

The Dynamics of the Implementation of Capital Punishment for Narcotics Crimes

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This research aims to describe and explain the characteristics of the execution of narcotics crime that has been carried out at the Tangerang District Attorney's Office based on a qualitative non-doctrinal approach. Therefore in this study, the focus is on primary data collected by interviews and observations and supported by secondary data collected by library research. Data has been processed for further qualitative analysis. Based on research results at the Tangerang District Attorney's Office, it is known that, during the period of 2008 to 2016 there were 13 prisoners who were executed and 31 people who were not executed and 1 death row inmate who died. With regard to determination or postponement of the execution of capital punishment, some are waiting for legal action, some are not. The waiting period for execution is 7 years with a maximum of 15 years (average 11 years). The above situation is influenced by weak legal factors because there is no clear deadline regarding the legal remedies of Judicial Review and Clemency. Secondly, law enforcement factors have supported it quantitatively and qualitatively. The third is that there are supporting facilities or facilities already supporting the implementation of the execution. The fourth is the convicted community have high awareness of access to legal efforts and law enforcement officials comply with existing regulations. The fifth is that the convict culture is to fight for their rights but some do not because of a distrust of legal advocates. The novelty value of the results of this study is that the implementation of the execution does not guarantee the existence of legal certainty by implementing the factors that influence the execution of executions; and that the Community factors and Cultural factors are very influential in this context.

Key words: *Capital Punishment, Execution, Narcotics Crime, Attorney.*

Introduction

The threat of capital punishment raises the pros and cons of Indonesian society, especially from observers and human rights institutions who oppose the imposition of capital punishment on perpetrators of criminal acts. Those who oppose the application of capital punishment argue that this type of punishment violates human rights. On the other hand, those who support the application of capital punishment are of the opinion that capital punishment is carried out to prevent a cruel crime from being repeated. JE Sehetapy stated: "death punishment can guarantee that the criminal will not move again so that the community will not be disturbed again by the perpetrators, capital punishment is a powerful tool of repression for the Dutch East Indies government with these tools then the interests of the community can be guaranteed so that law order can be protected." (Eddyono, 2015)

In Indonesia during the period from 2015 to 2016 there were 106 inmates who were sentenced to death. Of the 106 convicts, there are 18 inmates who have been executed, and there are still 88 inmates who are awaiting execution. A sector of these inmates has already filed a pardon to the President and had their testimony rejected, meaning they are in the process of waiting for execution. The policy on delaying the application of capital punishment has the potential to cause violations of human rights, such as: (a) legal uncertainty which results in death row inmates being unable to use their rights to be treated fairly in the eyes of the law, (Lam Li, 2017) (b) the existence of discriminatory treatment that is by discriminating between the terms of death row inmates with one another, (Harrison & Anouska Tamony, 2010) (c) in addition, there is also an indication of torture of death row inmates (Steiker, 2013) namely by imposing capital punishment coupled with imprisonment (in an uncertain period of time). (Tri W, 2012). See death execution data presented in Table 1 below.

Table 1: Death Execution Data Years Volume I, II, and III During the Term of Office Attorney General H.M.Prasetyo

Eksekusi Pada Tahun 2015 Tahap Pertama	Eksekusi Pada Tahun 2015 Tahap Kedua	Eksekusi Pada Tahun 2016
a. Ang Kiem Soei alias Tommy wijaya	a. Rodrigo Gularte	a. Michael Titus
b. Rani Andriani	b. Syl Vester Obiekwe Nwolise	Igweh
c. Namaona Denis	c. Okwudili Oyatanze	b. Fredy Budiman Als
d. Marcho Archer Cardoso Moreira	d. Martin Anderson Als . Belo	Budi Bin H. Nanang Hida Yat
e. Daniel Enemu Als Diarrssaouba	e. Mgs . Zainal Abidin	c. Humprey Ejike Als Doctor ,
f. Tran Thi Bich Hanh Binti Dinh Hoang	Bin Mgs . Mahmud Badarudin	d. Seck Osmane,



	f. Rahem Agbaje Salami Cordo Va g. Myuran Sukumaran h. Andrew Chan	
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Source: Republic of Indonesia Attorney Annual Report 2015 and 2016, <https://www.kejaksaan.go.id>

Of the 4 death row inmates who were executed in stage III yesterday, there are still 10 death row inmates who have not been executed. The possibility of the 10 death row inmates will be planned in the next stage of execution, among them. First, Ozias Sibanda (a Nigerian citizen) who was caught for smuggling thousands of grams of heroin in capsule form. Second, Eugene Ape (a Nigerian citizen), Ape was arrested in 2003 and sentenced to death after being caught carrying 300 grams of heroin in a bag. Third, Obina Nwajagu (a Nigerian citizen), Nwajagu was sentenced to death after he was caught at the Ibis Hotel while buying 45 capsules of heroin from a Thai citizen. Fourth, Okonkwo Nonso Kingsley (a Nigerian citizen), Kingsley was arrested at Polonia Airport, Medan, North Sumatra, in 2003 when he tried to smuggle 1.1 kg of heroin. He was sentenced to death in 2004. Fifth, Merri Utami (an Indonesian citizen), Merri was sentenced to death in 2003 when he was caught carrying 1.1 kg of heroin when he arrived at Soekarno-Hatta Airport from Taiwan. Sixth and Seventh, Agus Hadi and Pujo Lestari (Indonesian citizens), Agus Hadi and Pujo Lestari were arrested together in 2006 while trying to smuggle 12,000 benzodiazepine pills into the Riau Islands from Malaysia. They were sentenced to death the following year. Eighth, Gurdip Singh (an Indian citizen), Singh was arrested in August 2014 at the airport for his role as a courier in smuggling 300 grams of heroin. He was sentenced to death in 2005 by the Tangerang District Court, Banten. Ninth, Zulfiqar Ali (a Pakistani citizen), Case Ali and Gurdip Singh, Indian death row inmate, were linked. Tenth, Frederick Luttar (a Nigerian national) who was arrested in 2006 for smuggling drugs. (Sumanto, 2017)

Based on the data above, even though they have been sentenced to death by the court, apparently the death row inmates are yet to be executed. The occurrence of legal uncertainty in carrying out executions, in turn will lead to public mistrust of the law. In order to overcome the legal uncertainty of the complicated execution process of death row inmates, and experience delays in awaiting the President's clemency decision, it should be necessary to do a review related to the legal certainty of the process of executing death sentences for convicted narcotics so that it will increase the legal certainty itself. So as long as the court has determined a decision and clemency has been rejected, the execution can be carried out.

Based on the above background, the following problems can be formulated: What are the characteristics of the execution of the narcotics crime?



Literature Review

a. About Capital punishment

Capital punishment is one type of criminal in his age, as old as the age of human life and the most controversial of all criminal systems, both in countries adhering to the Common Law and countries that embrace Civil Law (Ali, 2010). The application of capital punishment in Indonesia is a legacy of the legal provisions of the Dutch colonial power, which until now has not been corrected. While the practice of the death law is still enforced in Indonesia, in the Netherlands has abolished the practice of capital punishment since 1870 through the elimination of the threat of capital punishment from their Penal Code. But for military crimes, capital punishment is still maintained by the Dutch (Rommelink, 2003).

Capital punishment is criminal imprisonment by revoking the rights that have committed a criminal offense regulated in the Law which is threatened with capital punishment. The death sentence means that it has taken someone's life. Capital punishment is a sentence that is more severe than life imprisonment and cannot be canceled (Lenta & Farland, 2008). The convicted person is entitled to lose his life for the losses that have been done (Miethe, 2005).

American criminal law allows penalties when a defendant's guilt has been proven beyond doubt, but the state often does not have conclusive evidence to convict defendants who still deserve to be sentenced (Wansley, 2013). Even in the Republic of Korea (hereinafter, South Korea) (Brown, Benedict & Buckler, 2010) strong public support of capital punishment as a reason to maintain its existence. (Lee, 2011) Japan's attitude to maintain capital punishment by not giving its approval to the Human Rights Agreement (Kikuta, 1993).

As the average time between sentence and execution in the United States ballooned from eleven years to almost eighteen years. (Grey, 2019) The Texas Department of Justice website shows that the average death sentence in Texas is 10.87 years. (Death Row Facts) Suspension of capital punishment is the most reasonable position in the institution and practice of capital punishment. This protects the whole process of the rights of the accused and the convicted, while not surrendering or only denying justice in terms of responsibility and proportionate punishment (Corlett, 2013).

b. Law Enforcement Theory

1) The definition of Law Enforcement

According to Muladi, law enforcement is an effort or attempt in upholding the legal norms and values that underlie these norms. Therefore, law enforcers must understand the values and spirit of the law that underlies an established legal rule which must then be enforced including in adjusting to developments in the process of making legislation (*law making process*) (Mambaya, 2015; Akimzhano et al, 2018).

2) Factors Inhabiting Law Enforcement

Factors that influence law enforcement according to Soerjono Soekanto are as follows (Soekanto, 2008):

(1) Law factor

The practice of law enforcement on the ground is sometimes having conflict between legal certainty and justice; this is caused by the conception of justice as an abstract formulation, whereas legal certainty is a normatively determined procedure.

(2) Law enforcers factor

Law function, the mentality or personality of law enforcer officers plays an important role, if the regulations are good, but the quality of officers is not good, there is a problem. Therefore, one of the keys to success in law enforcement is the mentality or personality of law enforcer. One of them is that the Prosecutor as a law enforcer can legally consider a number of factors in making decisions such as the strength of evidence, the possibility of punishment, the interests of the victim in prosecution, and the cost and complexity of the prosecution and trial (Davis, 2005).

(3) Facilities Factor or Supporting Facilities.

Facilities factor or supporting facilities include software and hardware, one of the example of software is education. According to Soerjono Soekanto that law enforcers cannot work properly if they are not equipped with proportional vehicles and communication devices. Therefore, facilities and tools have an important role in law enforcement.

(4) Community Factor

Law enforcers comes from the community and aim to achieve peace in the community. Every citizen or group has more or less legal awareness; the problem that arises is the level of legal compliance, namely high, moderate, or lacking legal compliance. There was a degree of community legal compliance of law, which is one indicator of the functioning of the law in question.

(5) Cultural factor

Based on the concept of daily culture, people often talk about culture. Culture based on Soerjono Soekanto, “has a very large function for humans and society, regulating humans in order to understand how they should act, serve, and determine their attitude when they interact to other people. Thus, culture is a basic outline of behavior that sets rules about what must be done, and what is prohibited.” The use of public opinion to guide government policy making is most valuable when the opinion is well informed (Choi, Jiang & Lambert, 2019).



Research Method

a. Approach Method

This research was conducted with a qualitative non-doctrinal approach,(Wignjosuebrot) because in this study, law is not only conceptualized as the whole principles and rules governing human life in society, but also includes the institutions and processes that embody the implementation of these rules in society, which are the embodiments of the symbolic meanings of social actors, which manifested in and from their actions and interactions.

b. Research Location

This research was conducted by taking a location at the Tangerang City Prosecutor's Office and Kedungpane Semarang Penitentiary, as the consideration that the location supports the existence of data related to research.

c. Type of Data

1) Primary data

Primary data refers to the law actions and words of the subjects who are involved with the object this study. Primary data were obtained through informants and events or relationships law, which were chosen purposively, by determining the informants and events or legal relations as first.

The criteria must be fulfilled as initial informants: (1) those who are understand and master or competent in the focus of the problem or object under study through the enculturation process; (2) those who are directly involved in the activities being studied; (3) those who have the commitment, time and opportunity to be asked for information.

Interviews and observations in this study will be stopped if it is felt that they no longer generate new information which can be added to each sample discussion is conducted.

2) Secondary Data

Secondary data is data derived from library materials. Death execution data during the period of August 2019 by Tangerang District Attorney's Office, the data presented that there were 13 who had been executed and 32 people who had not been executed and 1 death row inmate died (Soleimani & Esfahani, 2018).

d. Method of Collecting Data

The data needed in this study, was collected in three ways: a literature study was conducted to collect secondary data; while interviews, and observations, were conducted to collect primary data.

e. Method of Analysis Data

Methodology of data analysis was used for interviews with respondents, in this study a qualitative analysis method was conducted sequentially:

- 1) Domain analysis, the researcher gains a comprehensive picture of the study subject matter.
- 2) Taxonomic analysis, to organize or gather elements of the same domain.
- 3) Componential analysis, looking for the differences between elements and domains.
- 4) The method of cultural theme is held by finding the relationship between the results of domain analysis, taxonomic and componential, in order to obtain the meaning of the object study.

Findings and Discussion

Table 2: Death Execution Data that had been executed by Tangerang District Attorney's Office

No	The name of the convict and type of case	Legal Effort		Execution Date
		Judicial Review Clemency		
1	Hansen Anthony Nwaolisa Article 82 UU No. 22/1997 About Narcotics	Judicial Review 15-09-2005 35PK/Pid/2005 Died Clemency 09-07-2004 13/G/2004 Died		27-06-2008
2	Samuel Iwuchukwu Okoye	Judicial Review 15-09-2005		27-06-2008

	Article 82 UU RI No. 22/1997	36PK/Pid/2005 Rejected Clemency 9-07-2004 15/G/2004 Rejected	
3	Muhammad Abdul Hafeez Article 82 UU No.22/1997	Judicial Review First 28-07-2005 68PK/Pid/2005 Rejected Second 18-02-2009 96/PK/Pid.Sus/2008 Rejected Clemency 09-07-2004 15/G/2004 Rejected	17-11-2013
4	Adami Wilson Article 82 UU RI No. 22/1997	Judicial Review - Clemency -	17-11-2013
5	Marco Archer Cardoso Moreira Article 82 (1) a UU RI No.22/1997	Judicial Review - Clemency 10-02-2006 6/G/2006 Rejected 30-12-2014 26/G/2014 Rejected	14-01-2015

6	<p>Daniel Enemuo</p> <p>Article 82 (1) a UU No. 22/1997</p>	<p>Judicial Review 14-01-2009 26PK/Pid.Sus/2009 Died</p> <p>Clemency 30-12-2014 33/G/2014 Rejected</p>	14-01-2015
7	<p>Ang Kim Soei</p> <p>Article 59 (1) c UU No.5/1997</p>	<p>Judicial Review 01-06-2006 106/PK/Pid/2005 Rejected</p> <p>Clemency 30-12-2014 32/G/2014 Rejected</p>	14-01-2015
8	<p>Namaona Denis</p> <p>Article 82 (1) a UU No.22/1997</p>	<p>Judicial Review 09-06-2010 105/PK/Pid.Sus/ 2009 Rejected</p> <p>Clemency 09-07-2004 10/G/2004 Rejected</p> <p>30-12-2014 30/G/2014 Rejected</p>	14-01-2015
9	<p>Rani Andriani</p> <p>Article 82 (1) a UU No.22/1997</p>	<p>Judicial Review 29-04-2002 11/PK/Pid/2002 Rejected</p>	14-01-2015

		Clemency 30-12-2014 27/G/2014 Rejected	
10	Okwudili Oyatanze Article 82 (1) a UU No.22/1997	Judicial Review 04-01-2012 144PK/Pid.Sus/2011 Rejected Clemency 05-02-2015 14/G/2015 Rejected	29-04-2015
11	Rodrigo Gularte Article 82 (1) a UU No.22/1997	Judicial Review 01-06-2011 46PK/Pid.Sus/2010 Rejected Clemency 05-01-2015 5/G/2015 Rejected	29-04-2015
12	Sylvester Obiekwe Nwolise Article 82(1) a UU No.22 /1997	Judicial Review 10-05-2011 66/PK/Pid.Sus/2009 Rejected Clemency 05-02-2015 11/G/2015 Rejected	29-04-2015
13	Michael Titus Igweh Article 82 (3) a UU No. 22/1997 tentang Narkotika Jo Article 55 (1) Ke-1	Judicial Review First 10-10-2012 251/PK/Pid.Sus/2011 Rejected	29-07-2016

	KUHP Jo Article 64 (1) KUHP	Second 20-07-2016 144/PK/Pid.Sus/2016 Rejected Clemency -	
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Table3: Death Execution Data Who Had Died Due to Illness

No	The name of the convict and type of case	Legal Effort	Place and time Convicted to Sentenced
1	Zulfiqar Ali Article 82 ayat (1) a UU. No. 22 /1997 about Narcotics	Judicial Review First 30-1-2008 60PK/Pid.Sus /2008 Second 5-2-2014 16PK/Pid.sus/2014 Clemency -	CORRECTIONAL INSTITUTION of Klas I Cipinang ± 11 tahun Note: The oral statement of the convicted person will submit a clemency and on May 31, 2018 died in Medistra Hospital because of the death of an active chronic liver disease

Table 4: Death Execution Data who had not been executed at the Tangerang District Attorney's Office

No	The name of the convict and type of case	Legal Effort	Place and time Convicted to Sentenced
		Judicial Review of clemency	
1	Merry Utami Article 82 (1) a UU No.22/ 1997 about Narcotics	Judicial Review 15-8-2014 66PK/Pid.Sus/2014 rejected clemency Proces	Correctional Institution of Cilacap ±14 years

		In State Secretariat No:R139/M.Sesneg/D- 1/HK.06.00/09/2016 7 September 2016	
2	Ozias Sibanda Article 82 (1) a & (2) a UU. No.22/1997	Judicial Review 30-06-2010 67PK/PID.SUS/210 rejected Clemency -	Correctional Institution of Batu ± 14 years
3	Obinna Nwajagu Article 82 (1) a UU No.22/1997 about Narcotics jo Article 55 (1) first KUHP	Judicial Review First 13PK/ Pid/2004 15-05-2007 Rejected Second 25PK/PID.SUS/ 2009 15-07-2009 Not Accepted Third Not Accepted Clemency -	Correctional Institution of Batu ± 13 years
4	Gurdip Singh Article 82 (1) a UU No. 22/1997	Judicial Review 12-6-2016 45PK/Pid.Sus/2016 Rejected Clemency 22-2-2017 3/G/2017 Rejected	Correctional Institution of Batu ± 11 years
5	Chen Hongxin	Judicial Review 3-2-2015	

	Article 59 (1) & psl 60 (1) a jo article 71 (1) UU No.5/1997 tentang Psikotropika	201PK/PID.SUS/2014 Rejected Clemency 24-10-2016 24/G/2016 Rejected	Correctional Institution of Pasir Putih ± 11 years
6	Gan Chunyi Article 59 (1) & article 60 (1) a jo article 71 (1) UU. No.5/1997	Judicial Review 3-2-2015 201PK/PID.SUS/2014 Rejected Clemency 24-10-2016 24/G/2016 Rejected	Correctional Institution of Pasir Putih ± 11 years
7	Jiang Yuxin Article 59 (1) & article 60 (1) a jo article 71 (1) UU. No.5/1997	Judicial Review 3-2-2015 201PK/ PID.SUS/ 2014 Rejected Clemency 24-10-2016 24/G/2016 Rejected	Correctional Institution of Pasir Putih ± 11 years
8	Zhu Xu Xhiong Article 59 (1) & article 60 (1) a jo article 71 (1) UU No.5/1997	Judicial Review 3-2-2015 201PK/PID.SUS/2014 Rejected Clemency 24-10-2016 24/G/2016 Rejected	Correctional Institution of Pasir Putih ± 11 years
9	Serge Areski Atlaoui	Judicial Review 21-04-2015	

	Article 59 (1) & Article 60 (1) huruf a jo article 71 (1) UU No.5/1997	67PK/Pid.Sus/2015 Rejected Clemency 30-12-14 Keppres No.35/G/2014 Rejected	Correctional Institution of Pasir Putih ± 10years
10	Benny Sudrajat Article 59 (1) & article 60 (1) a jo article 71 (1) UU. No.5/1997	Judicial Review 22-2-2015 a. Ke-1 2PK/PID/2012/PN.TNG Rejected b. Ke-2 tidak diterima Clemency 13-02-2018 3/G/2018 Rejected	Correctional Institution of Batu ± 11years
11	Iming Santosa Article 59 (1) & Article 60 (1) a jo article 71 (1) UU No.5/1997	Judicial Review - Clemency -	Correctional Institution of Pasir Putih ± 11 years
12	Kweh Teik Choon Article 114 (2) Jo Article 132 (1) UU RI No. 35/ 2009	Judicial Review - Clemency -	Correctional Institution of Class I Cirebon ± 4 years
13	Gareth Dane Cashmore Article 114 (2) UU RI No.35/ 2009 Jo Article 132 (1) UU RI No. 35/ 2009.	Judicial Review - Clemency -	Correctional Institution of Class I Tangerang ± 4 years

14	Meirika Franola Article 114 (2) Jo Article 132 (1) UU dan Article 137 a UU RI No. 35 Tahun 2009	Judicial Review - Clemency -	Woman Correctional Institution of Class IIA Tangerang ±2 years
15	Simon Ikechukwu Ezeaputa Article 114 (2) Jo Article 132 (1) UU RI No. 35 Tahun 2009 dan Article 137 huruf a UU RI No. 35 Tahun 2009.	Judicial Review - Clemency -	Correctional Institution of Permisan Nusa Kambangan ± 2 years
16	Wang An Kang Article 113 (2) Jo Article 132 (1) UU RI No: 35 year 2009 Note: The convict will file a clemency after the Judicial Review within a period of 5 years, if it is past the time period then the legal remedies have been used.	Judicial Review - Clemency -	Teenager Correctional Institution of Class II A Tangerang ± 2 years
17	Lo Chih Chen Article 113 (2) Jo Article 132 (1) UU RI No: 35 years 2009 Note: The convict will file a clemency after the Judicial Review within a period of 5 years, if it is past the time period then the legal remedies have been used.	Judicial Review - Clemency -	Teenager Correctional Institution of Class II A Tangerang ± 2 years

18	<p>Chen Jia Wei Article 113 (2) Jo Article 132 (1) UU RI No: 35 Tahun 2009</p> <p>Note: The convict will file a clemency after the Judicial Review within a period of 5 years, if it is past the time period then the legal remedies have been used.</p>	<p>Judicial Review - Clemency -</p>	<p>Teenager Correctional Institution of Class II A Tangerang</p> <p>± 2 Tahun</p>
19	<p>Ng Ka Fung Article 114 (2) Jo Article 132 (1) UU RI No. 35 Tahun 2009</p>	<p>Judicial Review - Clemency -</p>	<p>Teenager Correctional Institution of Class II A Tangerang</p> <p>± 8 Months</p>
20	<p>Kanu Collins Nnanna Article 114 (2) Jo Article 132 (1) UU RI No: 35/ 2009</p>	<p>Judicial Review - Clemency -</p>	<p>Teenager Correctional Institution of Class II A Tangerang</p> <p>± 8 Bulan</p>
21	<p>Sudarto Article 114 (2) Jo Article 132 (1) dan article 197 UU RI No. 35/2009</p>	<p>Judicial Review - Clemency -</p>	<p>Teenager Correctional Institution of Class II A Tangerang</p> <p>±11 months</p>
22	<p>Chen Yu Tsai Article 114 (2) Jo Article 132 (1) UU RI No. 35/2009</p>	<p>Judicial Review - Clemency -</p>	<p>Teenager Correctional Institution of Class II A Tangerang</p> <p>± 5 months</p>
23	<p>Hung Hsiao Tzu Article 114 (2) Jo Article 132 (1) UU RI No. 35/2009</p>	<p>Judicial Review - Clemency -</p>	<p>Teenager Correctional Institution of Clas II A Tangerang</p> <p>±5 months</p>

24	Yeh Jen Chieh Article 114 (2) Jo Article 132 (1) UU RI No. 35/2009	Judicial Review - Clemency -	Teenager Correctional Institution of Clas II A Tangerang ± 7 months
25	Cai Changpan Article 114 (2) UU RI No. 35/2009 dan Article 112 (2) UU RI No. 35/2009	Judicial Review - Clemency -	Teenager Correctional Institution of Class II A Tangerang ± 9 months
26	Tono Article 114 (2) Jo Article 132 (1) UU RI No. 35/2009 Ket:Terdakwa tidak melakukan upaya Hukum dan Menerima Putusan	Judicial Review - Clemency -	Teenager Correctional Institution of Klas II A Tangerang 8 months
27	Bong Djung Sen Bin Ko Liong Kun Article 114 (2) Jo Article 132 (1) UU RI No. 35/2009	Judicial Review - Clemency -	Teenager Correctional Institution of Class II ATangerang 9 months
28	Sutrisno Gunawan Article 114 (2) Jo Article 132 (1) UU RI No. 35/2009	Judicial Review - Clemency -	Teenager Correctional Institution of Class II A Tangerang 9 months
29	Andi Djong Article 114 (2) Jo Article 132 (1) UU RI No. 35/2009	Judicial Review - Clemency -	Teenager Correctional Institution of Class II A Tangerang 9 months
30	Andi Article 114 (2) Jo Article 132 (1) UU RI No. 35/2009	Judicial Review - Clemency	Teenager Correctional

		-	Institution of Class II A Tangerang 9 months
31	Joni Article 114 (2) Jo Article 132 (1) UU RI No. 35/2009	Judicial Review - Clemency -	Teenager Correctional Institution of Class II A Tangerang 9 months

A period of time waiting for the process from Inkrack to Dead Execution	
has been executed	not executed yet
The fastest is 7 years and the longest is 15 years	legal remedies on average have waited 10 years or more, and have not taken legal action on average have served sentences from 5 months to 4 years

The number who make all legal remedies	
Executed	Not Executed
10	9
The number of people who took judicial review more than 1 time	
2 (Muhammad Abdul Hafeez, Michael Titus)	2 (Obbina Nwajagu, Benny Sudrajat)
The number who did not take judicial review	
1 (Marco Archer)	-
The number of people who take clemency more than once	
2 (Namaona Denis, Marco Archer)	-
The number of people who did not take judicial review and clemency	
1 (Adami Wilson)	-
The number of people who did not take clemency	
1 (Michael Titus)	2 (Ozias Sibanda, Obbina Nwajagu)
Number of those who have not taken legal action	
-	21
Number of convicts who received the verdict and did not take legal action	
-	1
The number of convicts who died has taken judicial review twice	
-	1

Similarity	Diferentiation
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<ul style="list-style-type: none">a. Capital punishment.b. The waiting period for convicted persons who have taken legal action tends to be long.c. The convicted person has the same right in terms of legal remedies.	<p>Legal remedies by different convicts. Because there are convicts who filed Judicial Review more than once but did not make clemency remedies. this may be done provided that the convicted person makes a statement that he / she will not take legal action against clemency.</p>
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The existence of similarities and differences are based on the existence of:

- a. MK Decision Number 34 / PUU-XI / 2013 concerning with the cancellation of Article 268 paragraph (3) KUHAP which limits the submission of Judicial Review that only once. This ruling opens the interpretation that the Judicial Review may be submitted many times as long as it meets the requirements specified in Article 268 paragraph (2) of KUHAP.
- b. MK Decision Number 107 / PUUXIII / 2015 concerning with the cancellation of the deadline for submitting a clemency from one year after the decision becomes unrestricted with reason it can eliminate the convict's constitutional right.

Suspension of capital punishment is the most reasonable position in the institution and practice of capital punishment. This protects the whole process of the rights of the accused and the convicted, while not surrendering or only denying justice in terms of responsibility and proportionate punishment (Corlett, 2013).

Suspension of capital punishment is the most reasonable position in the institution and practice of capital punishment. This protects the whole process of the rights of the accused and the convicted, while not surrendering or only denying justice in terms of responsibility and proportionate punishment, based on rules about clemency and JUDICIAL REVIEW. And there are no specific internal rules in the Prosecutor's Office that regulate the execution process regarding the postponement, the prosecutor will wait for all the proceedings to be completed and with a certificate from the convict stating that they have finished carrying out various legal efforts, then the execution can be carried out (Erlangga, 2019).

Discussion

This study was analyzed using theory according to Soerjono Soekanto about the factors that influence law enforcement: legal factors, law enforcement factors, supporting facilities or facilities factors, community factors and cultural factors:

1. Legal Factors

Talking about the waiting period for execution there are several legal reasons that can delay the execution of capital punishment in the perspective of the criminal system, i.e.:

a. Request from convicted person

In this regard, it can be found in Article 6 paragraph (2) of Law 2 / PNPS / 1964 concerning the Basics and Procedures for capital punishment in Indonesia:

If the convict wants to say something, then the statement or message is received by the High Prosecutor / Prosecutor.

b. Convicted In Pregnant Condition

Postponement of the death sentence is stated in Article 7 of Law Number 2 / PPNS / 1964:

If the convict is pregnant, then capital punishment can only be carried out forty days after the child is born.

c. Extraordinary Legal Efforts

1) Cassation for the Purpose of Law

Cassation in the interest of the law is an extraordinary remedy that is regulated in part one of Chapter XVIII of the Criminal Procedure Code starting from Article 259 to Article 262. Cassation can be made at the request of interested parties or at the request of the Attorney General because of his position (Hamzah, 2001). Submitted to all decisions that have permanent legal force, namely the District Court and the High Court's decision. Decisions that can be appealed for cassation in the interest of the law are decisions that contain errors in the application of the law, the way to adjudicate is not carried out according to the provisions of the law and the court has exceeded its authority. So that the cassation decision in the interest of the law does not harm the parties concerned (Sidabutar, 1999).

2) Judicial Review

Against court decisions that have permanent legal force (*inkracht van gewijsde*) reconsideration can be requested from the Supreme Court. (Harahap, 2005.) This Judicial Review legal remedy refers more to MK Decision Number 34 / PUU-XI / 2013 because it canceled Article 268 paragraph (3) of the Criminal Procedure Code which limits the submission of Judicial Review only once. This ruling opens the interpretation that Judicial Review may be filed repeatedly as long as they meet the requirements specified in Article 268 paragraph (2) of the Criminal Procedure Code.

As specified in Article 268 paragraph (2) of the Criminal Procedure Code, which states "Requests for reconsideration are carried out on the basis of:

1. If there is a new situation that raises a strong suspicion, that if the condition is already known at the time the trial is still ongoing, the result will be a free verdict or a verdict free from all lawsuits or demands of the public prosecutor that cannot be accepted or against the case applied criminal provisions yang lebih ringan;

2. *etc*".(Harahap, 2005,)

The extraordinary legal remedies of the Judicial Review are historically-philosophically a legal effort born to protect the interests of the convicted person. Extraordinary legal remedies aim to find justice and material truth. Justice cannot be limited by time or formality provisions which limit that extraordinary remedies (reconsideration) can only be filed once, because it is possible that after the submission of the judicial review and termination, there is a substantial new condition (*novum*) which has only been discovered when the previous Judicial Review was not yet found. The assessment of something that is *novum* or not *novum* is the authority of the Supreme Court which has the authority to judge at the Judicial Review level. Therefore, the requirements for attaining extraordinary legal remedies are very material or substantial and the very basic requirements are related to truth and justice in the criminal justice process.

c. Clemency

An amnesty given by the President to someone by changing, erasing or reducing the sentence given by the judge. Clemency is a non-legal effort based on prerogative rights and is also decided based on the President's subjective judgment. *The Constitutional Court issued a decision related to Number 107 / PUUXIII / 2015 concerning the cancellation of the deadline for filing a pardon from one year after the decision became unrestricted when submitting the sentence by removing the constitutional rights of the convicted person.*

Clemency is the President's Constitutional Rights mentioned in Article 14 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Constitutional rights mean that the President has the privilege to do something without requesting the approval of other institutions despite the Supreme Court's consideration, this consideration is not binding, can be followed or not . It is intended that the functions and roles of the government are stretched wide so that they can take actions that can improve the welfare of the community, including the granting of clemency, that there may not be limitations on the President's Constitutional Rights.

The presidential system in America the power of the President to grant clemency is not only an awesome power, but the most benevolent power of the president, which is a gift given by an executive who cannot be controlled, unchecked by other branches of power (Duker, 1977).

Based on a number of descriptions regarding the regulation that the law has regulated what legal remedies can be done but are not affirmed regarding the duration, especially in the Judicial Review and clemency legal efforts, this legal factor cannot guarantee legal certainty.

1. Law Enforcement Factor

The Structure of the Work Unit of the Tangerang City Prosecutor's Office in accordance with the Regulation of the Attorney General of the Republic of Indonesia Number: 006 / A / JA / 07/2017 concerning the Organization and Work Procedures of the Attorney General's Office of the Republic of Indonesia. The General Crimes Section has the task of carrying out and controlling the handling of cases of general criminal offenses which include pre-prosecution, additional hearings, prosecutions, judges and court rulings, supervision of conditional criminal conduct, criminal oversight, supervision of the implementation of conditional offenses and other legal actions.

The Head of the Public Crimes Section is held by Aka Kurniawan, S.H., M.H.

The General Crime Section consists of:

1. Pretrial Subsection: Octaviandi Samsurizal, S.H.
2. Prosecution Subsection: Gojali, S.H.
3. Execution and Examination Subsection: Muhammad Erlangga, S.H

The appointment of a prosecutor as legal advisor to handle a case must have the experience that has been dealt with previously to create smoothness in the conduct of the hearing, the Prosecutor's Office in improving its quality is the Prosecutor's Apparatus Education and Training Program which must be followed by Prosecutors. In the context of capital punishment as seen from the weight of the evidence, weight refers to the Internal Prosecutor's guidelines. For prosecutors who have followed the execution process in the field, they have been coordinated by the Attorney General for general crimes, related Prosecutors from the Attorney General's Office, the High Prosecutor's Office and the Public Prosecutor's Office.

The training is carried out with basic shooting activities; shooting at distances of 10 to 15 meters during the day and night; firing simultaneously or salvo standing attitude; and rehearsals for the execution of capital punishment. The organization of the execution of capital punishment consists of a firing squad and supporting squad members of the Police Mobile Brigade.

The firing squad comprised 14 people consisting of: 1 Implementing Commander with the rank of Police Inspector, 1 Commander of the Brigadier or Chief Police Brigadier (Bripka); and 12 members of the rank of Police Two Brigadier (Bripda) or Police One Brigadier (Brigadier).

The support team consisted of: team 1 survey team and equipment (10 people); team 2 escort convict (10 people); team 3 escort officials (10 people); team 4 route misdirection (10 people); and squad 5 securing the area (10 people).

Law enforcement officers in the Tangerang City Prosecutor's Office consist of 1 (one) section head of speech with the quality of master's education and has 3 (three) sub-sections headed by the quality of undergraduate education. As for improving the quality of each Prosecutor has received the Apparatus Education and Training Program from the Attorney General's Office.

Polri law enforcement officers tasked with executing are sufficient in terms of the number of personnel divided into firing squads and support squads and the conditions acting as personnel, for firing squads must have the rank.

2. The factors of supporting facilities:

Table 4: Equipment and supplies used in the execution of capital punishment:

Shooter Group (Article 19)	Group 1 (Article 21)	Group 2 (Article 22)	Group 3 (Article 23)	Group 4 (Article 24)	Group 5 (Article 25)
a. 1 hand-held weapon and a sword for the Commanding Officer; b. 1 handgun for the firing squad Commander c. 12 long-barreled firearms for firing squad members; d. 12 magasin for firing squad members; e. 3 bullets of 5.56 mm caliber;	a. PDL 3 Brimob clothing b. troop transport vehicles c. handy talkies (HT) and handsets; d. map; e. compass; f. coordinator / global positioning system (GPS); g. tent; h. handycam;	a. 10 units of organic long-barreled firearms; b. PDL 3 Brimob clothing; c. troop / convict vehicle; d. HT and handset; e. handcuffs; f. ambulance.	a. 10 units of organic long-barreled firearms; b. 3 PDL Clothes of Brimob; c. troop transport vehicles; and d. HT, handset	a. 10 units of organic long-barreled firearms; b. PDL 3 Brimob clothing; c. similar vehicles used by Team 2; d. HT and handset; e. map; f. compass; g. GPS; h. tent; i. camcorders .	a. 10 units of organic long-barreled firearms; b. PDL 3 Brimob clothing; c. similar vehicles used by Team 2; d. HT and handset; e. folder; f. compass; g. GPS; h. tent; i. camcorders.

<p>f. 9 rounds of 5.56 mm caliber bullets; g. 12 bullets of handheld weapons; and h. 3 PDL clothes Police Mobile Brigade.</p>	<p>i. chair; j. poles; k. strap; l. jerry cans filled with water; m. stretcher; n. clean clothes; o. body bag; p. kerosene; q. matches; r. black head covering fabric; s. black coloring mark; t. hoe or shovel; and u. spotlight / flashlight.</p>				
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Source: Regulation of the Head of the Indonesian National Police Number 12 of 2010 concerning Procedures for the Implementation of Capital Punishment

Table 5: Supporting Facilities for the execution of capital punishment by the Prosecutor's Office in terms of details of the use of the budget per death row in 2015

Coordination meetings	Transportation Executor
Security	Car rental
Consumption	Lodging Executor
Firing squad	Inn of Deputy Defendant
Translator	Transportation of the convicted deputy
Priest	Health workers
Funeral	Delivery of a corpse

Source: capital punishment updates in Indonesia 2016 institute for criminal justice reform (ICJR) August 2016

Supporting facilities or infrastructure in the execution of execution seen from the description above is sufficient from the amount of equipment and supplies, especially in the process of execution because it is in accordance with regulations in the police. As the supporting facilities



of the Prosecutor's Office can be seen from the table above, what is provided by the Prosecutor's Office has sufficient capacity for execution.

4. Society Factor

Based on the data available above regarding death row inmates who have not yet been executed, the convicted person has a high level of legal awareness and all obey these rules without anyone escaping. As implemented almost all convicts use their rights to take legal action. Law enforcement officers in this case obeyed the law with evidence that they did not execute while the legal process was still ongoing.

The number who have taken all legal remedies to Judicial Review and Clemency's legal remedies is ten for those who have been executed and eight for those who have not been executed. As for legal remedies that have carried out more than one Judicial Review legal action, there were two for death row inmates and two convicted prisoners. Number of those who did not carry out Judicial Review legal action for one convict who had been executed. For those who have been tried for clemency more than once, 2 convicts have been executed. As those who have not made Judicial Review and Clemency efforts, there is one convict who has been executed and one convict who has not been executed. As well as the number who did not make Clemency Efforts, there were one convict who had been executed and two convicted persons who had not yet been executed. And there are 20 convicts who have not taken legal action. and 1 convict who did not take legal action by accepting the decision. Convicts who died have made Judicial Review twice.

5. Culture Factor

Based on the data above, the convicts who had carried out the executions of almost all of them took legal action but could not change the verdict. As a convict who does not submit a pardon only reaches the Judicial Review because the decision from the beginning until the second Judicial Review remains a death sentence, and there is a convict who accepts the decision by not making legal efforts, it makes the convict prepare himself before execution. Values contained for convicts who have not been executed but undertake legal remedies with the aim of fighting for the rights of the convicted person in order to obtain a reduced sentence from capital punishment to life or 20 years in prison.

Death row inmates who have not been executed but did not take Judicial Review legal action and clemency can be seen from an interview with death row Iming Santosa has been serving a sentence of approximately 11 years in prison, in the process of using 18 Advocates divided into 2 people at BNN, 8 people at in the PN trial, appeal 3 people and appeal 3 people by spending more from the trial until the cassation decision, there is distrust of Advocates because of lack of understanding of the ins and outs in the field of defense for capital punishment, they are more in general thinking then can not provide convincing input to the Prosecutor and Judge.



That reason makes the convicted people reluctant to use Judicial Review and clemency legal efforts.

Conclusion

Based on the results of research and discussion it can be concluded that:

In the Tangerang District Attorney's Office, during the period of 2008 to 2016 there were 13 inmates executed, 31 people who had not been executed and 1 convict who died. In the context of determination or postponement of the execution of capital punishment, some are waiting for legal action, some are not. The period of time waiting for executions varies from 7 years to a maximum of 15 years (average 11 years). The above conditions are influenced by: First, the Legal Factor reflects compliance with the prevailing norms which still has weaknesses because there is no clear time limit on the legal remedies for Judicial Review and Clemency, hence it does not guarantee legal certainty. Secondly, the Law Enforcement Factor, supporting quantitatively and qualitatively, especially with good coordination between the Prosecutor acting as the executor and the National Police acting to execute. Third, the Supporting Facilities or Facilities Factor has supported as the facilities are fulfilled by the Police and Prosecutors as providers of supporting facilities. Fourth, Community Factors, convicts of sufficiently high awareness to submit legal remedies as well as law enforcement officials have obeyed the law without first executing it. Fifth, Cultural Factors of convicts who have been executed reflect that ultimately they prepare themselves for execution because the legal remedies do not generally change the initial decision and convicts who have not been executed can fight for their rights to amend a criminal ruling but the distrust of legal advocates makes the convicted reluctant to proceed with legal remedies.



REFERENCES

- Ali, A. (2010). *Menguak Realita Hukum*, Jakarta: Media Grafika.
- Brown, B., Benedict, W. R., & Buckler, K. (2010). Support for the death penalty in developing democracies: A binational comparative case study. *International Criminal Justice Review*, 20(4), 398-416.
- Chen, S. (2015). Discretionary Death Penalty for Convicted Drug Couriers in Singapore: Reflections on High Jurisprudence thus far. *International Islamic University of Malaysia Law Journal*, 23(1), 31.
- Choi, E., Jiang, S., & Lambert, E. G. (2019). Reasons for South Korean attitudes towards the death penalty: exploring the nexus between strong public support and history of misapplication. *International Journal of Comparative and Applied Criminal Justice*, 43(1), 61-76.
- Corlett, A. J. (2013). Responsibility and Punishment. *Library of Ethics, and Applied Philosophy*, 34, 149-190.
- Davis, A. J. (2005). The power and discretion of the American prosecutor. *Droit et cultures. Revue internationale interdisciplinaire*, (49), 55-66.
- Duker, W. F. (1976). The President's Power to Pardon: A Constitutional History. *Wm. & Mary L. Rev.*, 18, 475.
- Akimzhano, T., Amandykova, S., Tleukhan, R., Daurembekov, Y., & Aykumbekov, N. (2018). Problems of applying and realization of preventive measures in the form of detention concerning persons, suspected and accused in the commission of the act of terrorism and crimes of extremist nature. *Opción*, 34(85-2), 800-823.
- Eddyono, S. W. (2015). *Hukuman Mati Dalam RKUHP Jalan Tengah Yang Meragukan*, Institute For Criminal Justice Reform (ICJR).
- Ellsworth, P. C., & Gross, S. R. (1994). Hardening of the attitudes: Americans' views on the death penalty. *Journal of Social Issues*, 50(2), 19-52.
- Fan, M. D. (2015). The supply-side attack on lethal injection and the rise of execution secrecy. *BUL Rev.*, 95, 427.



- Gray, E. (2019). Decades in Death's Twilight: Cruel and Unusual Punishment on Texas's Death Row. *New Criminal Law Review: In International and Interdisciplinary Journal*, 22(2), 140-163.
- Hamzah, A. (2001). *Hukum Acara Pidana Indonesia*, edisi Revisi, Jakarta: Sinar Grafika.
- Harrison, K., & Tamony, A. (2010). Death row phenomenon, death row syndrome and their affect on capital cases in the US. *Internet Journal of Criminology*, 1, 11–12.
- Kikuta, K. (1993). The Death Penalty in Japan: Why Hasn't It Been Abolished?. *International Journal of Comparative and Applied Criminal Justice*, 17(1-2), 57-75.
- Lee, D. I. (2011). A critical study on justification for death penalty. *Criminal Policy*, 23, 277–300.
- Lenta, P., & Farland, D. (2008). Desert, justice and capital punishment. *Criminal Law and Philosophy*, 2(3), 273-290.
- Li, H. L. (2017). Contractualism and the Death Penalty. *Criminal Justice Ethics*, 36(2), 152-182.
- Lindsey, T., & Nicholson, P. (2017). *Drugs Law and Legal Practice in Southeast Asia: Indonesia, Singapore, And Vietnam*. Book Review: Hart Publishing, *Melbourne Journal of International Law*, 18.
- Malkani, B. (2013). The obligation to refrain from assisting the use of the death penalty. *International & Comparative Law Quarterly*, 62(3), 523-556.
- Mambaya, M. (2015). *Kesesatan Peradilan: Perspektif Hukum dan Etika dalam Sistem Peradilan Pidana di Indonesia*, Yogyakarta: Genta Publishing.
- Miethe, T. D., & Lu, H. (2005). *Punishment: A comparative historical perspective*. Cambridge University Press.
- Peffley, M., & Hurwitz, J. (2007). Persuasion and resistance: Race and the death penalty in America. *American Journal of Political Science*, 51(4), 996-1012.
- Rommelink, J. (2003). *Hukum Pidana: Komentar Atas Pasal-Pasal dari Kitab UU Hukum Pidana dan Padanannya dalam Kitab UU Hukum Pidana Indonesia*, Jakarta: Gramedia Pustaka Media Tama.
- Sambas, N. (2010). *Pembaruan Sistem Pemidanaan Anak di Indonesia*, Yogyakarta: Graha Ilmu.



- Sander, G. (2018). The death penalty for drug offences: Global overview 2017. Harm reduction international. Repéré à <https://www.hri.global/the-death-penalty-for-drug-offences>.
- Soekanto, S. (2008). Faktor-Faktor Yang Mempengaruhi Penegakan Hukum, Cetakan Kelima, Jakarta: Raja Grafindo Persada.
- Soleimani, M., & Esfahani, M. K. (2018). Analytical review spaces on crime and criminal policy in connection with drugs in Kermanshah with a critique governing the drug offenses. *Journal of Social Sciences and Humanities Research*, 6(04), 10-14.
- Steiker, C. S. (2013). Can/Should We Purge Evil Through Capital Punishment?. *Crim Law and Philos* DOI 10.1007/s11572-013-9250-9.
- Sumanto, A. (2017). Efektifitas Pidana Mati Dalam Proses Penegakan Hukum Tindak Pidana Narkotika. *Perspektif*, 22(1), 21-31.
- Texas Department of Criminal Justice, Death Row Facts, http://www.tdcj.state.tx.us/death_row/dr_facts.html [hereinafter TDCJ, Death Row Facts].
- Wahyudi, S. T. (2012). Problematika Penerapan Pidana Mati Dalam Konteks Penegakan Hukum Di Indonesia. *Jurnal Hukum dan Peradilan*, 1(2), 207-234.
- Wansley, M. (2013). Scaled Punishments, *New Criminal Law Review: An International and Interdisciplinary Journal*, 16(3), 309-363.
- Wignjosoebroto, S. (2006). Silabus Metode Penelitian Hukum, Program Pascasarjana Universitas Surabaya: Airlangga.
- Yahya, M. H. (2005). Pembahasan Permasalahan dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi dan Peninjauan Kembali, edisi kedua, Cet IV, Jakarta: Sinar Grafika.