

Implementation of Death Penalty in Indonesia on Human Rights's Perspective

Abdul Salam Siku

Faculty of Law, University of Bosowa, Makassar – South Sulawesi, Indonesia

Abstract

The aim of this study is to know how to exercise execution of death penalty in Indonesia; and it is also to know whether the implementation of the execution of death penalty in Indonesia is not contrary to human rights.

The study was conducted in the Attorney General of the Republic of Indonesia, the Indonesian Supreme Court, the Constitutional Court of the Republic of Indonesia, the Ministry of Justice and Human Rights and several universities in Indonesia, both public and private universities. The research approach is a socio-juridical approach in which it will be formulated in terms of the applicable law to see the implementation of it. The result of the applicable law will conclude whether it is contrary to human rights or not. The research's results indicate that execution death penalty in Indonesia has been established by the Law No. 5 of 1979 and technically is set in the Chief Police Regulation No. 12 of 2010. The regulation governs that the procedure of execution of the offenders must be shot until death in an enclosed place by a firing squad of Brimob Police of the Republic of Indonesia. According to the Supreme Court of the Republic of Indonesia No. 2-3 / PUU-V / 2007 and opinion of 8 (eight) experts on law and human rights that the execution of death penalty in Indonesia is not contrary to the human rights.

Keywords: Implementation; Death Penalty; Human Rights.

1. Introduction

Execution of death penalty in Indonesia is regulated in Article 11 of the Code of Criminal Law (Penal Code). It states that the convict basically can be executed by hanging on a hanger with ensnaring rope on neck the convict. The sentence is changed by the Presidential Decree No. 2 of 1964 and rechanged then to the Law No. 5 of 1969. The Law No. 5 of 1969 states that in terms of death penalty, the convict will be executed by being shot to death. Psychologically, the death penalty supposedly can decrease level of crime, especially extra ordinary crime such as narcotics, psychotropic, terrorisme, and murder is punishable to death. However, the crime phenomenon tends to increase.

On a global scale, some states still maintain the death penalty in their own legal system. Of course, some states also abolish it in their legal system. For those countries that still retain the death penalty, various methods are used to eliminate the negative impact of the execution, whether related to the way the execution of the death penalty or the requirements of the imposition of the death penalty. The result of it, there are some developed ways of implementation of the execution to be more humane and painless. In addition, it is using a very tight requirements and some exceptions of it in its application.

The existence of the death penalty as a criminal sanction can be seen in Article 10 of the Indonesian Criminal Code (hereinafter referred to penal code. In terms of the legal history, the article 10 tends to be discrimination and politic, in which it strengthens the Dutch colonial rule against the State colonies. It is because since 1870 in *Wetboek van Strafrech (W.v.S) Netherlands*, the death penalty sentence has been abolished in Dutch penal code. However, it has not done against *Wetboek van Strafrech voor Nederlands Indie* (in Indonesia).¹

The death penalty is a social reality, although in many countries and many people reject the existence of the death penalty. Even some countries originally abolishes, then revives the death penalty with some reasons such as security, maintainance of social unity, and maintainance the existence of the state. For the pros countries of the death penalty, it is a *ultimatum remedium* and as a last drug – called amputation as known in the medical science. Philosophically, there is an argument that the death penalty is a safeguard life together.

The death penalty once run, it is unlikely to be changed or corrected again. It means that if there is omission or a mistake or find the element of "Novum" (new evidence) in the case, the convict can not be life anymore. In other words, once the execution has been carried out, people have lost their lives and may not be turned on again. Any sophisticated medical science could not turn on the person who had been shot dead.

Perhaps with such considerations as mentioned above, although it is not disclosed clearly in the legislation, it is understandable why the execution is not carried out immediately compared to other types of criminal subject such as imprisonment and criminal fines. It is no suprised if there are some questions arise (pros and cons) related to the death penalty including the exact time when the death penalty should be carried out. It remains a problematic that can not be solved satisfactorily by the parties polemics. Typically, a person who has

¹ Pujiyono, *Paper Collection on Criminal Law*, CV. Mandar Maju, Bandung, 2007, p.2.

been sentenced to the death penalty although it is concerned not to use legal remedies in the form of appeals, the execution can not be carried out immediately and instantly. For the sake of the execution, although it does not specifically state when it will be done, it must consider some aspects before executing the convicts.

One of the big issues and very unsettling matters especially for those who do not agree to on the death penalty is a grace period that often so long and and it is not clear when will be carried out the execution. Delay the death penalty to a period of many years is especially more than ten or twenty years, it clearly shows the responsibility of the ruling party. The responsibilities whatever the reason or motivation can not be justified morally and ethically. In other words, it can be said that the delay of the death penalty execution is violation of human rights and also indicates as an atrocity own anyway.¹ The cruelty is meant here in line with unclear when the convict will be executed. It has implications and consequences that the death penalty process is suffering some kind of omission, which is unethical and immoral. If the person sentenced to the death penalty is left without certainty in a long time limit at all concerned with the execution, it actually has engineered a kind of spiritual persecution and psychological torture. In this situation, it is not only spiritual, psychological, and mental suffering aspects made to the convict but also in terms penology science, it will be a covert of victimization. The implications of covert victimization is that the convict is loss of his/her properties scary (deterrence).

Therefore, the focuses on this article are to elaborate to what extend the execution of the death penalty in Indonesia is conducted; and whether the execution of it in Indonesia does not contradict human rights otr not.

2. Research Methodology

2.1 Research sites

This research is conducted in the Attorney General's Office of the Republic of Indonesia as an institution that is authorized to carry out the execution; the Constitutional Court is authorized to examine whether a law governing the death penalty is not contrary to the human rights set forth in the Constitution of the Republic of Indonesia Year 1945; and the National Human Rights Commission is authorized to analyze on the application of human rights in Indonesia, as well as universities with professors who are expert in law and human rights.

2.2 Type of Research

The type of research is socio-juridical form. It means that it not only analyzes some provisions governing the death penalty and human rights, but also analyzes the implementation of the execution of the death penalty as part of law enforcement in Indonesia.

2.3 Types and Sources of Data

The research is conducted by using two types of data - namely primary and secondary data. The primary data collected directly in the field by the respondents / informants in relation to the problems examined, such as the Attorney General, the Constitutional Court, the Commission on Human Rights, and universities. The secondary data obtained through documents related to the problems examined such as some regulations, court decisions, research reports, papers, and books of reference.

2.4 Data collection technique

In order to obtain the necessary data in this study, the data collection method is

The field and literature research. The field research uses opened interviews to the respondent and the distribution of questionnaires writtenly. The literature research is carried out from the books, some laws, and court decision on the death penalty in Indonesia.

2.5 Data analysis

The data obtained in this study are analyzed descriptively qualitative. The qualitative analysis is intended to describe the execution of the death penalty in Indonesia and whether the execution of it is not contrary to human rights.

3. The Data of The Death Penalty's Execution in Indonesia

On Sunday, November 9, 2008 at 0:15 pm located at the Valley Nirbaya, Nusakambangan Cilacap in Central Java, it had been executed of the death penalty against 3 (three) Bali bombers I - Amrozi, Mukhlis, and Imam Samudra.

The chronological execution of three men convicted of the Bali Bombing is as follows: 1. At 23.00 pm, Amrozi Cs. removed from solitary confinement. 10-minute driving distance of Batu Prison to Valley Nirbaya. 2. At 00.00 pm, the three convicts was executed by firing team.² The execution had been implemented by the

¹ Sahetapy, *The Death Penalty in State of Pancasila*, Citra Aditya Bakti, Bandung, 2005, pp.67-68.

² Harian Fajar, November 9th, 2008, p.1.

shooter Team of Indonesian Police. The execution itself has received feedback from various parties both domestically and from overseas. There are pros and cons to such execution.

According to Andi Hamzah,¹ after the execution Kusni Kasduk and Tupanwael were done, the issue of the death penalty in Indonesia was becoming hot issues. Arising out of a group calling itself “HATI” (anti-the death penalty law) in which the vice president at the time, Adam Malik, included in the group. After the issue of the death penalty abated, suddenly appeared mysterious gunman who shot dead to those who were called criminals recidivists or insane. Until August 1983, there were already hundreds of such criminals that were shot to death.

Throughout 2008, there were 8 (eighth) the death penalty were executed. They were the 2 (two) Nigerian drug smuggler, Ahmad Saroji that killed 42 (forty two) people in North Sumatra, Tubagus Yusuf Mulyana that killed 8 (eight) people in Banten, and both Simuarsih and Sugeng) were sentenced involved the murder of a family in Surabaya. The most famous execution in 2008 and received wide attention from the public was the execution of Imam Samudra and Ali Ghufron, convicted Bali bombings 2002. After 2015, there were dozens of people sentenced to the death penalty.

According to Kontras, the names of people who had been executed until 2015, as following:

Year	The death penalty conducted	Name of Case	The desicion court
2015	Andrew Chan (Australia)	Drugs (Bali)	
	Myuran Sukumaran (Australia)	Drugs (Bali)	
	Rodrigo Gularte (Brasil)	Drugs (Banten)	
	Silvester Obiekwe Nwolise alias Mustofa (Nigeria)	Drugs (Banten)	
	Okwudili Oyatanze (Nigeria)	Drugs (Banten)	
	Stephanus Jamio Owolabi Abashin alias Raheem Agbaje Salami (Nigeria)	Drugs (Banten)	
	Martin Anderson alias Belo (Nigeria)	Drugs (Banten)	
	Zainal Abidin (Indonesia)	Drugs (North Sumatera)	
	Rani Andriani	Drugs (Banten)	
	Namaona Denis (Malawi)	Drugs (Banten)	
	Ang Kim Soe (alias Kim Ho alias Ance Thahir alias Tommi Wijaya) (Belanda)	Drugs (Banten)	
	Marco Archer Cardoso Moreira (Brazil)	Drugs (Banten)	
	M. Adami Wilson alias Abu (Malawi)	Drugs (Banten)	
	Tran Thi Bich Hanh (Vietnam)	Drugs (Central Java)	
2014	Tidak ada		
2013	Muhammad Abdul Hafeez (Pakistan)	Drugs (Banten)	
	Suryadi Swabuana alias Adi Kumis	Murder (South Sumatera)	
	Jurit bin Abdullah	Murder (South Sumatera)	
	Ibrahim bin Ujang	Murder (South Sumatera)	
	Daniel Enemo (Nigeria)	Drugs (Banten)	
2008	Amrozi	Terorisme (Central Java)	
	Imam Samudera	Terorisme (Central Java)	
	Muklas	Terorisme (Central Java)	
	Rio Alex Bullo	Murder (East South-East Nusa)	
	Usep alias TB Yusuf Maulana	Murder (Banten)	

¹ Andi Hamzah and A. Sumangelipu, *The Death Penalty in Indonesia: in the Past, Present, and Future*, Ghalia, Jakarta, 1983, pp.13-14

Year	The death penalty conducted	Name of Case	The desicion court
	Sumiarsih	Murder (East Java)	
	Sugeng	Murder (East Java)	
	Ahmad Suraji alias Dukun AS	Murder (North Sumatera)	
	Samuel Iwuchukuwu Okoye (Nigeria)	Drugs (Banten)	
	Hansen Anthony Nwaliosa (Nigeria)	Drugs (Banten)	
2007	Ayub Bulubili	Murder (South-East Kalimantan)	-
2006	Fabianus Tibo	Murder (Central Sulawesi)	16
	Marinus Riwu	Murder (Central Sulawesi)	
	Dominggus Dasilva	Murder (Central Sulawesi)	
2005	Astini	Murder (East Java)	10
	Turmudi	Murder (Jambi)	
2004	Ayodya Prasad Chaubey (India)	Drug (North Sumatera)	5
	Saelow Prasad (India)	Drug (North Sumatera)	
	Namsong Sirilak (Thailand)	Drug (North Sumatera)	
2001	Gerson Pande	Murder (East South-East Nusa)	16
	Fredrik Soru	Murder (East South-East Nusa)	
	Dance Soru	Murder (East South-East Nusa)	
1998	Adi Saputra	Murder (East Java)	1
1995	Chan Tian Chong	Drug	?
	Karta Cahyadi	Murder (Central Java)	
	Kacong Laranu	Murder (Central Sulawesi)	
1992	Sersan Adi Saputro	Murder	?
1991	Azhar bin Muhammad	Terorisme (?)	1
1990	Satar Suryanto	Political Crime (case in 1965)	3
	Yohannes Surono	Political Crime (case in 1965)	
	Simon Petrus Soleiman	Political Crime (case in 1965)	
	Noor (atau Norbertus) Rohayan	Political Crime (case in 1965)	
1989	Tohong Harahap	Political Crime (case in 1965)	4
	Mochtar Effendi Sirait	Political Crime (case in 1965)	
1988	Abdullah Umar	Political Crime (Islamic Activitist)	4
	Bambang Sispooyo	Political Crime (Islamic Activitist)	
	Sukarjo	Political Crime (case in 1965)	
	Giyadi Wignyosuharjo	Political Crime (case in 1965)	
1987	Liong Wie Tong alias Lazarus	Murder(?)	22
	Tan Tiang Tjoen	Murder (?)	
	Sukarman	Political Crime (case in 1965)	
1986	Maman Kusmayadi	Political Crime (Islamic Activitist)	1
	Syam alias Kamaruzaman alias Achmed	Political Crime (case in 1965)	

Year	The death penalty conducted	Name of Case	The desicion court
	Mubaudah		
	Supono Marsudidjojo alias Pono	Political Crime (case in 1965)	
	Mulyono alias Waluyo alias Bono	Political Crime (case in 1965)	
	Amar Hanefiah	Political Crime (case in 1965)	
	Wirjoatmodjo alias Jono alias Tak Tanti	Political Crime (case in 1965)	
	Kamil	Political Crime (case in 1965)	
	Abdulah Alihamy alias Suparmin	Political Crime (case in 1965)	
	Sudijono	Political Crime (case in 1965)	
	Tamuri Hidayat	Political Crime (case in 1965)	
1985	Salman Hafidz	Terorisme	1
	Mohamad Munir	Political Crime (case in 1965)	
	Djoko Untung	Political Crime (case in 1965)	
	Gatot Lestario	Political Crime (case in 1965)	
	Rustomo	Political Crime (case in 1965)	
1983	Imron bin Mohammed Zein	Terorisme	
1982	Tidak ada		1
1980	Hengky Tupanwael	Murder	
	Kusni Kasdut	Murder	
1979	Oesin Batfari	Murder	

Sumber Data :id.wikipedia.org/wiki/Hukuman_mati, diakses 8 Februari 2016.

4. Execution of The Death Penalty and Human Rights

4.1. Decision of the Constitutional Court of the Republic of Indonesia No. 2-3 / PUU-V / 2007 on the death penalty and its execution in Indonesia.

In consideration of the law of the Constitutional Court argued:

Restrictions set forth in Article 28J paragraph (2) of the 1945 Constitution can not be interpreted as something that justifies the death penalty to limit right to life in Article 28 paragraph (1); Article 28J paragraph (1) and (2) is a provision of a general nature which states that rights referred to in Article 28A through 28I is not absolute because it is something that can not be released to respect the rights of others and can not also be restricted on the grounds to ensure recognition and respect for the rights dan freedoms of others and to meet the demands which are appropriate to some consideration like moral, religious values, security and public order, in one democratic society. Thus, it is not intended to limit Article 28 particularly for the sake of the legal basis of justification of the death penalty.

It is because the right to life interpreted broadly as mentioned above, it led to restrictions on the right to life can be interpreted by eliminating itsown life. Original intent of the amenders of the 1945 Constitution on this subject is not be seen clearly in its minutes to determine whether the limitation of article 28J paragraph (2) is intended explicitly to justify the death penalty. The minutes are not also found out some facts whether discussion on Article 28J paragraph (2) is associated with whether the death penalty is allowed in the penal code in Indonesia or not. Although the history of the 1945 Constitution concerning the loading sequence of human rights as set forth in Chapter XA of the Constitution is done through the second amandement, its substances basically are adopted and raised from the Law No. 39 of 1999 on Human Rights.

Explanation of article 9 of the Law No. 39 of 1999 states that in extraordinary circumstances for example in cases of abortion and the death penalty, it can still be permitted. Both the abortion and the death penalty are an exception of the Law No. 39 of 1999 in quo. Therefore, Article 28J of the 1945 Constitution is enacted to all citizens and it is an exeption. In terms of restrictions, there is restriction that is defined as a temporary delay for the sake of war and disasters. Some temporary delay are for example the right to express an idea, the right to communicate and obtain information, and the right of residence.

In the context of the right to life, it can not be limited. It means that the right to life can not be done with abolishing the life itself. Therefore, the most important thing is how to respect for human beings life. The right to life must be respected by others. In this situation, the limitation of the right to life is put to restore balance. The focus on it is limitation to human beings activities in which they are placed in a special place and undergoing special training-coaching. Therefore, even if it is understood that the right to life is not absolute and hence can be restricted, then the limitation can not be construed as a right of the state to eliminate the human beings life and/or it can not be interpreted as authority of the Government and lawmakers to regulate and judge the death penalty against a convicted person guilty of committing certain gross crime.

The Death Penalty: Deterrence / Preventie?

This argument has been widely noted by some experts both the government's experts and university's scholars. Intensively both the Government and the National Drugs Council (hereinafter referred to BNN) state that the death penalty has deterred against perpetrators and desperately needed to reign drug crime, which has brought a mighty number of victims and has endangered the nation. It can be said also that even if the death penalty is enacted, the number of drugs crime are still increasing. In fact, Indonesia as a state becomes a paradise for the drugs sellers, it then is not be abolished.

There is no denying that the level of drug crimes and its consequences become a serious threat to the younger generation. It is very alarming. It also can be denied that the death penalty such as other types of punishment, certainly has deterrence specifically to both the individual potential criminals and the society as a whole. However, the deterrence matter is not solely the result of which can only be achieved by applying the death penalty. The question sometimes arises that should the death penalty be applied to the drugs users and sellers? or should we complete the procedural laws in order to sentence the perpetrators fair? Those questions become general discussion to justify whether the death penalty should be applied in Indonesia or not?

Applying criminal justice system through check and balance mechanisms basically can justify that the effectiveness of the death penalty can be done due to its deterrence. The question further arises in moral aspect especially in the context philosophical aspect as stated in the 1945 Constitution. This is one of the basic reasons to do judicial review in the Constitutional Court in order to pose Indonesia in right position that amongst Indonesian laws are not against one to another.

Considering irrevocable of the death penalty in which the Court decision that the drugs law is not against to the 1945 Constitution, the Court then states that in the context of criminal law reform and harmonization of laws relating to the death penalty, the formulation, implementation, and execution of it in the criminal justice system in Indonesia must be promulgated, as followings:

- a. the death penalty is no longer the principal criminal, but it is rather as criminal which is special and alternative;
- b. the death penalty can be imposed by probation for ten years which, if convicted commendable behavior can be changed with criminal imprisonment for life or for 20 years;
- c. the death penalty can not be imposed on children who are minors;
- d. the execution of the death penalty can be sentenced to pregnant women and the mentally ill person deferred until the pregnant women giving birth and convict the mentally ill are healed;

Considering that in spite of efforts to reform the penal code as mentioned above, for the sake of legal certainty, the Court suggests all death penalty verdict that had a fixed sentence legally (*in kracht van gewijsde*) immediately implemented properly.¹

Therefore, it can be concluded that based on the Constitutional Court decision that there are 3 (three) important points of its concern in its decision number 2-3 in 2007, namely:

1. The death penalty in Indonesia is not against to the human rights;
2. The execution of the death penalty against pregnant women and a mentally ill deferred until the the pregnant women giving birth and mentally ill convicts recovery; and
3. For the sake of legal certainty, all death penalty verdict that had a fixed sentence legally (*in kracht van gewijsde*) immediately implemented properly.

4.2 The Experts point of views on the Execution of the Death Penalty

Researchers have been collecting primary data on the death penalty by interviewing several criminal law experts in the area of criminal law, constitutional law and human rights, criminal customary law, and Islamic law. Those experts are:

1. Marwan Mas.

He is an expert in the area of the criminal law from University of Bosowa, Makassar. According to him, the

¹ See [https://www.polri.go.id/Pustaka/Pdf/Peraturan number 2012 of 2010 regarding the procedure of criminal mati.Pdf](https://www.polri.go.id/Pustaka/Pdf/Peraturan%20number%202012%20of%202010%20regarding%20the%20procedure%20of%20criminal%20mati.Pdf). accessed February 12, 2016.

death penalty is¹ article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that “in exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society.”

Under article 28J of the 1945 Constitution, Human Rights is limited by law. It means that as long as the death penalty is regulated by law, it shall not violate the human rights. In the Indonesian penal code, the death penalty is stipulated in Article 10 of the Penal Code and the execution of it is stipulated in the Law No. 5 of 1969. Thus, the death penalty and its execution are not violated the constitutional rights. Moreover, there are the Decision of the Constitutional Court No.2-3 of 2007 which declared the death penalty and the execution are not contrary to the human rights. In order to build political criminal law in Indonesia, the death penalty and the execution will still need to be maintained especially for extraordinary crimes.

2. Hambali Talib

He is criminal law scholar from University of Muslim Indonesia Makassar. He states that:² In the positive law in Indonesia, the death penalty is the principal crime stipulated in Article 10 of the Penal Code, which is the legal heritage of the Dutch East Indies colonial government enacted by the Law No. 1 of 1946. The procedures for its implementation (execution) is regulated in the Law No. 5 1969. In the concept of human rights is the right to life. So in fact, the death penalty violates the human rights but it is limited by the Law in its implementation. Therefore, it can be concluded that the death penalty does not violate human rights. The most important things that must be reviewed and redefined related to the implementation of the death penalty in Indonesia is the death penalty must be done in dignity ways such as drug delivery or injected to death, or conducted in the electric chair.

3. Muliaty Pawennei

She is criminal law and criminology scholar from University of East Indonesia. She argues that:³ The death penalty is the type of crime that still retained the entry into force in Indonesia. The procedure for implementation set in the Indonesian Presidential Regulation No. 2 of 1964 is passed in the Law No. 5 of 1969. In Article 28I of the 1945 Constitution, human rights must be framed by law. It means that in terms of upholding and protecting human rights, it should be in line with the principles of the rule of law. So, its implementation must be guaranteed, regulated, and poured in relevant laws. The execution of the death penalty is carried out based on the existing law, so it clearly does not violate human rights.

4. Andi Fadly Natsif

He is criminal law and human right scholar from University of Islam Makassar. He argues that:⁴ the existing laws in Indonesia still allow for the imposition of the death penalty to certain crimes. If the court impose the death penalty to the defendant in accordance with the Law number 35 of 2009 on Drugs, it does not violate human rights. The basic argumentation on it is Article 28J of the 1945 Constitution, which “in exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law...”. according to him further, it would be better if such laws do not include the death penalty anymore as one type of crime in Indonesia. In terms of its implementation, the death penalty must be done in dignity ways such as drug delivery or injected to death.

5. Ruslan Renggong

He is an expert in the area of the criminal law from University of Bosowa, Makassar. According to him, the death penalty is⁵ the right to life that is the most fundamental right that is natural and is guaranteed by Article 28A of the 1945 Constitution. Although the death penalty is possible made by the court and executed by the prosecutor based on the laws and regulations in force, basically the abolishment of the right to life of people is violating human rights. Therefore, for future perspective, the death penalty should be eliminated from Indonesian laws.

6. Darussalam

He is Islamic criminal law and Dean of the Faculty of Sharia Islamic State University of Makassar.⁶ He argues that in the view of the Islamic criminal law, the death penalty is one type that can be imposed by a criminal court judge who has certain such a crime. People who can be dropped to the death penalty in the Islamic criminal law are: 1. People who accidentally left Religion (*murtad*). 2. People who commit adultery in terms of they have a wife or a husband. 3. People who has killed another person. and 4. People who make damage on this earth.

In terms of execution in the Islamic criminal law, it is beheaded or stoned to death in a place open to the

¹ Interviewed 27 February 2016.

² Interviewed 23 February 2016.

³ Interviewed 29 February 2016.

⁴ Interviewed 17 February 2016.

⁵ Interviewed 23 February 2016.

⁶ Interviewed 18 February 2016.

public. The execution is intended to provide general deterrence to the public in order for member of society to prevent himself from committing the same crime with death row inmates. Due to the death penalty and the execution are justified under the Islamic law, it does not violate human rights. Moreover, the death penalty has been executed to those who have violated the human rights. Related to its implementation, it depends on the purpose of the public interests.

7. Aminuddin Salle

He is criminal customary law expert from Hasanuddin University.¹ He argues that in the criminal customary law recognizes the existence of the death penalty particular *salimara* (incest) in terms of biological father or biological mother had intercourse with her/his son/daughter. According to the belief of indigenous communities, if there is a crime like *salimara*, it will cause disaster in public life such as the rain will not fall, the plants will be attacked by pests, and the sailors will be difficult to catch fish. In terms of its implementation, the convicts will be executed by “*diladung*” or “*ditaka batu*”. It means that the convicts are tied with stones and then drowned in the sea to die. The execution can be seen by others. The purpose of it under the customary law is to restore balance and create harmony in society. In the context of implementation of the death penalty in Indonesia, the death penalty by being shot to death in a closed place still needs to be maintained.

8. Syamsul Bahri

He is a Constitutional Law and Human Rights expert from Hasanuddin University. He states that In Indonesian legal system, the death penalty is still recognized as the principal punishment stipulated in Article 10 of the Penal Code and the execution will be regulated in the Law No. 5 of 1969. Under the terms of Article 28J of the 1945 Constitution, human rights are restricted by law. In the frame of developing the political of law, the death penalty is still needed to exist particular for extra ordinary crimes such as drugs, terrorism, and murder.

9. Ahmad Ruslan

He is an Administrative Law and Human Rights expert from the University of Hasanuddin. He states that there are 2 (two) opinion whether the death penalty and the execution violate human rights or not. The first opinion, the death penalty and its execution do not violate human rights due to the death penalty and the execution set out in the legislation. This is regulated in Article 28J of the 1945 Constitution, which states “in exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law...”. The second opinion, the death penalty and the execution violates human rights. It is because the right to life is a gift from God and no person has the right to revoke the lives of others. I think if the executions in the implementation meets the requirements specified in the legislation, then it does not violate human rights. However, if sentenced to death are not executed properly, then a lot of people will be threatened their human rights.

10. Abd. Rahman

He is a Constitutional Law and Human Rights expert from University of East Indonesia.² He argues that the right to life is the most fundamental of human rights. It must be guaranteed by the 1945 Constitution. Article 28A of the 1945 Constitution states that “every person shall have the right to live and to defend his/her life and existence”. To uphold and protect human rights in accordance with the principle of rule of law state, the exercise of human rights are guaranteed, regulated and set forth in the regulations. In the principle of rule of law, human rights is one of the elements whose implementation is regulated and limited by law. Neither the death penalty nor execution is governed by laws that do not violate human rights, especially reinforced by the decision of the Constitutional Court of the Republic of Indonesia Number 2-3 2007 on the death penalty and the execution is not contrary to Article 28A of the 1945 Constitution.

4. Conclusion

Based on the results of research and discussion outlined above, it can be concluded as follows:

1. The execution of the death penalty in Indonesia is governed by the Law No. 5 of 1969. The Law emphasizes that the death penalty must be executed by shooting to death. The death penalty in Indonesia has been conducted since 1979 to 2015. It is 77 people has been shot and especially in 2015, it is 15 people has been shot. The execution is taking attention from the public either domestic of overseas.
2. Based on the Decision of the Constitutional Court of the Republic of Indonesia number 2-3 in 2007 and the opinion of legal and human rights experts, it can be sid that the death penalty in Indonesia is not contrary to human rights.

References

Andi Hamzah and A. Sumangelipu, *The Death Penalty in Indonesia: in the Past, Present, and Future*, Ghalia, Jakarta, 1983.

¹ Interviewed 12 February 2016.

² Interviewed 16 February 2016.

Harian Fajar, November 9th, 2008.

Pujiyono, *Paper Collection on Criminal Law*, CV. Mandar Maju, Bandung, 2007.

Sahetapy, *The Death Penalty in State of Pancasila*, Citra Aditya Bakti, Bandung, 2005.

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