IMPLICATION OF DEATH PENALTY FOR DRUGS CRIMES IN INDONESIA: A Case Study in Indonesia Anti-Narcotics Agency of East Kalimantan Province

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Abstract

The aim of this paper is to investigate the implication of death penalty for drugs crimes in Indonesia, case in Indonesia Anti-Narcotics Agency of East Kalimantan Province Indonesia. In line with the tendency of paradigm shifts in the academic sphere to non-positivistic, primarily constructivism. Then, this research uses steps in the form of data collection, legal materials and field research conducted at the office of the National Narcotics Agency in East Kalimantan. In the study also conducted questionnaires to be answered by the National Narcotics Agency. The death penalty for narcotics crime in Indonesia has been regulated in the Criminal Code and other laws and the application of capital punishment in Indonesia has been known since the time of the kingdom to the present day, but what happens is a crime that can be threatened with death penalty continue to happen in this beloved country. This is one of few studies which investigate the death penalty, especially in Indonesia. The death penalty has been regulated in the Act but has not yet had a widespread impact on the perpetrators, so the execution of the death penalty does not provide a deterrent effect and does not cause fear for drugs criminals.

Keywords: drugs, crimes, National Anti Narcotics Agencies, the death penalty, the alternative punishment

1. Introduction

Indonesia as a state of law has been regulated constitutionally in the 1945 Constitution of the Republic of Indonesia, paragraph 3 of the third amendment. Then any acts committed by the public and the government shall be in accordance with applicable law provisions, so that any member of society and government who violate the law shall be subject to sanctions rather than the laws and regulations. Since August 17, 1945 Indonesia was proclaimed as an independent state to determine its own fate and laws and one year later in 1946 was born the first law was Law No. 1 of 1946 on the Book of Criminal Law. In the book legally stipulated criminal provisions in Article 10 of the Criminal Code which consists of death penalty, imprisonment, penitentiary, fine, and criminal cover. With the provision of the death penalty in Indonesian criminal law, any act that fulfills the elements of capital punishment shall be punished under the penal provisions as set forth in the Criminal Code.

In the development of the Indonesian nation, the law continues to follow and regulate any such progress. Unlawful acts are increasingly evolving to emerge crimes that in the early days of independence have not occurred much, such as Terrorism, Corruption and Narcotics crimes. These crimes are increasingly disturbing public order and security. Thus, the crimes if violated will be subject to the provision of capital punishment, for example narcotics which initially is intended as a cure for those affected by certain diseases, it has now been misused and misappropriated its use is not prescribed and used excessively so it can lead to addiction and deadly, and threaten the safety of the younger generation.

The Government and the Legislative have enacted the Law of the Republic of Indonesia Number 35 Year 2009 on Narcotics, in order to improve the health status of human resources...
in order to realize the welfare of the people, efforts should be made to improve the field of medicine and health services, among others by seeking certain types of narcotics that is needed as a medicine, and to prevent and control the danger and illicit trafficking of narcotics and narcotics drugs. On the one hand, narcotics is actually a drug or a useful ingredient in the field of medicine or health care and the development of science. however, on the other hand it can also cause a very harmful addiction if misused or used without strict control and supervision.

In the current situation in Indonesia, the use of narcotics has occurred deviations of its use, almost every day in the mass media and electronic reporting narcotics circulation with various types such as: shabu-shabu, marijuana, LL, and ecstasy which is circulated to the community even among the law enforcement officers. Various efforts made by the government to prevent narcotics and its eradication, even the President of the Republic of Indonesia, President Jokowu instructed the Chief of Police not to give mercy drug dealer.

The Government of Indonesia warns the drugs crimes both for the Indonesian people themselves and foreign actors who thought that Indonesia is one of the main markets of narcotics. They will be shot immediately if they fight while smuggling the narcotics across Indonesian territory. This is the police chief's command to the police officers not to be afraid to act firmly against foreigners who smuggle narcotics into Indonesia, and this statement relates to the success of the police in thwarting a one-ton smuggling entered through the coastal of Anyer, Banten. Where, police arrested four Taiwanese citizens namely; Lin Ming Hui, Chen Wei Cezuan, Liao Guan Yen and Hsu Yung Li. Eradication of narcotics that has become a concern of Indonesia and also other Asian countries such as the Philippines and Malaysia. Philippine President Duterte has communicated and promised to continue to hunt for narcotics criminals and he declares "I will hunt you down to the gates of hell".

All countries around the world are expected to jointly close the distribution of narcotics, because the trafficking of narcotics has been trans-national and international conducted using high modus operandi, advanced technology, supported by a wide network of organizations, and has caused many victims. While in many cases, the State is also obliged to save individuals lives. With the abundance of narcotics abuse, it is necessary to develop strategic measures to prevent and combat the abuse and illicit trafficking of narcotics which is very harmful and endangers the lives of the people and the state. The steps are set forth in Law No. 35 of 2009 on Narcotics, that importing, exporting, producing, planting, storing, distributing and / or using narcotics without strict control and supervision and contrary to laws and regulations may be criminalized, because it is very harmful and dangerous for human life, society, nation and state and national resilience of Indonesia.

Based on the background above, the aim of this paper is to investigate the implication of death penalty for drugs crimes in Indonesia, case in Indonesia Anti-Narcotics Agency of East Kalimantan Province Indonesia. This is one of few studies which investigate the death penalty, especially in Indonesia. As a rule of law, Indonesia overcomes and prevents the drugs crimes through the enactment of Law No. 35 of 2009 on Narcotics, with the intention that those committing drugs crimes may be punished by law. The death penalty has been regulated in the Act but has not yet had a widespread impact on the perpetrators, so the execution of the death penalty does not provide a deterrent effect and does not cause fear for drugs criminals.

2. Theoretical Framework
2.1. Drugs Theory

According to Article 1 to 1 of Law No. 35 of 2009 on Narcotics, narcotics is a substance or drug derived from plants or non-plants either cytentic or semisynthetic, which may cause a decrease or change in awareness of the loss of taste, reduce to pain relief, and can cause dependence that is distinguished into the class of either narcotics class I, class II and class III.

The use of narcotics should not be used without a prescription, under article 7 of the Narcotics Act that narcotics can only be used for the benefit of health services and or the
development of science and technology. The circulation of narcotics is not justified for people who do not get permission from the minister of law. The circulation of narcotics includes any activity or series of narcotics distribution or delivery activities, whether in the framework of trade, or alienation, for the benefit of health services and the development of science and technology.

Narcotics in English is known as narcotics and in Dutch it is known as Verdoven which means anesthetize, but in fact it is not just to sedate or as an anesthetic, but its use has been abused and corrupted the younger generation. In order to prevent and eradicate the misuse and distribution of narcotics and narcotics circulation, a body known as the National Narcotics Agency has been established, both at the central and provincial and district / city levels.

Drug abuse and trafficking are classified as crimes that could endanger the safety and livelihood of young people, nations and nations. Crime in Dutch is known as a myth and in English known as crime is a prohibited act and is threatened with severe penalty by law. Narcotics crime has been regulated in criminal provisions as regulated in articles 111 to 148 of Law No. 35 of 2009 on Narcotics, for those who violate such provisions may be punished, whether criminal penalties, imprisonment and even death penalty.

With the punishment laid down in the Narcotics Act, it is hoped that the public will be afraid of not committing the crime of narcotics and for those who have been punished by the provisions of the Narcotics Law to become aware and repent so that in the future it will not do any more.

2.2. Death Penalty Theory

Death penalty is one of the main punishments set forth in the Criminal Code, at first the death penalty can be executed by the executioner on a hanging holder by tying the related rope hanging on the neck of the convicted person, then dropping the board where the convict stood.

Sahetapy. J. E in La Sina's book, law and human rights stated that capital punishment was originally done extra, meaning that it was carried out outside the prison wall. The form of execution of capital punishment through gallows with an executioner as executor, capital punishment executed in open field, capital punishment hung on the hanger will be made a kind of deterrent (frightening prospective criminals).

The execution of the death penalty in different countries varies greatly, for example, the Arab state by beheaded, then for Indonesia in its journey the death penalty is changed the way its execution, because the way as described diats very inhuman. By hanging on the gallows is very torturous for the perpetrators of crimes and who sentenced to death is difficult to end his life, ultimately the way is re-arranged with Law Number 2 / PNPS / 1964 about the procedure of execution of capital punishment by shot.

The death penalty of various literatures and dictionaries is not found in understanding, except in the regulation of Chief of Police No. 12 of 2010 on the procedure of execution of the death penalty. The death penalty is one of the principal punishments handed down by a judge to a convicted person who has obtained permanent legal force, while the so-called dead death is a state of disappearance of signs of life, cardiac arrest and breathing stoppage expressed by a physician. In dropping the death penalty, the defendant should not be put to death, but there is still an alternative way to impose capital punishment with other basic punishment such as being jailed for 20 years or for life imprisonment.

According to Adam Chazawi in his book La Sina Law and Human Rights, stated that provided an alternative criminal, so for the judge does not necessarily have to impose capital punishment for crimes that are threatened with capital punishment. Freedom of the judge, free in choosing to impose life imprisonment or prison temporarily, depends on many facts considered in the event of a crime that occurs concretely. The law provides for an alternative criminal punishment for every perpetrator of a crime by the death penalty, so that in certain
circumstances a person who is punished with the death penalty with adverse factors implies a judge's judgment is not appropriate to impose capital punishment, he may impose a criminal on another the severity of the crime committed by a person.

2.3. Theory of Human Rights
In the consideration of the Universal Declaration of Human Rights, 1948 stated that human rights should be protected by a government based on the law as essential, in order that one should not be forced to take another, as a last resort, by resisting tyranny and oppression. Since the enactment of the Universal Declaration of Human Rights, 1948 internationally, every country in the world must observe the provisions of universal declaration of human rights, the birth of this declaration because of the abandonment and harassment of human rights has led to barbaric acts which degrade the human instinct, and the birth of a world in which humankind will enjoy freedom of speech and belief and freedom from fear and possibly have been pledged as the supreme aspiration of man.

In article 5 of the Universal Declaration of Human Rights, no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. Thus punishment that does not comply with humanitarian values violates human rights. James W. Nickel stated that international human rights must be formulated broadly enough to include countries with very different institutions, practices and resource levels. So then Indonesia currently has Law No. 39 of 1999 on Human Rights as a manifestation of the Universal Declaration of Human Rights.

In various international literatures, there is no clear definition of human rights except in the universal declaration of human rights giving human rights a sense as in La Sina, Human Rights is a set of basic human rights that should not be separated from its human existence. Thus, human dignity will develop if the most basic rights of independence and equality can be developed.

English-language literature found in terms such as: natural right, human right. In the concept of natural right it is said that every human being is equal before God, Jan Materson (Komnas Ham PBB) is quoted by Baharuddin Lopa, that human rights are the inherent rights of every human being, without which no human can be human. This is reinforced also by Roseau and Montesquin, that man is independent since in the mother's belly, so it is not logical if after birth should be shackled.

Indonesia currently has a Law on Human Rights that the definition of human rights is contained in article 1 point 1 of Law No. 39 of 1999 on Human Rights, that human rights are a right inherent in human beings as the creature of God Almighty who shall be respected, upheld and protected by the state, law, government and every person for the honor and protection of human dignity and dignity.

Currently many people are talking about Human Rights, but human rights violations continue to occur, this requires the attention of various elements to enforce it so that no longer expected violations of Human Rights. Peter, R. Baekri, declares that nowadays so many sweet sayings are spoken every day regarding the idea or opinion of Human Rights, but at the same time many violations in this world. Human rights is a matter of law, but this issue has been developed into a political issue, lawyers, politicians, government, non-governmental organizations, others and women, parents, children, victims and offenses, in the issue of Human Rights

3. Methods
In line with the tendency of paradigm shifts in the academic sphere to non-positivistic, primarily constructivism. Then, this research uses steps in the form of data collection, legal materials and field research conducted at the office of the National Narcotics Agency in East Kalimantan. In the study also conducted questionnaires to be answered by the National Narcotics Agency. Thus the type of research used is empirical juridical research is sociological
legal research and can also be called field research. This study used a judicial approach or also known as non-doctrinal research, the type of research was descriptive that describes something that applies in a certain place.

4. Result and Discussion
4.1. Effectiveness of Enforcement and Eradication of Narcotics Abuse.
   a. Prevention of Narcotics Abuse

   In order to prevent and eradicate Narcotics was established National Narcotics Agency set forth in Chapter XI, article 64 of Law 35 of 2009 and established the National Narcotics Board Province and Regency / City set forth in article 65 paragraph (2) Law 5 Year 2009 About Narcotics. To prevent and eradicate narcotics the National Narcotics Agency is given the following duties and powers

   a) Establish and implement a national policy on the prevention and eradication of the illicit abuse and trafficking of narcotics and narcotic narcotics;
   b) Prevent and combat the misuse and illicit trafficking of narcotics and narcotic narcotics;
   c) Coordinate with the head of the National Police of the Republic of Indonesia and the prevention and eradication of the illicit abuse and trafficking of narcotics and narcotic narcotics;
   d) Improving the ability of medical rehabilitation institutions and social rehabilitation of narcotic addicts, whether organized by the government or the public;
   e) Empowering communities in the prevention of illicit misuse and trafficking of narcotics and narcotic narcotics;
   f) Monitor, direct, and improve community activities in the prevention of illicit misuse and trafficking of narcotics and narcotic narcotics;
   g) To engage in cooperation, bilateral and multilateral both regional and international, in order to prevent and combat illicit trafficking of narcotics and narcotics perpetrators;
   h) Developing narcotics and drug narcotics laboratories;
   i) Carry out the administration of investigation and investigation of cases of abuse and illicit trafficking of narcotics and narcotics perpuk and;
   j) Making an annual report on the performance of duties and authorities.

   From the duties and authorities given to the National Narcotics Board both central and regional, it is very difficult because it is confronted with the international and national narcotics and narcotics dealers and criminals who are sufficiently sophisticated that require qualified manpower and resources, honest and nimble in dealing with various narcotics crimes by narcotics dealers and businesses.

   The National Anti Narcotics Agency of the Province and the Municipal District are almost daily occupied with narcotics criminals in various modes conducted by narcotics dealers such as the one-tone smuggling case that goes through the Anyer-Banten waters, July 20, 2017, the circulation of three hundred kilogram shabu stored in a shoe polishing machine on July 26, 2017, and a smuggling syndicate of 1.2 million Ecstatic pills from the Netherlands controlled from inside the Nusa Kambangan prison, this network is controlled by one inmate inside the jail who has been sentenced to 15 years in prison.

   National Anti Narcotics Agency along with police officers and related institutions every day is never quiet with the news of arrest of narcotics crime, it also happened in East Kalimantan province, on July 14, 2017 in Tenggarong by Police officer of Kutai Kertanegara Regency arrested 200 suspected narcotics by Chip of Police stated that the disclosure of the case in rescuing the younger generation and nation. Moreover, not a few children in Kutai Kartanegara who get involved as users to become drug couriers and make it as a business that generate profits. From the disclosure records of Kutai Kertanegara Police, since January 2017
until July 2017 recorded the number of suspects trapped to 200 people. In the meantime, the articles of shabu-shabu (methamphetamine) weighing 526.85 grams, this amount is feared to continue to grow and overtake the acquisition of disclosures in the previous year which continues to increase, and for marijuana evidence that is secured as much as 55.89 grams and copolymer 16,815 grains.

In Berau District, there was also a large number of drug dispersions ranging from one kg and the largest 2.5 kg smuggled from Malaysia and also the captured Narcotics Drug near the Office of the National Narcotics Agency of Balikpapan, methamphetamine weighing 195, 75 Kg on the 23rd July 2017 and in Tarakan on July 20, 2017, the National Narcotics Agency Tarakan thwarted a 5-kilogram sabu. Based on the duty and authority of the National Narcotics Agency BNN continues to try to prevent and eradicating the abuse of narcotics but smuggling and narcotics circulation, at any time never subsided and it continues to grow.

Narcotics abuse has come to a worrying stage because of users, and its circulation is no longer limited to certain people but drug abuse has penetrated from ordinary people, artists, police, prosecutors, bureaucrats and officials as well as its circulation almost all the country has been infected narcotics. National Narcotics Agency of East Kalimantan Province, in order to prevent and combat narcotics crime on 26 July 2017 commemorate International Anti Narcotics Day through these activities can be expected to combat and deal with the problem of abuse and circulation of narcotics whose impact has damaged all the lines of life of the community, from these activities need optimize to overcome the negative effects of illicit drug trafficking and need to empower the role of society through family empowerment as a bulwark of prevention of abuse and illicit trafficking of narcotics. Prevention is an effective way of building awareness of each individual to not start abuse, Narcotics and participate in the narcotics network, so it is appropriate if it is said to prevent better than to treat, it is necessary effort to prevent massively, continuous and synergic in every neighborhood. Public participation in preventing narcotics is a key word to counter the increasingly alarming danger of narcotics, the community needs to gain empowerment by providing socialization, education and skills training so as not to engage in illicit drug trafficking.

In the event commemorate International Anti Narcotics Day dated July 26, 2017. Head of the National Narcotics Agency of East Kalimantan stated that based on the results of a survey conducted by the National Narcotics Agency in collaboration with the University of Indonesia health research center in 2016 obtained the number of narcotic abuse relevance in groups of students and students of 1 , 9 percent or 2 out of 100 students who use narcotics.

In order to prevent the crime of narcotics must involve various types of contents, namely: government, apparatus, students, students and all elements of society and East Kalimantan Provincial DPRD, on 7 August 2017 East Kalimantan Provincial Legislative Council in cooperation with the National Narcotics Board of East Kalimantan Regional Regulation for the Facilitation of Narcotics Abuse Prevention

According to AKBP Tampubolon, head of the National Narcotics Agency's Department of Eradication of East Kalimantan province that east Kalimantan is the second rank of national abuse of narcotics with the number of users 63 thousand more souls. The severity of the illegal goods users has touched all levels of society, both the age of the child and the profession. Imagine there is a 7-year-old child has been using narcotics type sabu-shabu so that East Kalimantan declared emergency narcotics.

The high number of narcotic users and the geographical location of East Kalimantan bordering Malaysia and other countries such as the Philippines, Vietnam, the narcotics circulation should be prevented from entering the border countries. The results of research at the National Narcotics Agency have at least 800 new narcotics types in the world and 60 of them circulate in Indonesia, this huge amount of duty to prevent narcotics is not borne by the National Narcotics Agency, but also all parties, especially students and students, because the problem of narcotics is a national disaster and the enemy of the state.
Prevention of narcotics crime continues to be pursued in eastern Kalimantan, such as the National Narcotics Agency of West Kutai Regency recruited 102 students into anti-drug task forces, who were given the task of supervising at school and in their respective neighborhoods.

b. Eradication of Narcotics Abuse

Since the enactment of Law Number 35 Year 2009 on Narcotics, that narcotics eradication has been conducted based on the provisions of the prevailing laws and regulations, the perpetrators who are proven to be violated are subject to sanctions according to their level of wrongdoing, some are fined, imprisoned and even sentenced to death, narcotics continue to grow and not busted well, especially narcotics crime is at the International, National and Regional levels, as well as perpetrators of narcotics crimes not only in ordinary people, but police officers and officers of the national narcotics agency should eliminate narcotics just become users, dealers, doing business narcotics, this also happens in drug prisons and can even produce drugs in drug rehabilitation institutions.

In general, the narcotics eradication conducted by the National Narcotics Agency is good enough, only certain elements involved in narcotics abuse, the seriousness of the apparatus for and combating narcotics crime can be acknowledged as courage, and the ingenuity of the Head of National Board of Commissioners General Budi Waseso in eradicating and handling narcotics cases to the death penalty process. Since he was the Head of the National Narcotics Agency, the eradication of narcotics continues even if the crime continues to grow.

With the enforcement of the Narcotics Act, narcotics crimes have never been eradicated, because of this crime the criminals possessed extraordinary intelligence and were so profitable that they had links to people who dreamed of becoming rich, drugs crimes was a like chronic disease that difficult to be healed.

Thus, the number of victims increases. To suppress narcotics crime, the provisions of Article 113 paragraph (2), Article 114 paragraph (2), Article 116 paragraph (2), Article 118 paragraph (2), Article 119 paragraph (2) and Article 121 paragraph (2) set the death penalty, but the perpetrators of narcotics crime are not afraid of even the opposite. Should the death penalty have the effect of awareness for others not to commit the crime of narcotics and make the deterrent effect of not doing it again, but the fact is not so, the narcotics grow.

With various challenges to combat narcotics crime, it is expected that all elements of society can join hands with the National Narcotics Agency, prosecutors, police and judges to jointly combat narcotic crime and as the spearhead of law enforcement is on the judge's hammer to punish narcotics perpetrators with appropriate penalties according to level and level of error.

Eradication of narcotics crime is currently not only through the judicial process, but also what happens can be executed at the time pursued by the apparatus and against the authorities at the time of security so that forced the perpetrators of the crime was shot in place and or at the time of escape. With such actions precisely narcotics circulation rather than disappear, it is increasingly rampant, narcotics criminals increasingly dared to fight the police and the national narcotics agency.

c. Effectiveness of Narcotics Crime Prevention and Eradication

Etymologically the word effectiveness comes from the word effective, in English "effective" and in Dutch "effectief" and in Indonesian has meaning to succeed.

Soerjono Soekamto provides an approach on the meaning of the effectiveness of a law varies depending on the point of view taken, which is determined by the level of propriety of citizens against the law, including its law enforcers, so it is known an assumption that high legal compliance is an indicator of the functioning of a legal system.

From the meaning meaningful effectiveness, it can be connected with the effectiveness of the enforcement and eradication of narcotics crime, if carefully observed the meaning of
successful means that the meaning has not given meaning for the prevention and eradication of narcotics crimes in the enforcement according to survey results conducted in the field has not showed the propriety of citizens society against the law of narcotics, because there are still people, apparatus and various professionals doing drugs crime. Indicators of the number of crime narcotics show that the Law No. 35 of 2009 on narcotics has not been successful in overcoming narcotics crimes that occurred in Indonesia, both in central and regional areas.

The number of narcotics crimes is still high and has not provided an indicator of the functioning of a legal system as regulated in Law Number 35 Year 2009 on narcotics.

For the effectiveness of the prevention and eradication of narcotics crime necessary steps as follows:

1. The need for maximum law enforcement.
2. Socialization and counseling to the community, the elements of students and students and officials.
3. Officers in charge of preventing and eradicating drugs do not engage in narcotics crimes.
4. The awareness of every society about the dangers of narcotics, as a common element and society and the state.
5. Need to be done rajia on an ongoing basis.
6. Provision of punishment with severe penal sanctions

From these steps it is expected that narcotics crimes can be overcome, because the public understands the impacts of narcotics, becomes a driver, and becomes a narcotics dealer.

Narcotics eradication has been carried out in various ways, such as the perpetrators being shot in place against and / or escaping, punishable by fines, prison confinement and death penalty, but continuing narcotics crimes are unceasingly circulating among the public. For example, on August 2, 2017 in Jakarta the Kulon was dubbed as a drug hamlet, as 29 people were arrested as users, dealers and as narcotics and 60 kg narcotics as evidence had been secured, and the dealer was shot, thus the eradication of narcotics, has not been effective in its implementation.

The result of interview with National Narcotics Board of East Kalimantan Province on August 10, 2017 with Drs La Marede, M.Pd, that for the effectiveness of prevention and eradication of narcotics required the implementation of continuous raids and rehabilitation needs to be done for narcotics users. National Narcotics Agency of East Kalimantan Province made various efforts to ward off narcotics crime, for example the former drug prisoners and former drug rehabilitation serve as a counselor in combating narcotics. At the time the researchers conducted research at the BNN office of Katim Province there was an extension activity on community leaders, non-governmental organizations and students were following a very exciting socialization event since 2009 since the enactment of the Narcotics Law in East Kalimantan has not been convicted to death. In an effort to prevent the circulation of narcotics and the use of narcotics by the researchers invited the Head of the National Narcotics Board of East Kalimantan Province to conduct socialization in front of the citizens of Buton Lapandewa Kaindea Samarinda on 19 August 2017 which was attended by about 3000 people coupled with activities commemorating 72 years of independence of Republic of Indonesia and the 32nd year of the Buton Residents of Buton Lapandewa Kaindea Samarinda. By passing such activities, it is hoped that the public will be aware of the dangerous danger of narcotics against themselves, children, nation and state.

In East Kalimantan every day there is a narcotics crime so that from the number of cases handled by the prosecutor's office, the narcotics case dominates and ranks first, of 2,859 general criminal cases, 1,009 of which are narcotics cases, attempts to give deterrent effect by the prosecutor's office demands 7 death sentences to the narcotics defendant, but all are free from the verdict of the death penalty, the defendants are only sentenced to lifelong imprisonment.
4.2. Implications of Death Penalty for Narcotics Crime

In Law No. 35 of 2009 on Narcotics it is stipulated that Article 113 paragraph (2) in the case of the act of producing, importing, exporting or distributing narcotics class I as meant in paragraph (1) of this article, in the form of plants weighing more than 5 (five) tree trunks or non-weighing plants exceeding 5 (five) grams of perpetrators shall be subject to capital punishment, life imprisonment or a maximum imprisonment of 5 (five) years and a maximum of 20 (twenty) years and maximum fine penalty 10 billion Rupiah.

Article 114 paragraph (2) in the case of offering act to sale, sale, purchase, intermediary in buying and selling, exchanging, delivering or receiving narcotics of Group I as referred to in paragraph (1) of this article, in the form of plants weighing more than 1 (one) kilogram or exceeding 5 (five) tree trunks or non-plant weighing 5 (five) grams, the perpetrator shall be subject to capital punishment, life imprisonment or imprisonment of a minimum 6 (six) years and a maximum of 20 (twenty) years and a maximum fine of 10 billion.

Article 118 paragraph (2) in the case of the act of producing, importing, exporting or distributing narcotics of Group II as referred to in paragraph (1) of this article weighs more than 5 (five) grams, the perpetrator shall be subject to capital punishment, life imprisonment or imprisonment of a maximum of 5 (five) years and a maximum fine of 8 (eight) billion.

Article 119 paragraph (2) in the case of the act of offering to sell, sell, buy, accept, intermediary in buying and selling, exchanging, or, handing over narcotics of Group II as referred to in paragraph (1) of this article weighing more than 5 (five) grams, the perpetrator shall be subject to capital punishment, life imprisonment or imprisonment of a maximum of 5 (five) years and a maximum fine of 8 (eight) billion.

Article 121 paragraph (2) in the case of narcotics users against another person or the provision of narcotics class II for the use of another person as referred to in paragraph (1) of this article shall result in another person dying or permanently disabled the offender shall be subject to capital punishment, life imprisonment or imprisonment of a maximum of 5 (five) years and maximum of 20 (twenty) years and a maximum fine of 8 (eight) billion.

The provisions of that article have not provided the effect and fear of narcotics crime, this can be seen from the rise of users, dealers, narcotics products and drug dealers, the more time these crimes never recede, almost every day is always fuss with narcotics news.

The administration of President Jokowi has executed the third death sentence, despite being opposed by the international community and human rights organizations, but the execution is still in place. the execution of death is against the crime of narcotics conducted by Fredi Budiman (Indonesian), Acena, Seck Osmane, Michel Titus Iqwe and Humphrey Ejike alias doctors each are Nigerian. With the death penalty it should give awareness to the community how frightening and horrible the death penalty is, but the facts show the occurrence of narcotics crime that occurs today is very disturbing the order and security of society, nation and state.

The execution of the death penalty in Indonesia made Zeid Ra’ad Al Hussein, the UN Human Rights Commissioner and the European Union urged Indonesia to immediately enact a moratorium on the execution of the death penalty. From this international pressure Indonesia should seek a way of punishment is carried out with an alternative punishment for narcotics crime that is with a lifelong sentence and or a sentence with a certain period of 20 years, because with the death penalty narcotics crime is not subside and people are aware but do the opposite, with this is the government should find the best solution to stop the death penalty for narcotics crime, so that people are aware and repentant to no longer commit a narcotic crime.

In neighboring Indonesia, Malaysia has abolished the death penalty for narcotics crimes, this should serve as an example for Indonesia to abolish the death penalty, because the death penalty is not the only way to awaken and improve the human nature of evil to be good, but it still exists another best way for humans to make themselves to be better human beings.
4.3. Implementation of Death Penalty

The Madinah Charter sourced from the Qur’an has a great deal to say about Human Rights, among them in Al-Maidah verse 32 "who kills a person without rights, or does any damage on earth as he has killed the whole man, and who keeps a life man, then as if he has kept the life of all human beings. Similarly Surah Al Anam verse 151, do not you kill a life that is forbidden by Allah, except with a great cause.

The European Convention of 4 November 1950 concerning Human Rights in Article 2 paragraph (1) states that the right of everyone to life must be protected by law no one shall be deprived of his life intentionally, except in the execution of a punishment from the court after it is decided that he has committed a crime subject to such penalties by the Act.

The death penalty violates the right to life given by the creator because it is a gift that must be protected, the right to life exists when human beings are still in the womb of their mother, from then on the state plays an important role to protect it, because the right to life is a human right respected by every people of the nation and state. According to criminal law expert J. E. Sahetapy and Muladi slimming the effectiveness of capital punishment in its function to bring a deterrent effect and prevent crime.

J.E. Sahetapy argues that there is an assumption that someone is threatened with the death penalty for a criminal act, so people will not dare to commit the crime anymore, such an assumption is too naïve to proceed from a view that has not yet understood human problems and crimes and social structures of life, death crime is increasing.

The above-mentioned expert opinion should serve as a rationale for the government to consider the execution of the death penalty in Indonesia the fact that in Indonesia since the time of the kingdom has applied the death penalty, but still there are crimes and crimes each time increasing, especially the crime of narcotics.

In his book la Sina, the law and human rights state that public opinion, experts, politicians, NGOs and humanitarian actors, there is always a controversial justification and rejection of the death penalty is still engulfing the universe of human life, although in many parts of the world remove the death penalty in the positive law of each country.

The countries of the world have abolished the death penalty, among others, Belgium (1967), Portugal (1867), Sweden (1921), Australia (1922-1968), Mexico (1928), Denmark (1930), Brazil (1946), Italy (1948), United Kingdom (1965), Vatican (1969), Canada (1976), France (1981), and even the Dutch since the 19th century (1976) , has abolished the death penalty, while in Indonesia is still executing the death penalty, Indonesia should learn to these countries, whether by the termination of death penalty the crime rate in those countries has decreased or the crime rate has increased.

The application of capital punishment is inconsistent with the philosophy of punishment in Indonesia, the death penalty is more pressing on the aspect of revenge. There is no opportunity for evildoers to repent and readiness to return to society, the death penalty contrary to the theory of punishment, the penalty is not to satisfy the absolute demand of justice, the retribution itself has no value but only as a means of protecting the interests of the people.

Jeremy Bentham in his book La Sina, Law and Human Rights, states that criminal law should not be used in retaliation against criminals, but only for the purpose of preventing crime, his idea of capital punishment similar to Beccaria, that criminal, which brings cruelty or external brutality ordinary, is not a satisfactory punishment because it creates more trouble than is necessary to achieve the goal.

The above opinion is in line with what was said by the executioners' wife who died from a Nigerian crime executed in Nusa Kambangan Prison, they said we became widows because of the injustice of Indonesian law against our husbands, our children became abandoned and had no father , our life becomes difficult. With screams and feelings that they think are inhumane hopes that no more victims of executions like their husbands. Thus, the execution of death that was carried out in Indonesia invited the reaction of sharing elements in
Indonesia, international reaction and even the United Nations voted in order to in Indonesia remove the death penalty for narcotics crime. The death penalty invites controversy by the nations of the world so this needs to get the attention of the Indonesian government. Thus punishment is not a retaliation but in the form of guidance, so that humans return to their nature as a menu, as long as institutionalized peacock peacekeeping has been equipped with various knowledge of religion so that they become aware and return to society has become a good person.

Narcotics crime handled by the National Narcotics Board of East Kalimantan Province is processed in accordance with the applicable law provisions and the case is submitted to the East Kalimantan High Prosecutor Office to be forwarded to the court. Of the total number of 1009 cases of narcotics seven of them were prosecuted by death sentence, but only seven of them were sentenced to life imprisonment, according to records from the East Kalimantan High Prosecutor's Office that 5 narcotics-specific PDPs numbered 1137, prosecution of 7 people, cases that have been sentenced to 1009 people and the perpetrators of children were devalued 7 people. With the expected number of crime narcotics can be suppressed, from these data narcotics crime is still prominent compared with other cases.

In order to avoid the spread of narcotics, in addition to the National Narcotics Board of East Kalimantan Province as well as government, non-governmental organizations play a role in overcoming the narcotics circulation so that people of East Kalimantan free from the threat of capital punishment and other punishment.

The National Narcotics Agency of East Kalimantan continues to work effectively to prevent narcotics and seeks to save children and generations and the people of East Kalimantan against the dangers of narcotics that are deadly and can be threatened with the death penalty.

5. Conclusions

Enforcement and eradication of narcotics use has been regulated in Law Number 35 Year 2009 on Narcotics, the authority to prevent and combat narcotic crime in the hands of National Anti Narcotics Agency, provincial and district / city, but the execution of duty and authority to overcome the crime of narcotics yet effective and still needed extra strictly to carry out the duties and authorities of prevention and eradication. National Anti Narcotics Agency along with police officers and other related apparatus have been serious in carrying out their duties, but the task cannot stop and complacent with which have been achieved but to perform the task more effectively must involve various parties because narcotics continue to mushroom all over Indonesia. For the effectiveness of the prevention and eradication of narcotics, the need for continuous and bersinegri prevention efforts with various lines, public participation as the key to ward off narcotics crime.

The death penalty for narcotics crime in Indonesia has been regulated in the Criminal Code and other laws and the application of capital punishment in Indonesia has been known since the time of the kingdom to the present day, but what happens is a crime that can be threatened with death penalty continue to happen in this beloved country. During the reign of President Joko Widodo for law enforcement, the death penalty has been imposed on 4 people executed as perpetrators of narcotics crimes, in Law No. 35 of 2009 regulated the provisions of the death penalty, but what happens narcotics crime continues to grow, people as narcotics criminals fear the threat, but justsemen as if they are more resistant and not afraid of the threat. The death penalty needs to be considered by the government because in the provisions of Law Number 35 Year 2009 there are other provisions that can be used as sanctions against narcotics crime, namely life or prison sentence at a certain time. The right to life is a fixed price that cannot be disputed by anyone including the government and the state, because the death penalty is very contrary to the dignity and human dignity and human rights.
References


[21] Tribun Kaltim, 1 Agustus 2017, pp 11