

# International law review on the implementation of the death penalty for foreign citizens involved in drug crimes in Indonesia

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## Abstract

**Purpose:** The main focus of this study is to examine the national legal basis used by Indonesia in imposing the death penalty, as well as assessing the suitability of the implementation of this punishment with international legal obligations and standards, especially those related to the protection of human rights.

**Research Methodology:** Using qualitative methods and a normative legal approach, involving the analysis of various legal documents, documented cases, and academic literature. This study also discusses how international law, such as the International Covenant on Civil and Political Rights (ICCPR), and the Vienna Convention on Consular Relations, influences the implementation of the death penalty in Indonesia, especially in cases involving foreign nationals.

**Results:** It also finds that although the implementation of the death penalty for foreign nationals in Indonesia has a strong legal basis in national law, there are several issues and challenges that need to be considered from an international law perspective. Some of these include compliance with fair trial standards, protection of human rights, and diplomatic responses from the convict's country of origin. In addition, international pressure and criticism from human rights organizations highlight the need for a re-evaluation of the death penalty policy, especially in the context of drug cases.

**Suggestions:** Then suggest the need for reform of the death penalty policy in Indonesia by considering a more humane approach and in accordance with international standards.

**Keywords:** *Death Penalty, Foreign Nationals, Drug Crimes, International Law, Human Rights*

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## 1. Introduction

The death penalty in Indonesia is not a form of extrajudicial, summary or arbitrary execution that violates human rights standards. The death penalty is a formal legal act regulated by legal procedures and the implementation of other actions. In fact, the pros and cons of the death penalty have existed for a long time in this country. In fact, the existence of the death penalty in Indonesia will continue to exist in the future because in the Draft Criminal Code (RKUHP), the death penalty is still one of the punishments maintained to punish people. The framework of the death penalty is considered one of the main criminal penalties that is special and is always threatened as an alternative (ACLU, 2007). The application of the death penalty in Indonesia has become a hot topic of discussion and prolonged debate in civilized countries. This is because the application of the death penalty is not in line with the state philosophy according to Pancasila, which always prioritizes a sense of justice and community civilization.

In the international community, recognition of the death penalty has practically no place in a democratic and civilized society. The UN Committee responded as follows:

"Although the death penalty has not been prohibited under international law, the tendency towards such a prohibition is very clear. The adoption of the Second Optional of the International Covenant on Civil and Political Rights in 1989 which aims to abolish the death penalty is a very clear recognition by the international community of the need to eliminate the use of the death penalty totally and completely".

The execution of death row inmates in Indonesia in cases of narcotics crimes is considered a difficult problem. This is based on various aspects that have implications for the implementation of the death penalty. Most consider this step to be very appropriate because drug dealers can damage the nation's generation. In accordance with Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, drug dealers or dealers can be ensnared by giving the heaviest punishment, namely the death penalty. However, on the other hand, the problem that is often raised is that the execution of the death penalty for drug dealers in Indonesia and the death penalty for drug dealers are contrary to aspects of Human Rights (Reksodiputro, 1997).

The application of the death penalty to perpetrators of drug cases, as part of the enforcement of positive law that is still in effect in Indonesia, and the implementation of bilateral relations between Indonesia and friendly countries actually have nothing to do with each other. The legal sovereignty of a country must be respected, while bilateral relations between countries are part of international relations that should be developed and improved by countries in the world. Anti-drug diplomacy that should be intensified by Indonesia, both bilaterally and multilaterally. Anti-drug diplomacy aims to provide a complete understanding to the international community about the dangers of the threat of drugs in Indonesia and Indonesia's serious efforts to overcome it (Sujono & Daniel, 2011).

The danger of drug threats that have become a concern for the international community, including the UN world body through UNODC (United Nations Office on Drugs and Crime), must be the basis for joint efforts by countries in the world to combat illicit drug trafficking and abuse. This means that bilateral diplomacy carried out by Indonesia is basically, besides being a national interest, also part of the form of concern of the international community about the dangers of drug threats.

This can also be done through multilateral channels, namely efforts to eradicate drugs certainly also need to be increased through multilateral diplomacy. Here, the emphasis is on building cooperation between countries multilaterally, especially through cooperation between institutions or related stakeholders, in eradicating illicit drug trafficking, because it is impossible for a country to eradicate the illicit drug trafficking that has become global alone. In eradicating international illicit drug trafficking, the international community has formed many international collaborations, such as through Interpol, Europol, ASEANAPOL (ASEAN Chiefs of National Police), ASOD (ASEAN Senior Official on Drugs Matters), and others. In addition, of course, through the United Nations Anti-Drug Agency (UNODC). In this multilateral forum or forum, various cooperation efforts are usually discussed to eradicate the illicit trafficking of drugs in a wider scope, both in a region and at the global level.

If we refer to the current condition of drug trafficking crimes, it is indeed a transnational crime committed between countries without borders and territories. Drug crimes are the most deadly form of crime because their main target is the younger generation. However, without realizing it, drug crimes are crimes that have claimed human lives after consuming drugs due to overdose and the influence of addiction to these drugs. Even through the current government, Indonesia has declared a drug emergency because drugs no longer recognize borders and territories (territorial). Even according to the Director General of Corrections, half of the occupancy of Correctional Institutions (Lapas) or Detention Centers (Rutan) throughout Indonesia are drug cases. This indicates to us that Indonesia is truly a drug emergency. Drug crimes not only kill lives, but kill human lives, even the wider community. Drug crimes not only take tens of thousands of human lives every year, but destroy the lives and future of the nation's next generation.

In terms of Originality, the author discusses the issue of international legal review of the application of the death penalty for foreign nationals involved in drug crime cases in Indonesia, where the author prefers that the death penalty for foreign nationals involved in drug cases can be resolved diplomatically or through an agreement between countries as a solution so that there will be mutual respect for the laws in force in various countries, So that a new idea will arise.

Based on the description above, the author is interested in conducting further research by raising the title "International Legal Review of The Implementation of The Death Penalty for Foreign Citizens Involved in Drug Crimes in Indonesia."

## **1.2 Main Issues**

Based on the description of the background, the author presents the main problems as follows:

1. How is the legal analysis of the application of the death penalty for foreign nationals involved in narcotics crime cases in Indonesia reviewed from the perspective of National Law?
2. How is the legal analysis of the application of the death penalty for foreign nationals involved in narcotics crime cases in Indonesia reviewed from the perspective of International Law?

## **2. Literature Review**

### **2.1. Death Penalty**

The death penalty is a legal policy that legalizes a country or legal system to impose the death penalty on perpetrators of serious crimes. The death penalty cannot be applied in all countries, the death penalty is widely opposed by several systems or organizations in the world. And it is very contrary to human rights. Execution is carried out by beheading, but execution can be carried out by many methods, including hanging, shooting, lethal injection, stoning, electrocution, and poison gas (Amnesty International).

Crimes punishable by death vary by jurisdiction, but typically involve serious crimes against a person, such as murder (whether premeditated or not), mass murder, rape (often including child sexual abuse), terrorism, war crimes, crimes against humanity, and genocide, plus crimes against the state such as attempted overthrow of a government, treason, espionage, sedition, and piracy, as well as other crimes such as recidivism, serious theft, kidnapping, and smuggling, trafficking, or possession of narcotics. In Indonesia, there are three types of crimes punishable by death, namely: production, processing, extraction, conversion or supply of category I narcotics, premeditated murder and escape or treason against the state in times of war (Schimmel, 2004).

Perpetrators of these crimes can all be shot dead as the most severe punishment applicable in Indonesian law. The International Covenant on Civil and Political Rights (ICCPR) states that the right to life is a fundamental right and cannot be violated under any circumstances. The ICCPR encourages the abolition of the death penalty. KIHSP also said, in countries that still use the death penalty, the death penalty may only be used for the most severe punishment, and its implementation if the provisions of KIHSP are met including the right to a trial before a "competent" court. In the development of the United Nations (UN), members have decided that "The abolition of the death penalty helps to improve human dignity and the gradual development of human rights" and then made the second protocol of KIHSP which explicitly aims to abolish the death penalty. Countries that have ratified the second protocol agree to abolish the death penalty for ordinary crimes. Countries that have ratified the second protocol can only make exceptions if they have clearly made reservations to the protocol, and the exceptions are only for crimes committed "in times of war for the most serious crimes of a military nature".

Until now 43 (forty-three) countries have ratified the second protocol of KIHSP, and 6 (six) more have signed it. Indonesia has not ratified the second protocol of the KIHSP, at the IV national human rights workshop in 1998, the National Human Rights Commission recommended that the Indonesian government immediately ratify the KIHSP and its first and second protocols. Although Indonesia has not yet ratified the convention, in the Human Rights Court Bill for example, the death penalty has been eliminated for serious crimes against humanity, but in PERPU Number 1 of 1999 concerning the Human Rights Court it is still included.

## **2.2. Foreign Nationals**

A foreign citizen is someone who lives and resides in a particular country but is not from that country and is not officially registered as a citizen, who has various purposes, for example in order to pursue education, business or other things. Although the status of a person is a foreign citizen in Indonesia, the person still has rights and obligations towards the country where he lives.

## **2.3. Drug Crimes**

Drug crime is an unlawful act and is an organized crime. Drug crime is a transnational crime which is a form of cross-border crime. This causes the development of drug crimes that occur in countries in the world to need to be eradicated completely. This study aims to determine the development of drug crimes as one of the transnational crimes and to determine the steps taken by the state in dealing with drug crimes. This study uses a normative approach. Drug abuse is currently very disturbing to all mankind

Drugs are an extraordinary crime and must be handled in an extraordinary way. In the midst of the dynamics of the revision, a discourse on codification has emerged in the Draft Criminal Code (Law Number 1 of 2023). According to various sources collected by the author, later in the Draft Criminal Code (Law Number 1 of 2023) there will be regulations regarding narcotics. Quoting from the presentation of Supardi, SH, MH, an analyst at the BNN Legal Directorate, according to the bill, there will be an adoption of articles from Law Number 35 of 2009, namely articles 111 to 129 to become articles 507 to 525 with the same prison sentence formulation but lower fines. Meanwhile, articles 130 to 148 are not adopted. With such a concept, it is feared that there will be no more regulation of demand reduction, undercover buy, controlled delivery, and wiretapping, which are permitted according to the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 which has been ratified by Indonesia with Law Number 7 of 1997 and the UN Convention Against Transnational Organized Crime of 2000 which has been ratified with Law Number 35 of 2009.

Drug crime is a transnational crime which is currently a transnational crime that occurs in Indonesia. The Indonesian government currently has regulations to address the problem of drug crime with Law Number 35 of 2009 concerning Narcotics.

## **2.4. Assumptions - Assumptions**

In the form of a provisional answer to the question contained in the formulation of the problem where that from the perspective of national law, the application of the death penalty to foreign nationals involved in narcotics cases in Indonesia must pay attention to human rights norms recognized both by national law and international treaties ratified by Indonesia, that the judicial process against foreign nationals involved in narcotics cases runs with the principles of justice and legal certainty, including the defendant's right to a fair and impartial trial.

Judging from international law, based on the existence of various international legal instruments governing human rights and the death penalty, such as the International Covenant on Civil and Political Rights (ICCPR) and the Second Optional Protocol aimed at abolishing the death penalty, the International gives the right to the country of origin of foreigners to protect their citizens through diplomatic and consular means, including intervention in legal proceedings in other countries. There is some need to ensure that Indonesia's national laws are consistent with its international obligations, especially in the context of the application of the death penalty to foreign nationals.

## **3. Research methodology**

### **3.1. Type of Research**

Normative Juridical research type. Research that uses or refers to legal norms obtained in laws and regulations that refer to legal norms and focuses on the analysis of written legal rules and how these rules are applied in practice. The normative juridical research method, also known as doctrinal legal research, examines legal norms written in legislation, court decisions, international treaties, and legal literature.

### **3.2. Research Specifications**

This research is descriptive analysis, namely research where knowledge or theories about the object already exist and then analyzed in accordance with the provisions of relevant laws and regulations, legal theories and opinions of legal experts, regarding the death penalty can be carried out systematically and in-depth, making a significant contribution to the development of more just and humane laws and public policies.

### **3.3 Research Approach**

The approach through Case, legislative, conceptual, *comparative* and empirical limited analysis of Comparative Law by comparing the death penalty for foreign nationals in narcotics cases in Indonesia with similar sentences in other countries and reviewing the differences and similarities in international legal approaches in various jurisdictions regarding such cases.

### **3.4 Collection of Legal Materials**

The collection of material can be reviewed from the judgments of international courts such as the International Court of Justice or the European Court of Human Rights relating to the death penalty and human rights and from legal journals published in accredited academic journals, as well as relevant articles on the death penalty in Indonesia and international legal reviews.

### **3.5 Data Processing and Analysis**

Data collection is carried out through document studies on secondary data. Secondary data in legal research can be limited to the use of document studies or library materials only. This method of literature is carried out by visiting various literature, as well as other sources related to the material discussed in this thesis proposal with the intention of obtaining theoretical materials both directly and indirectly related that will be used in the general review.

### **3.6 Drawing conclusions**

Drawing conclusions is carried out using deductive logic, meaning the method of drawing conclusions from general to special, namely general statements. The conclusion is the answer to the problem raised based on the results of the test and discussion convincingly as far as the research is conducted.

### **3.7 Legal Procedures and Application of the Death Penalty in Indonesia in Countering Narcotics Crimes for Foreign Citizens**

By applying severe punishment through the death penalty for serious crimes such as narcotics, the Constitutional Court argued that Indonesia did not violate any international treaties, including the International Covenant on Civil and Political Rights (ICCPR) which advocates the abolition of the death penalty. In fact, the Constitutional Court emphasized that article 6 paragraph 2 of the ICCPR itself allows the death penalty to still be imposed on participating countries, especially for the most serious crimes. It is not threatened with all narcotics crimes, because it is only threatened by illicit producers and dealers who are limited to group I, such as marijuana and heroin. As for abusers and users, they are not subject to the death penalty.

Indonesia has been bound by the international convention on narcotics and psychotropics which has been ratified into national law in Law Number 22 of 1997 concerning Narcotics. In the convention, Indonesia has recognized narcotics crimes as an extra-serious crime against humanity (*extra ordinary*) so that its enforcement needs special, effective and maximum treatment. One of the special treatments, according to the Constitutional Court, is by applying severe punishment, namely the death penalty.

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Internationally, Indonesia is among the 68 countries that still impose the death penalty (data until July 2006). Meanwhile, 129 countries, including the heirs of the Criminal Code (the Netherlands), have become abolitionist countries that have abolished the death penalty. The application of the death penalty is a national legal policy of a country. Mahfud M.D (MD, 2006) in this case said that:

There is also a lack of effectiveness of a law due to the law enforcement itself. According to Atmasasmita (2001), the factors that hinder the effectiveness of law enforcement do not only lie in the mental attitude of law enforcement officials (judges, prosecutors, police, and legal advisors) but also lie in the factor of legal socialization which is often overlooked. From these two opinions, it can be concluded that the law will be effective if law enforcement consistently enforces the law (Atmasasmita 2001). In the bilateral framework, the anti-drug diplomacy carried out by the Indonesian state with other countries is more serious and intensive to discuss the increasingly massive and real threat of drugs and illegal drugs. The problem of the latent danger of narcotics and illicit drugs has become a concern of the world community, including the United Nations world agency through UNODC (*United Nations Office on Drug and Crime*) must be the basis for joint efforts of countries in the world to combat illicit trafficking and drug abuse. This means that diplomacy carried out bilaterally by Indonesia is basically, in addition to being in the national interest, it is also part of the international community's concern about the dangers of drug threats.

#### **4. Results and discussions**

##### ***4.1. Implications of International Legal Procedures in the Application of the Death Penalty for Foreign Nationals Involved in Narcotics Cases in Indonesia***

The death penalty in Indonesia has been regulated in article 10 of the Criminal Code (KUHP) which is one of the most severe punishments carried out by a convict by taking away the life of the convict. And Indonesia is a country that still imposes the death penalty as the heaviest penalty in its legal system (Lubis, 2012).

The regulation on the application and enforcement of the death penalty in contemporary international law can be said to be not yet a single vote. The application of the death penalty, including to narcotics crimes, is basically not contrary to both International Human Rights Law (ICCPR) as well as Indonesian national law, both the 1945 Constitution as well as the (organic) laws under it, especially in the study of human rights known and recognized in general the existence of specific or relative cultural values, which means that the application of human rights (can) be adjusted to cultural values, religion and ideology of their respective countries. In fact, the Constitutional Court (MK) argued that there was no international legal obligation born from international treaties violated by Indonesia by imposing the death penalty in the Narcotics Law.

More than 70% of countries in the world have abolished the death penalty in law or practice. However, the death penalty is still in force in many parts of the world, especially in countries with large populations and countries with authoritarian governments. In recent decades, there has been a clear trend away from the death penalty, as many countries have abolished the death penalty or stopped using it. The U.S. remains an exception among its close allies and other democracies in its continued application of the death penalty.

Although international law does not prohibit the death penalty, most countries consider it a violation of human rights. The worldwide application of the death penalty is relevant in evaluating U.S. standards of decency and what should be considered a cruel and unusual punishment under the Eighth Amendment. Some Supreme Court justices have referred to international law as a further affirmation of their own conclusions about the death penalty, particularly since the sentence can apply to certain groups of defendants such as juvenile offenders. There are a number of disagreements that may arise between countries that impose the death penalty and those that do not. Countries without the death penalty are particularly worried when one of their citizens faces execution in the U.S. Some countries refuse to extradite individuals to the U.S., or even to provide incriminating evidence, if the accused could face the death penalty (Olajubu, 2022).

In addition, many countries and international bodies consider the death penalty to be a human rights issue and various U.S. death penalty practices have been criticized for violating U.S. treaty obligations and international human rights law. Concern for human rights around the world has always been important in U.S. diplomacy, but the U.S. has often been challenged for its use of the death penalty and the protections it provides to other countries that use it in a very abusive way. On May 7, 2024, *Harm Reduction International (HRI)* released a special global overview report on the use of the death penalty for drug offenses, which is a violation of international law because drug offenses do not meet the threshold of the "most serious" crimes.

A number of parties consider that the death penalty violates human rights by referring to Article 3 of the *Universal Declaration of Human Rights (UDHR)*, which recognizes the right to life. The death penalty is one of the most controversial issues in the *International Covenant and Civil and Political Rights (ICCPR)*. Although the right to life is recognized as a *non-derogable right* (a right that cannot be reduced by Article 6 paragraphs (2), (4) and (5)), it is stated that the death penalty is not prohibited. Meanwhile, Article 6 paragraph (6) states the spirit of this covenant to gradually and progressively abolish the practice of the death penalty.

In fact, this provision makes it clear that nothing in this article shall be required to delay or prevent the abolition of the death penalty by a state party to this treaty (Mwesigwa, 2021a, 2021b). Second Optional Protocol to the International Covenant on Civil and Political Rights; Aiming at the Abolition of the Death Penalty, adopted by the UN General Assembly Resolution on December 15, 1989, expressly prohibits the practice of the death penalty. In the international legal norms in the group that does not support the death penalty, it is argued that international legal norms expressly prohibit the death penalty, but in the group that supports the death penalty, the group that supports the death penalty believes that international legal norms basically do not contain a prohibition on the death penalty.

Article 3 is often used as a weapon to say that the death penalty does not exist in international legal instruments, especially those related to human rights norms. Based on the idea of the right to life, simplistically the opponents of the death penalty state that the death penalty has violated people's right to life, so the rule of law must be abolished. The death penalty is more visible as an act of human rights violation, not solely to punish human rights violators. Regarding the death penalty in the provisions of the ICCPR that are directly related to the death penalty is in Article 6 of the ICCPR. Article 6 is often referred to by opponents of the death penalty.

Based on the description above, it can be concluded that the death penalty in Indonesia has been regulated in article 10 of the Criminal Code (KUHP) which is one of the most severe punishments carried out by a convict by eliminating the life of a convict. International law is also regulated in several international legal instruments such as Article 3 of the *Universal Declaration of Human Rights (UDHR)*, Article 6 paragraph (1) of the *International Covenant on Civil and Political Rights (ICCPR)* and in the Second Optional Protocol to The International Covenant on Civil and Political Rights. This is an additional protocol of the ICCPR that requires its member states to prohibit the execution of the death penalty and abolish the death penalty. The Constitutional Court ruled that the death penalty in the Narcotics Law does not conflict with the right to life guaranteed by the 1945 Constitution because the guarantee of human rights in the constitution must be used by respecting and respecting the human rights of others for the sake of public order and social justice. Thus, human rights must be limited by the instrument of the Law, that is, the right to life should not be reduced, unless decided by the court. Another reason from the Constitutional Court is that Indonesia has been bound by the international convention on narcotics and psychotropics which has been ratified into national law (Narcotics Law).

#### ***4.2. The death penalty is reviewed in terms of international legal instruments.***

International law is a set of rules and norms that govern relations between countries as well as other international entities, such as international organizations and, in some cases, individuals. According to international law, human life cannot be taken arbitrarily, including by the execution of the death penalty. This is in accordance with several international conventions such as Article 3 of the *Universal*

Declaration of Human Rights (UDHR), Article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR) and the Second Optional Protocol, the International Covenant. This is governed by legal documents. About citizenship and political rights. It is an Additional Protocol to the International Covenant on Civil and Political Rights, which obliges participating states to prohibit and abolish the death penalty. The execution in Indonesia itself backfired for Indonesia, because many parties criticized Indonesia for the death penalty, both domestically and internationally, which attracted the world's attention (Saputri, 2020; Tarasari & Nasywa, 2021).

An analysis of several international legal norms that are more or less in contact with the issue of the execution of the death penalty. There are two types of instruments that are specifically to be observed, namely International Human Rights Instruments and Instruments in the form of Statutes of the International Criminal Court.

#### 4.2.1. *The Death Penalty is reviewed from Article 3 of the DUHAM*

Based on Article 3 "Everyone has the right to life, freedom, and personal security". The most extreme form of violation of the right to life is the murder or physical or spiritual injury of a person or group of people who have been sentenced to death in clear violation of this article, where the person sentenced to death has been deprived of his life, his liberty, his personal security. After all, the death penalty is a punishment that seriously violates the right to life for human beings as creatures created by God. It can be seen that many people have been sentenced to death, including corruptors in China, Saddam Hussein, or others. However, as in the case of Rwanda and Yugoslavia, perpetrators of human rights violations are only rewarded with a maximum penalty of life imprisonment, because the death penalty in modern times is beginning to be abandoned by countries in the world, although there are still several countries that still carry it out in various ways (Levin, 2012).

The regulation of basic rights, namely the right to life regulated in the Human Rights Act, which in this case is linked to the death penalty, there are exceptions to the exercise of these rights, namely with a deep understanding of the existence of derogable rights, namely in the first case "*a public emergency which threatens the life of the nation*" can be used as a basis to limit the exercise of basic freedoms. on the condition that the state of emergency (*public emergency*) must be officially *proclaimed*, limited in nature and must not be discriminatory (Chirozva & Damba, 2021; Khan & Sultana, 2021).

#### 4.2.2. *The Death Penalty reviewed from Article 6 of the ICCPR*

The death penalty is reviewed according to the International Covenant on Civil and Political Rights, namely Article 6 paragraph (1), which reads: Every human being has an inherent right to life. This right must be protected by law. No human being can be recklessly deprived of his life. As explained in Article 3 of the Criminal Court, the execution of the death penalty has violated Article 6 paragraph (1), the execution basically causes physical pain and deprivation of the right to life of a person, and this is contrary to Article 6 paragraph (1) of the ICCPR and Article 3 of the Criminal Court.

Although many countries have not abolished the death penalty, including Indonesia, China and Iraq, the problem is the lack of fulfillment and clear arrangements for the execution of the penalty, both in the process of arrest and in the implementation of examinations at court, so it is contrary to the concept *of the rule of law* Where there is a clear arrangement, both equality of position before the law and also a free and impartial judiciary which implies an independent judicial power.

In countries that have not abolished the death penalty, the sentence may be given only for the most serious crimes, in accordance with the law in force at the time the crime was committed, and without violating any provision of this Covenant and the Convention on the Prevention and Punishment of the Crime of Genocide of the Nation. This punishment may only be carried out with the final decision of the competent court.

Furthermore, Article 6 paragraph (4) of the International Covenant on Political Civil Rights stipulates that:



A person who has been sentenced to death should have the right to apply for pardon or leniency. Amnesty, pardons, or death penalty leniency can be granted in any chapter.

Based on Article 3 "Everyone has the right to life, freedom, and personal security". The most extreme form of violation of this right to life is the murder or physical or spiritual injury of a person or group. The death penalty clearly violates this article, where the person sentenced to death has been deprived of his life, his freedom, his personal security. After all, the death penalty is a punishment that seriously violates the right to life for human beings as creatures created by God. It can be seen that many people have been sentenced to death.

In this case, according to the description above, the author tries to argue by paying attention to several aspects, because in understanding a regulation of the death penalty, philosophical, sociological, and juridical aspects are considered in the commission or application of the death penalty, although in human rights the death penalty is prohibited because it is not in accordance with Article 3 of the Criminal Code and also many countries in the world have abolished the death penalty.

#### ***4.3. The impact of diplomacy and international relations on Indonesia in the application of the death penalty to foreign nationals in narcotics cases***

As is known, in Indonesia, the Constitution "45 Article 28I paragraph 1 does state that the right to live and not be tortured is a human right that cannot be reduced under any circumstances. However, in article 28J paragraph 2, the Constitution states that in exercising their rights and freedoms, everyone is obliged to submit to the restrictions stipulated by law with the sole intention of ensuring recognition and respect for the rights and freedoms of others and to meet fair demands in accordance with moral considerations, religious values, security and public order in a democratic society. These articles have been interpreted by nine judges of the Constitutional Court who agreed that although the right to life is a human right, this statement also cannot make the death penalty unsharia as Mahfud MD said that the death penalty in Indonesia is "shah" and "does not contradict the constitution.

In 2002, an additional protocol to the Covenant on Civil and Political Rights (UN) emerged that prohibits the death penalty in all situations, including in times of war. This protocol is an explicit protocol that aims to abolish the death penalty in countries that have signed and agreed to the protocol. But in reality, this second protocol has a facultative nature and does not contain a withdrawal clause. Other international instruments such as ICCPR Article 6 paragraph (2), protocols 1 and 2 of 1949, protocol 6 and the ICC or *the International Crime Code of Rome* also do not prohibit the death penalty, so until now there is no official text or international consensus that requires countries to abolish the death penalty. As a consequence, there are also no international sanctions for countries that apply such penalties (e.g. trade embargo sanctions).

Sanctions are only threatening and symbolic, such as the threat of severing diplomatic relations in the Serge case or the threat of suspension of the status of the United States and Japan as European advisory countries, until these countries abolish the death penalty. Responding to the death sentence of its citizens, French Foreign Minister Laurent Fabius argued that the attorney general's office took a decision too quickly, without allowing the presence of witnesses and legal experts who could help solve Serge's case. Through his spokesman, Stephane Le Foll, the French Foreign Minister said that diplomatic efforts will continue to be pursued by the French government to save its citizens from the death penalty.

In addition, François Hollande reminded Indonesia that the death penalty against French citizens will have an impact and consequences in cooperation and bilateral relations between the two countries. Manuel Valls, the Prime Minister of France, also stated that defending Serge Atlaoui means defending France in eradicating the death penalty. Indonesian Foreign Minister Retno Marsudi responded to the statement by saying that the death penalty for drug cases in Indonesia is a law enforcement issue in Indonesia and not a diplomatic issue between countries. He argued that the French President should be aware of this.

Meanwhile, Indonesia is sometimes considered a two-faced country because of Indonesia's request for clemency from countries such as Saudi Arabia which executed many Indonesian migrant workers, but refused to grant clemency to other countries. Responding to this, Mahfud MD responded that Indonesia did ask for clemency so that Indonesian citizens would not be executed, but Indonesia never asked the State to abolish the death penalty from the country's laws or constitution. Thus, diplomatic relations and economic cooperation are still running between Indonesia and Saudi Arabia, until now.

Based on the explanation above, it can be seen that the death penalty is still valid in several countries in various parts of the world, including Indonesia. In an international perspective, the Universal Declaration of Human Rights indicates that the death penalty violates a person's right to life, and it is forbidden to apply it. However, on the other hand, *the International Covenant on Civil and Political Rights (ICCPR)* still allows countries that have not abolished the death penalty in their penal systems within certain limits. On the other hand, as a result of the application of the death penalty, especially in the above case, Australia threatened to withdraw its ambassador from Indonesia, which will ultimately disrupt the good relations between the two countries where there is mutually beneficial bilateral cooperation in it. Australia's threat to the Indonesian government has disrupted the country's sovereignty, which includes the country's jurisdiction where other countries cannot interfere in Indonesia's internal affairs.

In the execution carried out by the Indonesian government under the leadership of President Joko Widodo and Vice President Muhammad Jusuf Kalla on January 18, 2015 against six death row inmates related to drug crimes, namely Rani Adriani alias Melisa Aprilia (Indonesian citizen), Daniel Enemuo (Nigerian citizen), Ang Kiem Soe (Netherlands), Tran Thi Bich Hanh (Vietnamese citizen), Namaona Denis (Nigerian Citizen) and Marco Archer Cardoso Moreira (Brazilian Citizen).

The execution of the execution drew strong protests from various parties such as Human Rights Organizations (HAM) both locally and internationally. Despite the strong protests made by various parties, after three months later, on April 29, 2015, eight people sentenced to death related to the drug case were executed again, they are Andrew Chan and Myuran Sukumaran (Australian Citizens), Raheem Agbaje Salami alias Jamiu Owolabi Abashin (Nigerian Citizens), Zainal Abidin (Indonesian Citizens), Martin Anderson alias Belo (Ghanaian Citizens), Rodrigo Gularte (Brazilian citizen), Sylvester Obiekwe Nwolise (Nigerian citizen) and Okwudili Oyatanze (Nigerian citizen), in addition to two others were given a temporary suspension of execution. On the other hand, as a result of the implementation of this execution, of course, Indonesia has again become the world's attention, even several newspapers abroad raised the process of executing six drug kingpins as a hot topic of discussion and this execution will certainly have an impact not only domestically but also internationally.

After the execution of the death penalty for 5 foreign nationals involved in drug cases, of course, it will have an impact on diplomatic relations, especially the diplomatic impact with the country incarcerated on death row and it is possible that they will also impose the death penalty on Indonesian citizens who commit criminal acts in that country, including also rejecting diplomatic efforts at the request of the Indonesian government if any of their citizens are threatened with the death penalty abroad, such as Negara Brazil. In fact, as is known, many Indonesian citizens abroad are threatened with the death penalty and the majority of them are threatened with the death penalty in Middle Eastern countries such as Saudi Arabia.

Reflecting on the previous government in the era of the Susilo Bambang Yudhoyona administration, it was successful in taking diplomatic efforts with the State of Saudi Arabia which caused several Indonesian citizens who were threatened with the death penalty to finally be forgiven by the Saudi Arabian government, including the victims' families, as long as they were able to pay fines as compensation amounting to billions of rupiah. The firmness of punishing drug offenders to death certainly has its own consequences, including relations with other countries in the right *to mutual legal assistance* (MTA) for Indonesian citizens who are threatened with the death penalty abroad and it is possible that Indonesian citizens who are threatened with the death penalty abroad will not get a pardon from that country as well as the Indonesian State which does not provide pardons for foreign citizens

Although diplomatic efforts have been made, such as the President of Brazil who directly contacted President Jokowi, his request to release his citizens was rejected by the President.

Even the Brazilian and Dutch governments once withdrew their ambassadors from Indonesia as an effort to protest strongly against the Indonesian government's decision to persecute its citizens. The two countries withdrew their ambassadors because the Indonesian government had just executed Brazilians and Dutch citizens for being involved in drug cases. Ang Kim Soei is a Dutch citizen and Marco Archer, a Brazilian citizen, who was executed by the prosecutor's office this morning. Brazil considers the execution of one of its citizens in Indonesia because the drug case is a form of 'cruelty'. Brazil said Moreira was the first Brazilian to be executed abroad and warned the sentence would "damage" relations with Indonesia. Brazilian President Dilma Rousseff said in a statement that she was shocked and judged the punishment to be cruel. "Relations between the two countries will be affected," President Rousseff said. "The Brazilian ambassador in Jakarta has been withdrawn for consultations," he said. In addition to Brazil, the Netherlands also withdrew its ambassador, after Foreign Minister Bert Koenders said the execution of 52-year-old Dutch citizen Ang Kiem Soe "constituted a denial of human dignity and integrity". Four foreign nationals, namely Brazil, the Netherlands, Malawi, Nigeria and one Indonesian, have been executed at LP Nusa Kambangan, while the execution of Vietnamese citizens Boyolali in Central Java was executed at the same time.

From the above research, we can understand that bilateral relations between countries are very important to be maintained so that they are mutually beneficial to both parties. State relations that have been well established and have been established for a long time can be disrupted and damaged if there is no mutual respect for the decisions of each country. The problem that occurs between Indonesia and Brazil is that the two countries have different understandings regarding executions. The Brazilian government is protecting its people who will be executed in Indonesia due to a drug trafficking case that ensnares. As a democratic country that highly upholds human rights (HAM), Brazil strongly opposes the execution, because it is considered incompatible with human rights and does not respect human life. On the other hand, the Government of Indonesia remains firm in defending its decision to execute the convict in the drug case.

Through the National Narcotics Agency (BNN), the President directly instructed to take strict action against the distribution of drugs from abroad. 15 Brazilian citizens who were caught carrying a large amount of drugs in Indonesian territory then received the death penalty from the Attorney General's Office. This is already a law that applies in Indonesia related to drug abuse. In this case, the Brazilian government strongly opposes what the Indonesian government did to one of its citizens. The Brazilian government gave a reaction in the form of rejecting the letter of confidence of an Indonesian diplomat for Brazil. In addition, Brazil also postponed several cooperation agreements established between Indonesia and Brazil. The reaction issued by the Brazilian government shows that the Brazilian government, President Dilma Rousseff does not respect the laws that apply in Indonesia. Countries have their own authority to determine the law in their own country without any interruption from other countries. The response issued by the Brazilian government has made relations between the two countries deteriorate. The Indonesian government through President Joko Widodo immediately withdrew the Indonesian diplomat to Brazil from the embassy in Brazil.

According to Mr. Marcelo Koiti Hasunuma, *Head of Politics and Consular Section* (Diplomat of the Embassy of Brazil) The most important reason why Brazil opposes and opposes the death penalty is related to moral and human rights, gender and freedom to a decent life which has been enshrined in their constitution for a long time, normally every State Government is to protect citizens, due to several factors and reasons that the death penalty is not appropriate such as In 2004, Brazil met with the ICC and signed against and disagreed with the death penalty on many aspects of human rights. There are many cases such as in Germany where a citizen is caught carrying narcotics at the airport and arrested by the German Police through diplomatic channels between Brazil countries is given back to the Brazilian Government without the death penalty, regardless of that, all the Brazilian Government is involved in the death penalty imposed in Indonesia, still upholding the decisions and rights of each

country in imposing criminal penalties for foreigners, especially the death penalty and until now diplomatic between Brazil and Indonesia continue to run smoothly and well.

## 5. Conclusions

### 5.1. Conclusion

Based on the results of the research and interviews of the Resource Persons, the author has drawn the following conclusions:

1. The death penalty in Indonesia is regulated in the Criminal Code (KUHP) and a number of special laws, including Law Number 35 of 2009 concerning Narcotics. Article 114 paragraph (2) of Law Number 35 of 2009 concerning Narcotics states that perpetrators who are proven to import, export, or circulate large quantities of narcotics can be subject to the death penalty.

The implementation of the death penalty for Indonesian foreigners applies territorial principles in criminal law, which means that Indonesian criminal law applies to anyone who commits a criminal act in Indonesian territory, including foreigners. The application of the death penalty for foreigners involved in narcotics cases in Indonesia is also based on international agreements that have been ratified by Indonesia, such as the United Nations Convention on Narcotics.

Juridical and Human Rights Executions, while legally valid, have often drawn criticism from various international circles and human rights organizations. Indonesia's Constitutional Court has tested the constitutionality of the death penalty several times and ruled that the death penalty does not contradict the 1945 Constitution, as long as the rights of convicts are fulfilled during the judicial process.

International views and responses to the application of the death penalty to foreigners often elicit diplomatic reactions from the country of origin of the convict, including diplomatic efforts to commute the sentence or obtain clemency. Several countries and international organizations continue to encourage Indonesia to abolish the death penalty, especially for cases involving foreigners and related to narcotics crimes.

**Effectiveness and Controversy** The effectiveness of the death penalty as a measure to prevent narcotics crimes is still a matter of debate. Some argue that the death penalty has a deterrent effect, while others argue that it is ineffective in reducing narcotics crime. Controversy also arises regarding aspects of justice and potential errors in the justice system that can result in the execution of convicts who are actually innocent.

Thus, the conclusion can show that the application of the death penalty for foreigners in narcotics cases in Indonesia has a strong legal basis in national law, but it also faces challenges and criticisms from the perspective of human rights and international diplomacy.

2. In international law, every country has the sovereignty to establish and enforce its criminal law, including the application of the death penalty. Indonesia, as a sovereign country, has the right to impose the death penalty in narcotics cases in accordance with its national law.

The obligation of States to protect Human Rights under various international instruments, such as the International Covenant on Civil and Political Rights (ICCPR), states that continue to apply the death penalty must ensure that this punishment is applied only to "*the most serious crimes*" and follows fair judicial standards. The ICCPR, which has been ratified by Indonesia, stipulates that the death penalty should not be imposed arbitrarily and must go through a rigorous and fair judicial process.

The protection of foreign nationals in the judicial process of international law, including the Vienna Convention on Consular Relations, requires the detaining state to immediately notify the consulate of the convict's home country and grant consular access. Indonesia is obliged to comply with this obligation to ensure that foreign nationals facing the death penalty have access to representatives of their home countries and receive adequate legal assistance.

Review from a Human Rights Perspective International human rights organizations, such as Amnesty International and *Human Rights Watch*, oppose the application of the death penalty in general and in particular to narcotics cases, arguing that the death penalty violates the universally guaranteed right to life. There is strong international pressure on Indonesia to abolish the death penalty or at least a moratorium on its implementation, especially for cases that do not fall into *the category of "the most serious crimes"* as defined by international standards.

**Diplomatic implications** The application of the death penalty for foreign nationals can cause diplomatic tensions between Indonesia and the country of origin of the convict, especially if the country of origin opposes the death penalty. Countries whose citizens face the death penalty in Indonesia often make diplomatic efforts to commute sentences or obtain clemency for their citizens.

Although the UN Convention on Narcotics does not explicitly mention the death penalty, the application of this punishment must still comply with the general principles of international law and human rights. International best practice tends to move towards decriminalization and a rehabilitative approach rather than the death penalty in handling narcotics cases.

Thus, the conclusion shows that the application of the death penalty for foreign nationals in narcotics cases in Indonesia raises a number of questions and challenges from the perspective of international law. Although it has a basis in national law and the principle of sovereignty, its application needs to be carefully considered in the context of the protection of human rights and Indonesia's international obligations.

## **5.2. Suggestions**

Based on the results of the research and interviews of the Resource Persons, the author has drawn the following conclusions:

1. The Death Penalty Policy is recommended to conduct a review of the death penalty policy in narcotics cases, taking into account its effectiveness as a deterrent and the social and legal impact it causes.

The Human Rights Protection proposes strengthening human rights protection mechanisms in the criminal justice system, especially related to the application of the death penalty. This includes ensuring that the rights of convicts, such as the right to legal aid and a fair judicial process, are always respected. Improving the quality of the judicial process suggests improving the quality of the judicial process in cases that have the potential to impose the death penalty. This includes training for law enforcement and judicial officials on the importance of justice and compliance with national and international legal standards.

**Legislative Evaluation and Reform** Propose evaluation and, if necessary, reforms to laws governing the death penalty in narcotics cases, such as Law No. 35 of 2009 on Narcotics, to ensure that such regulations are in accordance with the principles of justice and human rights. **Alternative Punishment** It is recommended to explore alternatives to punishment other than the death penalty, such as life imprisonment or rehabilitation-focused sentences. This alternative can be a step forward in more humane and effective law enforcement. **International Cooperation** proposes an increase in dealing with narcotics crimes involving foreign nationals. This includes cooperation with the convict's country of origin in terms of legal aid, information exchange, and the implementation of rehabilitation programs.

**Transparency and accountability** suggest increased transparency and accountability in the application of the death penalty. This includes the publication of data and information related to judicial proceedings and executions of the death penalty to ensure that there are no violations of the law or human rights.

**Public education campaign** proposes the implementation of a public education campaign about the dangers of narcotics and the implications of the death penalty. This education can help the public understand the negative impact of narcotics crime while also rallying support for a more humane approach to law enforcement. **Monitoring and Evaluation** Recommend the establishment of an

independent monitoring and evaluation mechanism to assess the application of the death penalty, including examining whether the application of the death penalty is truly effective in reducing narcotics crime and whether the judicial process is running fairly and transparently. It is hoped that it can create a fairer, humane, and more effective legal system in dealing with narcotics crimes involving foreign nationals in Indonesia.

2. **Strengthening Human Rights Protections** Indonesia should strengthen human rights protection mechanisms in the application of the death penalty, especially by ensuring that the entire judicial process against foreign nationals meets international standards of justice and that there are no violations of fundamental rights. **Moratorium and Review of the Death Penalty** Consider imposing a moratorium (temporary suspension) of the implementation of the death penalty while conducting a review and review of the death penalty policy in narcotics cases, taking into account developments in international law and global trends that tend to lead to the abolition of the death penalty.

**International cooperation** increases cooperation with the countries of origin of foreign nationals involved in narcotics cases and international organizations in handling these cases, including in the aspects of law, consular assistance, and diplomacy to reduce potential diplomatic tensions. **Strengthening the capacity of law enforcement officials** Increase capacity and training for Indonesian law enforcement officials to understand and apply international standards in handling narcotics cases and human rights protection, especially in legal processes involving foreigners. **The review of narcotics policy** conducts an in-depth review of existing narcotics policies, including the effectiveness of the death penalty as a deterrent, and the exploration of alternative approaches such as rehabilitation, decriminalization, or punishment that is more humane and in accordance with international standards.

**Openness and transparency** Increase openness and transparency in judicial processes involving the death penalty, including providing adequate access to information to the public and the international community to ensure that legal processes run fairly and in accordance with international standards. **Public Advocacy and Education** Conducting campaigns on the implications of the application of the death penalty, human rights, and international legal standards, to build public understanding and support for policies that are more humane and in line with developments in international law. **Independent Evaluation and Monitoring** Establish an independent evaluation and monitoring team consisting of legal experts, academics, and representatives of human rights organizations to oversee the implementation of the death penalty, provide recommendations for improvement, and ensure that the application of the death penalty does not violate international law and human rights.

By implementing these suggestions, it is hoped that Indonesia can strengthen its legal position in the international community, improve human rights protection, and adopt a more progressive approach in accordance with international legal standards in handling narcotics cases involving foreign nationals.

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