

Execution Delay and Its Impact on the Psychological Suffering of Death Row Inmates in the Indonesian Criminal Law System

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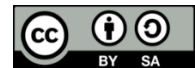
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ABSTRACT

This study analyzes the issue of execution delays and their impact on the psychological suffering of death row inmates in Indonesia's criminal law system. Using a normative juridical approach, the research identifies a significant normative gap, as Indonesian positive law lacks explicit regulations governing the time limit for carrying out executions after a verdict becomes final. This legal vacuum leads to prolonged uncertainty for inmates, resulting in extreme psychological distress known as the death row phenomenon. This condition is argued to constitute cruel, inhuman, or degrading treatment, violating both international human rights principles, such as those in the ICCPR, and Indonesia's constitutional guarantees of humane treatment and legal certainty. The analysis reveals a fundamental tension between retributive justice and substantive humanity. The study concludes by emphasizing the urgent need for legal reform to establish clear execution time limits and robust oversight mechanisms. This is crucial to align Indonesia's penal system with the principles of substantive justice, human dignity, and the rule of law.

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1. INTRODUCTION

The death penalty is the harshest punishment available in the criminal justice system, and it has long been a topic of discussion between the concepts of humanity, utility, and justice. According to Article 10 of the Criminal Code (Kitab Undang-Undang Hukum Pidana/KUHP), the death penalty is still permitted in Indonesia as one of the primary forms of punishment. Law Number 35 of 2009 on Narcotics, Law Number 15 of 2003 on the Eradication of Criminal Acts of Terrorism, and Law Number 31 of 1999 jo. Law Number 20 of 2001 on the Eradication of

Criminal Acts of Corruption are among the specific laws that support this clause. Despite having a solid legal foundation, the death penalty's application in Indonesia frequently encounters significant issues, such as the lengthy wait in execution following the verdict's acquisition of permanent legal force [1].

This phenomenon gives rise to a condition known as the death row phenomenon, which is the psychological suffering experienced by death row inmates due to the uncertainty of the execution timing.

For years, they live under extreme mental pressure, facing constant fear of death, and experiencing a degradation of human dignity. This condition has been acknowledged as a type of cruel, inhuman, or degrading treatment from the standpoint of international law. In the 1989 case of *Soering v. United Kingdom*, the European Court of Human Rights upheld this opinion, among other things, by declaring that a protracted delay in applying the death penalty is a violation of Article 3 of the European Convention on Human Rights (ECHR) [2].

In the context of Indonesia, several death row inmates are known to have waited for years before being executed. For example, convicts in narcotics cases such as Freddy Budiman and Mary Jane Veloso waited for execution for more than five years. This delay not only causes psychological pressure for the convicts but also creates legal uncertainty and questions the effectiveness of the death penalty as a deterrent. The state, in this case, faces a dilemma between executing court decisions as a form of law enforcement and the constitutional obligation to protect the human rights of every citizen, including death row inmates [3].

Theoretically, this issue can be analyzed through two main approaches: retributive theory and utilitarian theory in punishment. Retributive theory, as proposed by Immanuel Kant, emphasizes that the death penalty is a legitimate form of moral retribution for serious crimes committed by an individual, especially in cases of murder or other extraordinary crimes. On the other hand, according to Jeremy Bentham's utilitarian view, punishment should serve as a deterrent and safeguard against future occurrences of the same crimes.

However, the development of modern punishment theory shows a paradigm shift towards integrative and humanistic theories, which place human values and the right to life as central elements in the execution of punishment. This principle is consistent with the Pancasila philosophy, specifically the second precept "Just and Civilized Humanity," and the 1945 Constitution of the Republic of Indonesia's

Article 28A, which affirms that the right to life is a non-derogable right that cannot be diminished under any circumstances.

As a signatory to the International Covenant on Civil and Political Rights (ICCPR), Indonesia is required by international law to uphold the right to life as guaranteed by Article 6 of the ICCPR. The UN Human Rights Committee, through General Comment No. 36 (2018), further emphasized that the death penalty can only be carried out under very limited conditions, ensuring a fair legal process and without unnecessary suffering. Prolonged execution delays causing excessive mental suffering are considered a violation of this principle and can be categorized as a form of indirect torture [4].

Meanwhile, Indonesian national law does not explicitly regulate the time limit for carrying out the death penalty after a verdict gains permanent legal force. The Criminal Procedure Code (KUHAP) only stipulates that the execution is carried out by the prosecutor after an order from the Attorney General, without explanation regarding time limits or delay mechanisms. Consequently, many death row inmates wait without legal certainty. This condition indicates the existence of a normative gap in the Indonesian criminal law system, which has implications for human rights protection.

Philosophically, execution delays contradict the principles of legal certainty (*rechtssicherheit*) and humane treatment (human dignity). The principle of legal certainty demands that punishment be carried out within a reasonable time and in accordance with statutory regulations. Meanwhile, the principle of humane treatment requires that every person, including inmates, be treated as human beings with dignity. When the state delays execution without clarity, it indirectly allows the convict to remain in a psychologically torturous condition, violating these principles [5].

In the context of modern criminal justice, the legal system should not only be oriented towards retribution but also towards moral rehabilitation and the protection of fundamental human rights. Punishment, as

described by Herbert L. Packer in *The Limits of the Criminal Sanction* (1968), must be carried out with the principle of due process of law, namely respect for the fundamental rights of the individual throughout the entire judicial process. Therefore, the practice of execution delays that ignores the psychological rights of death row inmates can be seen as contrary to the principle of due process and the principle of substantive justice.

Based on the above, this research is important to conduct to deeply analyze how the Indonesian criminal law system regulates the implementation of the death penalty, particularly regarding execution delays, and how this condition affects the rights of inmates from national and international legal perspectives. Furthermore, this research also aims to examine the urgency of legal reform to ensure that the implementation of the death penalty aligns with the principles of humanity, legal certainty, and human rights protection.

2. METHODS

Using a normative juridical approach, this study examines international human rights standards and positive legal norms governing Indonesia's application of the death penalty. Law Number 39 of 1999 on Human Rights, the Criminal Procedure Code (KUHAP), the Criminal Code (KUHP), and the International Covenant on Civil and Political Rights (ICCPR), which was ratified by Law Number 12 of 2005, are examples of primary legal sources. Secondary legal materials were obtained from academic literature, international journals, human rights institution reports, and relevant court decisions. The analysis technique used is normative qualitative analysis, interpreting legal norms and principles of justice to identify the gap between regulations and the practice of death penalty execution, and to assess the implications of execution delays on inmates' rights within the framework of a just and humane criminal justice system.

3. RESULTS AND DISCUSSION

3.1 The Position of the Death Penalty in the Indonesian Criminal Law System

The harshest kind of punishment available under Indonesian criminal law is the death penalty. The *Wetboek van Strafrecht voor Nederlandsch-Indië* (WvS), which was subsequently modified as the Criminal Code (KUHP) following independence, established the death penalty's presence in the framework of national criminal law during the colonial era. This norm's persistence shows that the retributive justice paradigm, which views the death sentence as a proportionate form of retaliation for crimes deemed unusual (extraordinary crime), is still upheld by the Indonesian criminal justice system.

In the old Criminal Code, the death penalty was regulated in various articles, primarily related to offenses against state security, premeditated murder (Article 340), and crimes threatening public safety. These provisions indicate that the death penalty was intended as an *ultimum remedium*—a last resort in upholding legal order when other punishments are deemed inadequate. However, the development of modern criminal law has brought significant changes in orientation [6].

The new Criminal Code, ratified through Law Number 1 of 2023 on the Criminal Code, introduces the concept of a conditional death penalty as regulated in Article 100. This norm provides room for perpetrators to obtain a conversion of the death sentence to life imprisonment if, during a probation period of 10 years, they show commendable behavior and deep remorse. This approach illustrates a paradigm shift from retributive justice towards corrective and rehabilitative justice, positioning the death penalty as an alternative punishment (alternative punishment).

From a philosophical standpoint, the death sentence poses a conflict between two core ideas: the protection of society (protection of society) and the right to life (right to life). The Republic of Indonesia's 1945 Constitution, which states that the right to life is a human right that cannot be restricted in

any way, guarantees the right to life in paragraphs (1) of Articles 28A and 28I. On the other hand, the state has a constitutional obligation to protect its citizens from the threat of serious crimes, such as terrorism and narcotics, which some argue warrant the death penalty to safeguard the public interest (public interest) [7].

In this context, the Constitutional Court, through Decision Number 2-3/PUU-V/2007, affirmed that the death penalty is still constitutional as long as it is imposed selectively, proportionally, and accompanied by fair legal mechanisms. This decision underlined that the right to life is indeed the most fundamental human right, but it is not absolute when faced with broader interests, namely the protection of society.

Nevertheless, normative debate never subsides. From the perspective of modern criminal law, many experts argue that the death penalty is no longer in line with the humanitarian values that form the basis of the Pancasila legal state. The principle of just and civilized humanity (just and civilized humanity) demands that the punishment system be directed towards moral and social restoration, not merely retribution. This concept aligns with developments in international criminal law, particularly in the International Covenant on Civil and Political Rights (ICCPR), which, although not absolutely prohibiting the death penalty, encourages state parties to restrict its application to the most serious crimes (the most serious crimes).

Analysis of the new Criminal Code shows the state's effort to accommodate this humanitarian principle through the implementation of the conditional death penalty and stronger judicial review mechanisms. However, the existence of this norm still raises fundamental questions regarding the effectiveness of the death penalty in preventing crime (deterrence effect) and its conformity with the principle of substantive justice. A number of empirical studies in various countries show no direct correlation between the application of the death penalty and the rate of decrease in crime. Thus, the existence of the death penalty

in the Indonesian criminal law system more reflects political and moral compromise rather than evidence-based legal needs (evidence-based criminal policy) [8].

In practice, the death penalty is also often entangled with problems of disparity in the criminal justice system (criminal justice disparity), such as limited access to legal aid, sentencing disparities, and errors in the evidentiary process. These factors strengthen the argument that the implementation of the death penalty is not only a juridical issue but also a moral and social one.

3.2 The Absence of an Execution Time Limit and Its Legal Implications

In positive Indonesian law, there is no provision that explicitly regulates the time limit for carrying out the death penalty since the verdict obtains permanent legal force (*inkracht van gewijsde*). This normative gap creates serious problems in the context of protecting inmates' rights and legal certainty (legal certainty). Empirically, many death row inmates wait for execution for years, even decades, in correctional institutions without clarity regarding the timing.

This condition gives rise to the phenomenon known in international literature as the death row phenomenon, which is extreme psychological suffering due to uncertainty about the impending time of death. From the perspective of criminal law and human rights, this phenomenon can be categorized as a form of cruel, inhuman, or degrading treatment, as regulated in Article 7 of the International Covenant on Civil and Political Rights (ICCPR).

In the context of national law, the principle of humane treatment of convicts is also guaranteed in Article 28G paragraph (2) of the 1945 Constitution and Article 9 paragraph (1) of Law Number 39 of 1999 on Human Rights. These provisions affirm that every person has the right to protection of their person, family, honor, dignity, and property, and the right to security and protection from the threat of fear to act or not to act. Thus, the uncertainty of death penalty execution can be viewed as a violation of the right to live with dignity.

Analysis of implementing regulations shows that Article 15 of Law Number 2/Pnps/1964 on the Procedures for Implementing the Death Penalty only regulates the technical aspects of execution, without determining the time period between the verdict and the execution. Similarly, the Attorney General's Regulation Number PER-002/A/JA/05/2019 on the Implementation of the Death Penalty contains no provision setting a maximum time limit for execution. This condition creates wide discretionary space for the executing institution, particularly the Attorney General's Office, which can delay execution for administrative, political, or diplomatic reasons.

In practice, delays often occur due to the process of filing for clemency, extraordinary legal remedies (extraordinary legal remedies), or humanitarian considerations from the President. However, in many cases, these delays are not followed by certainty regarding time limits. Such a situation potentially violates the principles of due process of law and the rule of law, where every state action must be based on clear, non-arbitrary, and proportional law [9].

In international jurisprudence, the death row phenomenon has been recognized as a form of human rights violation. The case of *Soering v. United Kingdom* (1989) in the European Court of Human Rights (ECHR) affirmed that extraditing a person to a country that may impose the death penalty and cause psychological suffering due to execution delays constitutes a violation of Article 3 of the European Convention on Human Rights (ECHR). Similarly, in the case of *Pratt and Morgan v. Attorney General of Jamaica* (1993), the Judicial Committee of the Privy Council stated that an execution delay of more than five years constitutes inhuman treatment.

If these principles are applied in the Indonesian context, then the practice of indefinite execution delays can be categorized as a violation of the principle of humane treatment as guaranteed in Article 7 of the ICCPR and Article 28G of the 1945 Constitution. Theoretically, this shows a gap

between positive law and the principle of substantive justice (substantive justice).

The legal vacuum regarding the execution time limit also creates problems in the context of the theory of legal certainty (theory of legal certainty). According to Gustav Radbruch, good law must fulfill three basic values: justice, utility, and legal certainty. In the case of the death penalty, the uncertainty of execution timing ignores the values of certainty and humanity, causing the law to lose its moral legitimacy. Furthermore, excessively long delays can be considered a form of double punishment (double punishment), because the inmate is not only sentenced to death but also experiences prolonged mental suffering due to uncertainty [10].

In modern legal systems, many countries have set specific time limits for carrying out the death penalty after all legal remedies are exhausted. For example, Japan stipulates that execution must be carried out within six months after clemency is rejected, while the United States limits delays through the principle of speedy execution regulated in the court rules of each state. This comparison shows that establishing regulations on execution time limits is not merely an administrative need but also a manifestation of respect for human dignity in the punishment system.

In the context of Indonesian law, regulatory reform is urgently needed to ensure that the implementation of the death penalty is carried out humanely and in accordance with the principles of justice. The regulation of execution time limits can be placed in a revision of the law implementing the death penalty or as a complementary norm in the Government Regulation implementing the new Criminal Code. Thus, the national criminal law system will be more aligned with international standards on human rights and the principle of humane treatment of prisoners [11].

The concept of the death penalty in the Indonesian legal system shows a conceptual tension between the principles of retributive justice and substantive humanity. The continuation of the death penalty,

although moderated through conditional mechanisms in the new Criminal Code, still reveals fundamental problems regarding the state's moral legitimacy in taking the lives of its citizens. The right to life is a right that cannot be diminished under any circumstances, as guaranteed in Article 28I paragraph (1) of the 1945 Constitution and affirmed in Article 4 of Law Number 39 of 1999 on Human Rights. Normatively, this provision sets a limit for the state not to use the death penalty arbitrarily and obligates its implementation in accordance with the principles of humanity and legal certainty.

A relevant legal theory to explain this situation is Gustav Radbruch's Triad of Legal Values. Radbruch stated that law must contain three basic values: justice, certainty, and utility. If a conflict occurs among them, justice must be prioritized above certainty and utility. The death penalty without an execution time limit shows an imbalance between the values of justice and certainty. Excessively long delays negate legal certainty for the inmate and result in inhumane suffering, causing the law to lose its moral force. For Radbruch, law that only enforces certainty without regard for justice no longer deserves to be called law (*Gesetzliches Unrecht*).

H. L. A. Hart provides another dimension through his theory of law as a system of primary and secondary rules. In the context of the death penalty, primary rules include the criminal norms that establish prohibitions and the threat of the death penalty, while secondary rules regulate the implementation mechanisms and execution procedures. The absence of an execution time limit shows the weakness of secondary rules, preventing the legal system from functioning perfectly. When a legal system fails to provide clear secondary rules, overly broad discretionary space emerges for law enforcement institutions, particularly the Attorney General's Office as the executor of the death penalty. This situation contradicts Hart's principle of the rule of recognition, because it shows that the implementation of the law is not fully based on procedures that are legally recognizable and verifiable [12].

Ronald Dworkin emphasizes the importance of law as integrity, which demands that every application of the law be consistent with moral principles and justice. When the state delays execution indefinitely, even though the verdict has permanent legal force, the law loses its integrity. The principle being implemented is no longer consistent between sentencing and execution, because the judicial system concludes the verdict but delays its legal consequence. Dworkin argues that law must be read as a series of interconnected moral principles, not just a collection of rules. If a norm causes disproportionate suffering to humans, then that norm fails to fulfill the moral principle of law [13].

The death row phenomenon occurring in Indonesia demonstrates the legal system's failure to fulfill the principles of humanity and certainty. Death row inmates often wait for years in uncertainty because clemency processes or political considerations, which should be administrative, turn into indefinite execution delays. This situation causes significant psychological suffering—a form of mental torture that contradicts the principle of humane treatment of prisoners. Although formally the state does not commit physical violence, execution delays cause mental pressure comparable to cruel and inhuman treatment as intended in Article 7 of the ICCPR.

This condition is exacerbated by weak coordination between judicial institutions, the Prosecutor's Office, and the Ministry of Law and Human Rights. The absence of an execution time limit causes each institution to have its own interpretive space regarding the time deemed appropriate to carry out the death penalty. In practice, non-juridical factors such as political considerations, international pressure, or diplomatic considerations often become reasons for delays. However, the modern criminal law system requires that the execution of punishment must adhere to the principle of legality (*nullum crimen, nulla poena sine lege*), including at the execution stage. If the

timing of execution is not regulated, then the principle of legality loses its effectiveness [14].

From the perspective of substantive justice, execution delays also create disparities in treatment among death row inmates. Some are executed in a relatively short time, while others wait up to two decades. This inconsistency violates the principle of equality before the law (equality before the law), as guaranteed by Article 27 paragraph (1) of the 1945 Constitution. A rule of law demands certainty not only in terms of norms but also uniform application for every individual in the same legal condition.

A review of positive law shows that provisions regarding the implementation of the death penalty, both in the Criminal Code and its implementing regulations, only emphasize technical aspects without considering humanitarian aspects. Article 100 of the new Criminal Code does contain innovation by introducing the conditional death penalty, but it does not resolve the basic problem: the absence of a norm determining when the death penalty must be carried out after all legal remedies are exhausted. This normative weakness causes death row inmates to live in uncertainty, a condition that is morally not far different from prolonged torture.

From the perspective of penal policy (penal policy), establishing rules on execution time limits is crucial to ensuring certainty and justice. Determining the time limit can be done through revising the law implementing the death penalty or adding implementing norms in a government regulation. For example, execution must be carried out within a certain period—for instance, six months after clemency is rejected or after the verdict gains permanent legal force—unless there are valid juridical reasons for delay. Such a norm would not only guarantee legal certainty for the convict but also prevent the abuse of executive discretion.

In addition to time certainty, it is also important to affirm oversight mechanisms for the implementation of the death penalty. Establishing an independent supervisory body or an ethics unit under the Supreme Court or the National Commission on Human

Rights could be an alternative to ensure implementation complies with humanitarian standards. This oversight does not mean limiting the authority of the Prosecutor's Office but ensures that every execution is carried out proportionally, transparently, and accountably.

In the context of international human rights law, regulatory reform is also in line with the state's obligation to align national law with the principles of due process of law. Indonesia, as a party to the ICCPR, must ensure that every implementation of the death penalty does not violate human rights, including the right not to be tortured and the right to humane treatment. The UN Human Rights Committee (Human Rights Committee) in various General Comments has affirmed that state parties must restrict the use of the death penalty and ensure that its implementation is free from unnecessary physical or psychological suffering. Thus, establishing an execution time limit is not merely a national legal need but also a moral and international obligation [3].

Conceptually, uncertainty regarding execution timing can be viewed as a form of state overreach—an extension of state power that exceeds the moral limits of law. The state has the authority to impose punishment, but it does not have the right to delay the suffering resulting from that punishment itself indefinitely. Any form of delay that causes additional suffering should be qualified as an unlawful act. This concept can be explained through Dicey's theory of abuse of power, that power without limits and without control will lead to violations of the rule of law principle.

In practical terms, the absence of a time limit also impacts the families of death row inmates. They live in prolonged emotional and social uncertainty. Many families of convicts do not know when the execution will be carried out, often receiving information suddenly. This situation shows that the impact of delay is not only experienced by the inmate but also by their families and the surrounding community. The principle of humanity in criminal law should

take this psychosocial aspect into account as part of restorative justice (restorative justice). Restorative justice in the context of the death penalty does not mean abolishing the penalty itself, but rather organizing its implementation so that it does not cause suffering beyond reasonable limits. Thus, substantive justice can be achieved through mechanisms that balance the rights of the state and the rights of the individual. The state still has the authority to enforce the law, but the execution of punishment must adhere to moral and humanitarian principles.

The absence of an execution time limit also reveals a paradox in national legal policy. On one hand, Indonesia has signed various international human rights instruments and affirmed its commitment to the humane treatment of prisoners. On the other hand, the practice of implementing the death penalty reflects the state's absence in guaranteeing the basic rights of inmates. This strengthens the argument that criminal law reform is insufficient if only done at the legislative level; it must touch upon institutional aspects and the legal culture of law enforcers.

Reform of death penalty policy needs to be directed towards three main pillars. First, the establishment of norms regarding the time limit for carrying out the death penalty to ensure certainty and prevent psychological torture. Second, strengthening transparent and accountable execution oversight mechanisms through independent institutions. Third, developing alternatives to the conditional death penalty oriented towards the moral restoration of the perpetrator. This approach aligns with the principle of humanization of criminal law, which places humans at the center of every punishment policy.

This policy does not mean abolishing the state's authority to enforce the law firmly, but rather strengthens the moral legitimacy of the criminal law system. A Pancasila-based rule of law must demonstrate a balance between firmness and humanity. The death penalty without an execution time limit only causes suffering and violates substantive justice. Establishing clear, proportional, and humane regulations would be a concrete step

towards a civilized criminal law system aligned with universal human rights principles.

4. CONCLUSION

The death penalty remains a controversial issue in the Indonesian criminal law system, especially when its retributive function is contrasted with the humanitarian values guaranteed by the constitution. Its existence is still recognized within the framework of positive law, both through the old Criminal Code and the new Criminal Code, which introduces the conditional death penalty as a compromise towards the demands of respecting human rights. Although its legal legitimacy can be justified as an effort to maintain order and the public's sense of justice, the implementation of the death penalty still requires strict ethical and procedural foundations to avoid violating the fundamental rights of convicts.

The absence of an execution time limit indicates a normative gap that impacts legal certainty and humanity. Indefinite delays create psychological suffering that exceeds the punishment itself and raise constitutional issues regarding the principle of humane treatment as stated in Articles 28G and 28I of the 1945 Constitution. This phenomenon indicates an imbalance between the principles of justice, certainty, and utility of law as conceived by Gustav Radbruch, while also revealing the weakness of the legal system's integrity as argued by Ronald Dworkin, which demands harmony between the morality of law and the application of norms.

The reformulation of death penalty policy needs to be directed towards establishing explicit norms regarding execution time limits and objective delay mechanisms. This reform would not only provide legal certainty but also affirm the state's commitment to the principles of substantive justice and respect for human dignity. A modern criminal law system should not stop at legitimizing the death penalty but should move towards a legal design that ensures a balance between the

protection of society, justice for victims, and respect for the human rights of the convict.

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