

The Role of Doctors in Drug Administration and the Execution of Penal Death

Tongat Tongat¹, Ratri Novita Erdianti², Said Noor Prasetyo², Nu'man Aunuh², Yaris Adhial Fajrin², Wafda Vivid Izziyana³

¹Doktor, Muhammadiyah Malang University, ²Lecturer, Muhammadiyah Malang University,

³Doctor, Universitas Muhammadiyah Ponorogo

Abstract

Although until now Indonesia still applies capital punishment, efforts to limit its application are still being made, including improving the procedures for its implementation. One way to ensure that the execution of the death penalty is still carried out with respect for life is to involve doctors in treatment and the execution of the death penalty. In addition, in the reform of Indonesian criminal law (Draft KUHP), a policy for postponing death penalty has been formulated. Those sentenced to death are given the opportunity to improve themselves for a certain time (10 years). If within the grace period the convict can show improvement in himself, then the death penalty need not be carried out and replaced with deprivation of liberty.

Keywords: *The Role Of Doctors, Drug, Execution, Penal Death*

Introduction

Execution of the death penalty can be carried out in several ways, either by shooting or injecting with medicinal drugs, including using sodium thiopental or Pentothal, Pancuronium bromide, Potassium chloride, etc. with high doses of doctors and medical teams. The responsible for the execution to determine whether the convict is really dead.

Not many people understand that the role of doctors in providing treatment and execution of penal death in Indonesia is very important. His presence is very much needed, because doctors have a role to ensure the death of the convict. In the provisions of Article 4 letter c juncto Article 15 letter m Regulation Of The Head Of The State Police Of The Republic Of Indonesia Number 12 Year 2010 Concerning Procedures For Execution Of Penal Death, it is determined that the doctor puts a black mark on the shirt of the convict at the position of

the heart as the target of shooting, then the Doctor and Team 2 keep away from the convict. Even in the event that after the execution the convict still shows signs of life, the doctor has the authority to order an end shot to ensure that the convict is really dead.

Embryonally, the debate on penal death in Indonesia has lasted for a long time. The debate has placed at least two opposing perspectives, the perspective that rejects penal death either by shooting or administering drugs that are injected into inmates the perspective that supports capital punishment.⁽¹⁾ The perspective that rejects the penal death based on several rationalities as follows:

a. Treatment of soul consciousness through penal death is not a punishment because it does not meet all the criterias required for a punishment. According to Modderman, the penal death is not equal with the criminal's wrongdoing, with its imposition the possibility to improve oneself for the perpetrators is completely closed. The certainty of the judge's verdict that is right, correct and fair is difficult to guarantee because after all the judge is still a human. The penal death closes altogether the possibility of reviewing the verdicts that may be wrong, and the sentence as well as

Corresponding Author:

Tongat Tongat,

Muhammadiyah Malang University, Jl. Bendungan Sutami No. 188, Sumbersari, Kec. Lowokwaru, Kota Malang, email: tongat_umm@yahoo.co.id

the execution of penal death have a bad effect on society.

b. A human's life, even a criminal, should not casually be taken away by the execution of capital punishment or attempts to provide a treatment that can kill.

c. Had treatment the penal death been considered as a tool to scare the prospective criminals, it would be difficult to accept the idea of sentence commutation.

Meanwhile the perspective that supports the penal death is based on several rationalities as follows:

a. Penal death guarantees that the criminal will not commit crime anymore, hence the people will no longer be disturbed by the criminal.

b. Penal death is a powerful repression tool for the government, hence the people's interest is guaranteed and the peace and the order of the community are protected.

c. Penal death is also functioned as a means of general prevention, hence the prospective criminals will abort their intention to commit crime.

The Role of Doctors in the Execution of Penal Death

Even though Indonesia is still apply death penalty, its implementation still respects the values of life by including doctors in executions. Doctors who play an important role in treatment and the execution of the death penalty in Indonesia are explicitly stated in Article 4 in conjunction with Article 15 which states that is determined that the doctor puts a black mark on the shirt of the convict at the position of the heart as the target of shooting, then the Doctor and Team 2 keep away from the convict. Meanwhile, in the provisions of Article 15 letter w it is also stated that the Executive Commander, the Executing Attorney, and the Doctor examined the convict's condition and according to the Doctor that the convict was still showing signs of life, the Executing Prosecutor ordered the Executive Commander to carry out the final shooting. Apart from gunfire, there are countries that are still using drugs capable of transmitting, the convicted person will die within one or two minutes after the drug is injected.

Doctors have a very important role in treatment and the execution of capital punishment because doctors play a role in determining the death of the convict after being executed. The involvement of doctors in the execution of capital punishment can also be interpreted as an effort to ensure that the execution of the crime does not conflict with human values. The role of doctors can then be seen in the provisions of Article 15 letter y Regulation Of The Head Of The State Police Of The Republic Of Indonesia Number 12 Year 2010 Concerning Procedures For Execution Of Penal Death which states, this final shooting can be repeated, if according to the doctor's statement there is still signs of life. Based on the provisions of Article 15 letter y, it can be seen that the position of doctors in the execution of capital punishment plays a key role in ensuring the death of the convicted person. Such an important role for doctors in the execution of capital punishment is also evident from the provision of Article 15 letter z which states that the execution of capital punishment is declared complete, if the doctor has stated that there are no more signs of life in the convict.

Penal Death in the Perspective of Islamic Law

Talking about penal death in an Islamic perspective is seen as urgent in its relation to the penal death issue in Indonesia. Its urgency is at least due to several reasons. *First*, although it is not mentioned in the constitution as an Islamic state⁽²⁾—hence it cannot be formally referred to as an Islamic state⁽³⁾—Indonesia is known as the largest Muslim nation in the world. Apart from that, most people are lacking the intellectual sophistication in understanding Islamic teachings, both due to historical and cultural factors.⁽⁴⁾ *Second*, even though Indonesia does not describe itself as a religious state, constitutionally, Indonesia has established itself as a state based on the principle of Belief in One Supreme God.⁽⁵⁾ Therefore, according to Hazairin, as quoted by Jimly Asshiddiqie, he stated that in Indonesia something that contradicts the religious rules must not occur or apply.⁽⁶⁾ All legitimate religions in Indonesia have the same opportunity to fill the formation of legal system—including criminal law—in Indonesia based on *Pancasila*.⁽⁷⁾ In its relation to Islamic law, Islamic values—whether taken from the textual sources of Al-Qur'an and al-Hadith, from the sources inspired from socio-historical or empirical experiences regarding the

application of *fiqh* law throughout the Islamic history, or the local sources of Indonesian people—are the sources of law that can color the reformation of national law. (7) *Third*, the law essentially is not an institute that falls from the sky, but it is rooted in a certain socio-cultural community.⁽⁸⁾ The law is a reflection of the values that live in its society.⁽⁹⁾ The law is essentially an extension of the will and the desire of the people. It is essentially more a reflection of certain social ideal.⁽¹⁰⁾ The law that is out of its social context will be a burden on its society.

Based on the consideration of religious demography on one hand, and the mandate of the constitution on the other hand as explained above, the penal death discussion in the Islamic perspective is seen as urgent in its relation with the penal death discussion in Indonesia. Given that there are so many Islamic legal sources—including those relating to capital punishment—on this occasion, it is sufficient to refer to the main and first source of law in Islam, namely the Al-Qur'an. Some verses of the Al-Qur'an which explicitly provide the basis for the penal death application including Al-Qur'an Surah Al-Ma'idah verse 45 and Al-Qur'an Surah Al-Baqarah verse 178.

Based on the two verses of the Qur'an mentioned above, it is concluded that Islam provides legitimacy for penal death in the form of *qishaash*. *Qishaash* means taking the same retaliation. However, it should be noted⁽¹¹⁾, that the concept of *qishaash* in the Islamic law contains a certain "uniqueness". Although its type and method have been explicitly determined in the Qur'anic text—thus qualifying as a hudud crime—but in *qishaash*, law enforcement is highly dependent on the final attitude shown by the victims of *qishaash* crime (in the case of *qishaash* crime of persecution) or by the victim's family (in the case of *qishaash* crime of murder).⁽¹²⁾

Conceptually, the punishment commensurate with the action (*qishaash*) also developed in the western world. This concept in the western world is known as retributive theory,⁽¹²⁾ which starts from the idea that the punishment must be based on a crime (let the punishment fit the crime).⁽¹³⁾ According to this theory, the punishment becomes a fair retribution for the perpetrator's action. The only justification for a crime according to this theory is because the perpetrator has committed a crime. It is often said that this theory has a backward-looking orientation.⁽¹⁴⁾ Hence, the orientation is towards

the criminal act—which has been—committed by the perpetrator. The retribution concept in punishment is more aimed at providing a general prevention effect, which is to prevent other people from doing the same thing as the perpetrator.

Penal Death in the Perspective of Indonesia's Penalreform

Until this study written, the applicable criminal law in Indonesia is essentially a Dutch inheritance which was enforced on January 1, 1918. It is a criminal law that is much influenced by classical criminal law. At this point, it is understandable why the principles of criminal law enforced in Indonesia feel so stiff and rigid. Therefore, since the independence—precisely starting in 1964—Indonesia has prepared a reformation of national criminal law in the form of Criminal Code Draft. There are several ideas behind the reformation of criminal law in Indonesia. They are: *First*, political reason, sociological reason, and practical reason.⁽¹⁵⁾

Based on the background of the aforementioned idea, then in the concept of reforming the Indonesian criminal law, the penal death is positioned as a special punishment, not as a main punishment as in the current Criminal Code. With its status as a special punishment, the penal death in the reformation of Indonesian criminal law is also not formulated rigidly. It is formulated as a punishment whose treatment and execution can be postponed (suspended penal death) with special conditions. To provide an overview of penal death in the concept of reformation criminal law in Indonesia, the following are its formulation in the Indonesian Criminal Code Draft (2015), namely:

Article 89

Penal death is alternatively sentenced as the last resort to protect the community.

Article 91

(1) The execution of penal death can be postponed with a probation period of 10 (ten) years, if:

- a. the people's reaction to the condemned inmate is not great;
- b. the condemned inmate shows regret and there is hope for improvement;

- c. the condemned inmate position in the criminal offense is not very important; and
- d. there are mitigating reasons.

Conclusion

Based on the brief study above, it can be concluded that:

Execution of prisoners can be done by using lethal drugs and gunfire. Although until now Indonesia still applies penal death, the execution of penal death still respects the values of life. One of the methods taken is by calling for doctors to giving drugs on and carries off penal death. The tendency to keep the penal death in Indonesia is based on the values of Islamic law as a religion that is believed by the majority of Indonesian people.

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