HAM AND ISLAMIC LAW: DEATH PENALTY ON THE CRIME OF NARCOTICS ABUSE

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HAM AND ISLAMIC LAW: DEATH PENALTY ON THE CRIME OF NARCOTICS ABUSE

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Abstract: *This study aims to examine the death penalty in the crime of narcotics abuse according to the views of human rights and Islamic law.The research method is descriptive analysis which leads to juridical normative research. Sources of data used are primary secondary legal matrials, namely the Koran and laws and secondary lawa namely in the form of books and scientific journals. The results of the study show that the death penalty for convicted persons in the criminal case of narcotics abuse in the view of human rights refers to article 1 paragraph 2 of Law No.39 of 1999 concerning Human Rights that narcotics convicts cannot fulfill their obligations as stated in article 1 paragraph 1 the law, namely violating the right to life of the general public which is protected by law.So that convicted narcotics can be sentenced to death because they are deemed not entitled to their human rights, namely the right to life. In Islamic law, convicted of narcotics abuse crime can be categorized as having committed destruction and injustice in this world.*

Keywords: *Death Penalty, Narcotics, Human Rights, Islamic Law*

Introduction

In statutory regulations every crime that is subject to criminal sanctions (nestapa) according to Article 10 of the Criminal Code, the criminal threat is divided into two parts, namely the Basic Crime which contains the Death Penalty, the Imprisonment Penalty, the Imprisonment and the Fines and Additional Penalties in the form of Revocation of several rights, Confiscation of goods -certain goods, Announcement of the judge's decision.

The determination of criminal sanctions theoretically begins with the stipulation of acts that are prohibited because they are considered detrimental to legal interests or criminalization. If the criminalization process for these acts has been completed, the formation of the law is then exposed to a number of alternative protections to protect those regulated legal interests through criminal sanctions that are threatened against the violator.

The death penalty is one of the most controversial types of criminal law enforcement in the world. From the Babylonian era to the present, this punishment is still used as a sanction for those who are accused / proven to have committed a crime. There are no definite records that state the initial use of the death penalty (Zaidan, 2015).

In regulations or laws in Indonesia, it is quite clear that these drugs can only be used legally in terms of treatment and / or scientific development. However, the fact is there are many narcotics abuse in society. Narcotics abuse has a very detrimental effect on the human body when consumed, even resulting in death. Not to mention the various risks of transmission of diseases such as HIV / AIDS which are caused by the use of syringes or needles that are carried out alternately between users. Efforts to eradicate drug crimes introduced Law no. 35 of 2009 on Narcotics.

Literature Review

Narcotics according to Article 1 number 1 of Law Number 35 of 2009 concerning Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semisynthetic, which can cause a decrease or change in consciousness, loss of taste, reduce to reduce to relieve pain , and may cause dependence, which are differentiated into groups as attached in this Law.

The death penalty is the heaviest punishment that can be imposed by the court, namely by taking the life of a person to death (Hamzah, 1986). Acts or criminal acts that are punishable by death penalty by the Criminal Code, among others: Article 104, Article 111 paragraph (2), Article 124 paragraph (3), Article 140 paragraph (3), Article 340, Article 365 paragraph (4) , Article 368, Article 444 KUHP, Article 479 K paragraph (2) and Article 479 o paragraph (2). Then outside the Criminal Code, namely: a) Law Number 5 Year 1997 concerning Psychotropics Article 59 paragraph (2); b) Article 36 of Law Number 26 Year 2000 concerning Human Rights Courts; c) Article 2 paragraph (2) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes; d) Article 6 of Law Number 15 of 2003 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism; e) Law Number 35 of 2009 concerning Narcotics: Article 113 paragraph (2), Article 114 paragraph (2), Article 118 paragraph (2), Article 119 paragraph (2), Article 121 paragraph (2), Article 144 paragraph (2) (Bangun, 2014).

Human rights are terminologically defined as basic rights or basic rights that humans are born with, as gifts or gifts from Allah the Almighty (Hadjon, 1987). The definition of human rights according to Article 1 paragraph (1) of Law Number 39 Year 1999 concerning Human Rights is: "a set of rights inherent in the nature of human existence as the Almighty God and is a gift that must be respected, upheld and protected by the state. law, government, and everyone for the honor and protection of human dignity ".

Human rights exist not because they are given by society, or by virtue of the state, but based on their dignity as a human being (Suseno, 2001). Human rights are rights that humans have simply because they are human. However, the substance of rights which is the truth that is fought for by each individual or certain group will not differ much, even have very great similarities. Differences in understanding about rights cannot be separated from backgrounds and perspectives on truth (Hamid, 2003).

The definition of Islamic law is a system of rules based on the revelations of Allah SWT and the Sunnah of the Prophet. Shari'a according to the term means the laws commanded by Allah SWT for His people brought by a Prophet, both those related to belief (aqidah) and those related to amaliyah. Human rights in Islam are actually not strange because the discourse on human rights in Islam is earlier than other concepts or teachings. Islamic teachings on human rights can be found in the main source of Islamic teachings, namely the Qur'an and Hadith which are the source of normative teachings. The milestone in the history of taking Islamic rights towards human rights is the declaration of the Medina Charter which was followed by the Cairo Declaration (Rosyada, dkk., 2010).

Method

The type of legal research used is normative legal research supported by data obtained through library research (library research). Library research means research using written documents as data and data sources used in this study include primary legal materials and secondary legal materials. . Primary legal materials are legal materials that are binding or that make people law-abiding, including legal products that are subject to study and legal products as tools of criticism. The primary legal materials in this research are Al Quran and Hadiths and

statutory regulations, namely Law No. 39 of 1999 on Human Rights. Meanwhile, secondary legal materials are in the form of books and legal journals that are relevant to the research theme.

Result and Discussion

1. Narcotics Abuse

Narcotics comes from the Greek language, namely narcotics or narcotics which means to be drugged so that you don't feel anything. Narcotics comes from the word narcotic, which means something that can relieve pain and can cause a stupor (blank) effect, anesthetic substances and anesthetics. So narcotics are drugs or substances that can calm nerves, cause unconsciousness, or anesthetize, relieve pain. and sick, can cause drowsiness or stimulation, can cause stupor effect, and can cause addiction or addiction, and which is determined by the Minister of Health as Narcotics (Mardani, 2008).

The Narcotics Law only prohibits the use of narcotics not in accordance with the provisions of the law. In practice, narcotics are often misused not for the benefit of medicine and science, but are used to damage the user physically and mentally. Among them the effects of narcotics abuse are, the brain and nerves are forced to work beyond their true ability in abnormal conditions, the blood circulation and heart are due to contamination of the blood by substances that have a very strong effect, as a result the heart is stimulated to work outside. obligation, breathing will not work properly and very tired quickly, using more than the dose that the body can tolerate will bring terrible death, dependence both spiritually and physically until serious conditions arise due to withdrawal (Media.neliti, 2021).

2. Death Penalty for Narcotics Abuse from a Human Rights View

In state life, one thing that must be upheld is the life of law in society. This view is believed to be not only due to the adoption of the rule of law, but to look more critically at trends that occur in the life of the Indonesian nation. Therefore, the existence (existence) of law is universal. Law cannot be separated from society, both of them have a reciprocal relationship (Prasetiyo & Barkatullah).

Basically, criminal law focuses on regulating the problem of crimes that occur in society. It is hoped that the existence of the criminal law will be a guard so that people avoid crime.

Lomrosso and Garopalo, said that capital punishment is an absolute tool that must be in society to eliminate individuals who cannot be corrected again (Saleh, 1978). The argument about the death penalty has been widely put forward by experts, intensively put forward by the Government and the National Narcotics Agency, that capital punishment has a deterrent power against criminals, and is urgently needed to prevent the rampant drug crime, which has brought a large number of victims and endangers the future of the nation Indonesia.

In Indonesia, Human Rights (HAM) are regulated in Law Number 39 of 1999 concerning Human Rights. In article 1 of the law, it is explained that human rights are a set of rights inherent in the nature and existence of humans as creatures God Almighty and is His gift that must be respected, upheld and protected by the state, law, government and everyone for the honor and protection of human dignity (Rosyada dkk, 2010).

Then in the second Amendment to the 1945 Constitution, Article 28A clearly states that, "Everyone has the right to live and has the right to maintain his life and life" next in Article 28i of the 1945 Constitution states, "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 are human rights that cannot be reduced under any circumstances."

So based on article 1 paragraph 2 of Law No. 39 of 1999 concerning Human Rights, convicted narcotics cannot fulfill their obligations as stated in article 1 paragraph 1 of the law,

namely violating the right to life of the general public which is protected by law. So that convicted narcotics can be sentenced to death because they are deemed not entitled to their human rights, namely the right to life.

In the 1945 Constitution as the highest law it states that the right to life cannot be taken away for any reason, but in positive law Indonesia uses the legal principle of lex specialist derogate lex generalis which means that specific provisions override general provisions. So that the position of the 1945 Constitution as a general provision is then regulated in detail and clearly in a special provision, namely the Human Rights Law. So the provisions regarding the protection of human rights are regulated in the human rights law (https://www.google.com/search?q, 2021).

3. Death Penalty for Abuse of Narcotics According to Islamic Law

In Islamic teachings, it is basically aimed for the good or benefit of mankind in this world. Islam always warns its people to avoid all forms of action, behavior that is prohibited and brings harm. Like consuming narcotics this is a form of harm, where the impact of narcotics is very dangerous to human health, it can even lead to death if consumed continuously ".

In Islam, provisions related to the death penalty have been regulated, namely in the Al-Qur'an and Hadith:

a. In the Al-Qur'an

1) In Surah Al-Baqarah: 178 which means: "O you who believe, qishaash is obliged upon you regarding those who were killed; free people with free people, servants with servants, and women with women. So whoever gets an forgiveness from his brother, let (who forgives) follow in a good way, and let (who is forgiven) pay (diat) to those who give forgiveness in a good way (too). this is a relief from your Lord ".
2) Surah Al-Baqarah: 179 which means: "and in that qishaash there is (guarantee of) life for you, O wise people, so that you are cautious."
3) Surah al-Maidah: 33 which means: "Verily, the retribution against those who fight against Allah and His Messenger and cause destruction on the face of the earth, only they are killed or crucified, or mutilated their hands and feet in return, or banished from the country. (his residence). that is (as) an insult to them in the world, and in the hereafter they will be subjected to a great torment, "
4) Al-Maidah: 45 which means: "and We have decreed against them in it (At Torah) that the soul (is rewarded) with the soul, eyes with eyes, nose with nose, ears with ears, teeth with teeth, and wounds. (also) there is a kisas. Whoever releases (kisas rights), then releases that right (becomes) a sin redeemer for him. Whoever does not decide things according to what Allah sent down, Then they are the wrongdoers "

b. The hadith of the Prophet Muhammad (https://media.neliti.com/media/publications, 2021).

1) HR. Al-Bukhari and Muslim Meaning: From ibn Mas'ud ra said: Rasulullah saw, said "it is not permissible for the blood (to kill) of a Muslim who testifies that there is no god but Allah and I am the messenger of Allah, except for one of three reasons: someone who have been married committing adultery, killing other people, leaving their religion and separating themselves from the congregation ".
2) HR. Abu Dawud and Tirmidhi Meaning: Rasulullah SAW said: "whoever has his family killed, then he may choose the best of two considerations, namely between taking diyat or forgiving".
3) Yusuf Al Qardawi gave a fatwa that the government (state) must fight narcotcs and impose very harsh penalties on those who cultivate and distribute them. With the argument that in

essence narcotics traffickers have killed nations in order to rake in wealth. They deserve qisash punishment (https://www.google.com/search?q, 2021).

The execution of the death penalty for narcotics offenders is in accordance with Islamic teachings, this is because consuming narcotics does not bring good (benefit) but will be detrimental to the person consuming it. Whereas in Islamic teachings it prioritizes the benefit of its people, in other words, Islamic teachings aim to anticipate their followers harming or harming themselves and others. Some of the victims of drug users have died. Likewise, narcotics dealers and dealers have indirectly killed other people, so they are also subject to the same actions, namely if they kill they must also be killed, this is known as qishash *(Ibid)*.

Conclusion

The impact of consuming narcotics is clearly very devastating, damage to organs and even death, the perpetrator can be categorized as having done damage in this world, especially to humans

Based on ticle 1 paragraph 2 of the Human Rights Law, convicted narcotics cannot fulfill their obligations as stated in Article 1 paragraph 1 of the law, namely violating the right to life of the general public which is protected by law. So that convicted narcotics can be sentenced to death because they are considered not entitled to their human rights, namely the right to life. In Islam consuming narcotics does not bring good (benefit), even detrimental to the person who consumes it, also to narcotics dealers and dealers indirectly, also has killed other people, then they are also subject to the same act, namely if they kill they must also be killed. this is known as qishash.

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