, 2005) The imposition of punishment on the perpetrator of this crime is something that is deliberately imposed because it is believed to have different benefits. (Sahetapy, 1982) However, Andi Hamzah more firmly stated that "crime absolutely exists, because a crime is committed and there is no need to think about the benefits of imposing the punishment". (Andi Hamzah, 1993) This opinion seems more assertive than the previous statement because the imposition of punishment is independent of the benefits it will cause. So the absolute theory is the right approach in analyzing the existence of the death penalty in Indonesia. Absolute or retributive theory as one of the touchstones in measuring the application of the death penalty in the criminal justice system which will automatically provide preventive measures for the community so as not to commit crimes that will be threatened with the death penalty. The relevance of the absolute theory to the urgency of the death penalty in Indonesia is that justice, benefit and legal certainty can be achieved in comprehensive criminal law enforcement.

From various views on the death penalty, the author argues that the death penalty is one type of sanction that is a substantial component in the criminal law system in Indonesia. In substance, the death penalty is a form of legal certainty that the state wants to achieve in guaranteeing protection and maintaining order for all its people.

While this view regards the death penalty as an important substantive component of the criminal justice system, it is important to remember that there are various perspectives opposing the death penalty, particularly related to human rights issues, potential errors in the justice system, and the effectiveness of punishment in preventing crime. This debate continues, reflecting the complexity and dynamics of efforts to create justice and order in society.

2. Reasons for the Waiting Period in the Implementation of the Death Penalty

The legal ambiguity surrounding the waiting period for execution in Indonesia has an impact on the uncertainty of when the death penalty will be carried out. There are positive and negative impacts of the uncertain waiting period for the death penalty. The benefits are that prisoners can live longer and have more opportunities to repent. Then, if the perpetrator is seen to have done good deeds during the probationary period, a reduced sentence can be given to the death row convict. The disadvantage is that it can create a phenomenon of double punishment, where the convict seems to be serving a sentence for two (two) different types of serious crimes. First, detention in a correctional institution (Lapas) for an indefinite period and the second is the death penalty which has permanent legal force which will be executed.

The impact of this waiting period phenomenon also results in material losses to the state because the implementation of the death penalty, the costs incurred are entirely the responsibility of the state which requires quite large costs through several stages that require costs starting from the preparation stage to the implementation of the burial of the body, even if with this waiting period the state bears a lot of very large costs for the services of death row convicts who are in prison. After further investigation into the laws and regulations, there are 4 (four) legal reasons that can delay the execution of the death penalty:

a. The prisoner has made a request.

Article 6 paragraph (2) of Law Number 2/PNPS/1964 concerning the Basis and Process of the Death Penalty in Indonesia defines this as follows: If the convict has something to convey, the Public Prosecutor/JPU will listen to his statement or message. It can be concluded that the convict's final request must be granted because it is reasonable and must have limits. The convict's request is seen as an attempt to delay the execution if there are no clear limits attached to it.

b. Convict in Pregnant Condition

According to Article 7 of Law Number 2 PPNS 1964, the implementation of the death penalty must take into account the biological condition of the convict. If the convict is pregnant, the death penalty can only be carried out forty days after the child is born. From these articles it can be seen that Indonesian criminal law supports humanism or respect for human rights.

c. Clemency

The continued protection of the rights of death row inmates as convicts is another factor why the execution of death row inmates is postponed for so long after the court's decision. Among these rights is the ability to ask for forgiveness (grace) from the President.

d. Extraordinary Legal Remedies

1) Cassation in the interests of law

The first part of Chapter XVIII of the Criminal Procedure Code, from Articles 259 to 262, regulates cassation by law, an extraordinary legal remedy. In the previous regulation, namely Law Number 1 of 1950 concerning the Composition, Power and Procedures of the Supreme Court of the Republic of Indonesia, it was stated that cassation by law was regulated alongside ordinary cassation in Article 1734 which states that cassation can be made at the request of an interested party or at the request of the Attorney General because of his position.

2) Judicial Review (PK)

A judicial review of a judge's decision that has permanent legal force (*inkracht van gewijsde*) can be obtained from the Supreme Court. The Criminal Procedure Code has determined the time limit for submitting a request for judicial review in various articles, as follows: Paragraph 264 Article 3 There is no time limit related to a request for judicial review. A request for judicial review of a decision can only be made once as regulated in Article 268 paragraph (3) of the Criminal Procedure Code.

3) Reasons for the Death Penalty Probation Period in Law 1/2023

As additional information according to the provisions of Law 1/2023, the judge must consider the defendant's sense of remorse and the possibility of self-improvement, as well as the defendant's role in the unlawful act, when deciding whether to impose the death penalty with a 10-year probationary period. The 10-year probationary period begins the day after the court decision takes legal force.

Based on the consideration of the Supreme Court, the death penalty can be changed to life imprisonment by Presidential Decree if the convict shows commendable attitudes and behavior during the probationary period. However, the Attorney General can impose the death penalty if the defendant does not show commendable attitudes and behavior and there is no opportunity to change during the probationary period. Thus, the new Criminal Code or Law 1/2023 provides provisions regarding the postponement of the execution of the death penalty with a probationary period of 10 years.

3. The Prosecutor's Office's Steps in Realizing Legal Certainty in the Implementation of the Death Penalty

Although the death penalty is still upheld as an act to defend society or is more focused or directed at the interests of society, in its implementation it is anticipated selectively, carefully, and focused on the protection or interests of individuals (perpetrators). Therefore, it is important to have rules governing the waiting period for the execution of the death penalty or conditional capital punishment with a probationary period of 10 years. This way of thinking aims to reach a compromise between those who oppose the death penalty and the supporter group whose numbers are quite significant and including those who have mixed feelings at the global or international level and this is a form of the Criminal Code (Law Number 1 of 2023) to balance the monodualistic between the interests of society and the interests of individuals.

Another issue related to the death penalty with probation, based on Article 62 Paragraph (1) of the Criminal Code (Law Number 1 of 2023) version of the Pardon is no longer a reason to postpone the implementation of the verdict as long as it is not a death sentence according to Article 62 Paragraph (1) of the Criminal Code (Law Number 1 of 2023). This means that the pardon process which ends with a Presidential Decree determines whether or not the execution can be carried out. Article 100 of the Criminal Code (Law Number 1 of 2023) makes a breakthrough by facilitating a probationary period lasting 10 years. The probationary period is decided by the judge after considering the defendant's regret, which shows an improvement in attitude, the defendant's minimal involvement in the crime, and considering mitigating factors. The court must determine this probationary period in its decision, and the 10-year duration begins after the decision is legally binding or permanent. If the death row convict shows improvement, the convict will be examined and given recognition in the form of a change in sentence to life imprisonment. Referring to the provisions above, that based on the provisions of the Criminal Code (Law Number 1 of 2023) in the formulation of the probationary period regulated in Article 100 is part of the government's solution to overcome legal certainty regarding the phenomenon of the waiting period for the death penalty in Indonesia because death row convicts are given the opportunity to express regret and have hope with the existence of reasons that can reduce the defendant's sentence. If the death row convict has good behavior, there is a possibility that the death row convict's sentence will be reduced to a life sentence or at least a 20-year prison sentence by taking into account the defendant's remorse and there is hope to improve himself or the defendant's role in the crime as regulated in Article 100 Paragraph 1 of the Criminal Code (Law Number 1 of 2023).

CONCLUSIONS AND SUGGESTIONS

1. Conclusions

- a. In the context of legal development, where the law must develop in accordance with the development of society, the government can maintain the death penalty in the Criminal Code to provide a higher preventive effect from disturbances to legal order, and it is hoped that with the threat of the death penalty for certain crimes in the Criminal Code, it will scare everyone from committing these crimes.
- b. Legally, there are 4 (four) reasons that can be the cause of a waiting period in the implementation of the death penalty, namely; the prisoner has made a request; the convict is pregnant; pardon; and extraordinary legal efforts that can be taken through cassation in the interests of the law, Judicial Review (PK) and Reasons for the Death Penalty Probation Period in Law 1/2023.
- c. Based on the provisions of the Criminal Code (Law Number 1 of 2023) in the formulation of the probationary period regulated in Article 100, it is part of the government's solution to address legal certainty regarding the phenomenon of the waiting period for the death penalty in Indonesia because death row convicts are given the opportunity to express regret and have hope with the existence of reasons that can reduce the defendant's sentence.

2. Suggestions

We hope that in the future there will be legal clarity in regulating the waiting period before the death penalty is carried out. When the last legal effort has been implemented, the government must be limited by the maximum time. In addition, we hope that the regulation related to the death penalty needs to be moderated, with a focus on finding a middle ground for differences of opinion between parties who firmly oppose (Abolitionists) and parties who firmly support (Retentionists). With the existence of the new Criminal Code, hopefully it will be a middle ground for the polemic of the waiting period for the death penalty.

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