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3rd ImCoSS

THE THIRD INTERNATIONAL MULTIDISCIPLINARY
CONFERENCE ON SOCIAL SCIENCES

5 - 7 JUNE 2015

BANDAR LAMPUNG UNIVERSITY
INDONESIA

PROCEEDINGS

Hosted by :

- Faculty of Teacher Training and Education
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3rd IMCoSS 2015

**THE THIRD INTERNATIONAL MULTIDISCIPLINARY
CONFERENCE ON SOCIAL SCIENCES**

5, 6 June 2015
Bandar Lampung University (UBL)
Lampung, Indonesia

PROCEEDINGS

Organized by:



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PREFACE

The Activities of the International Conference are in line and very appropriate with the vision and mission of Bandar Lampung University (UBL) to promote training and education as well as research in these areas.

On behalf of the **The Third International Multidisciplinary Conference on Social Sciences (The 3rd IMCoSS) 2015** organizing committee, we are very pleased with the very good response especially from the keynote speaker and from the participants. It is noteworthy to point out that about 112 technical papers were received for this conference.

I would like to express my deepest gratitude to the International Advisory Board members, sponsor and also to all keynote speakers and all participants. I am also grateful to all organizing committee and all of the reviewers who contribute to the high standard of the conference. Also I would like to express my deepest gratitude to the Rector of Bandar Lampung University (UBL) who give us endless support to these activities, so that the conference can be administrated on time

Bandar Lampung, 6 June 2015

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THE DEATH PENALTY: PANCASILA, WITH EFFORTS TO ERADICATED DRUGS

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ABSTRACT - *The rise of drugs criminal in Indonesia at this time, making Indonesia would be drugs emergency. Drugs is an extraordinary crime and need special attention in the eradication effort. Therefore it takes great strength to use legal action heaviest where Indonesia has a death penalty sentence. The purpose of the death penalty is to give hard effect for drugs criminal and as warning for the others. The reality of the death penalty in Indonesia shows the operation of the judicial system is not good and execution is always in delay so impressed indecisive. Besides setting the death penalty also raises the debate between the ethical values of Pancasila with positive law (KUHP)*

No doubt that in an effort to implement the firmness some time sencountered resistance from both inside and outside the country. As well as various opinion will counter the unwarranted death penalty violates human rights. In Indonesia even for the cons of the death penalty, related with violating the first principle of Pancasila, which God as ruler of the universe that has a full provision of the right to life and death of his creatures. But Indonesia still apply the death penalty is based on the rule of law (KUHP).

Keywords: Pancasila, the death penalty, the eradication of drugs.

1. INTRODUCTION

Pancasila as the state ideology of nation that can not be modified to be applied in all social order Indonesia. Structure in question is the attitude of the pattern as a citizen, and the basis of the establishment of a legal system that set the course of life among citizens. Therefore, Pancasila is something that is important in making a judgment on the basis of the legal arrangement, which then in accordance with the rules of life of the Indonesian people in both the current time or the time will come

Pancasila values extracted from the viewpoint of the nation Indonesia, which is the soul and the personality of the Indonesian nation as the state. Pancasila contain material properties / behavior of Indonesian nationality who became the pride of the nation. Pancasila has a high standing, not only as a basic philosophy and laws of Indonesia, But also reflects the ideals and philosophy of life of the nation of the Republic of Indonesia. Positions Pancasila as the legal basis, be included in the preamble of the 1945 Constitution which in it has been confirmed that the values contained in Pancasila is the source of all sources of national law. Furthermore, as one the most important pillars of nationality, Pancasila is the basic driver of the Constitution of the Republic of Indonesia, 1945, NKRI, and Bhinneka Tunggal Ika. Therefore, understanding the value of the four pillars, an absolute thing that must be carried out continuously with both the life of the nation.

In practice, the value of Pancasila as stipulated in the national constitution of Indonesia that are in the preamble of the 1945 Constitution should guarantee the legal arrangements and the explanation is right and just for the nation Indonesia. Placement staatsfundamentalnorm Pancasila as the first presented by Notonagoro (Jimly; 2006). Pancasila seen as the ideals of law (rechtsidee) is a guiding star. This position requires the formation of positive law is to

achieve the ideas in the Pancasila, and can be used to test positive law. With the enactment of Pancasila as staatsfundamentalnorm the legal establishment, implementation, and its implementation can not be separated from the values of Pancasila.¹

Crime drugs arising from the behavior of people who are not responsible for the utilization of drug use as a medical treatment, as well as in the use of medical disciplines in the scope of its research and development treatment. Along with the times which have an impact on people's lifestyles, development of science and technology, even deviant behavior increasingly diverse, supporting the development of criminal acts drugs. Crimes drugs is a crime that is extremely dangerous and harmful for human life, society, nation, and resilience in a state. Like we all know that this crime is a crime to watch out for by all parties, given the tremendous impact, drug-related crime was also included in the class "extraordinary crime".

Drug crime is still an enemy to those who oppose this action, still running and developing the production activities to the wider community with a variety of operational modes organize. Often every day we hear news of drug-related crimes that occur in various regions, especially in Indonesia. Some proved that the need for extra measures cooperation between law enforcement agencies and the public in monitoring and prosecution of the perpetrators of this drug. In Indonesia itself has been set up on narcotic crime, as stipulated in Law No. 35 In 2009, the issuance of this law aims to ensure the availability of narcotics for health services and the development of knowledge as well as prevent, protect, and save Indonesia from the action of the drug abuse.

¹ *Pancasila Sumber Dari Segala Sumber Hukum di Indonesia, Kurnisar, Universitas Sriwijaya*

The number of criminal drug cases in the Indonesian almost every day occurs, causing the slogan "drug-free Indonesia 2015" that which has now become "Indonesia EMERGENCY drug crimes". Seeing this, condition of course, should be sought immediately the reason why there are many drugs a criminal offense in this era, and what are the things that should be done in the prosecution of those involved in the crime of drug. Subjects involved in drug-related crimes can we classify namely croupier, dealers, and users (even state officials involved in this crime can be included in an additional category, namely as a supporter of the crime subject). However in setting its law enforcement must necessarily be viewed from conditions and circumstances that exist, such as on the subject, namely who should receive the maximum punishment. In Indonesian positive law (KUHP) has the type of penalties provided in Article 10. However, in this discussion, referring to the toughest penalties in accordance with the rules of Article 10 of the KUHP that will apply to offenders who are involved in this crime, namely DEATH PENALTY. Of the subjects who engage in criminal acts of this drug, Croupier and dealers who regulated in Law No. 35 of 2009, where the narcotics law stipulates "that the action offering for sale, selling, purchasing, receiving, became an intermediary in the sale and purchase, exchange, or submit Narcotics which weighs more than 5 (five) grams, the perpetrator shall be punished by death, criminal life imprisonment, or imprisonment minimum 5 (five) years and a maximum of 20 (twenty) years of imprisonment and a maximum fine referred to in paragraph (1) plus 1/3 (one third).

The death penalty is the toughest law enforcement are still enforced in some countries, especially the rule on Indonesia's national law, although there are no international rules specifically dalampelarangan application of the death penalty, but in practice reap many pros and cons.

Looking from the purpose and effect of the execution itself, in its application purposes following the goal of 'law' is to create a deterrent effect against perpetrators crime and a warning to the people who are likely to commit similar crimes in order to decimate the intention of doing such crime. On the application of the death penalty did not necessarily give the verdict to a person who committed a crime, the punishment threatened with a short range of the investigation process. Law enforcement officers have to think extra hard and be careful in determining the enactment of this sentence to criminals facing the death penalty, so that later when the death penalty has been carried out is no longer an evidence to be justification after the death sentence carried out.

As the implementation process which does not run in accordance with the existing system, not infrequently pressures arise from various parties when process execution time approached implementation. Moreover, if it will execute other citizens who commit crimes in Indonesia and has received a death sentence from a court in Indonesia. The intervention of other countries to defend its citizens facing the death

penalty, it will destabilize the implementation and enforcement of existing laws in Indonesia. It is no doubt it tersebut merupakan a natural thing, given the state's obligation to protect its citizens wherever and in a state of apapun. Hal is also done by the Indonesian government in defense of foreign workers who were sentenced to death by the state that retain the death penalty in law nationalition. But also on the other hand, sometimes it causes the course of the execution process, especially in Indonesia itself is not in accordance with the original plan, seen from delays execution time should be done according to plan early, making law enforcement efforts in Indonesia invisible lack of firmness and seriousness from both government and enforcement law.

2. ISSUES

1. Is that Pancasila can adjustment in death penalty for crime drugs?
2. How to application death penalty to crime drugs in Indonesia?

3. DISSCUSSION

As a philosophy and states ideology, Pancasila is a hope on law and state which have values inspiration to realize state achievement. Therefore, Pancasila is have main function for all public wisdom, either in a form of legislation and on social programs, economics, and culture for rezlize states achievement.

For examples of legislation that describes the critical functions of Pancasila, in regulating the death penalty, which is put in the Indonesian postive law, in article 10 KUHP. The death penalty, is one of the highest penalty that is recognized by the Indonesian legal system. In practice, the death penalty is a criminal sanctions that already exist in the system of positive law in Indonesia.

Imposed the death penalty has a relationship with the philosophical foundation. death penalty relationship with the philosophical foundation can be seen in the application of the values of Pancasila. In Article 2 of Law No. 10 of 2004 on the establishment of legislation stated, Pancasila as the source of all sources of state law, which means that Pancasila is the supreme source of law which made a guideline. Therefore it can be concluded that the legal issues that exist in Indonesia, must be completed by the source of the values of Pancasila, not to mention the rule of law on death penalty

In this discussion, explaining about the death penalty for drug crimes. Drugs, when seen from abuse activities classified in the category of crimes exceptional or *extraordinary crime*. The crime prosecution should be noticed in particular, given the major impact for many people, among others destroy the future of the nation, destroy the potential that can develop in a person who should be someone that can be labor work productively, inhibit and degrade the effectiveness of an individual's performance , causing the loss of someone's life is slowly but surely, as well as the impact the scope of the financial burden to the

state to issue socioeconomic maintenance fund victims and other negative impacts.

In Pancasila, which is in the first principle that "Almighty God" (Ketuhanan Yang Maha Esa), to find a philosophical foundation enactment of the death penalty in this first principle, it should understand the notion of the supreme deity. In the description of the first principle explained by Mohammad Hatta, it can be concluded that the legal arrangements in Indonesia, including the death penalty issue should also be rooted in the values of Almighty God. In Islam is known for Qisas, which according to Islamic law the death penalty is a must for those who have claimed the lives of others. Qisas law explicitly visible in the Al-Qur'an :

Surat Al Baqarah ayat 178 : yang arti dalam bahasa Indonesianya adalah "Hai orang-orang yang beriman, diwajibkan atas kamu menuntut balas (kisas) sebab membunuh orang, merdeka dengan merdeka, sahaya dengan sahaya, perempuan dengan perempuan..."

وَنَوْلَكُمْ فِي الْقِصَاصِ حَيَاةً يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ

"Dalam hukum *Qishash* itu ada (jaminan) kelangsungan hidup, hai orang-orang yang berakal,

عَ الْمُتَّقِينَ اِعْتَدَى عَلَيْكُمْ وَانْفُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ مَالِشَهُرُ الْحَرَامِ بِالشَّهْرِ الْحَرَامِ وَالْحُرْمَاتُ قِصَاصٌ فَمَنْ اِعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا

"Bulan haram dengan bulan haram, dan pada sesuatu yang patut dihormati, berlaku hukum *Qishaash*. Oleh sebab itu barangsiapa yang menyerang kamu, maka seranglah ia, seimbang dengan serangannya terhadapmu. Bertakwalah kepada Allah dan ketahuilah, bahwa Allah beserta orang-orang yang bertakwa."

(QS Al-Baqarah/2: 194)

From the explanation of the verse can be taken explanation that a person who endangered his life, if under certain circumstances that endanger his life then he should defend himself. It can be connoted to narcotics crimes as an example of the "particular circumstances" that endanger the lives of the people, then the defense that can be done using the rules of law in force in a country in this regard can be included death penalty against those who deliberately commit crimes causing the loss of lives of others. Rule of law as applied to the benefit of the crowd will function properly if applied on act that violates the law.

Qisas is doing the same reprisals. Qishaash not applied, when the killing gets a pardon from the heirs of the slain namely by paying blood money (compensation) fair and according to the agreement. The payment of blood money asked nicely, requested by not forcing the killing, and killing let pay with good intentions, and not delay. If the heirs of the victim after the Lord explains these laws, which is not the killer killed, or kill the killer after receiving blood money, then against him in the world, regulated qishaash and in the Hereafter he gets a painful punishment.²

The death penalty is also justified by the teachings of Christianity. Christian religious leaders agree the application of the death penalty because it refers to Paul's view, that the state is the representative of God in performing temporal power, given the sword which is used to ensure the survival of the state. And in

supaya kamu bertakwa".

(QS Al-Baqarah/2: 179)

Qisas in Islamic law explain death penalty can be did, to a person who has committed a murder. But this law is to be implemented, or it can canceled when the legal heirs of the slain give forgiveness to those who killed, by paying a diyat. Diyat is, the act of paying fines agreed by both parties or determined by the judge, who was killed when heirs to forgive the killer from Qisas punishment.

That we can understand from this verse that the death penalty not be imposed implicitly though, the action taken by a person is in accordance with the legal consequences to be put to death penalty. With certain requirements, such as pay diyat (as has done) by the Indonesian government against several workers who were sentenced to death in Saudi Arabia could remove death sentence given by the local court.

Al-Qur'an juga menerangkan tentang masalah Qishash ini dalam ayat lainnya, yaitu dalam Surat Al-Baqarah ayat 194

Buddhism also know clausal relationship, where if a person causes the death of others, then that person also may be subject to a proportionate penalty.

Then, in the legal arrangements in Indonesia, leading to the death penalty, in addition to be rooted in the values of Almighty God, should also be derived from the values of Pancasila other covering, First Value humanity, Second Nationality Value, Third Populist, and fourth Social Justice. When the values of Pancasila are met and are in accordance with the purposes of the law and the country itself, the death penalty for the drugs crime, can be adapted to the values of Pancasila.

The Efforts to the application of the death penalty which is in accordance with the values of pancasila can be imposed for the drugs criminal .The endorsement of the death sentence for drug crimes are still many pro counter to the implementation of this punishment.

In the verdict of MK 2-3 PUUV2007 about drugs crime enlighten some doctrin, who give the reason death penalty still necessary put in a legal states, for the example:

" the death penalty is a tool that absolutely must be there in the community to eliminate individuals that could not be repaired therefore both undergraduate again.And even this became a criminal defense mati.Pidana death is a radical attempt to negate the people who no longer terperbaiki, and the existence of the death penalty is then hilanglah obligation to maintain them in prison yangsedemikian costly. Similarly, there goes our fears lest such people to

² <https://saripedia.wordpress.com/tag/islam-mengatur-hukuman-mati/>

escape from prison and make another crime in the society".

From the opinion, can be drawn several explanations one of which, the enactment of the death penalty against people who are classed as human beings who are not able to fix itself again as an example, has been found guilty of certain criminal acts but returned repeated actions and the impact is the same or more from the previous act, or when he is running his sentence in prison, he still can commit the crime in this case and narcotics abuse that utilize intermediaries other people but still it as the mastermind of the crime.

Dr. A. Muhammad Asrun, SH. MH. Said that The correct understanding of the imposition of the death penalty related to extraordinary crimes such as narcotics should be seen as a safeguard against the "right to life" (the right to life) of many people. The death penalty as stipulated in UU No. 22 year 1997 (j.o. UU. 35 year 2009) on Narcotics should be seen in the context of protection of the public life. Indeed narcotics criminals (traffickers, users and international narcotics syndicates) were caught apparatus and then sentenced to death by a court must be seen as a dangerous "right to life" of others or the public. The law must protect the interests of many people, which became the target of a narcotics transaction.

And, Prof. Dr. Achmad Ali, SH (Professor Law Faculty Hasanudin University) said that,

If only read Article 28 paragraph (1) that, it is the first impression and the message we are going to catch is as though our constitution "forbids the death penalty", but as we read as a whole Article 28 paragraph (1) and Article 28j paragraph (2), then one can draw a conclusion that, the right to life, freedom from torture, freedom of thought and conscience, freedom of religion, the right not to be enslaved, the right to recognition as a person before the law, and the right not to be prosecuted on the basis of a retroactive law, is a human right that can not be reduced under any circumstances,

The implementation of the rights can be limited and even omitted implementation by the requirements:

- a. in accordance with the law;
- b. in accordance with moral considerations;
- c. in accordance with religious values;
- d. according to security and public order.

In other words, "exclusion" guarantee the rights contained in Article 28 (1) of the Constitution of the Republic of Indonesia Year 1945, it is possible if based on the law, considerations of morality, religious values, for the sake of security and public order. More importantly, the death penalty is still needed because of the actions of the perpetrators themselves were no longer pay attention to aspects of life of humanity (second section of Pancasila) and a life filled with social justice (fifth section of Pancasila).

Law enforcement should be done by the government to the things that break the rules, must be conducted properly in order to reinforce the rules that have been created and achieve strict legal certain. However, no doubt the development of science and human thought,

the more the pros and cons against the death penalty. The pros and cons of not only occur from the inside or outside of the country that applies the death penalty or not the positive law of the country. This happens in Indonesia to implement the death penalty in criminal cases drugs against any person who committed the crime under the national law of the sovereign territory of Indonesia. "Everyone" is meant, not only Indonesian citizens, but also applied to foreign nationals residing in Indonesia.

When there are foreigners who has sentenced a verdict of death by the court of indonesia, of course there is the intervention of the government of the state of the defendant to try to free its citizens they of the death penalty which will be running. It is common, considering the state has an obligation to protect its citizens legally dimanapun citizens are. that's also often done by indonesia often found in the case of migrant workers terancam the death penalty in foreign, where indonesia strive to free the workers of the death penalty state to another with a variety of negotiation to the countries concerned, while no rarely the efforts failed.

From the discussion before, connected to the consistency of the application of penalties have been set in the rules in indonesia alone. There is the fact that the issue of narcotics, is not merely only a matter of law enforcement (law enforcement) mere, but on the issues of contention the interests of some groups, and other problems. This is an impact on the implementation of peradilannya where can be seen directly, the delay execution convict dikarenakan certain factors that make the reason for the delay was carried out. But actually with arranging the delay, shows indecisiveness indonesia to prove the legal sovereignty.

Hence, supposed to indonesia did not need to care a variety of censure from the other countries which intervene the implementation of the national law indonesia. Law enforcement indonesia have to show firmness of law imposed in his own country to parties in the country and overseas abide by the rule of law applied indonesia so the purpose of law to embody the life between the societies an orderly can be achieved, and the implementation of the death penalty in cases of a criminal act drugs in indonesia will be able to run well with in the absence of the influence of the intervention of in the country and overseas.

4. CONCLUSION

Pancasila as the source of all the laws of Indonesia, gives a reflection that a rule of the rules imposed on Indonesia is the result of rules that reflect the personality of the Indonesian. All applicable laws in Indonesia was certainly must contain the values of Pancasila which can adjust the order of a society both today and in the near future.

Regulation of the death penalty in Indonesian positive law system based values derived from Pancasila. Although some pros and cons for the implementation, however death penalty remains governed by both Indonesia and several other countries, and there is no

prohibition in the rules of international law and running as it should to combat certain crimes with the intent good purpose.

Certain crimes meant in this discussion is the act of abuse and illegal distribution of the drug which belongs to the category extraordinary crime. From this crime, the death penalty is applied subject is croupier and the distributor. The implementation of the death penalty in this crime as a result of acts in violation of law rules and social norms prevailing in society.

For remember us, This crime prosecution should be noticed in particular, given the major impact for many people, among others destroy the future of the nation, destroy the potential that can develop in a person who should be someone that can be labor work productively, inhibit and degrade the effectiveness of an individual's performance , causing the loss of someone's life is slowly but surely, as well as the impact the scope of the financial burden to the state to issue socioeconomic maintenance fund victims and other negative impacts.

Indonesia as a country with possess high sovereign legal status, deserve to realize their national law the judicial system without any intervention from the parties that will trigger and inhibit and cause a

negative view that the law does not expressly regulated in Indonesia implementation.

That thing considering in some time ago, when Indonesia will carry out the execution of convicted drug and became the talk the world, the process of its implementation is done by delaying implementation that makes the perception that Indonesia fear of criticism from certain parties and gave rise to the notion that lack of sharpness law enforcement prevailing in Indonesia.

Hence , Indonesia must focus on rule of law the applicable national , if someone has certain sentenced to punishment by a process of investigation that is ripe in this case the death penalty , then the act of implementing the punishment must begin immediately to reach legal certainty shall rule imposed .`

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