



Cancellation of Death Penalty For Narcotics Producer In Human Rights Perspective

Josef Purwadi Setiodjati*, Ayu Kumala Sari Hamidi

Faculty of Law, Universitas Slamet Riyadi

DOI:

<https://doi.org/10.47134/ijlj.v2i3.3865>

*Correspondence: Josef Purwadi Setiodjati

Email: josef197089@gmail.com

Received: 20-02-2025

Accepted: 21-02-2025

Published: 21-03-2025



Copyright: © 2025 by the authors. Submitted for open access publication under the terms and conditions of the Creative Commons Attribution (CC BY) license (<http://creativecommons.org/licenses/by/4.0/>).

Abstract: This research was conducted to examine an Indonesian court decision that acquitted the defendant of narcotics factory owner Hanky Gunawan from the cancellation death penalty for violating human rights in relation to the constitution. The method used in this research is a qualitative approach method that refers to literacy by conducting in-depth observations related to the discussion to be discussed through a case study approach, specifically the case of Supreme Court Decision No. 39 PK/PID.SUS/2011 which will also be reviewed with a legislative approach, namely the 1945 Constitution and Law No. 35 of 2009 concerning Narcotics and Law No. 39 of 1999 concerning Human Rights. The result of the research shows that the application of the Supreme Court's decision in the case of Hanky Gunawan as the owner of a narcotics factory has cancelled his death sentence on the grounds of protection of human rights. The death penalty which is ideally given to perpetrators of serious crimes in order to deter them whose actions threaten and cause consequences for the peace of the community cannot be applied. This then raises pros and cons regarding the direction of Indonesia's law enforcement system going forward.

Keywords: Cancellation of Death Penalty, Narcotics Producer, Human Rights

Introduction

Death penalty raises controversy due to the Second Amendment of Article 28 A and Article 28 I paragraph (1) of the 1945 Constitution or the constitution which explicitly states that every person has the right to live and the right to defend his life and life, because it is non-derogable or is a human right that cannot be reduced under any circumstances. Naturally, the contradiction arises, but it needs to be underlined once again that the State certainly has special considerations in imposing death penalty in our criminal law as stated in Article 10 letter a number 1 of the Criminal Code.

The imposition of death penalty is not imposed to any random person but specifically to the perpetrators of extraordinary crimes. (Sitorus, J. V & Firmansyah. H, 2023) The perpetrators of extraordinary crimes are considered to have shown from their actions that they are individuals who are very dangerous to society, and therefore must be made harmless by being expelled from society. One of the figures who supports the existence of death penalty institution in this country is R. Santoso Poedjosoebroto who is the former deputy chief justice of the Supreme Court, argues that death penalty is the

ultimate weapon or the end in justice, but in the imposition of death penalty must be considered matters relating to the rights of the convict and the execution is carried out in a proper and humane manner.

Narcotics crimes are serious and extra ordinary crimes, so the state's actions must also be firm and harsh against narcotics crimes. (Muhammad Hatta, 2022) The implementation of the death penalty is not only for the deterrent effect (deverant) or the provision of appropriate punishment, but more importantly it is intended to protect society (defend society) and save the nation's children from the dangers of drug abuse. Law enforcement against narcotics crimes has been carried out by law enforcement officials and has received a judge's decision in court. (Pasaribu A. S, 2024) This law enforcement is expected to be able to act as an antidote to the outbreak of narcotics distribution and abuse, but in reality, the more intensive law enforcement is carried out, the more the narcotics circulation increases.

When viewed through a humanitarian philosophical approach, the death penalty is very appropriate to be imposed on drug abusers, especially against networks and dealers, because the consequences of these actions are very heavy crimes, which in turn can destroy most of the young generation of a nation. (Putra R. P & Pujiyono P, 2022) These efforts often result in law enforcement officials being dragged into misconduct, such as accepting payment for services so that the cases of the parties involved are not processed, sentences are lightened, and so on.

Criminal sanctions imposed by judges against perpetrators of crimes are still considered not to provide fear and are influenced by norms outside legal norms, which seem to be still inherent and become an obstacle to consistent law enforcement. (Pardede et al, 2022) The enormous power of judges in deciding cases has resulted in many disparities in decisions in similar cases. This is characterized by a sharp substantial difference between the decisions of one District Court judge and another or High Court judge and Supreme Court judge regarding the same case, even though they all refer to the same regulations.

A few years back, the Supreme Court (MA) annulled the death penalty for narcotics factory owner Hanky Gunawan. In the Judicial Review (PK) decision, Hanky was only sentenced to 15 years in prison on the grounds that the death penalty violated the constitution. This is contrary to the decision of the Constitutional Court on the Application for Material Testing of Law Number 22 of 1997 concerning Narcotics against the 1945 Constitution submitted by four people sentenced to death for narcotics cases through their legal counsel regarding the unconstitutionality of the death penalty contained in Law Number 22 of 1997 concerning Narcotics. Based on the decision of the Constitutional Court, it was explicitly stated that the death penalty in Law Number 22 Year 1997 on Narcotics is not contrary to the Constitution. By analogy, a conclusion can be drawn that the death penalty is not an unconstitutional act.

Methodology

This research uses a qualitative approach method that refers to literacy. Make in-depth observations related to the discussion to be discussed. This qualitative method aims to explain the phenomenon in depth by collecting data from both reading and observation media. This research is included in the type of normative research which means not conducting research in the field but based on the literacy of journals, books and laws that apply and are binding. (Ahmad. A et al, 2024) This research uses the case study approach method, specifically case Supreme Court Decision No. 39 PK/PID.SUS /2011 which will also be reviewed with a legislative approach, namely the 1945 Basic Law and Law No. 35 of 2009 concerning Narcotics and Law No. 39 of 1999 concerning Human Rights.

Result and Discussion

Problems of Death Penalty in Relation to Human Rights in Indonesia

Human rights are the basic rights that human beings have since they were born. Human rights can be formulated as rights that are inherent to our nature as human beings, without which it is impossible to live as human beings. These rights are owned by humans solely because they are human, not because they are given by society or the state. (Junaidi et al, 2023). Therefore, human rights do not depend on the recognition of other humans, other societies, or other countries. Human rights come from their Creator, God Almighty, and are rights that cannot be ignored.

The death penalty is often associated with human rights violations, especially since the Amendment of the 1945 Constitution Article 28 A which states that "Every person has the right to live and the right to defend his/her life and livelihood". This is a non derogable human right, which cannot be reduced under any circumstances. In accordance with the constitutional principle, the legality of positive legal products that still maintain the death penalty should be adjusted to the Constitutional Amendment. This is done so as not to contradict the principle of *lex superiori* constitutionality because the legality of death penalty as a lower legal product contradicts a higher legal product. However, a person's human rights are limited by law as stated in the 1945 Constitution Article 28 J paragraph (2) which reads "in exercising his rights and freedoms, every person shall be subject to the restrictions stipulated by law." (Jumardin. J et al, 2023)

In 2007, several people sentenced to death for narcotics crimes accompanied by their legal counsel, Todung Mulya Lubis, had filed a judicial review of several provisions in Law No. 22 of 1997 concerning Narcotics. This law was considered contrary to the protection of the right to life contained in Article 28 I Paragraph (1) of the 1945 Constitution. However, the Constitutional Court at that time believed that the imposition of the death penalty as stipulated in Law No. 22 of 1997 concerning Narcotics was not contrary to the 1945 Constitution. According to T. Gayus Lumbuun, who does not agree to the imposition of the death penalty, that narcotics crimes do not decrease and even increase even though there has been a death penalty imposed on the perpetrators of these crimes. In addition, he also argues that the philosophy of death penalty for the Indonesian

people is inseparable from the views and attitudes of the Indonesian people as stated in TAP MPR No. XVII/MPR/1998 which states that the views and attitudes of the Indonesian people regarding human rights are derived from religious teachings, universal moral values and noble values of the nation's culture and based on Pancasila. The juridical philosophy of the death penalty is contained in Article 28 A of the 1945 Constitution and in every death penalty threat is always included an alternative in the form of life imprisonment as the maximum punishment, which is actually the death of freedom of life for the convicts and can also be a lesson for the community. From the opinions above, the interpretation of the meaning of Article 28 is different because each person views death penalty from a different perspective.

Consideration of the Supreme Court Rejecting the Death Penalty (Supreme Court Decision No. 39 PK/PID.SUS /2011)

In this case it can be seen that the criminal offense committed by the defendant is a psychotropic crime while in the writing of the thesis discusses narcotics because according to Law No. 35 of 2009 concerning Narcotics, Psychotropic Groups I and II are included in Narcotics, and the so-called Psychotropic only Psychotropic Groups III and IV. (Burhanuddin M. D. A, 2022) After reading and analyzing the chronology of the case, there is a difference of opinion with the decision of the District Court Judges because the defendant Hanky Gunawan was proven to produce or use class I narcotics as referred to in Article 59 paragraph (2) of Law No. 5 of 1997 jo Article 113 paragraph (2) of Law No. 35 of 2009 concerning Narcotics, then the punishment should be death penalty or life imprisonment or maximum imprisonment of 20 years and a fine of Rp 10,000,000,000, - (ten billion rupiah). In addition, the punishment imposed should be more severe than 15 years of imprisonment because narcotics crimes can threaten the nation's young generation and the defendant has previously been convicted of the same crime, which is an aggravation of punishment.

In the judge's decision at the appeal level, the panel of judges did not state the things that aggravated the imposition of punishment against the defendant so that this was not in accordance with the applicable law. In the cassation level decision, where the Supreme Court judge imposed the death penalty on the defendant was correct because producing psychotropic drugs (or called narcotics in Law No. 35 of 2009) is an extraordinary criminal offense that needs attention because it is very troubling to the community. By producing, there will be more narcotics circulating in the community and can be easily accessed so that it damages the future of the user and can periodically destroy the nation and state. It is also hoped that the death penalty can create a deterrent effect and fear for people who will become potential narcotics producers so as not to follow the illegal behavior of the defendant. (Hakim R, 2023)

Reading the decision at the level of judicial review, the Supreme Court judge who canceled the death penalty against the convict who was replaced with 15 years imprisonment was considered unfair. This is not in accordance with the actions of the

convict. Especially after reading the judge's consideration that the death penalty is contrary to human rights and violates the constitution as stated in Article 28 paragraph 1 of the 1945 Constitution and Article 4 of Law No. 39 of 1999 concerning Human Rights. In this case, the implementation of death penalty is not contrary to the 1945 Constitution, as evidenced by the Constitutional Court Decision No. 2-3/PUU-V/2007 which states that death penalty is still constitutional and still applicable in positive law in Indonesia both in the Criminal Code and outside the Criminal Code (especially in narcotic and psychotropic laws). (Mujaddidi, 2021).

When examining the Judicial Review submitted by the defendant, Hanky Gunawan, there are several irregularities. According to the defendant, only the *Judex Facti* (District Court and High Court) has the authority to determine the severity of the punishment. This is absurd because under positive law in Indonesia, the panel of judges of the Supreme Court as *Judex Juris* is also entitled to determine the punishment for anyone.

In addition, it is also stated in the memory of the Judicial Review that the death penalty is contrary to the 1945 Constitution and violates Article 4 of Law No. 39/1999 on Human Rights. This is odd, because the defendant compares a statutory regulation with the Constitution, which is irrelevant. If the defendant compares one piece of legislation with another piece of legislation, then this is acceptable. However, if they compare it with the Constitution, which has a higher position in the Indonesian legislative system, then this cannot be justified. (Fajarwati M, 2018).

As explained in the previous chapter, the right to life is indeed a human right that cannot be reduced (non-derogable right) by anyone, but every human right that a person has is limited by the human rights of others so that they cannot act arbitrarily in society. (Bazary S. S et al, 2024). Based on this explanation, the consideration of the Supreme Court judge who rejected the death penalty for Hanky Gunawan was unethical because Hanky as a narcotics producer violated the human rights of others by producing and distributing narcotics in the community, where the community also has the right to live in peace without being overshadowed by the threat of narcotics.

Rudi Satrio, a criminal law expert from the University of Indonesia stated that from the sociological benefits, punishment, including death penalty, is for: (Kadafi M, 2016)

1. Maintenance of community order
2. Protection of citizens from crimes, losses, or dangers committed by others
3. Re-socialize the law violators (except for death penalty)
4. Maintaining and maintaining the integrity of certain basic views on social justice, human dignity, and individual justice.

Moreover, for narcotics crime that has been so severe, death penalty must be maintained. In the judicial review process, the judge considered that the death penalty imposed on Hanky Gunawan violated human rights as stated in the 1945 Constitution. According to Patrialis Akbar, basically human rights formulated in the 1945 Constitution are not universal, in the sense that they are not free, but it is determined how to implement them and given restrictions by the Constitution itself. In its implementation, Article 28 I

paragraph (5) of the 1945 Constitution states “To uphold and protect human rights in accordance with the principles of a democratic state of law, the implementation of human rights is guaranteed, regulated, and set forth in laws and regulations”. (Asrun A. M, 2016). Thus, laws and regulations are a forum provided by the state to uphold and protect human rights.

Patrialis also stated that although there are nine articles (Article 28A s.d. Article 28I) of the Constitution which regulates human rights universally, the implementation of human rights is limited by the 1945 Constitution itself, namely by Article 28J paragraph (1) which states that “Every person shall respect the human rights of others in the orderly life of society, nation and state” and by Article 28J paragraph (2) which states, “In exercising his/her rights and freedoms, every person shall be subject to restrictions prescribed by law for the sole purpose of ensuring recognition and respect for the rights and freedoms of others and to meet just demands in accordance with moral considerations, religious values, security, and public order in a democratic society”. (Eltariant I, 2022)

Based on the opinions of the experts mentioned above who support the death penalty, especially in narcotics crimes, with the granting of annulment of death penalty against Hanky Gunawan who is a narcotics producer is very unfair, especially for other convicts who commit similar crimes or even lighter crimes, such as using narcotics, but are still sentenced to death by the judge and his clemency is not granted by the President. In this case, there is a disparity in the imposition of punishment by judges which in the long run can damage the legal system in Indonesia, causing the Indonesian state to deteriorate in terms of justice for the community.

Conclusion

Death penalty is often associated with human rights violations, especially since the Amendment of the 1945 Constitution Article 28 A which states that “Every person has the right to live and the right to defend his/her life and livelihood.” However, death penalty is needed to fulfill the sense of justice of the community as a demand for security and tranquility. The death penalty can be a shock therapy for criminal offenders in order to create a deterrent effect and at the same time create fear for the community so that people do not commit acts that are punishable by death penalty, especially narcotics crimes. In the Hanky Gunawan narcotics case, the Supreme Court judge who rejected the death penalty in the judicial review process was considered unfair because narcotics crime is an extraordinary crime that deserves the death penalty. The application of the law is not in accordance with the applicable law so as to make the legal system in Indonesia undirected.

References

- Ahmad, A., Fachrurrazy, M., Amalia, M., Fauzi, E., Gaol, S. L., Siliwadi, D. N., & Takdir, T. (2024). *Textbook on Research Methods & Legal Writing*. PT. Sonpedia Publishing Indonesia.
- Asrun, A. M. (2016). Human Rights Within the Framework of a Rule of Law State: Notes on the Struggle in the Constitutional Court. *Journal of Legal Aspirations*, 4(1).
- Bazary, S. S., Karsa, K., Indah, S., & Marseli, D. (2024). The Legal Thought of John Locke and the Foundation of Human Rights. *Das Sollen: Journal of Contemporary Law and Society Studies*, 2(01).
- Burhanuddin, M. D. A. (2022). *The Considerations Of Judges In Imposing Sentences For Class I Narcotic Abuse Based On Law No. 35 OF 2009 (Case Study No: 181/Pid. Sus/2022/PN Smg)* (Doctoral dissertation, Universitas Islam Sultan Agung Semarang).
- Eltariant, I. (2022). Understanding of PPKn Students at the University of Lampung Regarding the Results of the 1945 Constitution Amendments (Chapter Xa on Human Rights).
- Fajarwati, M. (2018). The constitutionality of the People's Consultative Assembly's Decree in the hierarchy of legislation. *Journal of Law & Development*, 48(1), 70-89.
- Hakim, R. (2023). Law enforcement of narcotics abuse crimes by children in the perspective of Law No. 35 of 2009. *Journal of Legal Preferences*, 4(2), 279-291.
- Junaidi, J., Abqa, M. A. R., Abas, M., Suhariyanto, D., Nugraha, A. B., Yudhanegara, F., ... & Mulyadi, D. (2023). *Law & Human Rights: A Concept and Theory of Human Nature Within the Framework of State Constitution*. PT. Sonpedia Publishing Indonesia.
- Jumardin, J., Fadlan, F., & Muhlis, M. Y. (2023). Human Rights Within the Framework of Law. *Vifada Assumption Journal of Law*, 1(2), 9-16.
- Kadafi, M. (2016). The Philosophical Approach to the Constitutionality Test of Firing Squad as a Method of Capital Punishment (Review of Constitutional Court Decision No. 21/puu-vi/2008). *Legal Issues*, 45(3), 164-172.
- Muhammad Hatta, S. H. (2022). *Law Enforcement of Drug Abuse in Indonesia*. Prenada Media.
- Mujaddidi, S. (2021). The constitutionality of human rights restrictions in the decisions of the Constitutional Court. *Jurnal Konstitusi*, 18(3), 539-561.
- Pardede, R. Y., Syahrin, A., Ekaputra, M., & Mulyadi, M. (2022). Juridical analysis of the application of criminal sanctions under special minimum criminal threats in narcotics crime cases: Study of Supreme Court Decision Number 775K/Pid. SUS/2020. *Locus: Journal of Legal Science Concepts*, 2(3), 144-155.
- Pasaribu, A. S. (2024). *Law Enforcement Against Drug Addicts And Abusers According To Law Number 35 Of 2009 On Narcotics (Study of the Kisaran District Court Decision Number 296/Pid. Sus/2021/PN. Kis)* (Doctoral dissertation, Master of Law, Islamic University of North Sumatra).

-
- Putra, R. P., & Pujiyono, P. (2022). Policy Formulation of Criminal Sanctions in the Upcoming Narcotics Law (Ius Constituendum). *Indonesian Law Development Journal*, 4(3), 364-381.
- Sitorus, J. V., & Firmansyah, H. (2023). The Existence of the Application of the Death Penalty in Indonesia for Narcotics Crimes in Indonesia. *UNES Law Review*, 6(2), 6282-6288.