

**LEMBAR**  
**HASIL PENILAIAN SEJAWAT SEBIDANG ATAU PEER REVIEW**  
**KARYA ILMIAH : JURNAL ILMIAH**

Penulis Jurnal Ilmiah : Dr. Hartanto, SE., SH., M.Hum

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Status Pengusul : Dosen Tetap Yayanan

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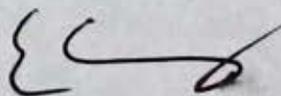
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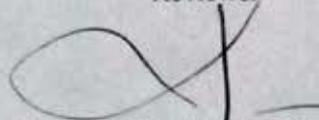
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## THE EFFECTIVENESS OF THE DEATH PENALTY AS A PREVENTIVE ACTION IN SUPPRESSING THE NUMBER OF NARCOTICS CRIMES IN INDONESIA

Hartanto, Bella Setia Ningrum Amin

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*The application of the death penalty for perpetrators of crimes is an absorbing topic to talk about because reaps the pros and cons. In Indonesia, despite these pros and cons, the death penalty is still maintained, only imposed on perpetrators of crimes, categorized as extraordinary crimes, one of which is narcotics crime. The government's reason for implementing the death penalty is none other than because the death penalty is considered to have a deterrent effect, so that it will be able to reduce the number of narcotics crime in Indonesia. Therefore, there are several things that we need to review, including, how is the regulation of death penalty for narcotics criminal offenders based on Law Number 35 of 2009, on Narcotics? How is implementation of the death penalty for narcotics criminal offenders in Indonesia? Has the application of death penalty for narcotics offenders proven effective in reducing the number of narcotics crime in Indonesia? It is essential to answer these questions to increase knowledge for readers and contribute to formulating a more effective and efficient strategy in the fight against narcotics crime. The study conducted through normative legal research, and the data in this study were secondary data, which consist of the primary law materials and the secondary law materials. The results of this study show us that Indonesia has declared narcotics crimes as a high-risk crime so that elements concerning narcotics crimes and sanctions are specifically regulated in Law No. 35 of 2009 on Narcotics. However, the number of narcotics crime in Indonesia remains high, even though the death penalty has been repeatedly imposed on the perpetrators of narcotics crimes, which proves that the death penalty is not effective as a preventive action in combating narcotics crimes in Indonesia*

**Keywords:** death penalty, capital punishment, preventive action, narcotics crimes, extraordinary crimes

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### 1. Introduction

The death penalty, or capital punishment, is the oldest and the cruelest form of punishment in the criminal system. This is because if the death penalty is imposed, the life of a person, who violates the provisions of the law, will be stolen. The death penalty has been used for a wide variety of offenses since ancient times [1]. The main idea of the death penalty is that an individual, who has unlawfully killed others, deserves to lose his/her life also. This idea is popularly known as 'eye for an eye' [2]. Most countries in the world impose the death penalty to punish murder or war-related crimes and in some countries, the death penalty is used for non-violent crimes, such as in Malaysia, Indonesia, and Vietnam, where drug-related crimes are punishable with death [1]. However, more than two-thirds of the countries in this world have abolished the death penalty either in practice or in law [1], while at least 35 countries retain the death penalty for drug offenses [3]. This trend can lead to universal abolition, which follows the Universal Declaration of Human Rights that states "everyone has the right to life, liberty, and security of person [4].

Indonesia remains a staunch retentionist of the death penalty. This practice originates even before independence and has become an integral part of customary law in several regions. Based on the history of Indonesian law during the Majapahit Empire (13th to 16th centuries), besides the severance of limb, fines, and compensation, the death penalty was categorized as a basic punishment [5]. In Aceh, if a wife commits adultery, she should be sentenced to death or executed. In Minangkabau, there lived a retaliation law that stated whoever kills will be killed. In Southeast Kalimantan, if someone makes false oaths (perjury) would be drowned to death and so on [6]. After the Indonesian Independence in 1945, the death penalty began to be regulated in written instructions. In the Code of Criminal Law (Penal Code), several actions are punishable with the death penalty namely:

1. Treason against the President or Vice President (Article 104).
2. Colluding with foreign states, a king or community with the intent to induce them to conduct hostilities or war against the state, or reinforce them in the intention, made up thereto, or assisting them in their preparations, so the hostilities are committed or the war breaks out (Article 111 paragraph 2).
3. In a war, deliberately helping the enemy (Article 124 paragraph 3).

4. Treason against the life or the liberty of a ruling king or another head of a friendly state, resulting in death (Article 140 paragraph 3).

5. Killing or physically injuring his/her adversary in a duel, if the conditions have not been previously arranged, if the duel does not take place in the presence of witnesses from both sides, and if the perpetrator intentionally detriments the adversary; commits any act of deceit or deviates from conditions (Article 185).

6. Premeditated murder (Article 340).

7. Violent theft, resulting in death (Article 365 paragraph 4).

8. Violent extortion, resulting in death (Article 368 paragraph 2).

9. Coast-piracy, river-piracy, and beach-piracy, resulting in death (Article 444).

10. Intentionally destroy, make it unusable, or damage buildings for the security of air traffic, resulting in the death of a person or the destruction of an aircraft (Article 478 k paragraph 2 and Article 479 o paragraph 2).

The death penalty is not prohibited under customary international law, but its use is limited in significant ways [7]. The death penalty has been only imposed to combat the most serious crimes categories, such as terrorism, corruption, and drug-related crimes. It is claimed, that the provision of the death penalty in several laws and regulations in Indonesia is a form of state responsibility to protect Indonesia's future generations [8]. The government believes that the death penalty will work as a deterrent, so that it will reduce the crime rate. Therefore, apart from being regulated in the Code of Criminal Law (Penal Code), there are provisions, related to the death penalty or capital punishment in several articles outside the Penal Code as stipulated in Law Number 35 of 2009 on Narcotics.

Based on the description above, hence we ask three questions. First, how is the regulation of the death penalty for narcotics criminal offenders based on Law Number 35 of 2009 on Narcotics? Second, how is the implementation of the death penalty for narcotics criminal offenders in Indonesia? Third, how is the effectiveness of the death penalty as a preventive action in suppressing the number of narcotics crimes in Indonesia? The answers to these questions will show how effective the death penalty as a preventive action is in reducing the number of narcotics crimes in Indonesia.

## 2. Literature Review

### 1. Death Penalty

At least, three countries declare to abolish the death penalty in every year [9].

Two aspects of the most serious crimes or the extraordinary crimes are first, the crime shall be planned, systematic, and organized. Second, the victim of the crime shall be huge for several selected groups [10]. Crimes in extraordinary criteria require extraordinary effort in combating them [11].

### 2. Narcotics Crimes

Narcotics crimes are the most severe transnational organized crimes, faced by South-East Asian countries [12], because Northern Thailand, Eastern Myanmar, and Laos (The Golden Triangle) are the leading producing regions of narcotics in the world [13]. Drugs have effects both on mental and physical health [14]. It can seriously damage states and their societies [14]. In Indonesia, narcotics abuse problems began to arise ±26 years ago [15]. Nowadays, narcotics abuse in Indonesia has been reported almost every day by the medias both in papers or electronics [16]. The government made various efforts to combat narcotics [16] both domestically through policies and legislations, and also internationally [17].

## 3. The aim and objectives of the study

This study aims to illustrate to the general public, criminal law academics, criminal law enforcement, and the government that the application of the death penalty in narcotics cases is still carried out in Indonesia, while many countries have opposed the death penalty. The international community has considered the death penalty ineffective in addressing various crimes, but based on our hypothesis, in Indonesia, it is necessary to process to achieve the same understanding with that view, so that it takes a target or a situation, where the death penalty is abolished.

Thus, there are several queries that need to discuss:

1. How is the regulation of the death penalty for narcotics criminal offenders based on Law Number 35 of 2009 on Narcotics?

2. How is the implementation of the death penalty for narcotics criminal offenders in Indonesia?

3. How is the effectiveness of the death penalty as a preventive action in suppressing the number of narcotics crimes in Indonesia?

## 4. Methods

This study was conducted using normative methods, which use the principle of law system as standards [18]. The data in this research were secondary data, including primary law materials and the

secondary law materials. The primary law materials consisted of the 1945 Constitution of the Republic of Indonesia, the Code of Criminal Law (Penal Code), and legislations in the field of Human Rights. The secondary law materials consisted of researches, books, and articles that support the data [19]. Both the primary law materials and secondary law materials have an essential role in this research, because the problems can be answered by focusing on analyzing primary materials and secondary materials [20].

## 5. Research results and discussion

### 5. 1. The Regulation of the Death Penalty for Narcotics Criminal Offenders Based On Law Number 35 Of 2009 On Narcotics

Indonesia is strategically located at the crossroads of global shipping lanes. This strategic position supports people from different parts of the world to visit Indonesia and this phenomenon is a result of globalization, which has influenced everything [21]. Moreover, the advancement of human life has succeeded in developing technology and means of transportation, so that the movement from one place to another is no longer limited by distance and time. This convenience has had many impacts on Indonesia, both positive and negative. On the positive side, we can feel it in various fields of life, including the creation of enormous opportunities for entrepreneurs to reach international markets, increasing jobs, which ultimately reduce unemployment, increasing the state income from tourism, and the ease of obtaining foreign products. Besides, we should also pay attention to the negative impact of the ease of movement of people from one place to another, one of which is the increasing number of crimes, such as human smuggling and illicit narcotics trafficking, whose cases are always interesting to discuss.

As stated earlier, Indonesia's strategic position does not only bring positive impacts, but its massive areas also expose Indonesia to various crimes, which mostly involve transnational crimes, such as human trafficking and narcotics trafficking [22]. Indonesia has been a consumer country and narcotics distribution country for years, even the largest drug market in Asia [23]. Nowadays, Indonesia is no longer only a consumer country and a place for narcotics distribution, but has also turned into a place for the production of these illicit goods. The success of the National Narcotics Agency (BNN) and the Police in uncovering the existence of illegal laboratories (clandestine laboratory) [24] both on a large scale (using sophisticated equipment and large production capacity) and small scale (using simple equipment and law production capacity) proves that Indonesia has become a country, where narcotics are produced. In the production process, it is suspected, that there is the involvement of an international organized crime network, this is because several foreign nationals were met among the laboratories. Also, there are law enforcement officials, who are involved in the distribution of narcotics, either directly or indirectly, even as users [25].

Narcotics crime rates have increased since 2006, based on data from the National Narcotics Agency, there is an increase in the number of cases and suspects for the circulation of methamphetamine, which reached 10.741 cases and 10.183 suspects [25]. In terms of circulation itself, the distribution process is usually through couriers or foreign tourists, and narcotics are tucked away or smuggled into other media, such as imported goods, and even tucked into parts of the human body by taking advantage of the weaker quality of territorial control [26].

Furthermore, narcotics crimes are very dangerous for the country because of their unique characteristics and are neatly planned as the results of a study, which states that narcotics crime is a type of organized crime, especially in Indonesia, has the following characteristics [25]:

a. Organized and sustainable. The distributors, dealers, and sellers have their respective roles with disconnected networks and do not know each other on a national and even an international scale.

b. Involves corruption to maintain immunity from the law. It can not be denied, that narcotics crimes often occur concurrently with other crimes, such as corruption, bribery, and murder [27].

c. Serving all the demands of narcotics for both men and women, the elderly or the young generations.

d. Their membership is confidential. The dealers never know, who the sponsors are, and this character complicates tracking the sponsors by the legal apparatus.

e. They have their own rules to maintain confidentiality to trick the legal apparatus.

f. Using violence and threats. The drug dealers will not hesitate to directly use violence and intimidate someone in competing for sales territory.

g. Well planned means that the perpetrators have a plan, related to how they carry out their operations, the techniques, and tactics.

h. Planned with a specialized division of tasks, sponsors, distributors, couriers, and dealers have expertise in running drug trafficking. Even in the modus operandi of drug production, the owner of the funds and the people, involved in the production process, such as ingredients mixers, raw material suppliers, packers, and goods distributor couriers, have a pattern that is increasingly difficult for field officers to anticipate, which makes it more difficult to disclose and eradicate narcotics crime.

Seeing how serious and dangerous the impact of narcotics crime is, it is very appropriate to feel that the Indonesian government determines narcotics crime as a crime so that extraordinary efforts are

needed. The President of Indonesia, Joko Widodo, himself stated that Indonesia is declaring a “war on drugs” now [28]. For the handling of narcotics crimes to be realized, the Indonesian government has formulated a legal product that is specific to the crime of narcotics. In line with the three well-known terms in the Principle of Legality, namely *nulla poena sine lege*, which means there is no crime without criminal provisions in the law. *Nulla poena sine crimine*, which means there is no crime without a criminal act, and *nullum crimen sine poena legali*, which means there is no criminal act without any penalties based on law, all prohibited acts and penalties in case of violation must be regulated in the Constitution. Therefore, the imposition of the death penalty and what kind of action is punished must be met in the provisions of the legislation. In Indonesia, the crime of narcotics is regulated in a special law, namely Law Number 35 of 2009 on Narcotics.

Illicit drugs can lead to addiction and bring calamity to any country and people [29], the quick and unnatural death. Therefore, it is also explained in Law Number 35 of 2009 on Narcotics that ‘*whereas narcotics in one side is a medicine or a beneficial item in treatment or health care and science development sector and on the other side may also emerge a very destructive dependence in the case being abused or used without tight and careful control and supervision*’.

To date, the production and circulation of narcotics are massively active in our society. It seems like the role of mafias is difficult to be stopped. They have influenced law enforcers to become users even dealers in Indonesia and several countries even though the entire nation is combating this crime. People hear statements about commitment building in combating narcotics in Indonesia and around the world oftentimes [30]. Indonesia, as previously mentioned, implements the death penalty for narcotics crime as regulated in various articles in Law Number 35 of 2009 on Narcotics. Narcotics in Indonesia are classified into three categories (Article 6 paragraph 1), namely:

- a) Category I (e.g., marijuana, heroin, and cocaine).
- b) Category II (e.g., racemethorphan and morpheridine).
- c) Category III (e.g., codeine and propiram).

We should understand the types of acts, prohibited by this law. Criminal provisions in Law No. 35 of 2009 are formulated in Chapter XV of the Criminal Provisions Article 111 to Article 148. There are 4 (four) categories of acts against the law that are punishable with criminal sanctions, namely [31, p. 256]:

1. Category I is the actions to plant, maintain, possess, store, control, or provide narcotics and narcotics precursor;
2. Category II is the actions to produce, import, export, or distribute narcotics and narcotics precursor;
3. Category III is the actions of offering for sale, sell, purchase and receive, being an intermediary, intrading, exchanging or handing over narcotics and narcotics precursor;
4. Category IV is the actions to bring, dispatch, transport, or transit narcotics and narcotics precursor.

In Indonesia, drug users are categorized as *Penyalahguna* (illegal drug user), *Korban Penyalahguna* (who consumes drugs under duress), and *Pecandu* (a person, who is addicted to drugs both psychologically and physically) [28]. Then, the types of sanction are regulated in Law No. 35 of 2009 on Narcotics, namely [30]:

1. Those, who are narcotics addicts and victims of narcotics, shall be required to go through medical and social rehabilitation.
2. Parents or guardians of a narcotics addict, who is not in the age of consent, which intentionally not reported, shall be punished with a maximum imprisonment of 6 (six) months or a maximum fine of Rp.1.000.000,00 (one million rupiahs).
3. Criminal acts, committed by corporations, are punishable by imprisonment and fines with a weight of 3 (three) times. Corporations may be subject to additional penalties in the form of revocation of business licenses and/or revocation of legal entity status (Article 130).
4. Any person, who intentionally not reported any criminal conduct, shall be punished with a maximum imprisonment of 1 (one) year or a maximum fine of Rp.50.000.000,00 (fifty million rupiahs).
5. The perpetrators of malicious attempts or conspiracy to commit narcotics crimes and Narcotic Precursors, referred to in Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117, Article 118, Article 119, Article 120, Article 121, Article 122, Article 123, Article 124, Article 125, Article 126, and Article 129, shall be sentenced to the same prison term, following the provisions as referred to in the Articles of such information (Article 132 paragraph 1). If the act as referred to in Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117, Article 118, Article 119, Article 120, Article 121, Article 122, Article 123, Article 124, Article 125, Article 126, and Article 129 shall be conducted in an organized manner, the imprisonment and the maximum fine is plus 1/3 (one-third) (Article 132 paragraph 2).
6. Anyone, who orders, gives, or promises something, provides opportunities, advocates, provides convenience, forces with threats, forces with acts of violence, commits a ruse, or persuades a child, who is not old enough to commit criminal offenses as referred to in the Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117, Article 118, Article 119, Article 120, Article 121,

Article 122, Article 123, Article 124, Article 125, Article 126 and Article 129, shall be punishable by the death penalty or imprisonment for life, or a minimum imprisonment of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least Rp2.000.000.000,00 (two billion rupiahs) and a maximum of Rp20.000.000.000,00 (twenty billion rupiahs) (Article 133 paragraph 1). And sentenced to a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years, and a fine of at least Rp1.000.000.000,00 (one billion rupiahs) and a maximum of Rp10.000.000.000,00 (ten billion rupiahs) (Article 133 paragraph 2).

7. Any narcotics addict, who is already in the age of consent and intentionally not reported herself/himself, shall be punished with a maximum imprisonment of 6 (six) months or a maximum fine of Rp.2.000.000,00 (two million rupiahs) (Article 134 paragraph 1). Later, paragraph 2 states that the family of a said narcotics addict, as referred to in paragraph (1), who intentionally not reported, shall be punished with a maximum imprisonment of 3 months or fined for a maximum of Rp.1.000.000,00 (one million rupiahs).

8. Any management of the Pharmaceutical Industry, which does not perform the obligation, referred to in Article 45, shall be punished with a minimum imprisonment of 1 (one) year and a maximum of 7 (seven) years and a minimum fine of Rp.40.000.000,00 (forty million rupiahs) and a maximum of Rp.400.000.000,00 (four hundred million rupiahs).

9. Deposit, pay or disburse, entrust, exchange, conceal or disguise, invest, keep, grant, inherit, and/or transfer of money, wealth, and items or assets either in form of movables or immovables, tangible or intangible, derived from the crime of narcotics and/or narcotics precursor, shall be punished with a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a minimum fine of Rp.1.000.000.000,00 (one billion rupiahs) and a maximum of Rp.10.000.000.000,00 ( ten billion rupiahs) (Article 137 letter a). (Letter b) One shall be punished with a maximum imprisonment of 3 (three) years and a maximum of 10 (ten) years and a minimum fine of Rp500.000.000,00 (five hundred million rupiahs) and a maximum of Rp5.000.000.000,00 (five billion rupiahs), if he/she does not know that the properties are the results of narcotics crimes and/or from narcotics percussion crimes.

10. Any person, who obscures or complicates the investigation and claim and examination of a criminal case of narcotics and/or of narcotics precursor before the court, shall be punished with a maximum imprisonment of 7 (seven) years and a fine the least Rp.500.000.000,00 (five hundred million rupiahs).

11. A ship captain or a pilot, who unlawfully not performed the clauses as referred to in Articles 27 or 28, shall be punished with a minimum imprisonment of 1 (one) year and a maximum of 10 (ten) years and a minimum penalty of Rp.100.000.000,00 (one hundred million rupiahs) and a maximum of Rp.1.000.000.000,00 (one billion rupiahs).

12. An investigator or a civil servant, who unlawfully not performed the clauses as referred to in Article 88 and Article 89, unlawfully not performed the provisions as referred to in Article 88 and Article 89, shall be punished with a minimum imprisonment of 1 (one) year and a maximum of 10 years (ten) years and a minimum fine of Rp100.000.000,00 (one hundred million rupiahs) and a maximum of Rp1.000.000.000,00 (one billion rupiahs) (Article 140 paragraph 1). Investigators of the National Police of the Republic of Indonesia and BNN investigators, who do not implement the clauses as referred to in Article 87, Article 89, Article 90, Article 91 paragraph (2) and paragraph (3), and Article 92 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), shall be punished as referred to in paragraph (1) (Article 140 paragraph 2).

13. A chief attorney of a district attorney office, which unlawfully not performed the clause as referred to in Article 91 paragraph 1, shall be punished with a minimum imprisonment of 1 (one) year and a maximum of 10 (ten) years and a minimum fine of Rp.100.000.000,00 (one hundred million rupiahs) and a maximum of Rp.1.000.000.000,00 (one billion rupiahs).

14. A laboratory personnel, who counterfeits the testing result or unlawfully not performed the obligation to report his/her testing result to the investigator or public prosecutor, shall be punished with a maximum imprisonment of 7 (seven) years and a maximum penalty of Rp.500.000.000,00 (five hundred million rupiahs).

15. Any witness, who provides fake information during the examination of a criminal case of narcotics or narcotics precursor before the court, shall be punished with a minimum imprisonment of 1 (one) year and a maximum of 10 (ten) years and a minimum fine of Rp.60.000.000,00 (sixty million rupiahs) and a maximum of Rp.600.000.000,00 (six hundred million rupiahs).

16. For any person, which during 3 (three) years period shall commit the repetitive crime as referred to in Articles 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127 paragraph (1), 128 paragraph (1), and 129, his/her maximum penalty shall be added to 1/3 (one-third).

17. A head of a hospital, public health center, clinic, state-owned storage facility for pharmaceutical preparation, and dispensary, circulated narcotics category II and III not for the interest of health service, shall be punished with a minimum imprisonment of 1 (one) year and a maximum of 10 (ten) years and a minimum fine of Rp.100.000.000,00 (one hundred million rupiahs) and a maximum of Rp.1.000.000.000,00 (one billion rupiahs).

18. A head of a science institution, who cultivates, keeps, purchases or controls a narcotics plant not for the interest of science development, shall be punished with a minimum imprisonment of 1 (one) year and a maximum of 10 (ten) years and a minimum fine of Rp.100.000.000,00 (one hundred million rupiahs) and a maximum of Rp.1.000.000.000,00 (one billion rupiahs).

19. A head of a certain pharmaceutical industry, who produces narcotics category I not for the interest of science development, shall be punished with a minimum imprisonment of 1 (one) year and a maximum of 10 (ten) years and a minimum fine of Rp.100.000.000,00 (one hundred million rupiahs) and maximum Rp.1.000.000.000,00 (one billion rupiahs).

20. A head of a pharmaceutical industry large trader, who circulates narcotics category I not for the interest of science development or circulates narcotics category II and III not for the interest of health service and/or not for the interest of science development, shall be punished with a minimum imprisonment of 1 (one) year and a maximum of 10 (ten) years and a minimum fine of Rp.100.000.000,00 (one hundred million rupiahs) and maximum Rp.1.000.000.000,00 (one billion rupiahs).

If we read and observe more about the provisions of the death penalty in Law No. 35 of 2009 on Narcotics, then we can conclude that the regulation of the death penalty is a criminal eradication, carried out based on the type, size, and amount of narcotics to cause a deterrent effect on perpetrators of the misuse and illicit circulation of narcotics.

The general regulation on the death penalty in Indonesia is found in the Indonesia Penal Code, the criminal type in article 10. According to article 10 Indonesian Criminal Code, criminal types are: a) Criminal Principal: 1) Death penalty, 2) Jail criminal, 3) Criminal confinement, 4) Criminal penalties (fines); and b) Additional criminal: 1) Revocation of certain rights, 2) Seizement of certain goods (Confiscation of certain items), 3) Announcement of Judge ruling [31, p. 256].

## 5. 2. The Implementation of the Death Penalty for Narcotics Criminal Offenders in Indonesia

There are a variety of methods on how the execution is carried out in the world, such as beheading, impalement, crucifixion, shooting, hanging, lethal injection, stoning and boiling in oil [32]. In Indonesia, the execution is carried out by a firing squad. Based on the provisions, stipulated in Article 11 of the Criminal Code, the death penalty is carried out by the *algojo* (executioner) in the hanger by entangling a rope, tied to the gallows on the convicted's neck, then dropping the board, on which the convict stands. Furthermore, the execution of the death penalty is amended by Law No.2/Pnps/1964, which states the death penalty is imposed in the general judicial environment or military judiciary and carried out by being shot to death. Procedures for the implementation of the death penalty in the judicial environment according to Law No.2/Pnps/1964, namely [33]:

a. If not determined otherwise by the Minister of Justice, the death penalty is carried out in the jurisdiction of the court that imposes the verdict in the first degree (Article 2 paragraph 1).

b. The Head of Regional Police where the court is located, after hearing the advice of the Attorney General/Attorney in charge for its implementation, determines the time and place of execution of the death penalty (Article 3 paragraph 1).

c. The chief of the Regional Police forms a Firing Squad of the Mobile Brigade, consisting of 1 (one) Bintara, 12 (twelve) Tamtama, and 1 (one) Perwira as the leader (Article 10 paragraph 1).

d. The convict is brought to the place of criminal execution with a sufficient police escort (Article 11 paragraph 1), can be accompanied by a spiritual nurse (Article 11 paragraph 2), dressed modestly and orderly (Article 11 paragraph 3).

e. Upon arrival at the place of execution of the death penalty, the commander of the guard closes the eyes of the convicted with a piece of cloth unless the convict does not want it (Article 11 paragraph 4).

f. The convict can undergo criminal proceedings by standing, sitting, or kneeling (Article 12 paragraph 1). If deemed necessary, the Attorney General/Attorney in charge can instruct to tie the convict's hands and feet or tie him/her to a backrest, specifically made for it (Article 12 paragraph 2).

g. Once the convict is ready to be shot, the firing squad with well-stocked weapons is heading to the designated place (Article 13 paragraph 1); the distance between the point, at where the convict and the Firing Squad are, must not exceed 10 meters and must not exceed 5 meters (Article 13 paragraph 2).

h. The Attorney General/Attorney in charge of its implementation instructs to begin the execution, when all preparations have been completed (Article 14 paragraph 1).

i. Using the sword as a gesture, the Firing Squad Commander gives instructions to prepare, then by moving his sword up, he instructs his squad to aim at the heart of the convict, and by quickly nudging his sword down, he commands to shoot (Article 14 paragraph 3).

j. If after the shooting, the convict still shows signs that he/she is not dead yet, then the Squad Commander immediately instructs the Petty Officer of the Firing Squad to do an end shot by pressing the barrel end of his weapon on the head of the convict directly above his ear (Article 14 paragraph 4).

k. To obtain certainty about the death of a convict, the help of a doctor can be requested (Article 14 paragraph 5).

1. The burial is handed over to the family or friends of the convicted unless it is in the public interest, so the Attorney General/Attorney in charge decided otherwise (Article 15 paragraph 1). The first batch execution of convicts since the moratorium was implemented in 2008 was conducted in January 2016. There were six convicts in this batch, five convicts were executed in Nusakambangan, Central Java, and another convict was executed in Boyolali, Central Java [8]. Then, four months later, on April 29, 2015, a phase two execution was carried out with the executed convicts Myuran Sukumaran and Andrew Chan (Australia), Martin Anderson, Raheem A Salami, Sylvester Obiekwe, and Okwudili Oyatanze (Nigeria), Rodrigo Gualarte (Brazil), and Zainal Abidin (Indonesia). A year later, on July 29, 2016, the third stage of executions of four narcotics convicts was faced by a firing squad. The four convicts executed were Freddy Budiman (Indonesia), Michael Titus Igweh (Nigeria), Humprey Ejike (Nigeria), and Seck Osmane (South Africa) [5].

An increasingly advanced civilization develops the thinking of legal experts by questioning whether reviewing the issue of the provision of the death penalty is more necessary than exploring a fair and accurate coping system [34].

### **5. 3. The Effectiveness of the Death Penalty as a Preventive Effort in Suppressing the Number of Narcotics Crimes in Indonesia**

The provision of the death penalty in Law No. 35 of 2009 is expected to reduce the number of narcotics crimes in Indonesia. The government and BNN also argued that the death penalty has a deterrent against perpetrators of crimes and is urgently needed to prevent the rampant drug crimes that have brought a large number of victims and endanger the future of the nation [35]. However, there is no stalwart evidence that the death penalty or capital punishment has a greater deterrent effect on crime than long terms of imprisonment [36, p. 427]. In fact, the death penalty was replaced with a whole life sentence or life imprisonment in Ukraine [37].

Based on the information of an expert, Jeffrey Fagan stated that the death penalty is not an effort that has a strong influence in preventing rampant narcotics crimes with the following information [37]:

1. There is no scientific evidence that shows that the death penalty successfully deters narcotics trafficking. Its circulation rate remains high even though more than one million people have been imprisoned for it. In countries that imposed the death penalty frequently, the circulation of narcotics remains high. Price is the most sensitive factor in this case; they have to take a very high risk, so that the price will be higher. On the other hand, in countries that have abolished the death penalty, the price is even higher.

2. In a study by the United Nations (UN Officer on Drugs and Crime) in 3 neighboring countries with very different narcotics consumption levels and execution policies, between 1999–2005, Indonesia executed 7 people, Singapore 106 people, and Malaysia 10 people. The study also showed that cocaine and heroin are more expensive in Indonesia than in Singapore and Malaysia. Supposedly, if the death penalty is the paramount factor, the opposite is true.

Similarly, according to a Trisakti University criminal law expert, Abdul Fickar Hadjar, the death penalty will not be effective for prosecution because it does not discourage the perpetrators. Although executions have been carried out several times, in reality, the rate of drug abuse and trafficking from year to year always increases. Based on data from the National Narcotics Agency (BNN) in 2018, the prevalence of drug abuse among students in 1 provincial capital in Indonesia reached 3.2 percent or 2.29 million people and 1.77 percent or 3.376.115 people in 2017 in the age range of 10–59 years [38]. Moreover, the Head of the National Narcotics Agency (BNN) Commissioner-General of Police Heru Winarko presented data regarding the results of their research, turned out to show an increase in drug trafficking during 2019 from the previous year of 0.03 percent. Most users are 15 to 65 years old and reach three million people. As for international syndicates, many sources are from Myanmar, Laos, and Thailand, and transit in Malaysia [39].

Researchers agree with Leechaianan and Longmire that international narcotics regulatory bodies have never supported the application of the death penalty as a countermeasure to narcotics trafficking in Southeast Asian countries and other countries, the U.S. government also argues that [40]. Furthermore, the authors disagree with Leechaianan and Longmire, who claim narcotics traffickers are punished solely for their disproportionate actions, based on comparisons of narcotics laws and important narcotics-related cases in four Southeast Asian countries and the United States [40].

According to the authors, the application of the death penalty is applicable to the perpetrators of drug dealers/traffickers because what they do is very dangerous to the lives of many people. Recent research in the Philippines has also shown that the current government's focus on promoting violence and the death penalty in dealing with drug dealers is not the right choice and is precisely a violation of human rights law. The drug problem is complex and shows exploitation to commit crimes. Maria C and Jose M. Joseb proposed that in addressing it must be balanced and comprehensive through the criminal justice system, based on the rights of victims/perpetrators and focused on health issues, and determining the root causes of social problems of drug abuse is considered more humane [41].

## 6. Conclusions

1. With the increasing number of narcotics crimes and the implementation of Indonesia into a high-risk crime country, Indonesia established a law that is specifically to handle narcotics crimes that also include the type of organized crime. The regulation of the death penalty in Law No. 35 of 2009 on Narcotics is a preventive effort, so that this crime does not become more rampant.

2. Indonesia implements the death penalty only to combat the extraordinary crimes categories. The death penalty is carried out based on the procedures, stipulated in Law No.2/Pnps/1964. The death penalty is carried out by being shot to death and is imposed in the general judicial environment or the military judiciary, as the procedure for the implementation of the death penalty in the judicial environment is regulated in Law No.2/Pnps/1964.

3. Based on the results, we can conclude that the death penalty is not effective as a preventive effort in suppressing the number of narcotics crimes. This is supported by the information of experts, named Jeffrey Fagan, Abdul Fickar Hadjar, and also the presentation of the results of research, conducted by the National Narcotics Agency (BNN), delivered by the Head of the National Narcotics Agency (BNN) Commissioner General of Police Heru Winarko.

## Suggestions

1. Based on the characteristics of narcotics crimes in Indonesia, one of which is the utilization of corruption among the upper class to maintain the immunity of perpetrators from the law, it will be more effective if the government focuses on forming honest and professional law enforcement, so that they will not be tempted by the rewards offered. One of them is by actively reviewing the field.

2. Based on the data, submitted by one of the experts, showing that the policy of high prices is more effective than the threat of the death penalty in suppressing the number of narcotics crimes, the authors suggest the use of economic and legal analysis in the process of forming more effective policies.

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Journal « ScienceRise: Juridical Science » ? 1(15)2021 29 UDC 343.8 DOI: 10.15587/2523-4153.2021.225793 THE EFFECTIVENESS OF THE DEATH PENALTY AS A PRE-VENTIVE ACTION IN SUPPRESSING THE NUMBER OF NAR-COTICS CRIMES IN INDONESIA Hartanto, Bella Setia Ningrum Amin How to Cite : Hartanto, Bella Setia Ningrum Amin (2021).

The effectiveness of the death penalty as a preventive action in suppressing the number of narcotics crimes in indonesia . ScienceRise: Juridical Science, 1 (15), 29 37. doi: <http://doi.org/10.15587/2523-4153.2021.225793> The application of the death penalty for perpetrators of crimes is an absorbing topic to talk about because it reaps the pros and cons.

In Indonesia, despite these pros and cons, the death penalty is still maintained, but only imposed on perpetrators of crimes, categorized as extraordinary crimes, one of which is narcotics crimes. The government's reason for implementing the death penalty is none other than because the death penalty is considered to have a deterrent effect, so that it will be able to reduce the number of narcotics crimes in Indonesia.

Therefore, there are several things that we need to review, including, how is the regulation of the death penalty for narcotics criminal offenders based on Law Number 35 of 2009, on Narcotics? How is the implementation of the death penalty for narcotics criminal offenders in Indonesia? Has the application of the death penalty for narcotics offenders proven effective in reducing the number of narcotics crimes in Indonesia? It is essential to answer these questions to increase knowledge for readers and contribute in formulating a more effective and efficient strategy in the fight against narcotics crime.

The study was conducted through normative legal research, and the data in this study were secondary data, which consisted of the primary law materials and the secondary law materials. The results of this study show us that Indonesia has declared narcotics crimes as a high-risk crime so that elements concerning narcotics crimes and sanctions are specifically regulated in Law No. 35 of 2009 on Narcotics.

However, the number of narcotics crimes in Indonesia remains high, even though the death penalty has been repeatedly imposed on the perpetrators of narcotics crimes, which proves that the death penalty is not effective as a preventive action in combatting narcotics crimes in Indonesia. Keywords: death penalty, capital punishment, preventive action, narcotics crimes, extraordinary crimes This is an open access article under the CC BY license (<http://creativecommons.org/licenses/by/4.0>). 1.

Introduction The death penalty, or capital punishment, is the oldest and the cruelest form of punishment in the criminal system. This is because if the death penalty is imposed, the life of a person, who violates the provisions of the law, will be stolen. The death penalty has been used for a wide variety of offenses since ancient times [1].

The main idea of the death penalty is that an individual, who has unlawfully killed others, deserves to lose his/her life idea popularly as for eye" [2]. Most countries in the world impose the death penalty to punish murder or war-related crimes and in some countries, the death penalty is used for non-violent crimes, such as in Malaysia, Indonesia, and Vietnam, where drug-related crimes are punishable with death [1].

However, more than two-thirds of the countries in this world have abolished the death penalty either in practice or in law [1], while at least 35 countries retain the death penalty for drug offenses [3]. This trend can lead to universal abolition, which follows the Universal Declaration of Human Rights that states "everyonhas right life, ty, of person [4].

Indonesia remains a staunch retentionist of the death penalty. This practice originates even before independence and has become an integral part of customary law in several regions. Based on the history of Indonesian law during the Majapahit Empire (13th to 16th centuries), besides the severance of limb, fines, and compensation, the death penalty was categorized as a basic punishment [5]. In Aceh, if a wife commits adultery, she should be sentenced to death or executed.

In Minangkabau, there lived a retaliation law that stated whoever kills will be killed. In Southeast Kalimantan, if someone makes false oaths (perjury) would be drowned to death and so on [6]. After the Indonesian Independence in 1945, the death penalty

began to be regulated in written instructions.

In the Code of Criminal Law (Penal Code), several actions are punishable with the death penalty namely: 1. Treason against the President or Vice President (Article 104). 2. Colluding with foreign states, a king or community with the intent to induce them to conduct hostilities or war against the state, or reinforce them in the intention, made up thereto, or assisting them in their preparations, so the hostilities are committed or the war breaks out (Article 111 paragraph 2). 3.

In a war, deliberately helping the enemy (Article 124 paragraph 3). Journal « ScienceRise: Juridical Science » ? 1(15)2021 30 4. Treason against the life or the liberty of a ruling king or another head of a friendly state, resulting in death (Article 140 paragraph 3). 5. Killing or physically injuring his/her adversary in a duel, if the conditions have not been previously arranged, if the duel does not take place in the presence of witnesses from both sides, and if the perpetrator intentionally detriments the adversary; commits any act of deceit or deviates from conditions (Article 185).

6. Premeditated murder (Article 340). 7. Violent theft, resulting in death (Article 365 paragraph 4). 8. Violent extortion, resulting in death (Article 368 paragraph 2). 9. Coast-piracy, river-piracy, and beach-piracy, resulting in death (Article 444). 10. Intentionally destroy, make it unusable, or damage buildings for the security of air traffic, resulting in the death of a person or the destruction of an aircraft (Article 478 k paragraph 2 and Article 479 o paragraph 2).

The death penalty is not prohibited under customary international law, but its use is limited in significant ways [7]. The death penalty has been only imposed to combat the most serious crimes categories, such as terrorism, corruption, and drug-related crimes. It is claimed, that the provision of the death penalty in several laws and regulations in Indonesia is a form of state responsibility to protect Indonfuturgener [8]. The government believes that the death penalty will work as a deterrent, so that it will reduce the crime rate. Therefore, apart from being regulated in the Code of Criminal Law (Penal Code), there are provisions, related to the death penalty or capital punishment in several articles outside the Penal Code as stipulated in Law Number 35 of 2009 on Narcotics. Based on the description above, hence we ask three questions.

First, how is the regulation of the death penalty for narcotics criminal offenders based on Law Number 35 of 2009 on Narcotics? Second, how is the implementation of the death penalty for narcotics criminal offenders in Indonesia? Third, how is the effectiveness of the death penalty as a preventive action in suppressing the number of narcotics crimes in Indonesia? The answers to these questions will show how effective

the death penalty as a preventive action is in reducing the number of narcotics crimes in Indonesia. 2. Literature Review 1. Death Penalty At least, three countries declare to abolish the death penalty in every year [9].

Two aspects of the most serious crimes or the extraordinary crimes are first, the crime shall be planned, systematic, and organized. Second, the victim of the crime shall be huge for several selected groups [10]. Crimes in extraordinary criteria require extraordinary effort in combating them [11]. 2.

Narcotics Crimes Narcotics crimes are the most severe transnational organized crimes, faced by South-East Asian countries [12], because Northern Thailand, Eastern Myanmar, and Laos (The Golden Triangle) are the leading producing regions of narcotics in the world [13]. Drugs have effects both on mental and physical health [14]. It can seriously damage states and their societies [14]. In Indonesia, narcotics abuse problems begot ±26 ago [15].

Nowadays, narcotics abuse in Indonesia has been reported almost every day by the medias both in papers or electronics [16]. The government made various efforts to combat narcotics [16] both domestically through policies and legislations, and also internationally [17]. 3. The aim and objectives of the study This study aims to illustrate to the general public, criminal law academics, criminal law enforcement, and the government that the application of the death penalty in narcotics cases is still carried out in Indonesia, while many countries have opposed the death penalty.

The international community has considered the death penalty ineffective in addressing various crimes, but based on our hypothesis, in Indonesia, it is necessary to process to achieve the same understanding with that view, so that it takes a target or a situation, where the death penalty is abolished. Thus, there are several queries that need to discuss: 1.

How is the regulation of the death penalty for narcotics criminal offenders based on Law Number 35 of 2009 on Narcotics? 2. How is the implementation of the death penalty for narcotics criminal offenders in Indonesia? 3. How is the effectiveness of the death penalty as a preventive action in suppressing the number of narcotics crimes in Indonesia? 4.

Methods This study was conducted using normative methods, which use the principle of law system as standards [18]. The data in this research were secondary data, including primary law materials and the Journal « ScienceRise: Juridical Science » ? 1(15)2021 31 secondary law materials. The primary law materials consisted of the 1945 Constitution of

the Republic of Indonesia, the Code of Criminal Law (Penal Code), and legislations in the field of Human Rights. The secondary law materials consisted of researches, books, and articles that support the data [19].

Both the primary law materials and secondary law materials have an essential role in this research, because the problems can be answered by focusing on analyzing primary materials and secondary materials [20].

### 5. Research results and discussion

#### 5. 1. The Regulation of the Death Penalty for Narcotics Criminal Offenders Based On Law Number 35 Of 2009 On Narcotics Indonesia is strategically located at the crossroads of global shipping lanes.

This strategic position supports people from different parts of the world to visit Indonesia and this phenomenon is a result of globalization, which has influenced everything [21]. Moreover, the advancement of human life has succeeded in developing technology and means of transportation, so that the movement from one place to another is no longer limited by distance and time. This convenience has had many impacts on Indonesia, both positive and negative.

On the positive side, we can feel it in various fields of life, including the creation of enormous opportunities for entrepreneurs to reach international markets, increasing jobs, which ultimately reduce unemployment, increasing the state income from tourism, and the ease of obtaining foreign products. Besides, we should also pay attention to the negative impact of the ease of movement of people from one place to another, one of which is the increasing number of crimes, such as human smuggling and illicit narcotics trafficking, whose cases are always interesting to discuss.

As earlier, Indonesia's strategic position does not only bring positive impacts, but its massive areas also expose Indonesia to various crimes, which mostly involve transnational crimes, such as human trafficking and narcotics trafficking [22]. Indonesia has been a consumer country and narcotics distribution country for years, even the largest drug market in Asia [23].

Nowadays, Indonesia is no longer only a consumer country and a place for narcotics distribution, but has also turned into a place for the production of these illicit goods. The success of the National Narcotics Agency (BNN) and the Police in uncovering the existence of illegal laboratories (clandestine laboratory) [24] both on a large scale (using sophisticated equipment and large production capacity) and small scale (using simple equipment and low production capacity) proves that Indonesia has become a country, where narcotics are produced.

In the production process, it is suspected, that there is the involvement of an international organized crime network, this is because several foreign nationals were met among the laboratories. Also, there are law enforcement officials, who are involved in the distribution of narcotics, either directly or indirectly, even as users [25].

Narcotics crime rates have increased since 2006, based on data from the National Narcotics Agency, there is an increase in the number of cases and suspects for the circulation of methamphetamine, which reached 10.741 cases and 10.183 suspects [25]. In terms of circulation itself, the distribution process is usually through couriers or foreign tourists, and narcotics are tucked away or smuggled into other media, such as imported goods, and even tucked into parts of the human body by taking advantage of the weaker quality of territorial control [26].

Furthermore, narcotics crimes are very dangerous for the country because of their unique characteristics and are neatly planned as the results of a study, which states that narcotics crime is a type of organized crime, especially in Indonesia, has the following characteristics [25]: a. Organized and sustainable. The distributors, dealers, and sellers have their respective roles with disconnected networks and do not know each other on a national and even an international scale. b. Involves corruption to maintain immunity from the law.

It can not be denied, that narcotics crimes often occur concurrently with other crimes, such as corruption, bribery, and murder [27]. c. Serving all the demands of narcotics for both men and women, the elderly or the young generations. d. Their membership is confidential. The dealers never know, who the sponsors are, and this character complicates tracking the sponsors by the legal apparatus. e.

They have their own rules to maintain confidentiality to trick the legal apparatus. f. Using violence and threats. The drug dealers will not hesitate to directly use violence and intimidate someone in competing for sales territory. g. Well planned means that the perpetrators have a plan, related to how they carry out their operations, the techniques, and tactics. h.

Planned with a specialized division of tasks, sponsors, distributors, couriers, and dealers have expertise in running drug trafficking. Even in the modus operandi of drug production, the owner of the funds and the people, involved in the production process, such as ingredients mixers, raw material suppliers, packers, and goods distributor couriers, have a pattern that is increasingly difficult for field officers to anticipate, which makes it more difficult to disclose and eradicate narcotics crime.

Seeing how serious and dangerous the impact of narcotics crime is, it is very appropriate to feel that the Indonesian government determines narcotics crime as a crime so that extraordinary efforts are Journal « ScienceRise: Juridical Science » ? 1(15)2021 32 needed. The President of Indonesia, Joko Widodo, has declared a national day on drugs [28].

For the handling of narcotics crimes to be realized, the Indonesian government has formulated a legal product that is specific to the crime of narcotics. In line with the three well-known terms in the Principle of Legality, namely *nulla poena sine lege*, which means there is no crime without criminal provisions in the law.

*Nulla poena sine crimine*, which means there is no crime without a criminal act, and *nullum crimen sine poena legali*, which means there is no criminal act without any penalties based on law, all prohibited acts and penalties in case of violation must be regulated in the Constitution. Therefore, the imposition of the death penalty and what kind of action is punished must be met in the provisions of the legislation.

In Indonesia, the crime of narcotics is regulated in a special law, namely Law Number 35 of 2009 on Narcotics. Illicit drugs can lead to addiction and bring calamity to any country and people [29], the quick and unnatural death. Therefore, it is also explained in Law Number 35 of 2009 on Narcotics that 'whereas narcotics in one side is a medicine or a beneficial item in treatment or health care and science development sector and on the other side may also emerge a very destructive dependence in the case being abused or without tight control and supervision'. To date, the production and circulation of narcotics are massively active in our society. It seems like the role of mafias is difficult to be stopped. They have influenced law enforcers to become users even dealers in Indonesia and several countries even though the entire nation is combating this crime.

People hear statements about commitment building in combating narcotics in Indonesia and around the world oftentimes [30]. Indonesia, as previously mentioned, implements the death penalty for narcotics crime as regulated in various articles in Law Number 35 of 2009 on Narcotics. Narcotics in Indonesia are classified into three categories (Article 6 paragraph 1), namely: a) Category I (e.g., marijuana, heroin, and cocaine).

b) Category II (e.g., racemethorphan and morphine). c) Category III (e.g., codeine and propiram). We should understand the types of acts, prohibited by this law. Criminal provisions in Law No. 35 of 2009 are formulated in Chapter XV of the Criminal Provisions Article 111 to Article 148.

There are 4 (four) categories of acts against the law that are punishable with criminal

sanctions, namely [31, p. 256]: 1. Category I is the actions to plant, maintain, possess, store, control, or provide narcotics and narcotics precursor; 2. Category II is the actions to produce, import, export, or distribute narcotics and narcotics precursor; 3.

Category III is the actions of offering for sale, sell, purchase and receive, being an intermediary, intrading, exchanging or handing over narcotics and narcotics precursor; 4. Category IV is the actions to bring, dispatch, transport, or transit narcotics and narcotics precursor. In Indonesia, drug users are categorized as Penyalahguna (illegal drug user), Korban Penyalahguna (who consumes drugs under duress), and Pecandu (a person, who is addicted to drugs both psychologically and physically) [28]. Then, the types of sanction are regulated in Law No. 35 of 2009 on Narcotics, namely [30]: 1.

Those, who are narcotics addicts and victims of narcotics, shall be required to go through medical and social rehabilitation. 2. Parents or guardians of a narcotics addict, who is not in the age of consent, which intentionally not reported, shall be punished with a maximum imprisonment of 6 (six) months or a maximum fine of Rp.1.000.000,00 (one million rupiahs). 3.

Criminal acts, committed by corporations, are punishable by imprisonment and fines with a weight of 3 (three) times. Corporations may be subject to additional penalties in the form of revocation of business licenses and/or revocation of legal entity status (Article 130). 4. Any person, who intentionally not reported any criminal conduct, shall be punished with a maximum imprisonment of 1 (one) year or a maximum fine of Rp.50.000.000,00 (fifty million rupiahs). 5.

The perpetrators of malicious attempts or conspiracy to commit narcotics crimes and Narcotic Precursors, referred to in Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117, Article 118, Article 119, Article 120, Article 121, Article 122, Article 123, Article 124, Article 125, Article 126, and Article 129, shall be sentenced to the same prison term, following the provisions as referred to in the Articles of such information (Article 132 paragraph 1).

If the act as referred to in Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117, Article 118, Article 119, Article 120, Article 121, Article 122, Article 123, Article 124, Article 125, Article 126, and Article 129 shall be conducted in an organized manner, the imprisonment and the maximum fine is plus 1/3 (one-third) (Article 132 paragraph 2). 6.

Anyone, who orders, gives, or promises something, provides opportunities, advocates, provides convenience, forces with threats, forces with acts of violence, commits a ruse,

or persuades a child, who is not old enough to commit criminal offenses as referred to in the Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117, Article 118, Article 119, Article 120, Article 121, Journal « ScienceRise: Juridical Science » ? 1(15)2021 33 Article 122, Article 123, Article 124, Article 125, Article 126 and Article 129, shall be punishable by the death penalty or imprisonment for life, or a minimum imprisonment of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least Rp2.000.000.000,00 (two billion rupiahs) and a maximum of Rp20.000.000.000,00 (twenty billion rupiahs) (Article 133 paragraph 1).

And sentenced to a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years, and a fine of at least Rp1.000.000.000,00 (one billion rupiahs) and a maximum of Rp10.000.000.000,00 (ten billion rupiahs) (Article 133 paragraph 2). 7. Any narcotics addict, who is already in the age of consent and intentionally not reported herself/himself, shall be punished with a maximum imprisonment of 6 (six) months or a maximum fine of Rp.2.000.000,00 (two million rupiahs) (Article 134 paragraph 1).

Later, paragraph 2 states that the family of a said narcotics addict, as referred to in paragraph (1), who intentionally not reported, shall be punished with a maximum imprisonment of 3 months or fined for a maximum of Rp.1.000.000,00 (one million rupiahs). 8. Any management of the Pharmaceutical Industry, which does not perform the obligation, referred to in Article 45, shall be punished with a minimum imprisonment of 1 (one) year and a maximum of 7 (seven) years and a minimum fine of Rp.40.000.000,00 (forty million rupiahs) and a maximum of Rp.400.000.000,00 (four hundred million rupiahs). 9.

Deposit, pay or disburse, entrust, exchange, conceal or disguise, invest, keep, grant, inherit, and/or transfer of money, wealth, and items or assets either in form of movables or immovables, tangible or intangible, derived from the crime of narcotics and/or narcotics precursor, shall be punished with a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a minimum fine of Rp.1.000.000.000,00 (one billion rupiahs) and a maximum of Rp.10.000.000.000,00 ( ten billion rupiahs) (Article 137 letter a).

(Letter b) One shall be punished with a maximum imprisonment of 3 (three) years and a maximum of 10 (ten) years and a minimum fine of Rp500.000.000,00 (five hundred million rupiahs) and a maximum of Rp5.000.000.000,00 (five billion rupiahs), if he/she does not know that the properties are the results of narcotics crimes and/or from narcotics percussion crimes. 10.

Any person, who obscures or complicates the investigation and claim and examination

of a criminal case of narcotics and/or of narcotics precursor before the court, shall be punished with a maximum imprisonment of 7 (seven) years and a fine the least Rp.500.000.000,00 (five hundred million rupiahs). 11. A ship captain or a pilot, who unlawfully not performed the clauses as referred to in Articles 27 or 28, shall be punished with a minimum imprisonment of 1 (one) year and a maximum of 10 (ten) years and a minimum penalty of Rp.100.000.000,00 (one hundred million rupiahs) and a maximum of Rp.1.000.000.000,00 (one billion rupiahs).

12. An investigator or a civil servant, who unlawfully not performed the clauses as referred to in Article 88 and Article 89, unlawfully not performed the provisions as referred to in Article 88 and Article 89, shall be punished with a minimum imprisonment of 1 (one) year and a maximum of 10 years (ten) years and a minimum fine of Rp100.000.000,00 (one hundred million rupiahs) and a maximum of Rp1.000.000.000,00 (one billion rupiahs) (Article 140 paragraph 1).

Investigators of the National Police of the Republic of Indonesia and BNN investigators, who do not implement the clauses as referred to in Article 87, Article 89, Article 90, Article 91 paragraph (2) and paragraph (3), and Article 92 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), shall be punished as referred to in paragraph (1) (Article 140 paragraph 2). 13.

A chief attorney of a district attorney office, which unlawfully not performed the clause as referred to in Article 91 paragraph 1, shall be punished with a minimum imprisonment of 1 (one) year and a maximum of 10 (ten) years and a minimum fine of Rp.100.000.000,00 (one hundred million rupiahs) and a maximum of Rp.1.000.000.000,00 (one billion rupiahs). 14.

A laboratory personnel, who counterfeits the testing result or unlawfully not performed the obligation to report his/her testing result to the investigator or public prosecutor, shall be punished with a maximum imprisonment of 7 (seven) years and a maximum penalty of Rp.500.000.000,00 (five hundred million rupiahs). 15. Any witness, who provides fake information during the examination of a criminal case of narcotics or narcotics precursor before the court, shall be punished with a minimum imprisonment of 1 (one) year and a maximum of 10 (ten) years and a minimum fine of Rp.60.000.000,00 (sixty million rupiahs) and a maximum of Rp.600.000.000,00 (six hundred million rupiahs). 16.

For any person, which during 3 (three) years period shall commit the repetitive crime as referred to in Articles 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127 paragraph (1), 128 paragraph (1), and 129, his/her maximum penalty shall

be added to 1/3 (one-third). 17. A head of a hospital, public health center, clinic, state-owned storage facility for pharmaceutical preparation, and dispensary, circulated narcotics category II and III not for the interest of health service, shall be punished with a minimum imprisonment of 1 (one) year and a maximum of 10 (ten) years and a minimum fine of Rp.100.000.000,00 (one hundred million rupiahs) and a maximum of Rp.1.000.000.000,00 (one billion rupiahs).

Journal « ScienceRise: Juridical Science » ? 1(15)2021 34 18. A head of a science institution, who cultivates, keeps, purchases or controls a narcotics plant not for the interest of science development, shall be punished with a minimum imprisonment of 1 (one) year and a maximum of 10 (ten) years and a minimum fine of Rp.100.000.000,00 (one hundred million rupiahs) and a maximum of Rp.1.000.000.000,00 (one billion rupiahs). 19.

A head of a certain pharmaceutical industry, who produces narcotics category I not for the interest of science development, shall be punished with a minimum imprisonment of 1 (one) year and a maximum of 10 (ten) years and a minimum fine of Rp.100.000.000,00 (one hundred million rupiahs) and maximum Rp.1.000.000.000,00 (one billion rupiahs). 20.

A head of a pharmaceutical industry large trader, who circulates narcotics category I not for the interest of science development or circulates narcotics category II and III not for the interest of health service and/or not for the interest of science development, shall be punished with a minimum imprisonment of 1 (one) year and a maximum of 10 (ten) years and a minimum fine of Rp.100.000.000,00 (one hundred million rupiahs) and maximum Rp.1.000.000.000,00 (one billion rupiahs).

If we read and observe more about the provisions of the death penalty in Law No. 35 of 2009 on Narcotics, then we can conclude that the regulation of the death penalty is a criminal eradication, carried out based on the type, size, and amount of narcotics to cause a deterrent effect on perpetrators of the misuse and illicit circulation of narcotics.

The general regulation on the death penalty in Indonesia is found in the Indonesia Penal Code, the criminal type in article 10. According to article 10 Indonesian Criminal Code, criminal types are: a) Criminal Principal: 1) Death penalty, 2) Jail criminal, 3) Criminal confinement, 4) Criminal penalties (fines); and b) Additional criminal: 1) Revocation of certain rights, 2) Seizement of certain goods (Confiscation of certain items), 3) Announcement of Judge ruling [31, p. 256]. 5. 2.

The Implementation of the Death Penalty for Narcotics Criminal Offenders in Indonesia

There are a variety of methods on how the execution is carried out in the world, such as beheading, impalement, crucifixion, shooting, hanging, lethal injection, stoning and boiling in oil [32]. In Indonesia, the execution is carried out by a firing squad.

Based on the provisions, stipulated in Article 11 of the Criminal Code, the death penalty is carried out by the algojo (executioner) in the hanger by entangling a rope, tied to the gallows on the convicted's neck, then dropping the board, on which the convict stands. Furthermore, the execution of the death penalty is amended by Law No.2/Pnps/1964, which states the death penalty is imposed in the general judicial environment or military judiciary and carried out by being shot to death.

Procedures for the implementation of the death penalty in the judicial environment according to Law No.2/Pnps/1964, namely [33]: a. If not determined otherwise by the Minister of Justice, the death penalty is carried out in the jurisdiction of the court that imposes the verdict in the first degree (Article 2 paragraph 1). b.

The Head of Regional Police where the court is located, after hearing the advice of the Attorney General/Attorney in charge for its implementation, determines the time and place of execution of the death penalty (Article 3 paragraph 1). c. The chief of the Regional Police forms a Firing Squad of the Mobile Brigade, consisting of 1 (one) Bintara, 12 (twelve) Tamtama, and 1 (one) Perwira as the leader (Article 10 paragraph 1). d.

The convict is brought to the place of criminal execution with a sufficient police escort (Article 11 paragraph 1), can be accompanied by a spiritual nurse (Article 11 paragraph 2), dressed modestly and orderly (Article 11 paragraph 3). e. Upon arrival at the place of execution of the death penalty, the commander of the guard closes the eyes of the convicted with a piece of cloth unless the convict does not want it (Article 11 paragraph 4). f. The convict can undergo criminal proceedings by standing, sitting, or kneeling (Article 12 paragraph 1).

If deemed necessary, the Attorney General/Attorney in charge can instruct to tie the convict's hands and feet or tie him/her to a backrest, specifically made for it (Article 12 paragraph 2). g. Once the convict is ready to be shot, the firing squad with well-stocked weapons is heading to the designated place (Article 13 paragraph 1); the distance between the point, at where the convict and the Firing Squad are, must not exceed 10 meters and must not exceed 5 meters (Article 13 paragraph 2). h.

The Attorney General/Attorney in charge of its implementation instructs to begin the execution, when all preparations have been completed (Article 14 paragraph 1). i. Using

the sword as a gesture, the Firing Squad Commander gives instructions to prepare, then by moving his sword up, he instructs his squad to aim at the heart of the convict, and by quickly nudging his sword down, he commands to shoot (Article 14 paragraph 3). j.

If after the shooting, the convict still shows signs that he/she is not dead yet, then the Squad Commander immediately instructs the Petty Officer of the Firing Squad to do an end shot by pressing the barrel end of his weapon on the head of the convict directly above his ear (Article 14 paragraph 4). k. To obtain certainty about the death of a convict, the help of a doctor can be requested (Article 14 paragraph 5).

Journal « ScienceRise: Juridical Science » ? 1(15)2021 35 l. The burial is handed over to the family or friends of the convicted unless it is in the public interest, so the Attorney General/Attorney in charge decided otherwise (Article 15 paragraph 1). The first batch execution of convicts since the moratorium was implemented in 2008 was conducted in January 2016.

There were six convicts in this batch, five convicts were executed in Nusakambangan, Central Java, and another convict was executed in Boyolali, Central Java [8]. Then, four months later, on April 29, 2015, a phase two execution was carried out with the executed convicts Myuran Sukumaran and Andrew Chan (Australia), Martin Anderson, Raheem A Salami, Sylvester Obiekwe, and Okwudili Oyatanze (Nigeria), Rodrigo Gularte (Brazil), and Zainal Abidin (Indonesia).

A year later, on July 29, 2016, the third stage of executions of four narcotics convicts was faced by a firing squad. The four convicts executed were Freddy Budiman (Indonesia), Michael Titus Igweh (Nigeria), Humprey Ejike (Nigeria), and Seck Osmane (South Africa) [5]. An increasingly advanced civilization develops the thinking of legal experts by questioning whether reviewing the issue of the provision of the death penalty is more necessary than exploring a fair and accurate coping system [34]. 5. 3.

The Effectiveness of the Death Penalty as a Preventive Effort in Suppressing the Number of Narcotics Crimes in Indonesia The provision of the death penalty in Law No. 35 of 2009 is expected to reduce the number of narcotics crimes in Indonesia. The government and BNN also argued that the death penalty has a deterrent against perpetrators of crimes and is urgently needed to prevent the rampant drug crimes that have brought a large number of victims and endanger the future of the nation [35].

However, there is no stalwart evidence that the death penalty or capital punishment has a greater deterrent effect on crime than long terms of imprisonment [36, p. 427]. In fact, the death penalty was replaced with a whole life sentence or life imprisonment in

Ukraine [37]. Based on the information of an expert, Jeffrey Fagan stated that the death penalty is not an effort that has a strong influence in preventing rampant narcotics crimes with the following information [37]: 1. There is no scientific evidence that shows that the death penalty successfully deters narcotics trafficking.

Its circulation rate remains high even though more than one million people have been imprisoned for it. In countries that imposed the death penalty frequently, the circulation of narcotics remains high. Price is the most sensitive factor in this case; they have to take a very high risk, so that the price will be higher.

On the other hand, in countries that have abolished the death penalty, the price is even higher. 2. In a study by the United Nations (UN Officer on Drugs and Crime) in 3 neighboring countries with very different narcotics consumption levels and execution policies, between 1999 – 2005, Indonesia executed 7 people, Singapore 106 people, and Malaysia 10 people.

The study also showed that cocaine and heroin are more expensive in Indonesia than in Singapore and Malaysia. Supposedly, if the death penalty is the paramount factor, the opposite is true. Similarly, according to a Trisakti University criminal law expert, Abdul Fickar Hadjar, the death penalty will not be effective for prosecution because it does not discourage the perpetrators.

Although executions have been carried out several times, in reality, the rate of drug abuse and trafficking from year to year always increases. Based on data from the National Narcotics Agency (BNN) in 2018, the prevalence of drug abuse among students in 1 provincial capital in Indonesia reached 3.2 percent or 2.29 million people and 1.77 percent or 3.376.115 people in 2017 in the age range of 10 – 59 years [38].

Moreover, the Head of the National Narcotics Agency (BNN) Commissioner-General of Police Heru Winarko presented data regarding the results of their research, turned out to show an increase in drug trafficking during 2019 from the previous year of 0.03 percent. Most users are 15 to 65 years old and reach three million people. As for international syndicates, many sources are from Myanmar, Laos, and Thailand, and transit in Malaysia [39].

Researchers agree with Leechaianan and Longmire that international narcotics regulatory bodies have never supported the application of the death penalty as a countermeasure to narcotics trafficking in Southeast Asian countries and other countries, the U.S. government also argues that [40]. Furthermore, the authors disagree with Leechaianan and Longmire, who claim narcotics traffickers are punished solely for

their disproportionate actions, based on comparisons of narcotics laws and important narcotics-related cases in four Southeast Asian countries and the United States [40].

According to the authors, the application of the death penalty is applicable to the perpetrators of drug dealers/traffickers because what they do is very dangerous to the lives of many people. Recent research in the Philippines has also shown that the current government's focus on promoting violence and the death penalty in dealing with drug dealers is not the right choice and is precisely a violation of human rights law. The drug problem is complex and shows exploitation to commit crimes. Maria C and Jose M.

Joseb proposed that in addressing it must be balanced and comprehensive through the criminal justice system, based on the rights of victims/perpetrators and focused on health issues, and determining the root causes of social problems of drug abuse is considered more humane [41]. Journal « ScienceRise: Juridical Science » ? 1(15)2021 36  
6. Conclusions 1.

With the increasing number of narcotics crimes and the implementation of Indonesia into a high-risk crime country, Indonesia established a law that is specifically to handle narcotics crimes that also include the type of organized crime. The regulation of the death penalty in Law No. 35 of 2009 on Narcotics is a preventive effort, so that this crime does not become more rampant. 2.

Indonesia implements the death penalty only to combat the extraordinary crimes categories. The death penalty is carried out based on the procedures, stipulated in Law No.2/Pnps/1964. The death penalty is carried out by being shot to death and is imposed in the general judicial environment or the military judiciary, as the procedure for the implementation of the death penalty in the judicial environment is regulated in Law No.2/Pnps/1964. 3.

Based on the results, we can conclude that the death penalty is not effective as a preventive effort in suppressing the number of narcotics crimes. This is supported by the information of experts, named Jeffrey Fagan, Abdul Fickar Hadjar, and also the presentation of the results of research, conducted by the National Narcotics Agency (BNN), delivered by the Head of the National Narcotics Agency (BNN) Commissioner General of Police Heru Winarko. Suggestions 1.

Based on the characteristics of narcotics crimes in Indonesia, one of which is the utilization of corruption among the upper class to maintain the immunity of perpetrators from the law, it will be more effective if the government focuses on forming honest and professional law enforcement, so that they will not be tempted by

the rewards offered. One of them is by actively reviewing the field. 2.

Based on the data, submitted by one of the experts, showing that the policy of high prices is more effective than the threat of the death penalty in suppressing the number of narcotics crimes, the authors suggest the use of economic and legal analysis in the process of forming more effective policies. Acknowledgments We would like to thank Prof. Dr. Edy Suandi Hamid, M.Ec, Dr. Jumadi, S.E., M.M, and Dr. Kelik Endro Suryono, S.H., M.Hum as the leaders of our university, who has encouraged and allowed the concept of learning to write collaborations of lecturers and students at the Faculty of Law of Widya Mataram University for publication in international journals. Also to Anna Kravchenko, we do appreciate your assistance in completing this journal.

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