

Death Row Phenomenon as an Inhumane Punishment in Human Rights

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Abstract

The Death Row Phenomenon is a psychological and physical condition experienced by death row inmates who endure years of waiting for their execution. During this waiting period, inmates face isolation, leading to deep mental stress and suffering. Even while on death row, there is uncertainty regarding the execution of their sentences. This study aims to examine the Death Row Phenomenon as a form of inhumane punishment. The research method employed is normative legal research, utilizing both a statutory approach and a conceptual approach. The treatment of death row inmates during this waiting period clearly violates human rights principles, as it is deemed inhumane and degrading, constituting a form of torture. The Death Row Phenomenon illustrates that the death penalty involves not only physical execution but also the prolonged waiting process, which can trigger various forms of suffering. Inmates often experience mental disorders, long-term depression, and anxiety, further deteriorating their lives. The uncertainty surrounding the timing of the execution adds to their psychological burden, creating a prolonged atmosphere of terror. The Death Row Phenomenon constitutes inhumane punishment due to the legal uncertainty that prevents death row inmates from exercising their rights to fair treatment under the law. The discriminatory treatment, which differentiates the sentencing of death row inmates from that of other prisoners, represents a form of discrimination and indicates the presence of torture and double punishment, as death row inmates undergo both imprisonment and the death sentence itself.

Keywords: Death Penalty, Death Row Phenomenon, Torture

Introduction

The death penalty, or capital punishment (*doodstraf*), is a legal penalty in Indonesia and can be considered the most severe form of punishment. The purpose of implementing the death penalty in Indonesia is to protect society from criminal behavior and to create a deterrent effect for those who engage in criminal acts. The enforcement of the death penalty continues to be a topic of discussion in international law, as society seeks justice through the

application of laws that are humane and do not degrade human dignity. In principle, our country, which upholds human rights in order to achieve a peaceful, secure, and harmonious life, must ensure and guarantee that its citizens receive their full rights and are treated equally before the law. This is enshrined in Article 27, paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which states, "All citizens are equal before the law and government and shall uphold the law and government without exception." This status is part of the most fundamental principles of modern law and is one of the cornerstones of the Rule of Law doctrine, which is widespread in developing countries like Indonesia.[1] Human actions that are classified as crimes or offenses are fundamentally related to the principles of criminal law, as explained by Moeljatno in his book "Azas-Azas Hukum Pidana" (Principles of Criminal Law). Specifically, the principle of legality (Principle of Legality) determines that no act shall be prohibited or punished unless it has been specifically defined by law.

Indonesia, which has ratified the Convention Against Torture through Law No. 5 of 1998 concerning the ratification of the *Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment* (Konvensi Menentang Penyiksaan dan Perlakuan atau Penghukuman Lain yang Kejam, Tidak Manusiawi, atau Merendahkan Martabat Manusia), is bound by this international agreement, signed on September 28, 1998. Therefore, Indonesia must adhere to the provisions of this convention, which will serve as a benchmark for evaluating reports related to the *Death Row Phenomenon*. Additionally, the Universal Declaration of Human Rights (UDHR) states that no one shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment. A death row inmate awaiting execution must also be afforded their human rights. Human rights are inherent and cannot be taken away or revoked by anyone. Therefore, human rights must be fulfilled by the government or state by defending and protecting the rights of every citizen, as guaranteed by the 1945 Constitution of Indonesia. Human rights are explicitly defined in Law No. 39 of 1999 concerning Human Rights (the Human Rights Law). Article 1 of this law states, "Human Rights are a set of rights inherent in the nature and existence of humans as creatures of the One Almighty God, and are a gift from God that must be respected, upheld, and protected by the state, law, government, and every individual for the dignity and protection of human honor and dignity." This article emphasizes that the state of Indonesia must safeguard the integrity of human existence, with rights that are inherent, universal, and must be upheld because they are gifts from God.

The death penalty in Indonesia continues to generate both support and opposition, especially with the long waiting periods for execution faced by death row inmates. There are two main reasons why some people support the death penalty. First, proponents argue that the death penalty serves as a deterrent, providing a deterrent effect to prevent further crime. Second, supporters justify the death penalty by asserting that individuals who commit particularly brutal or serious crimes deserve to be executed, as their actions have led to the loss of another person's life.[2] A death row inmate is an individual with inherent rights, dignity, and honor. On a national level, Indonesia has enacted positive law that regulates and prohibits torture. This is outlined in Article 33, paragraph (1) of the Human Rights Law, which

states, "Every person has the right to be free from torture, punishment, or treatment that is cruel, inhuman, degrading, or violates their dignity and humanity." Furthermore, death row inmates suffer mental and physical health issues during their long waiting periods of up to 10 years. The conditions of detention for death row inmates should be humane and should not worsen their conditions. Death row inmates are subjects, not objects, and their dignity must be preserved. The death penalty has changed over the years, but the core issue remains unresolved the uncertainty about when executions will take place. This prolonged waiting period, often referred to as the Death Row Phenomenon, constitutes a form of punishment in itself, creating immense mental stress and pressure. This situation, where the length of time in waiting for execution remains uncertain, can lead to inhumane treatment or even torture of death row inmates.[3]

Therefore, the Death Row Phenomenon remains a point of debate, with arguments asserting that it constitutes a violation of the rights of death row inmates under human rights protections. Based on the foregoing, the author is interested in discussing the *Death Row Phenomenon* as an inhumane form of punishment in the context of human rights.

Methodology

The type of research used in this article is the normative legal research method (yuridis normatif). Legal research is the process of finding the coherence of laws, legal principles, and doctrines to address legal issues (legal problems) encountered (know-how). It is descriptive in nature and is conducted by examining secondary data sources from various legal regulations, print media, and literature. Normative legal research analyzes positive legal norms in the form of interconnected regulations related to the issues discussed in this research, namely the Death Row Phenomenon as an Inhumane Punishment in Human Rights.

Results and Discussion

The death penalty is an act of taking a life, which is contrary to the natural right to life, the most basic and fundamental human right, granted by God Almighty through natural law.[4] The implementation of the death penalty in Indonesia is a subsystem of positive law. Essentially, a legal system is a formal structure, but when discussing the Indonesian legal system, it refers to the formal structure of the applicable legal norms and the principles underlying them, which are ultimately based on the 1945 Constitution and inspired by the philosophy of Pancasila.[5] The imposition of a penalty or sentence by a judge is one part of the penal system. Provisions regarding penalties, especially the death penalty, are not only contained in *ius constitutum* (existing law) but also in *ius constituendum* (future law).

Barda Nawawi Arief states that the purpose of penal policies, including the imposition of a sentence, is inseparable from the goals of criminal politics. In a broader sense, it aims to

protect society and achieve welfare. Therefore, to understand the purpose and function of sentencing, it must be connected with existing penal theories.[6]

The waiting period for death row inmates, with a trial period of ten years, can be linked to the utilitarian theory, as this type of punishment is not merely for retribution or revenge but for a specific, beneficial purpose. Thus, during the ten-year probationary period, death row inmates should demonstrate a change in behavior and refrain from repeating the crimes they have committed. Therefore, death row inmates must have the will to reform themselves.[7]

These provisions are enshrined in the Indonesian Penal Code (KUHP), which outlines various crimes and their corresponding penalties. However, in the case of the death penalty, the law presents it as an alternative sentence. Article 100 (1) of the KUHP states: "The judge imposes the death penalty with a probation period of 10 (ten) years, considering:

- a) the remorse of the defendant and the hope for self-improvement; or
- b) the defendant's role in the crime.

This article explains that the death sentence is not immediately carried out, but the judge imposes a death penalty with a probationary period of 10 years, and the execution will be carried out only as a last resort after all conditions set in Article 100 of the New Criminal Code are met. However, the ten-year probationary period becomes a form of punishment in itself, as the long wait often involves inhumane treatment due to overcrowded prisons and the lack of guarantees for the rights of those on death row.

The right to life is outlined in Article 4 and Article 9 of Law No. 39 of 1999 on Human Rights (UU HAM). Article 4 states, "The right to life, the right not to be tortured, the right to personal freedom, thoughts and conscience, the right to practice religion, the right not to be enslaved, the right to be recognized as a person, equality before the law, and the right not to be prosecuted under retroactive laws are human rights that cannot be reduced under any circumstances and by anyone." Article 9, paragraphs (1) to (3), states that "Everyone has the right to live, defend their life, and improve their standard of living; everyone has the right to peace, security, happiness, and physical and mental well-being; everyone has the right to a good and healthy environment." Based on this, the author analyzes that the right to life is the most fundamental human right, which cannot be diminished under any circumstances or by anyone. If the right to life is taken away, other human rights, such as non-derogable and derogable rights, will no longer exist.[8]

Before the enactment of Law No. 2/PNPS/1964 on the Procedures for the Implementation of the Death Penalty Imposed by Courts in General and Military Jurisdictions (PNPS 2/1964), the death penalty was carried out by hanging the convicted person. The procedure involved tying a rope to the condemned individual's neck and dropping a board, causing the person to hang. However, with the enactment of PNPS 2/1964, Article 1 stipulates that "Without prejudice to the provisions of criminal procedural law regarding the execution of court decisions, the execution of the death penalty imposed by a court in a general or military jurisdiction shall be carried out by shooting the condemned person to death, according to the provisions in the following articles.

Looking at the development of the penal system for death row inmates in Indonesia and the various methods of carrying out the death penalty, there are procedures that aim to be more humane, avoiding prolonged suffering for the condemned, as well as methods that are inhumane. However, the problematic issue in Indonesia's penal system remains the waiting period or Death Row Phenomenon, a psychological and physical condition that death row inmates endure due to the prolonged period before execution. This situation can cause suffering and psychological torture due to poor prison conditions or isolation during the waiting period, leading to deep mental stress and suffering. Indeed, within the prison system, there is a distinction between ordinary inmates and those on death row, which reflects the lack of fairness in the implementation of the prison system. The treatment of death row inmates disregards the protection of the rights every individual possesses, as these rights are part of the justice system, growing from the concept of respect for Human Rights. This respect is intrinsic to the nature of humanity and, ultimately, links to natural rights, which are legally upheld as an individual's own property. The right to life is an absolute right inherent in human beings. Constitutionally, abolitionists argue that Articles 28A and 28I of the 1945 Indonesian Constitution demand the absolute protection of the right to life. These groups also refer to international legal instruments, such as the International Covenant on Civil and Political Rights (ICCPR), Article 6, which states, "Every human being has the right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life," as a justification for abolishing the death penalty in positive law.[9]

A death row inmate whose sentence has been imposed by the court faces uncertainty regarding the punishment they are undergoing, as death row inmates experience a form of double punishment. They serve both a prison sentence and a death sentence. This condition results in the phenomenon of double punishment, where the condemned individual lives in the prison system under the constant fear of impending execution. This uncertainty in the execution time can be seen as a violation of human rights, as enshrined in Article 28D, Paragraph 1 of the 1945 Constitution, which guarantees that "Everyone is entitled to recognition, guarantees, protection, and certainty before the law, as well as equal treatment before the law." This provision connects to the issue of the timing of the execution, which is regulated under PNPS 2/1964 but does not specify the exact timing.[10] leading to legal uncertainty for death row inmates and violating their constitutional rights.[11] The issue of human rights also emerges as a central theme in discussions about societal life. Jimly Asshidiqie argues that when the 1945 Constitution was amended to include Chapter XA on Human Rights, all Indonesian citizens constitutionally accepted the concept of human rights as one that aligns with the ideology of Pancasila. Compared to constitutions in other countries, this represents a significant achievement in the struggle for human rights in Indonesia, as many countries do not have a separate chapter dedicated to human rights in their constitutions.[12]

The existence of the death penalty is something that cannot be avoided. From a normative perspective, the death penalty has been regulated in the Indonesian Penal Code (KUHP) and in ten other laws outside the Penal Code. Normatively, the death penalty does not conflict with the right to life, because according to the Human Rights Law, the right to life can be limited by the taking of life based on a court decision in the case of the death penalty.

This debate arises because non-derogable rights are those that cannot be suspended or restricted (diminished) by the state, even in emergency situations. Non-derogable rights are inherent to human rights and cannot be limited under any circumstances. If the exception clauses governing the death penalty, as outlined above, are included in the 1945 Constitution, it not only resolves the conflict between the existence of the death penalty, regulated in various laws, and the right to life, a non-derogable right, but also addresses the conflict between the death penalty and the provisions of Article 4 of the Human Rights Law. If this norm conflict is resolved, legal certainty will be achieved.[13]

Indonesia, having ratified the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment through Law No. 5 of 1998, must adhere to the convention. This convention provides the framework for examining issues related to the Death Row Phenomenon. Therefore, the waiting period for death row inmates must be clear to ensure legal certainty and prevent further harm to the inmates. A defendant on death row, awaiting execution for months or even years, will undoubtedly suffer from physical and mental deterioration due to the poor detention conditions and overcrowding.[14] Allowing death row inmates to endure long waiting periods results in abuse and psychological torture, severely affecting their mental health. Moreover, the legal uncertainty during the death row period creates a sense of injustice for both the inmates and society. This situation can be classified as a violation of human rights. Death row inmates often face inhumane treatment due to overcrowded prison conditions and the lack of guarantees for their basic rights. Although the issue of the Death Row Phenomenon is a new horizon in international law, it has been acknowledged in several domestic and international criminal justice systems.[15]

Conclusion

The Death Row Phenomenon in International Law is considered a relatively new issue and is gradually gaining explicit recognition in international jurisprudence. This is because it involves not only inhumane treatment or torture and methods of execution, but also the waiting period itself. The prolonged and uncertain duration of the waiting period has been debated and argued, and has become a point of consideration that the Death Row Phenomenon constitutes a violation of the protection of rights for death row inmates. This is because several human rights instruments already address such violations, and the Death Row Phenomenon is regarded as one of the violations of rights against those on death row.

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