



# Legal Certainty on The Implementation of Death Criminal Decisions that have Permanent Law Power in Indonesia (A Review of the Death Criminal Decision on Narcotics in 2014-2018)

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ARTICLE INFO	ABSTRACT
Published Online: 01 November 2021	The principle of legal certainty applied to the principle of extra ordinary crime is contrary to the respect for humanity as the most fundamental human rights principle and the principle of legality is associated with positive law and international conventions. The results of this study are intended to seek or find arguments for the certainty of the execution of the death penalty for the community, family, convicts and the state, so that the research on death penalty decisions in narcotics cases that occurred from 2014 to 2018. This research method is included in normative juridical law research. The conclusion is, sentencing with the threat of the death penalty can still be applied in Indonesia in narcotics crime cases is appropriate. Therefore, the death penalty, of course, state law does not conflict with religious law/teachings, in other words, the death penalty does not conflict with the first precepts because the first principle of Pancasila is Belief in One God, which means based on the beliefs/religions of each person who in carrying out/believes His religion is also guaranteed in the 1945 Constitution of the Republic of Indonesia, which is contained in Article 28 E paragraph (1) and paragraph (2) and Article 29 paragraph (2).
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<b>KEYWORDS:</b> Legal Certainty, Decision, Death Penalty	

## I. INTRODUCTION

Narcotics Problem this is also experienced by almost all countries in the world[1]. The United Nations (UN) formed UNODC (United Nation Office for Drugs and Crime) which specifically handles Narcotics problems and crimes related to Narcotics. However, from the results of the annual report (Annual Report) released by UNODC, the problem of Narcotics is increasing with various modus operandi, abusers, negative health impacts, and others). Along with the development and improvement of the Narcotics problem, it affects various aspects of human life, both aspects of social, health, continuity of superior generations, aspects of security and public order, aspects of economy, culture and resilience of a country[2].

Coupled with the emergence of new types of Narcotics (New Psychoactive Substances, for example: Methamphetamine, Sabu, Ecstasy, PCC and others), in addition to conventional types of Narcotics (Cannabis, Cocaine, Heroin, and others) Narcotics users [3]. The above conditions directly or indirectly affect the pattern of abuse and illicit trafficking of Narcotics in Indonesia until the situation is as stated by the President, namely "Indonesia

Narcotics Emergency". Besides causing negative impacts that can weaken the joints of Indonesian people's lives from the economic, social, health, cultural, security and public order aspects as well as Indonesia's national security, Indonesia's strategic geographical position also has the opportunity to be used to make Indonesia a target for smuggling, transit, and producing narcotics. because Indonesia consists of thousands of islands that stretch widely with the second longest coastline in the world. Indonesia's large population is also a potential market share and consumer of Narcotics[4] can see table 1.

**Table 1.** Number of Narcotics Cases and Narcotics Precursors in 2014–2018[5]

Case	Year					Amount
	2014	2015	2016	2017	2018	
Marijuana	8	40	75	103	115	341
Heroin	14	0	1	4	0	19
Hashish	0	1	0	1	1	3
Cocaine	0	0	4	1	0	5
Morphine	0	0	1	0	0	1
Shabu	343	568	738	820	844	3.313
Ecstasy	19	29	57	42	44	191

“Legal Certainty on The Implementation of Death Criminal Decisions that have Permanent Law Power in Indonesia  
(A Review of the Death Criminal Decision on Narcotics in 2014-2018)”

MDMA	0	0	1	0	0	1
Ampheta mines	0	0	0	4	22	26
Carisopro dol	0	0	0	0	4	4
Psychotro pics & Precursors (CL)	0	6	3	4	6	19
Gorilla Tobacco	0	0	1	5	2	8
Kathinon	0	0	0	4	1	5
Tryptamin e Derivativ s	0	0	0	2	0	2

Conditions as described above[5] certainly greatly affects the national resilience of the Indonesian nation and state in this era of competitive global competition. The young generation and productive age which are Indonesia's demographic bonus in the future (in 2030) which are expected to be able to compete in all aspects of life that utilize technology, are threatened with weakening and even causing the destruction of the nation's generation (lost generation) due to narcotics. It would not be an exaggeration, some people consider that the increasingly widespread illicit circulation of Narcotics in Indonesia is a "proxy war" so that Indonesia becomes weak and even destroyed, through the destruction of its young generation. An example of the dark history of China in the 18th century era, which was destroyed and slumped by the Opium war. Such a civilized nation[6], which is also an ingredient for Heroin-type Narcotics known today[7].

The already alarming condition in this country regarding the abuse and illicit circulation of Narcotics which is almost out of control, is exacerbated by the involvement of state apparatus, both as users and as dealers, and also as a backing for this Narcotics crime. Most of the law enforcement apparatus should be at the forefront of fighting the narcotics problem. This is due to the wide social gap and the consumerist lifestyle of the Indonesian people, which indirectly contributes to the growth of illicit narcotics trafficking. The world of Narcotics involves a very large turnover of money. One of the Indonesian and Malaysian narcotics smuggling syndicates that was successfully uncovered by BNN in 2018, confiscated assets reached 6.5 trillion rupiah.

The lure of this very tempting value for money, causing many laws enforcement officers to be affected, so that they sacrifice the integrity and safety of their nation from the dangers of Narcotics. Thus, it is not an exaggeration to say that Narcotics have shackled a decent life, which at any time is ready to pounce on family members both as addicts and as

members of narcotics trafficking syndicates. And along with other family members even though they are not users and/or illegal narcotics dealers, they also feel the inner and outer suffering, guilt and regret for life because family members fall into the Narcotics problem which in the end only three places, namely: Prison, Hospital, or Graves. It is no exaggeration to say that Narcotics have shackled a decent life, which at any time is ready to pounce on family members, both as addicts and as members of Narcotics trafficking syndicates. And along with other family members even though they are not users and/or illegal narcotics dealers, they also feel the inner and outer suffering, guilt and regret for life because family members fall into the Narcotics problem which in the end only three places, namely: Prison, Hospital, or Graves. It is no exaggeration to say that Narcotics have shackled a decent life, which at any time is ready to pounce on family members, both as addicts and as members of Narcotics trafficking syndicates. And along with other family members even though they are not users and/or illegal narcotics dealers, they also feel the inner and outer suffering, guilt and regret for life because family members fall into the Narcotics problem which in the end only three places, namely: Prison, Hospital, or Graves[8].

Prevention and Eradication Efforts to break the distribution chain and illicit Narcotics have been carried out with various strategies and cost the state very large (84 trillion/year). However, data from the 2018 BNN and LIPI Research shows that the results achieved are not commensurate, because there has only been a 0.35% decrease in the number of narcotics abuses at the national level. In this study, the author will specifically discuss further why the execution process was not carried out immediately after the verdict was handed down. This issue of capital punishment is closely related to the author's background, namely as the Deputy of Prevention at the National Narcotics Agency who is often asked for information/explanation about this matter, both formally and informally, by several relevant agencies both from within and outside the country.

With an in-depth discussion of this issue academically, it is hoped that it can add to the scientific information possessed by the author regarding the cause of the death penalty decision which has permanent legal force but has not been implemented in accordance with the laws and regulations. Furthermore, this paper intends to provide a theoretical explanation regarding the relationship between law and law enforcement coordination[9] in the implementation of death penalty decisions that meet legal decisions as well as descriptions of the ideal execution of narcotics cases that meet legal certainty and respect for human rights, so that they can provide accurate views and information or at least become a thought from the author in order to enrich and expand the realm of knowledge.

## “Legal Certainty on The Implementation of Death Criminal Decisions that have Permanent Law Power in Indonesia (A Review of the Death Criminal Decision on Narcotics in 2014-2018)”

In order to provide a deterrent effect on the perpetrators of narcotics crimes, whether dealers, dealers, couriers or addicts, in law enforcement[10] in Indonesia enforced the "Death Penalty"[11] for dealers, dealers, or national and international couriers. This is proven by the enactment of Law Number 35 of 2009 concerning Narcotics Article 113 paragraph (2), Article 114 paragraph (2), Article 116 paragraph (2), Article 118 paragraph (2), Article 119 paragraph (2), Article 121 paragraph (2), article 132 paragraph (3), article 133 paragraph (1) and Article 144 paragraph (2)[12].

When someone is sentenced to death, this is a court decision that must be respected. Where it should be, when a decision already has permanent legal force (in kracht van gewijsde) then the execution must be carried out immediately, but it is different regarding the death penalty[13]. Because this crime is the heaviest crime, the convict can carry out other legal remedies, such as reconsideration and pardon from a Head of State[14]. Review or PK itself is a "herziening institution", which is defined as a legal remedy that regulates the procedure for reviewing a decision that has obtained a permanent legal force, meaning that a person is given the right by law to continue to defend himself even though he has legal force. still after going through various legal efforts starting from the court of first instance, high court (appeal) and examination of cassation at the Supreme Court[15].

The next stage is an extraordinary legal effort, namely the submission of a Judicial Review (PK) to the Supreme Court. If various legal remedies have been taken but the convict is still found guilty, usually the death row convicts will submit a final legal remedy, namely the application of clemency to the President, i.e., apologizing and declaring that he is guilty. Although this clemency is not a legal remedy that is under the jurisdiction of the Judiciary, it is the prerogative of a President, but this is justified by existing law in Indonesia. However, these two legal processes are the problem, where the legal remedies provided are sometimes used as an opportunity for death row inmates to delay the execution of their death penalty[16]. on the grounds that he was applying for a PK and clemency, until finally it could only be implemented after many years.

The scheme of thinking departs from the concept of an institution which in this case is the executor of the death penalty, namely the Attorney General's Office of the Republic of Indonesia, the authority of the prosecutor and the Indonesian National Police as a firing squad as well as the legal procedures for the implementation of the death penalty. As an analytical tool, the theory of legal positivism and the theory of human rights are used.

Based on the description above, the authors examine the following matters in writing this research:

1. How is the implementation of drug death row in Indonesia?
2. What is the legal certainty for drug death row convicts who file extraordinary legal remedies?
3. What is the ideal form so that it does not conflict with human rights in the application of the death penalty and the implementation of the death penalty?

The author's study is to analyse the principle of legal certainty that is applied to the principle of extra ordinary crime in contrast to the respect for humanity as the most fundamental human rights principle and the principle of legality associated with positive law and international conventions. The results of this dissertation research are intended to seek or find arguments for the certainty of execution[17] death penalty for society, family, convicts and the state[18]. The scheme of thinking departs from the concept of an institution which in this case is the executor of the death penalty, namely the Attorney General's Office of the Republic of Indonesia, the authority of the prosecutor and the Indonesian National Police as a firing squad as well as the legal procedures for the implementation of the death penalty. As an analytical tool, the theory of legal positivism and the theory of human rights is used.

Seeing the explanation above, the application of the death penalty can be viewed from all aspects. These include aspects of legal history, juridical aspects, aspects of human philosophy, religious aspects and sociological aspects in human relations as a form of action and reaction.

In this study the problems are:

1. How is the legal certainty of the current execution of the death penalty in narcotics crime cases?
2. What is the solution to the execution of the death penalty in narcotics crime cases in the future in the perspective of legal certainty?
3. Why can punishment with the death penalty still be applied in Indonesia in narcotics crime cases?

## II. LITERATURE REVIEWS

### A. *Legal Certainty Theory*

According to Mertokusumo, legal certainty is a guarantee that the law must be implemented in a good way. Legal certainty requires efforts to regulate law in legislation made by authorized and authoritative parties, so that these rules have a juridical aspect that can guarantee certainty that the law functions as a regulation that must be obeyed[19]. The idea of the principle of legal certainty was originally introduced by Radbruch in his book entitled "*einführung in die rechtswissenschaften*". According to Radbruch, the law must contain three identity values, namely as follows.

1. The principle of legal certainty (*rechmatigheid*), this principle is reviewed from a juridical point of view.

## “Legal Certainty on The Implementation of Death Criminal Decisions that have Permanent Law Power in Indonesia (A Review of the Death Criminal Decision on Narcotics in 2014-2018)”

2. The principle of legal justice (*gerechtigheit*), this principal reviews from a philosophical point of view, where justice is equal rights for all before the court.
3. The principle of legal expediency (*zweckmatigheid*) or *doelmatigheid* or utility.

### **B. Theory of Justice**

According to Aristotle, justice is created from the ethical social heart of every citizen and ruler. Law is only used as a tool to guard justice. Law is very necessary to bind every citizen so that justice is achieved, so justice itself must be seen from various meanings, namely:

1. Numerical justice: that all people are equal before the law.
2. Proportionate justice: that each person should receive what is due.
3. Distributive justice: is justice that gives each person a share or share according to his services. He cannot demand that everyone get the same amount because the merits of each person are not the same, so it is not equality but proportionality.
4. Commutative justice: is justice by giving to everyone as much as possible without considering individual merits, which emphasizes that everyone should get the same.5e. Corrective justice: is justice that builds equality, meaning that every act of a person must be judged in balance with his actions[20].

### **C. Criminal Theory**

Sentencing is an important part of criminal law; it is said so because punishment is the culmination of the entire process of holding someone accountable for a crime. "A criminal law without sentencing would morally be a declaratory system pronouncing people guilty without any formal consequences following the form that guilt". Criminal law without punishment means to declare a person guilty without any definite consequences for his guilt. Thus, the conception of guilt has a significant influence on the imposition of punishment and the process of its implementation. If the error is understood as "reproachable", then here punishment is "the embodiment of the reproach"[21].

### **D. Politics of Criminal Law**

Criminal Law Politics can also be called Criminal Law Policy/Penal Policy or Criminal Law Reform[22]. Implementing the Politics of Criminal Law means 'efforts to realize criminal laws and regulations that are in accordance with the circumstances and situations at a time and for the future'. Thus, when viewed from the aspect of 'Legal Politics', it means that 'Criminal Law Politics' implies how the state seeks or makes and formulates a good criminal law for the present and the future. Criminal Law Politics is a crime prevention policy with criminal law or Criminal Law

Politics is an effort to overcome crime through the making of criminal laws.

### **E. Death Crime**

The death penalty is one of the oldest types of crime, as old as mankind. The death penalty is also the most interesting form of punishment studied by experts because it has a high contradiction or contradiction between those who agree and those who disagree[23]. The opinion that agrees says that the convicted person is entitled to the death penalty for several reasons that make him a person who deserves it. Meanwhile, those who do not agree with the death penalty are contrary to human rights, namely the right to life, which is a basic right for every individual. If in other countries, one by one abolishing the death penalty, then the opposite happened in Indonesia[23].

### **F. Death Row**

A defendant who has been found guilty and sentenced by the court has his status changed to a convict. Article 1 number 32 of the Criminal Procedure Code stipulates that the convict is "a person who is convicted based on a court decision that has obtained permanent legal force". Why is it called a convict? Because the person concerned has been sentenced to criminal sanctions by a court decision that has permanent legal force. Death convicts are convicts who have permanent legal force with the death penalty.

### **G. Death Penalty Against Narcotics Crime Actors**

Related to the death penalty against narcotics criminals. In the laws and regulations in force in Indonesia, narcotics crimes are classified as special crimes because they are not stated in the Criminal Code, the regulation is also special. The term Narcotics is no longer a foreign term for the public considering that there is so much news from both print and electronic media that reports on cases regarding narcotics. And with the provision of capital punishment for the perpetrators. Actually, Narcotics abuse to date has reached a very alarming level. Almost all the world's population can easily get Narcotics, for example from dealers / dealers who sell in school areas, discotheques, and various other places. The Narcotics business has grown and become a business that is in great demand because of its economic benefits. In the Narcotics Law, it has been regulated in such a way regarding the forms of abuse of Narcotics, for example in Article 114 Paragraph (1) of the Narcotics Law states that: Everyone who without rights or against the law offers for sale, sells, buys, accepts, becomes an intermediary in buying and selling, exchanging , or surrender Narcotics Category I, shall be sentenced to life imprisonment or a minimum imprisonment of 5 (five) years and a maximum of 20 (twenty) years and a minimum fine of Rp. 1,000,000,000.00 (one billion rupiah) and at most Rp.10,000,000,000.00 (ten billion rupiah).

### III. RESEARCH METHODS

Research is an activity carried out by someone in an effort to answer questions that arise about the symptoms seen, felt and experienced. The research uses normative juridical law research, the data collection is done through literature study, referring to the legal norms contained in the legislation and legal norms that exist in society (Decision of the Constitutional Court and Circular Letter of the Supreme Court) and in-depth interviews with several sources (statements of government experts and criminal experts) to find out their responses to legal uncertainty against death convicts in narcotics cases, what obstacles are faced in the execution process of death convicts in narcotics cases, and what suggestions are given by criminal experts in order to create legal certainty for those sentenced to death for narcotics cases which are then analyzed qualitatively. The nature of this qualitative research is descriptive analytical.

The data analysis technique used is primary data and secondary data. The data is then analyzed qualitatively, namely giving meaning and interpreting each data that has been processed through several stages and mechanisms. First, transcription of the interview results in the form of sentence descriptions is carried out systematically and logically to facilitate drawing conclusions. Second, data editing is done. Third, a qualitative – critical analysis was carried out on the data. Finally, an attempt is made to interpret (interpret) the data. From the existing data then a conclusion is drawn. Conclusions are drawn by means of deduction, namely from things that are general in nature, then concluded specifically for the problems studied.

### IV. RESULTS AND DISCUSSION

#### A. Legal Certainty in the Current Execution of the Death Penalty in Narcotics Crime Cases

Legal certainty of the current execution of the death penalty in narcotics crime cases Narcotics crime is regulated in Law Number 35 of 2009 concerning Narcotics. The provisions governing criminal sanctions for narcotics dealers are regulated in Article 114 which in paragraph (2) states that one of the criminal threats is the death penalty. Regarding the inclusion of the death penalty in narcotics crimes, the government has affirmed its opinion that the death penalty is necessary because it is considered a crime against humanity that aims to destroy humanity slowly but surely. The entire potential of human thought and mind is destroyed in masse for personal and group interests[24]. The government then illustrated that with the crime of narcotics, humans were made like living corpses that no longer had the potential to build civilization and culture but continued to behave in a destructive manner to the order of life. Therefore, narcotics crimes will always be threatened with serious crimes, including the death penalty. Narcotics crime statistics in general do not show a slight decrease, even though the

government has made great efforts to reduce this number, for example by establishing a special institution that is expected to coordinate various related agencies for prevention, law enforcement, rehabilitation and others against drugs. Criminal threats in the Narcotics Law and Psychotropic Law have continued to be increased and even multiplied since the enactment of Law no. 9 of 1976 concerning Narcotics which was later replaced by Law no. 22 of 1997 concerning Narcotics. However, in reality it is still not possible to reduce the number of narcotics crime cases, in fact the number continues to soar[25].

According to Sunarta, the current problem in Indonesia is the protracted execution of the death penalty. This happens because there are no rules that determine when the execution of the death penalty is executed after a court decision has permanent legal force. This condition is hampered by the right of the convict's family to file extraordinary legal remedies in the form of a PK (Review) to the Supreme Court and a request for clemency to the President.

The implementation of the death penalty will always cause polemics in society, there are those who are pro with the death penalty, and some are against it. This polemic will always arise because in a heterogeneous society there will always be different views on the death penalty. Therefore, the execution of the death penalty is an integral part of a series of settlements for handling criminal cases that are charged to the prosecutor's office as a state prosecution agency. The protracted execution of the death penalty because the death row convicts or their legal advisors always have the reason that the convict will file a PK, but in practice it is only as a basis to procrastinate in submitting a PK, this has become a legal problem related to the legal objectives to achieve the principle of certainty and legal justice.

According to Anam[26] as Commissioner of the Indonesian National Human Rights Commission, states the death penalty in terms of two contexts. The first context is the norm, and the second context is factual. Nominally, the death penalty is classified as being abolished for the first time, for example the option protocol, the convention on civil-political rights in which there is a political element and then an additional instrument No. 1 in the 1970s, discussing how the death penalty is applied in various worlds. The abolition of the application of the death penalty emerged as the first operational protocol. In fact, there are still many countries that still recognize the death penalty as a legal act in 1970, therefore it was abolished in various stages.

Meanwhile, to revoke the rule of law instrumentally, including in Indonesia, there is a dynamic regarding the application of the death penalty, but not with the instrumental context of the law. Politically, for example, when President SBY implemented a moratorium on the

## “Legal Certainty on The Implementation of Death Criminal Decisions that have Permanent Law Power in Indonesia (A Review of the Death Criminal Decision on Narcotics in 2014-2018)”

death penalty, it became his political policy scheme for a moratorium on the death penalty. Therefore, one of them is Indonesia is active in the context of international relations. During the time of President SBY, the death penalty in the context of electoral politics could be used for other purposes. So, in a policy conflict using the death penalty as an electoral issue. The application of the death penalty in the context of this moratorium in Indonesia is not optimal. For example, the moratorium, like the UK, states that the moratorium is an act not only an execution at the end.

President Jokowi uses the death penalty as an electoral issue, but the moratorium does not carry out executions. Moratorium means not carrying out executions, not applying the death penalty, there are biological instruments that occur such as the dynamics of the death penalty, including the dynamics in Indonesia. Legal instruments in Indonesia should be much stricter after the decision of the Constitutional Court, indeed legally very normative is still a positive law in various Narcotics Laws, even not only the Narcotics Law, in Law No. 26 of 2000 concerning the Human Rights Court the threat to the death penalty is still something of a contradiction. So, the Constitutional Court said that shifting back the death penalty should not be done arbitrarily.

The author also conducted interviews with Jaya[27] as the Supreme Court Justice of the Supreme Court who gave the opinion that legal remedies for death row convicts were limited to one time. Then in the Constitutional Court it was limited in the name of human rights, so it was possible to apply for unlimited legal remedies again. This is different between corporations and people, if the execution of the death penalty is already underway, even though it can still be reappointed and has not expired. The fatwa regarding legal remedies for death row convicts was limited only once and then the Court limited it in the name of human rights. So you can file unlimited legal remedies and end up like this. The last SEMA that became a PK cannot now be repeated (there is a SEMA), the Constitutional Court's decision is again contested with SEMA, so that if you apply for a PK again, there will be no more two times.

To create legal certainty, Sunarta gave his opinion regarding legal certainty: the prosecutor's office consistently and consistently complies with all provisions of the law related to the execution of the death penalty such as the pardon law and other related regulations. Indeed, there are weaknesses in existing regulations regarding the timing of executions after the President's request for clemency is rejected (the law does not explicitly specify the time limit)[27]. The author also conducted an interview with the Director General of PAS Silitonga[28]. Regarding death convicts in drug cases that have permanent legal force (*Inchract*) whether they are in one place (concentrated) or scattered in several prisons,

according to Silitonga, spread across several prisons in Indonesia (data attached) data from the Directorate of Information Technology and Cooperation of the Directorate General of Past.

Then if it is spread across several prisons, whether the execution of executions is left to each prison or coordinated/under central control (Directorate General of PAS), explained that for the implementation and placement of executions it depends on the decision of the Attorney General of the Republic of Indonesia (Kajagung), but with the implementation of Nusakambangan as a pilot project of Correctional Revitalization in accordance with *Permenkumham* No. 35 of 2018, then prisoners with the death penalty were placed on Nusakambangan Island. This is also confirmed by the existence of interview research with Criminology and Police Experts, Meliala, Deputy Attorney General for General Crimes, Rochmad, and Supreme Court Justice Alkostar. The main question is: What are the inhibiting factors for the length of execution of death row convicts for narcotics crimes?

In general, the legal view on the issue of uncertainty regarding the implementation of the death penalty, including for death convicts on drugs that have permanent legal force, is the emergence of two legal views in society, namely people who agree on the implementation of the death penalty for drug convicts because the consequences of their actions can cause damage and loss. Which is very massive both to the soul, property, social life, as well as the resilience of the State and the Indonesian nation. The death penalty can also function as a deterrent effect that can create a deterrent effect for those who have not committed a crime. The second view is that people do not agree on the implementation of the death penalty based on human rights considerations. According to them, the purpose of punishment is to provide a deterrent impact and retaliation for the actions of drug offenders that cause great damage, it has proven not to achieve its objectives and does not provide a deterrent effect, because drug crimes are still happening and are increasing with an increasingly sophisticated modus operandi. advanced[29].

Unfortunately, the public's view of the death penalty is only divided into two camps, namely those who agree and support the death penalty and those who want the abolition of the death penalty (abolishment), and there is no alternative of views other than the two camps above.

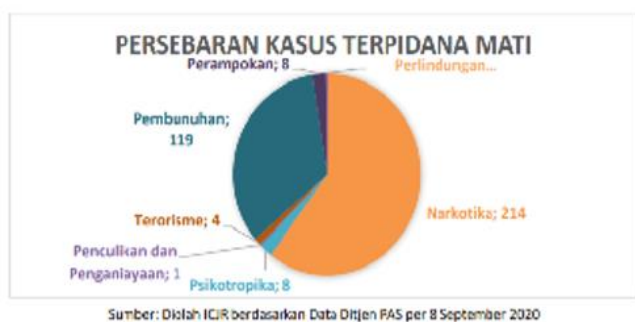
The following is data on drug convicts who were sentenced to death and executed from 2014 to 2018 can see table 2.

“Legal Certainty on The Implementation of Death Criminal Decisions that have Permanent Law Power in Indonesia  
(A Review of the Death Criminal Decision on Narcotics in 2014-2018)”

**Table 2.** Death Penalty for Narcotics 2014-2018

Year	Number of Death Law Cases for Narcotics
2014	6 cases
2015	46 cases
2016	60 cases
2017	47 cases
2018	84 cases

From the data above, in 2014 there were 6 cases that were sentenced to death, then in 2015 it increased to 46 cases, rose again to 60 cases in 2016. In 2017 it decreased by 47 cases of death penalty and increased back to 84 cases in 2018. Meanwhile, in 2019 there were an additional 98 death row inmates for narcotics cases. The table for cases of death row inmates in 2020 can see figure 1.



**Figure 1.** Death Convict Case

Of the total 355 death row convicts whose data was processed by ICJR based on the Data on Death Convicts of the Directorate General of PAS 2020, the majority are known to be death row inmates for narcotics cases, as many as 214 people. The next largest composition is the murder case of 119 people. While the rest are death convicts for psychotropic and robbery cases, each of which is 8 people, 4 people of terrorism cases, and cases of kidnapping and maltreatment and cases of child protection, each of which is 1 person[30]. In this case the death penalty is in the legal philosophy of the RKUHP and is based on probability and justice. The author argues that the philosophy of law can be studied from three points of view, namely:

1. From the point of view of normative legal science, the purpose of law is emphasized in terms of legal certainty.
2. From the point of view of legal philosophy, the purpose of law is focused on justice.
3. From the point of view of the sociology of law, the purpose of law is emphasized in terms of expediency.

With this description, it leads us to the three basic legal values proposed by Radbruch, namely justice, expediency and legal certainty. Although it is hoped that the judge's decision should be the resultant of these three things, in practice this is difficult to happen. In fact, often the opposite happens, that between the three there is tension or conflict. In one event, if the judge had to decide fairly, legal certainty had to be sacrificed. Or vice versa, for the sake of legal

certainty, justice is not achieved because the existing law is no longer in accordance with the sense of justice in society.

**B. Solutions to the Execution of the Death Penalty in Narcotics Crime Cases in the Future in the Perspective of Legal Certainty**

Based on the results of the research that the author did, basically the death penalty is an escape from the community to punish the perpetrators of extraordinary crimes such as narcotics crimes, in order to provide a deterrent effect to drug offenders, but is it effective? For the Indonesian government, the death penalty is an instant solution for drug offenders. Executions are considered to be able to give heavy rewards to criminals, so that it is hoped that no one will commit narcotics crimes. As stated by Khairul Anam, that the death penalty is not the right solution to combat narcotics crime, so it only prolongs the chain of violence without providing an adequate solution. In the view of the government of a country that still enforces the death penalty, will change the way people view life. Where a person's life is in the hands of the state is no longer the right of its citizens, especially narcotics crimes, namely narcotics dealers.

According to the author, the solution to the execution of the death penalty in narcotics crime cases in the future, namely:

1. Regarding legal certainty, the author applies Hans Kelsen's legal theory which states that the legal process should not involve political interference from certain authorities. So the enforcement of legal certainty rests on two main components, namely; First, certainty in orientation for society (the principle of certainty orientation) that people understand, what behaviour is expected by others from them, and what response they can expect from other people for their behaviour. Second, certainty in the application of the law-by-law enforcement. The principle of certainty in the realization of the law that allows people to rely on calculations, that the applicable norms are respected and implemented, that the decisions of the Court are truly implemented and obeyed. Because of that,
  - a. Norms clearly define what is required and what is prohibited. As a legal instrument, it tends to be interpreted differently both among law enforcers themselves and between parties who are subject to sanctions according to their own tastes and benefits.
  - b. Legal transparency that prevents the public from normative confusion. Consistency in the actions and words of state officials and law enforcement is a defining part of legal transparency. Contradictions in their actions and words will further deepen the "normative confusion" among the people, because in any country, people view (and often remember) the words and behaviour of state officials and law enforcement as a reference.

## “Legal Certainty on The Implementation of Death Criminal Decisions that have Permanent Law Power in Indonesia (A Review of the Death Criminal Decision on Narcotics in 2014-2018)”

- c. The continuity of the legal order that provides a reference for future behaviour. If a state official at one time stated that the government would not intervene in the legal process, but, then the government intervened, he would result in people's distrust of the continuity of the rule of law.

In addition to these three factors, the resolution of various special cases through court decisions that reaffirm the principles of justice, as well as broad individual compliance with generally accepted legal principles such as "the principle of presumption of innocence" and "the principle of a fair legal process" also play a role. important as a guide for legal certainty. The application of reference factors for the orientation of community legal certainty as well as the application of generally accepted legal principles or principles must be carried out based on two principles or principles of justice, so as not to injure the community's sense of justice. Therefore, with the principle of legal certainty, it can create certainty for prisoners in waiting for the death penalty process so that double criminality does not occur. In the sense that the convict does not serve his sentence twice,

2. In the decision, it can be directly determined at the first level, namely at the District Court level, whether it is appropriate or not, it can be in the form of a Circular Letter or a Joint Decree. This is so that there is no long waiting process for prisoners. So the imposition of the death penalty imposed by the criminal court from the first level to the Supreme Court and the Judicial Review, it is better for the implementation of the death penalty to be carried out by the District Court (first level court). Executors are carried out by the District Court if the Prosecutor's Office is not fit to carry out the execution of the death penalty. The Head of the District Court may order the Prosecutor's Office together with the Indonesian Police to carry out the death penalty against the death row inmate. Meanwhile, the application for judicial review by including evidence such as a novum must still be tested in the district court. The death row convict may file for reconsideration twice on the condition that the novum cannot be the same as the previous judicial process.
3. In the Draft Criminal Code, the death penalty process must be in accordance with the principle of legal certainty, it must also contain clear criteria, definite stages, waiting period and the person in charge of implementing it at each stage. The death penalty must be enforced with an appropriate legal process, especially in terms of legal certainty and justice. Why is the death penalty necessary? Because of the death penalty, especially those convicted of drug cases, they are producers/suppliers/distributors who poison the community which can be fatal to the loss of the nation's

generation, self-destruction and family members suffer the consequences, as well as material losses of tens of trillions per year and also violate the human rights of the community. Broader, namely the loss of the right to a decent and healthy life due to drugs, so that drugs are an extra ordinary crime.

In the findings of this dissertation, the writer can conclude that the law that is enacted in the form of a law does not always succeed in creating law is a tool of social engineering. The law should be bottom up and vice versa and the law should be progressive, but it should also be able to manipulate.

### ***C. Sentencing with the Death Penalty Can Still Be Applied in Indonesia in Narcotics Crime Cases***

The death penalty is the heaviest criminal sanction, as stated in Article 10 of the Criminal Code, the death penalty is placed at the top of the list, therefore the death penalty is not applied to all crimes, but only to certain crimes that are considered quite serious, such as premeditated murder, treason, theft with violence, and others. In addition to the Criminal Code, the death penalty is also listed in several laws and regulations in Indonesia, including Law Number 35 of 2009 concerning Narcotics, this means that legally the implementation of the death penalty is justified, in other words in the national law the implementation of the death penalty has been its existence is guaranteed.

The existence of the implementation of the death penalty was also strengthened after the rejection of the judicial review of the previous narcotics law, namely Law Number 22 of 1997 concerning Narcotics, as stated by Citrawan[31], "The right to life is guaranteed in the Indonesian constitution., but these rights can be limited by statutory instruments. The constitutionality of the death penalty, which is regulated by a number of laws, one of which is the narcotics law, has also been strengthened by the decision of the Constitutional Court”.

Article 80 paragraph (1) letter (a), paragraph (2) letter a and paragraph (3) letter a, Article 81 paragraph (3) letter a, and Article 82 paragraph (1) letter a, paragraph (2) letter a , and paragraph (3) letter a of Law Number 22 of 1997 concerning Narcotics by applicants for judicial review deemed contrary to the 1945 Constitution of the Republic of Indonesia (UUD 1945), including Article 28A of the 1945 Constitution, where Article 28I paragraph (1) of the 1945 Constitution states that the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of retroactive law is a human right that cannot be reduced under any circumstances.

Based on the considerations of the Constitutional Court, the death penalty is appropriate in Indonesia, especially for



## “Legal Certainty on The Implementation of Death Criminal Decisions that have Permanent Law Power in Indonesia (A Review of the Death Criminal Decision on Narcotics in 2014-2018)”

narcotics crimes. The Court in giving consideration looks at various points of view to obtain the fairest justice, not only from the point of view of the perpetrator, but also from the point of view of the victim, because in fact the victim is the party who is most disadvantaged, this is in accordance with the fifth principle of Pancasila, namely social justice for all Indonesian people, where justice must be equal for all levels of society, including justice in the field of law. In addition to victims who are specifically harmed, of course, the public is also harmed because of the disruption of social harmony due to the occurrence of crime. The role of the death penalty is to restore social harmony in society. It is undeniable that as humans we cannot escape mistakes, including in carrying out the criminal justice system, it is possible to impose criminal sanctions on innocent people, but in fact the possibility is very small because judges are always careful and careful in considering a decision. The view that considers the death penalty fails to provide a deterrent effect should not make it a reason for the abolition of the death penalty, because as the heaviest sanction the death penalty is still needed, on the other hand abolishing the death penalty also does not guarantee a decrease in crime rates. including in running the criminal justice system, it is possible to impose criminal sanctions on innocent people, but in fact the possibility is very small because judges are always careful and careful in considering a decision. The view that considers the death penalty fails to provide a deterrent effect should not make it a reason for the abolition of the death penalty, because as the heaviest sanction the death penalty is still needed, on the other hand abolishing the death penalty also does not guarantee a decrease in crime rates. including in running the criminal justice system, it is possible to impose criminal sanctions on innocent people, but in fact the possibility is very small because judges are always careful and careful in considering a decision. The view that considers the death penalty fails to provide a deterrent effect should not make it a reason for the abolition of the death penalty, because as the heaviest sanction the death penalty is still needed, on the other hand abolishing the death penalty also does not guarantee a decrease in crime rates.

Narcotics crime as an extraordinary crime certainly requires extraordinary handling, including in terms of punishment that is different from ordinary crimes where the philosophy of punishment in Indonesia, namely the rehabilitation and social reintegration of perpetrators of criminal acts is a general principle, therefore for special crimes. or certain must be distinguished. If viewed from the arguments of the Petitioners stating that the death penalty is contrary to the 1945 Constitution, then from the opinion of the Constitutional Court, it can be concluded that both in national law and in international legal instruments, guarantees for the protection of human rights include one of them, namely the right to life, is not absolute but there are

certain limitations, With this limitation, it can be justified the deprivation of the right to life if it is in accordance with existing regulations. It can be said that a person's actions greatly affect the rights he has.

Currently, the death penalty that has just been decided, has not been *inkracht* related to the six terrorist defendants who attacked the Police Corps Headquarters or Mako Brimob Police in Kelapa Dua, Depok, in 2018 were sentenced to death by the East Jakarta District Court judges on Wednesday, April 21, 2021. The defendants decided to accept the judge's decision. The six defendants are Rachman, Suparman alias Maher, Pakpahan, Suyanto alias Izza, Handoko alias Abu Bukhari, and Kurniawan. The judge's verdict on the defendants was in accordance with the demands of the public prosecutor. The defendants accepted the death penalty. He said that the legal counsel for the defendants had questioned the defendants' decisions again, but the defendants did not change their decisions and he also said that the defendants had not submitted a plea or a memorandum of defines against the prosecutor's demands.

Meanwhile, from the discussion as well as the launch of the Technical Guidelines for Handling and Assisting Deportants and Returnees of Women and Children Exposed to Radical Terrorism, according to the Director of Deradicalization of the National Agency for Combating Terrorism, Irfan Idris emphasized the importance of assistance for women and children who were deported or returned from Syria and Iraq to the Land. Water is not only carried out by the government or BNPT, but also religious community organizations and civil society. The reason is, it is not easy to de-radicalize deportants and returnees who had joined the Islamic State terrorist group in Iraq and Syria or ISIS. There are three important things, namely heart, hand, and head. The heart is touched, then the hand is about how he has a job, then the head is about narrative or understanding.

These guidelines were prepared by the International NGO Forum on Indonesian Development (INFID) together with Regional Leaders (PW) Fatayat Nahdlatul Ulama (NU) East Java, PW NU West Java, and Harmoni. From the experience of assisting deportants and returnees in East Java, according to the Chairperson of PW Fatayat NU East Java, Winarti, communication and interaction is necessary. In addition, facilitators must find out their needs so that they can escape the snares of radicalism and help to meet those needs.

So, in the author's view, punishment with the threat of the death penalty can still be applied in Indonesia in narcotics crime cases is appropriate. Therefore, the death penalty is of course not against the law/religious teachings, in other words, the death penalty does not conflict with the first precepts because the first principle of Pancasila is Belief in One God, which means based on the beliefs/religions of each person in practicing/believing one's religion is also

guaranteed in the 1945 Constitution of the Republic of Indonesia, which is contained in Article 28 E paragraph (1) and paragraph (2) and Article 29 paragraph (2).

## V. CONCLUSION

Based on the discussion above, the conclusions are:

1. The legal certainty of the current execution of the death penalty in narcotics crime cases is related to legal remedies, both ordinary and extraordinary, which have been regulated in the law, but with the Constitutional Court Decision which essentially states that a Judicial Review (PK) can be submitted many times, there is no limit on how many times it can be submitted, it creates uncertainty, especially in executing the death row inmate, because when the convict's PK is rejected, he is still entitled to apply for the next PK-PK. Therefore, there is a need for a law that regulates the maximum time limit for filing extraordinary legal remedies in the form of a PK by the convict since the notification of a court decision which has permanent legal force is received. Thus, the convict also obtains legal certainty regarding the execution of the criminal imposed on him. The execution of the death penalty is currently in the narcotics crime case. Drugs are a problem throughout the world community regardless of national borders, social status, educational background and others. Narcotics cases have entered into the joints of people's lives, so that the problem of drugs to date has become increasingly complicated and complex. One of the reasons for this is the supply and demand chain that persists, although on the supply side, producers, suppliers, couriers and dealers according to the Narcotics Law Number 35 of 2009 are threatened with the death penalty. However, the fact is that the process of illicit drug trafficking in Indonesia remains high. One of the legal phenomena in Indonesia, the death row convicts in drug cases that have legal force, continue to experience legal uncertainty in the execution of the death penalty. The reason is the extraordinary legal process that is not clearly regulated, especially in terms of the stages of time. This situation certainly injures the purpose of the law itself, namely "legal uncertainty". One of the impacts is that the death row convicts are indirectly sentenced to double criminality.
2. The law enforcement officers who are responsible for the execution of the death penalty, namely the Public Prosecutor, also experience uncertainty/doubt in carrying out the execution even though it has been clearly regulated in the law. The waiting period for the execution of the death penalty, which creates legal certainty at this time, can be overcome through. Determination of the Court of first instance (District Court) which is regulated through statutory provisions, which examines the submission of extraordinary legal

remedies (Review) whether or not it is feasible to be granted. Thus, the legal certainty of the execution of the death penalty for convicts in drug cases which has legal force remains to be realized. Determination of the Court of first instance (District Court) which is regulated through statutory provisions, which examines the submission of extraordinary legal remedies (Review) whether or not it is feasible to be granted. Thus, the legal certainty of the execution of the death penalty for convicts in drug cases which has legal force remains to be realized. Determination of the Court of first instance (District Court) which is regulated through statutory provisions, which examines the submission of extraordinary legal remedies (Review) whether or not it is feasible to be granted. Thus, the legal certainty of the execution of the death penalty for convicts in drug cases which has legal force remains to be realized.

3. Sentencing with the threat of the death penalty can still be applied in Indonesia in narcotics crime cases is appropriate. Therefore, the death penalty, of course, state law does not conflict with religious law/teachings, in other words, the death penalty does not conflict with the first precepts because the first principle of Pancasila is Belief in One God, which means based on the beliefs/religions of each person who in carrying out/believes His religion is also guaranteed in the 1945 Constitution of the Republic of Indonesia, which is contained in Article 28 E paragraph (1) and paragraph (2) and Article 29 paragraph (2).

The suggestions are:

1. It is recommended that the death penalty decision can be directly determined at the first level, namely at the District Court level whether it is appropriate or not, it can be in the form of a Circular or a Joint Decree. This is so that there is no long waiting process for prisoners. Then in the Draft Criminal Code, the death penalty process must be in accordance with the principle of legal certainty, so that it regulates criteria, such as the stages of implementation and the timing of the execution of the death penalty for death row convicts in drug cases, so that drug death row convicts who have not taken extraordinary legal remedies, should be immediately sentenced to death. execution.
2. It is recommended to revise Article 24 of Law Number 48 of 2009 concerning Judicial Power so that judges are given the authority to decide whether or not a judicial review is appropriate and include the role of prisons in the Shining Prison Program to participate in evaluating the behaviour of prisoners sentenced to death on drugs during the probationary period 2 -3 years as a recommendation for the Prosecutor, thus changing the death penalty to another punishment according to the mandate of the RKUHP.

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