

Death Penalty Against Narcotics Criminal Offender As An Countermeasure Effort Of Narcotics Distribution

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Abstract. This research aims to study and analyze implementation executions in the criminal narcotics in Central Java High Court decision No.04 / Pid.sus / 2012 Dated 26 January 2012, as well as consideration of the judge in imposing the death penalty against the doers as efforts to control narcotics. This research is normative legal research that uses Descriptive research and Evaluative research. Secondary data sources are in the form of primary, secondary, and tertiary legal substances. The data collecting technique is done by using a literary study, which investigates the substance or content of the legal substance in form of a book, legislative regulation, document, and the other literature that is related to the problem statement that the researcher investigates. Data analysis by using a deductive method which is based on significant premise submission (general statement), then offered minor premise (specific), from both premises, it appears a conclusion. The implication of this research is Death Penalty against Narcotics Criminal Offenders as a Countermeasure of Narcotics Distribution should implicate the right of the death penalty criminals tribute based on humanity and justice is the important thing. Still, it is more important to respect justice and human right as the victim of the drug dealers and narcotics abuse.

Keywords: Executions, Death Penalty, Narcotic

1. Introduction

Ased on a study conducted by the National Narcotics Agency (BNN), narcotics are one of the most powerful weapons of moral destruction and the future generation of the nation. Circulation and abuse of narcotics in Indonesia began to emerge since 1969. The misuse and illicit trafficking of narcotics, psychotropic substances, and other dangerous substances is a study that becomes a problem both nationally and internationally. In fact, narcotics crime has indeed become a transnational crime committed by organized crime groups [1].

Indonesia itself has had legal cases for a long time, such as narcotics cases, corruption cases, cases related to the legal mafia, and various other cases. Along with the times, in resolving these legal cases, most of the perpetrators use various legal remedies, in order to ease the legal decisions that will be imposed on them. Legal remedies that can be submitted include, among others, legal remedies for appeal, cassation and review (PK). All court decisions, especially in criminal justice against dissatisfied parties, can take legal action, as regulated in chapter XVII and chapter XVIII of Law Number 8 of 1981 concerning the Criminal Procedure Code (HAP) and in

submitting legal remedies for judicial review (herziening) can only be done if new evidence is found (novum).

Not everyone supports the death penalty as a positive legal norm. Many people are against the death penalty. The problem that arises in the conflict between the pros and cons of the death penalty is the most basic human rights issue, namely the right to life. The word human is defined as everything that is fundamental and fundamental which is always attached to the subject. Human rights in Indonesian are defined as fundamental rights in human beings.

The death penalty is a crime that is old in age, but young in age, the death penalty from the past until now has always been a debate in various circles regarding the pro and contra factors of the death penalty. Sanctions on the death penalty essentially rob human rights, the term criminal in Dutch is called "straf" and in English it is called "penalty" which means "punishment", then the death penalty means the punishment imposed on a criminal offense by killing his life. Criminals are imposed solely because people have committed crimes or criminal acts. Criminal is an absolute consequence that must exist as a retaliation to the person who committed the crime [2].

The long history of capital punishment or capital punishment proves that the debate between groups that agree and disagree with the implementation of the death penalty. There is an English Judge's expression in the 18th century which is now well-known among criminology scholars: "you are to be hanged, not because you have stolen a sheep but in order that others may not steal sheep". which is effective because the sheep are still stolen until now.

In fact, judges in Indonesia rarely decide cases by imposing the death penalty. Cases that are often sentenced to death are those related to drug trafficking and sadistic murder. Therefore, although there are many death row inmates, the number of those executed is relatively small compared to the list of those sentenced to death. It is understood that the issue of the death penalty has always been a controversial debate. The pros and cons of implementing the death penalty are always fighting at all levels of society and policy makers. Controversy about the death penalty can also be seen on the international and national stage. The hanging of Saddam Husain in Iraq sparked debate in international forums.

Indonesia is one of the countries that still persists in adopting the death penalty in its positive law. In the author's view, the death penalty is still needed for serious crimes perpetrators who meet certain criteria in accordance with the applicable positive law. Drug crimes, terrorism, premeditated murder and other serious crimes still deserve the death penalty. The execution is also carried out with the aim of preventing similar crimes, among others.

Sunday, February 18 2015 at 00.48, the execution of the death penalty took place at the Brimob Command Headquarters in Boyolali against the convict Tran Thi Bich Hanh. narcotics crime as an effort to control narcotics trafficking [3].

With the implementation of the death penalty but narcotics trafficking is still high, for that we want to analyze it further by analyzing the death penalty decision against the death penalty through the Central Java High Court decision No.04/Pid.sus/2012 dated January 26, 2012.

Based on this description, the author is interested in conducting research that is contained in the form of legal writing with the title: The Death Crime Against The Criminal Action Of Narcotics As An Effort To Collect The Circulation Of Narcotics.

The formulation of the problem is made with the aim of solving the main problems that arise clearly and systematically. The formulation of the problem is intended to further emphasize the problem to be studied, so as to facilitate the process and achieve the desired target.

Based on the description of the background, the formulation of the problem in writing this law is formulated as follows:

1. How is the execution of the death penalty against narcotics criminal offenses?
2. What are the judges' considerations in imposing the death penalty on narcotics criminals as an effort to combat narcotics trafficking?

In a study there must be benefits that are expected to be achieved by the author, as for the benefits expected in this study are as follows:

1. Theoretical Benefits
 - a. The results of this study are expected to be an additional reference, input for legal materials, or literature for legal writing which can then be useful for interested parties.
 - b. The results of the study are expected to contribute solutions to the problems studied.
2. Practical Benefits
 - a. Provide an overview and information about similar research and knowledge for the wider community about the death penalty against narcotics criminals as an effort to combat narcotics trafficking.
 - b. Provide insight, knowledge and new experience to the author regarding legal issues to be studied, which can be useful for writers in the future.

2. Methods

Legal research is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced. Legal research is carried out to produce new arguments, theories or concepts as prescriptions in solving problems at hand.

In legal research, the research method used depends on the legal concept itself. Quoting the opinion of Soetandyo Wigjosoebroto in his book *Setiono*, put forward five legal concepts, namely :Laws are moral principles or truth and justice which are natural and universally applicable. The law is a positive norm or rule in the statutory system. Laws are decisions of the judiciary in the settlement of cases or cases (*in concreto*) or what is decided by the judge. Institutionalized patterns of social behavior exist as empirical social variables. Manifestation of symbolic meanings of social behavior as visible in their interactions (which according to Setiono's language is called the law in the human mind).

In this study, the author based on the third legal concept, which according to Soetandyo Wigjosoebroto, namely law is the decisions of the judiciary in the settlement of cases or cases (*in concreto*) or what is decided by the judge. This research is intended to obtain an in-depth description of the death penalty against narcotics criminals as an effort to combat narcotics trafficking. Based on this, the authors in this study used the following writing methods: This research is included in the category of normative research. This study uses secondary data. According to the form of research is divided into three [1], namely: Diagnostic research is research that is intended to obtain information about the causes of a symptom. Perspective research is research that aims to

get suggestions on what to do to overcome certain problems. Evaluative research is research that is carried out if someone wants to assess the programs being run. The form of research in reviewing the formulation of the problem in this study is to use the form of evaluative research to find out what the legal basis is used in deciding the death penalty for narcotics criminals and how relevant the death penalty decision is in the perspective of the country's economy.

The nature of the research is divided into: Exploratory research is research that is carried out if a symptom to be investigated is still lacking or even non-existent. This study aims to deepen knowledge about a particular symptom, or to get new ideas about a symptom. Descriptive research, this research is to provide data that is as accurate as possible about humans, conditions or other symptoms, descriptive research aims to accurately describe the characteristics of a particular individual, condition, symptom, or group, or to determine whether there is a relationship between a symptom. with other phenomena in society. Explanative research (explaining). This study aims to test the hypotheses about whether there is a causal relationship between the various variables studied. Observing the description of the nature of the research, this legal research is carried out descriptively intended to provide data that is as accurate as possible about humans, circumstances or other symptoms. The purpose is to accurately describe the characteristics of an individual, condition, symptom, or certain group, or to determine whether there is a relationship between a symptom and other symptoms in society.

Considering that this research is included in normative research, the type of data used is secondary data, which from the point of view of binding strength is classified into:

- a. Primary Legal Materials, namely binding legal materials, and consist of:
 - 1) The 1945 Constitution
 - 2) The Criminal Code (KUHP)
 - 3) The Criminal Procedure Code (KUHP)
 - 4) Law No. 5 of 2010 concerning Amendments to Law No. 22 of 2002 concerning Clemency.
 - 5) Law Number 48 Year 2009 concerning Judicial Power.
 - 6) Law Number 5 Year 2004 concerning the Supreme Court.
 - 7) Law Number 8 of 2004 concerning General Courts.
 - 8) Law of the Republic of Indonesia Number 200 concerning.
 - 9) Procedures for Implementing the Death Penalty .
- b. Secondary Legal Materials, namely legal materials that provide an explanation of primary legal materials, such as draft laws, research results, works from legal circles, and so on. The secondary legal materials that the author uses in this research are:
 - 1) Text books written by legal experts
 - 2) legal journal
 - 3) articles
 - 4) internet
 - 5) Other sources that have a correlation to support this research.
- c. Tertiary Legal Materials are legal materials that provide information on primary legal materials and secondary legal materials, for example:
 - 1) Big Indonesian Dictionary
 - 2) Encyclopedia
 - 3) Legal Dictionary

4) Website

The data analysis technique that the author uses in this study is to use the deduction method which starts from the submission of the major premise (general statement), then proposes a minor premise (specific), from the two premises a conclusion is then drawn.

3. Result and Discussion

a. Execution of the Death Penalty Against Narcotics Criminal Acts.

The death penalty in Indonesia is increasing every year. The application of the legal function in the death penalty symbolically answers the moral outrage caused by crime. In this way the law affirms and reorganizes the moral consensus that binds all members of society. The application of the death penalty is at least an effort to enforce the law in the context of fulfilling a sense of justice and preventing similar crimes. In its implementation in the field, several things need to be considered [4], including:

Threat Estimate

1. The existence of a person or group hired by both domestic and international drug networks to thwart executions
2. The existence of retaliatory actions carried out by the network of convicts against individuals and institutions of law enforcers involved in the execution;
3. Threats from NGOs demanding that the death penalty be abolished;
4. The information leaks regarding the execution to journalists who can provide information up to the international level.

Mode

1. Acts of sabotage, terror by the prisoners in the Nusakambangan Prison, especially the Iron Prison;
2. Demonstrations by students / mass organizations supporting human rights against the implementation of the death penalty;
3. Suspect Prisoners escape;
4. National and international mass media coverage which reports excessively about the execution

Between the relationship between law enforcement and society on the effectiveness of the law, the author argues that the law enforcement against narcotics to be effective is largely determined by two factors [5], namely:

a. Factors in the application of criminal sanctions.

Criminal witnesses must be able to function as a deterrence effect

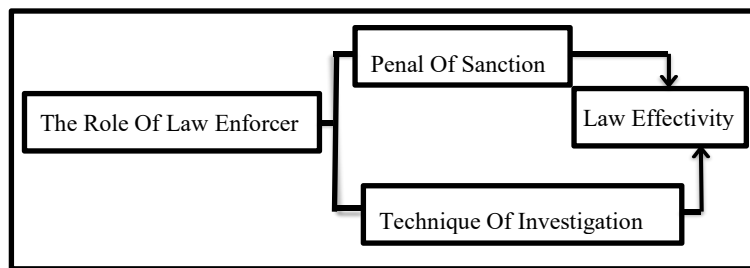
b. Use of appropriate and effective investigative techniques.

Based on empirical studies, the authors conducted research on the relationship between the role of law enforcement and community participation to find the relationship with the effectiveness of the law. Several factors found in this study indicate that the variables that underlie the opinion of researchers in the framework that builds a law enforcement system in relation to the interests of social welfare and security interests, namely the role of law enforcement in creating legal effectiveness is essentially determined by two factors, namely the importance of criminal sanctions so that they can have a deterrent effect and the second factor is the use of appropriate investigative techniques, such as covert purchasing techniques, controlled delivery of narcotics, as illustrated in this diagram:

- b. Judges' Considerations in Imposing the Death Penalty on Narcotics Offenders as an Effort to Combat Narcotics Circulation.

Criminal penalties or criminal sanctions are a concrete form of consequence of the existence of legal norms. Acts that meet certain requirements under the law can be subject to sanctions, therefore criminal sanctions are usually things that are felt to be unpleasant or detrimental, especially for the person concerned. The imposition of a sentence or crime against a person by state power demands accountability or accountability. The death penalty is an extreme form of punishment with extreme consequences, namely if it is later found that the person is innocent, then it is too late to make corrections. It is not possible to return convicts who have been executed [6].

Indonesia is one of the countries that still persists in adopting the death penalty in its positive law. In the author's view, the death penalty is still needed for serious crimes perpetrators who meet certain criteria in accordance with the applicable positive law. Drug crimes, terrorism, premeditated murder and other serious crimes still deserve the death penalty. The execution is also carried out with the aim of preventing similar crimes, among others.



Although there are abolitionists who want the abolition of the death penalty, in fact the death penalty remains a positive law in Indonesia. With the enactment of laws and regulations related to the protection and promotion of human rights, the death penalty cannot be immediately abolished from Indonesia [7].

The development of the practice of implementing the death penalty, the government of President Joko Widodo has taken a firm policy against death row inmates, especially those related to drug cases. In 2015 alone, there have been executions of 14 (fourteen) people sentenced to death, 6 (six) people in the first stage consisting of 5 (five) foreigners and 1 (one) Indonesian citizen located on Nusa Kambangan Island and one in Boyolali, Central Java. and 8 second stage consisting of 7 (seven) foreigners and 1 (one) Indonesian citizen located on Nusa Kambangan Island, this firm stance will continue with the next execution plan as has been widely covered and announced through the mass media.

There are pros and cons regarding the application of the death penalty, both at the national and international levels. At the level of debate on the death penalty, a number of experts in Indonesia have different opinions regarding the death penalty [8]. One of the criminal law experts who rejects the death penalty is Roeslan Saleh. In relation to the application of the death penalty, Roeslan Saleh once argued as follows:

Regarding the urgency of whether the threat of the death penalty still needs to be maintained in positive legislation in our country, considering that Indonesia is a country that has a Pancasila state basis. In this connection, it is known that the application of the death penalty is a last resort. This means that the last action is a situation in such a way and from the point of view of ethics and Pancasila the imposition of the death penalty can be justified.

The death penalty in Indonesia is still applied because the death penalty is not an unconstitutional act and violates human rights because it is legally formal based on the provisions contained in the International Covenant on Civil and Political Rights (ICCPR) which regulates the right to life (Right to Life). as well as national law according to the 1945 Constitution, article 9 and the explanation of the Constitutional Court's decision law No. 2-3/PUU-V/2007, the legality of the death penalty to be applied in Indonesia is getting stronger [9].

The threat of capital punishment against the perpetrator is deemed appropriate in terms of the purpose of punishment, if for reasons of human rights in the form of the right to life of a convicted person who for example has been proven to have committed a narcotic crime, the death penalty is questioned, then what about the right to life of the community against the consequences of the perpetrator's actions.

In positive Indonesian law, the use of the death penalty is still considered effective in preventing the occurrence of crimes that can be qualified as serious crimes or the most serious crimes. This can be seen by the inclusion of the death penalty as a type of capital punishment as one of the main types of punishment in Article 10 letter a of the Criminal Code. In addition to the Criminal Code, the death penalty can also be found in the formulation of other laws and regulations, including Law no. 5 of 1997 concerning psychotropics, Law no. 31 of 1999 jo. UU no. 20 of 2001 concerning the Eradication of Corruption Crimes, Law no. 26 of 2000 concerning the Human Rights Court, Law no. 15 of 2003 concerning the Crime of Terrorism, and Law Number 35 of 2009 concerning Narcotics [10].

The discussion of the death penalty in positive law in Indonesia will certainly not be separated from the role of the prosecutor as the executor of decisions that have permanent legal force, including in this case the execution of the implementation of the death penalty. To date, the number of death row inmates in narcotics cases is as follows:

- The number of death row inmates in narcotics cases is 64 people.
- The first stage of execution on January 18 2015 was 6 people.
- 8 people have been executed in phase II on 29 April 2015
- The rest have not been executed as many as 50 people.

As is well known, nowadays the problem related to the legislation on the implementation of the death penalty is the emergence of a new norm that changes the provisions for submitting a judicial review (PK) that can be carried out more than 1 (one) time based on the Constitutional Court Decision Number: 34/PUU-XI/2013 dated 6 March 2014 on the judicial review of Article 268 paragraph (3) of Law Number 8 of 1981 concerning Criminal Procedure Code. Although the application for PK again does not suspend or stop the implementation of the decision (see Article 268 paragraph (1) of the Criminal Procedure Code), the prosecutor's office feels the need to pay close attention to the existence of the Constitutional Court's decision,

especially what will be executed is a death penalty, so that readiness is needed from all aspects especially related legal aspects.

Then in its development, the Supreme Court issued a circular letter MA (SEMA) No. 7 of 2014 dated December 31, 2014, which states that PK can only be done once. The SEMA is based on the decision of the Constitutional Court number 34/PUU-XI/2013 dated March 6, 2014 only stating that Article 268 paragraph (3) of the Criminal Procedure Code is declared to have no binding legal force and is contrary to the Constitution of the Republic of Indonesia so that it does not necessarily abolish legal norms. which regulates the application for PK in article 24 paragraph (2) of Law no. 48 of 2009 concerning Judicial Power and Article 66 paragraph (1) of Law no. 14 of 1985 concerning the Supreme Court as amended by Law no. 5 of 2004 Jo. UU no. 3 of 2009 which states that PK can only be done once [11].

We view this circular as a wise step in overcoming the issue of the implementation of the death penalty, but considering the nature of the Supreme Court's circular, it is not binding on the Prosecutor's Office as the executor of court decisions. As of Friday, January 9 2015, there was a mutual agreement regarding the Submission of an Application for Judicial Review (PK) in accordance with the Constitutional Court's Decision No. 34/PUU-XI/2013 dated 06 March 2014, which was determined at a meeting at the meeting office at the office of the Ministry of Law and Human Rights which was signed by the Menkumham, Attorney General and Menkopolkam, and witnessed by representatives of Komnas HAM, Judges of the Supreme Court, Director General of Corrections, the Director General of General Legal Administration, the Director General of Prosecution of the Corruption Eradication Commission and the Head of Criminal Investigation Unit who agreed, among others:

1. For death row convicts whose request for clemency has been rejected by the President, executions will continue to be carried out in accordance with the prevailing laws and regulations.
2. Following up on the Constitutional Court's Decision Number: 34/PUU-XI/2013 dated March 6, 2014 an implementing regulation is still needed as soon as possible regarding the submission of a PK application regarding the meaning of Novum, time restrictions, and procedures for submitting a PK.
3. Before there are implementing provisions in point 2 the convict has not been able to apply for the next PK in accordance with the Law as amended by the decision of the Constitutional Court Number: 34/PUU-XI/2013 dated 06 March 2014 [12].

Whereas in the execution of the death penalty, I realize that there are pros and cons, but I need to say that every death convict has gone through a long process of handling cases through public trials and accompanied by legal counsel, so that the legal process and the sentencing of the convicts are in accordance with the provisions of the law. the provisions of laws and regulations and the legal rights of death row inmates have been fully granted.

Indonesia is currently in a state of So that the execution of drug dealers, makers, and intermediaries is considered capable of providing fear and a deterrent effect to drug offenders.

The enactment of the death penalty in Indonesia is expected to hinder the circulation of narcotics which later is expected to help the growth of the country's

economic development, so that the worst impact that is greatly feared is that future generations of young people who will be responsible for running the wheels of government and the country's economy will not be poisoned by prohibited items that we call narcotics, and other dangerous substances.

The death penalty is still necessary because it can prevent others from committing similar crimes, but its application must be very selective. If the certainty about the death penalty is complete, the execution must be carried out immediately because the long waiting period will burden the convict [13].

The judge's considerations in imposing the death penalty on narcotics criminals as an effort to combat narcotics trafficking are:

- a. the nature of narcotics crime itself which is an extraordinary crime because it can not only pose a danger to the perpetrators of abuse, but more than that it can be the cause of other dangerous crimes, such as violent theft, murder, rape and others.
- b. Where narcotics are very dangerous substances, especially Narcotics Group I in the form of methamphetamine in very large quantities, reaching 1,104 (one thousand one hundred and four) grams, where previously the defendant had 8 (eight) times successfully imported into the State of Indonesia, which is very reasonably suspected that narcotics This has been circulating in Indonesia which is likely to have poisoned the younger generation of Indonesia and it can threaten the safety of the Indonesian nation and state as a whole.
- c. Narcotics crime is a transnational crime and has become an agreement between countries in the world to make maximum efforts to eradicate narcotics heavy trafficking networks as stated in the United Nations Convention on the Eradication of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (United Nations Convention Against Traffic Narcotic Drugs and Psychotropic Substances). ratified by the Indonesian state through Law Number 7 of 1997, therefore Indonesia as one of the countries supporting the International Convention must seriously try to eradicate the international illicit trafficking of narcotics.
- d. The act of importing narcotics into the Customs area of the Republic of Indonesia was carried out by the defendant as a livelihood and most of the income earned by the defendant from the act based on the defendant's statement was used by the defendant to indulge and gamble [14].

4. Conclusion

The execution of the death penalty against the perpetrators of narcotic crime are: Pre-execution stage (h-1) early detection, eliciting and fundraising activities in order to collect information related to the development of the security and social security situation as well as the nature of threats that have the potential to hinder or thwart the execution of the execution, especially against parties who are against the execution and radical groups, survey the locations to be used as execution locations, checking and determining the main and alternative routes as well as checking the readiness of implementation, the execution team carried out execution training in accordance with the stages of execution as stipulated in the National Police Chief Regulation Number Perkap 12 of 2010 concerning Procedures for the Implementation of the Death Penalty; Execution stage (H) The activities carried out are in the form of carrying out executions of death row inmates as well as securing the execution and delivery of bodies to a

predetermined location, and ensuring that the execution procedure is in accordance with the National Police Chief Regulation number 12 of 2010 concerning procedures for the implementation of the death penalty; Post-execution or consolidation stage (h+1).

The activities carried out were to maintain a conducive national security and security situation, to prevent retaliation from parties who were dissatisfied with the execution of the executor, to consolidate personnel and equipment used in the operation, as well as to carry out the operation as a whole. Broadly speaking, detection and raising activities are carried out for potential disturbances to the public order after the execution. The judge's considerations in imposing the death penalty on narcotics criminals as an effort to combat narcotics trafficking are: the nature of narcotics crime itself which is an extraordinary crime because it can not only pose a danger to the perpetrators of abuse, but more than that it can be the cause of other dangerous crimes, such as violent theft, murder, rape and others. Where narcotics are very dangerous substances, especially Narcotics Group I in the form of methamphetamine in very large quantities, reaching 1,104 (one thousand one hundred and four) grams, where previously the defendant had 8 (eight) times successfully imported into the State of Indonesia, which is very reasonably suspected that narcotics.

This has been circulating in Indonesia which is likely to have poisoned the younger generation of Indonesia and it can threaten the safety of the Indonesian nation and state as a whole. Narcotics crime is a transnational crime and has become an agreement between countries in the world to make maximum efforts to eradicate narcotics heavy trafficking networks as stated in the United Nations Convention on the Eradication of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (United Nations Convention Against Traffic Narcotic Drugs and Psychotropic Substances), ratified by the Indonesian state through Law Number 7 of 1997, therefore Indonesia as one of the countries supporting the International Convention must seriously try to eradicate the international illicit trafficking of narcotics. The act of importing narcotics into the Customs area of the Republic of Indonesia was carried out by the defendant as a livelihood and most of the income earned by the defendant from the act based on the defendant's statement was used by the defendant to indulge and gamble.

The logical consequences of the conclusions obtained are as follows: of than of 2006 by the National Police. , but it is much more important to respect the sense of justice and human rights as victims of narcotics abuse and illicit trafficking. The imposition of the death penalty in Indonesia is not a violation of laws and regulations where the judge in imposing the death penalty must be based on various aspects of consideration, so that the execution of drug dealers, makers, and intermediaries has implications for providing fear and a deterrent effect by a reduction in criminal acts in society, especially for the perpetrators of drug crime cases.

Based on the results of the discussion described above, it can be detailed some suggestions as follows: The death penalty should be a more serious concern in the future so that a fair and responsible law enforcement system and process needs to be improved in order to reduce errors in the application of court verdicts. The legal process to arrive at the execution of the death penalty is very long and long, finally the convict will experience great suffering and mental shock, both physically and morally and mentally. This can disrupt the continuity of life in prisons so that there will be potential disturbances in security and order in prisons, so that in the future the Draft Criminal Code can explicitly contain the time of execution after the decision has permanent legal force.

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