PROBLEM IN THE IMPLEMENTATION OF DEATH EXECUTION IN INDONESIAN CRIMINAL JUSTICE SYSTEM

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ADVISOR RECOMMENDATION LETTER

This thesis entitled “PROBLEM IN IMPLEMENTATION OF DEATH EXECUTION IN INDONESIAN CRIMINAL JUSTICE SYSTEM” composed and submitted by Noerfaizi as a partial fulfillment of requirements for the degree of Bachelor of Law in the Faculty of Humanities has been reviewed and found to have satisfied the requirements for a thesis fit to be examined. I therefore recommend this thesis for oral defense.

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Advisor II

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DECLARATION OF ORIGINALITY

I declare that this thesis, entitle “PROBLEM IN IMPLEMENTATION OF DEATH EXECUTION IN INDONESIA CRIMINAL JUSTICE SYSTEM” is, to the best of my knowledge and beliefs, an original piece of work that has not been submitted, either in whole or in part, to another university to obtain a degree.

Cikarang, 10 September 2017

Noerfaizi
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CHAPTER I
INTRODUCTION

1.1 Research Background

Indonesia is one of the countries that still maintaining and recognizing the legality of capital punishment as one way to punish perpetrators of crime, although the pros and cons of capital punishment have long been happening in this country. Even the existence of capital punishment in Indonesia will continue in the future because in the Draft of the Criminal Code (New), capital punishment is still one of the criminal sanctions maintained to punish the perpetrators of crime.¹

By 2015, there has been an increase of new death sentences, which represents a sharp increase compared to 2014, of which only 6 death sentences are recorded. Even Amnesty International records the number of death sentences in Indonesia of at least 46 cases by 2015. However, compared to 2015, in 2016, the use of capital punishment remains high. In the ICJR's monitoring of the death penalty for prosecution until 2015 to 2016, there were 30 death sentences and 76 people prosecuted and sentenced to death by 2015. While in 2016, until June 2016, already recorded a number of 17 people sentenced to death and 26 people who were prosecuted and sentenced to death and 133 convicts are still waiting for certainty for execution die.² And the plan there will be 30 death row inmates who will be executed in 2017.

In Law Number 12 of Year 1995 concerning Penitentiary (Lembaga Pemasyarakatan/LAPAS) mentioned that the Penitentiary, hereinafter referred to as LAPAS, is

¹ M.Zen Abdullah, Pelaksanaan Pidana Mati Di Indonesia Telah Dalam Kontek Hak Asasi Manusia, Jurnal Ilmiah Universitas Jambi, 2009, p. 61
² Supriyadi, Widodo, Eddyono, Update Hukuman Mati di Indonesia 2016, Institute for Criminal Justice Reform (ICJR), 2016, p. 2
the place to carry out the guidance of Prisoners and Prisoners of Correctional. Whereas the meaning of prisoners is a criminal who underwent a loss of freedom as a sanction, in LAPAS, while the definition of a convicted is a person who is convicted based on a court decision that has obtained permanent legal force. Thus, LAPAS means only serves to carry out guidance for the criminal who underwent a freedom-loss kind of sanction. While in the Criminal Code the type of criminal sanction in a form of a loss of independence (Article 10 of the Criminal Code) covers both life imprisonment and temporary imprisonment, and detention.

The procedure of execution of death penalty in Indonesia is by being shot by firing squad. The umbrella law for death execution in Indonesia is regulated in detail by Law No. 2 / Pnps / 1964 namely Presidential Decree No. 2 of 1964 (LN 1964 No 38) which is then stipulated into Law No. 5 of 1964 on the Procedures for the Criminal Implementation handed down by the Courts in the General and Military Courts. Regardless of the pros and cons of execution of the death penalty, it is an indisputable fact that on a national and international scale there are obviously many convicted executions.

In Head of Constabulary Decree of the Republic of Indonesia 12/2010 it is explained, among others, that the organization of execution is by the firing squad and the support squads, the support team is divided into 5 squads. One of the support squads, which is Team 2, which is 10 people, is in charge of carrying out security and escort to death row convicts in Penitentiary / LP, as well as escorting death row convicts from the place of isolation to the location of the execution of capital punishment and from the location of the execution of capital punishment to the hospital (See Article 7 paragraph [1] in conjunction with Article 9 jo Article 11 of the 12th Perkapolri). The death row inmates are placed in prisons as a place of isolation for death row
inmates pending execution. The rights referred to refers to the provisions of Article 14 of Law no. 12 Year 1995 concerning (society) that is:

1. Conducting worship according to religion or belief.
2. Getting treatment, both spiritual and physical.
3. Getting health services and decent food.
4. Submitting a complaint.
5. Obtain reading material and follow other mass media broadcasts that are not prohibited.
6. Receive family visits, legal counsel, or other specific persons.
7. Obtain other rights in accordance with applicable laws and regulations.

However, until now, there is no clear provision that governs on how to serve the convicted during the inhabitants of LAPAS prior to the execution. This creates uncertainty for the officers of LAPAS in conducting the service to the death row. The regulation on capital punishment is regulated in several articles in the Criminal Code, namely Article 104; Article 111 paragraph (2); Article 124 paragraph (1); Article 124 bis; Article 140 paragraph (3); Chapter 340; Article 365 paragraph (4); Article 444; Article 479k Paragraph (2) and Article 479o Paragraph (2), while the rules outside the Criminal Code regulating the death penalty are summarized in Law Number 5 Year 1997 regarding Psychotropic (Article 59 Paragraph (2)); Law Number 22 Year 1997 Concerning Narcotics (Article 80 paragraph (1) letter a, Article 80 paragraph (2) letter b, Article 80 paragraph (3) letter a; Article 82 paragraph (1) letter a; Article
In connection with that, in Indonesia with the laws and regulations on human rights, namely Law no. 39 of 1999 on Human Rights (Human Rights Law), regulates the right to life contained in Article 9 Paragraph (1) states:

"Everyone has the right to live and improve his standard of living"

Therefore, in order to achieve the objective of the application of capital punishment, the implementation of capital punishment should be done properly and measurable. A very long span of time, between a judge's verdict, which has obtained permanent legal force (Kracht van Gewijsde) and the time of execution of capital punishment by the competent law enforcement that often occurs in Indonesia. This can cause criminal and punishment purposes to be difficult to achieve and tarnished the principle of legal certainty, so that it can cause double misery for the convicted person, in addition to having to wait for execution also undergo a criminal imprisonment.

The practice of capital punishment has given rise to a phenomenon called death row phenomenon due to the length of waiting period experienced by death row convicts. The length of waiting period experienced by death row convicts even up to 16 years. This long waiting time has created a situation of torture for death row inmates. On the one hand it shows that the death penalty itself is a severe punishment, on the other hand, it is doubled by the addition of a long waiting period until they have to run two sentences of prison and capital punishment.

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3 Hukuman Mati Dalam Internasional Covenant Civil AndPolitic Rights (Iccpr) Dan Uu No. 39 Tahun 1999Tentang HAM dari Al-Ahkam, Jurnal Pemikiran dan Pembaharuan Hukum Islam, Volume XX/Edisiii/ Oktober 2009

In addition, long waiting period can lead to a severe mental trauma and physical deterioration of the death row inmates while in custody.\textsuperscript{5} And also in this period, there could be the possibility of death row inmate into a different person which is be a better person than ever. However, the application for clemency appeal still difficult to obtain the death row convict.\textsuperscript{6}

Based on the above description, the author interested to know and explore in the form of thesis with the title "PROBLEM IN THE IMPLEMENTATION OF DEATH EXECUTION IN INDONESIAN CRIMINAL JUSTICE SYSTEM"

1.2 Research Question

Based on the background of the problems described above, questions in this research are:

1. How is the implementation of death execution in Indonesia related to the death row phenomenon?

2. How does Indonesia's criminal justice system govern the execution of death?

1.3 Research Objectives

1. To know the irregularities in the implementation of rules regarding capital punishment.

2. To know the effectiveness of the rule in regulating the capital punishment.

1.4 Research Benefits

1.4.1 Theoretical Benefit

It is expected that this research can contributes thoughts and inputs in the world of legal knowledge about the implementation of capital punishment, especially for criminal law.

\textsuperscript{5} http://icjr.or.id/praktek-penyiksaan-masih-menjadi-bagian-dalam-penegakan-hukum-pidana-di-indonesia/, Accessed on July 21\textsuperscript{st} 2017, 21:00 PM

1.4.2 Practical Benefit

It is expected that with the results of this study can be a quality input and inspiration for law enforcement officers and the government in implementing and making policies and laws and regulations, especially the law regulating the death penalty in Indonesia.

1.5 Research Method

In this thesis research the author used methods as follow:

1. Types of Research

Type of research used in this research is sociological juridical approach method. The sociological juridical approach is an approach that sees the enactment of law in society. This usually gets influence from the people who support it. Research in the field through a sociological juridical approach by interviewing prisoners and prison officers to describe the phenomenon that occurs in the implementation of the correctional system as an effort to realize the purpose of the convicted.

2. Nature of Research

The research specification used in this research is analytical descriptive. Because this study describes the applicable legislation relating to theories of jurisprudence and a particular circumstance or object in factual and accurate, which then analyzes the data, obtained from the research. Basically, the descriptive analytical method is a description of the events in the field and then analyzes the existing data.

3. Technique of Data Collection

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In general, data can be distinguished between those obtained directly from the community and from library materials. Research obtained directly from the community is called the primary data (base). While the data obtained from library materials called secondary data.\(^9\)

The data collection technique is done by way of:

A. Field Studies

Field study as supporting data is done to obtain primary data that is by conducting an interview. "Interviews are a verbal question-and-answer process in which two or more people are dealing physically".\(^{10}\)

The interviews were conducted in a guided manner by preparing a standardized and uniform standardized questionnaire to ensure that the direction of the interviews was kept under control and did not deviate from the guidelines, but there were possible variations of questions tailored to the conditions in which interviews were not rigid.\(^{11}\)

B. Literature review

Literature review is a research to obtain secondary data obtained by studying the literature, collection of lecture materials, concepts, doctrines and laws and regulations related to the problems under study.\(^{12}\)

The literature review referred to here can be secondary data from the legal field, namely:

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\(^{11}\) ibid

1. Primary legal materials, namely materials that are binding because it is issued by the government that is the various laws and regulations that apply. The laws and regulations used in this study are as follows:

   a. 1945 Constitution of the Republic of Indonesia
   b. Criminal Code (KUHP)
   c. Criminal Code Procedures (KUHAP)
   d. Criminal Code Concept of 2006
   f. Law No. 12 of 1995 concerning Correctional System
   g. Law No. 39 of 1999 on Human Rights
   h. Law No. 26 tahun 2000 on Court of Human Rights
   i. Law No. 22 of 2002 on Clemency
   j. Head of Police Regulation No. 12 of 2010 on the execution of capital punishment
   k. International Covenant on Civil and Political Rights (ICCPR).

2. Secondary legal materials, those materials that are closely related to primary legal materials and can help analyze and understand the primary legal materials

   a. Literature books
   b. Research results
3. Tertiary legal materials, which are materials that support primary and secondary legal materials.
   a. Dictionary
   b. Handbook

4. Technique of Data Analysis

   In this research, data analysis technique used is qualitative data analysis technique. Qualitative data analysis means that all data collected both from the results of library research (secondary data) and field research (primary data) are arranged systematically then analyzed by using the theories and laws and regulations in effect in order to be drawn conclusions in order to obtain clarity regarding The problems studied.

   In this study, researchers used interaction analysis model.

1.6 LEGAL WRITING METHOD

In this thesis research, the author made a systematic writing as follow:

CHAPTER I : INTRODUCTION

The introductory chapter covers: background, research question, research purpose, research benefit, research method, legal writing system.

CHAPTER II : DEATH ROW PHENOMENON IN THE IMPLEMENTATION OF DEATH PENALTY IN INDONESIA

This chapter elaborates explanation concerning the result of field research about death penalty in Indonesia.
CHAPTER III : DEATH EXECUTION IN CRIMINAL JUSTICE SYSTEM OF INDONESIA

This chapter discusses about death penalty in Indonesia criminal justice system including punishment theory and legal force.

CHAPTER IV : PROBLEM IN THE IMPLEMENTATION OF DEATH EXECUTION IN INDONESIAN CRIMINAL JUSTICE SYSTEM

Based in the research that has been conducted by the author, this chapter presents the impact and problem of excessive flagging execution for death penalty and Indonesia criminal justice system control the death penalty.

CHAPTER V : CONCLUSION

This chapter contains conclusions obtained from conducting a research in respect of the problem studies.
CHAPTER II

DEATH ROW PHENOMENON IN THE IMPLEMENTATION OF DEATH PENALTY IN INDONESIA

Law is a tool or guideline used to regulate and control human behavior in order to achieve justice and prevent the occurrence of chaos within the community. Law is also regarded as the social control that determines the steps that must be done in regulating the relationship between humans.

The death penalty has a very big role in reducing crime. There is a very long span between the decision of a judge who has obtained permanent legal force and the time of execution of capital punishment by authorized officers. This is very worrying because it can cause criminal and punishment purposes to be difficult to achieve and risking the legal certainty. In addition, this can also cause double misery for the convicted person where he or she has to wait for the execution and still undergo the imprisonment.

2.1 Death Execution According To Head of Lapas Nusa Kambangan

In collecting data to explain the phenomenon of the waiting period for death row inmates, on the 15th of April 2017 at 13.30 PM, the author traveled from Cikarang to Cilacap with a distance of 400 km or with time 8 hours to meet Head of water police unit Cilacap, Ajun Komisaris Polisi Mr. Huda Syafi'I in Cilacap city police station. Here are the results of interviews that the author has done:

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13 [https://tirto.id/hukuman-mati-bukan-obat-kriminalitas-8Gx](https://tirto.id/hukuman-mati-bukan-obat-kriminalitas-8Gx), Accessed on July 22nd 2017, 22.00 PM
Head of water police unit Cilacap, Ajun Komisaris Polisi Mr. Huda Syafi'i said before the execution, they have made preparations to deliver the tools that are needed during the execution process. They brought several cars from outside into Nusa Kambangan through a secret door to be known by the public and they also entered some chests to use after execution. Patrol activity is very frequent on a few days before the execution schedules; this is done to anticipate the existence of irregularities at the time of execution.

After the question and answer session is over, the author and Head of water police unit Cilacap, Ajun Komisaris Polisi Mr. Huda Syafi'i, Head of water police unit boarded the patrol boat Police Cilacap to cross Nusakamangan Island which takes about 15 minutes.  

The author went to the back of the Nusakambangan subsector, where the author saw the place of death execution and also the bathing place. After the author left the sub-sector, the author went to Grade 1 Batu penitentiary and met with the Head of Prison of Nusa Kambangan. Although not able to conduct long discussions, the author had to ask some questions to him about the process and execution procedures.

According to Abdul Haris (head of Prison Nusa Kambangan), for convicted persons who have been proven to commit a crime, they must receive any punishment that will be stipulated including the death penalty. For a while, the authors call back to him because there is question that the author should ask about whether there are rules that govern the waiting period. He said that the waiting period is a long process in which they must wait in under pressure situation and try to adapt to the prison environment to show the deterrent effect on other convicts. He confirmed that in Nusa Kambangan an irregularity occurred but he believed that our country has

14 Huda, syafi’i. Kasatpolair Polres Cilacap AKP, Nusa kambangan ,15th of April 2017 at 13.30 PM
done the best. The waiting period occurs because many of the convicts who have been sentenced to death and the amount of budget needed to execute.\footnote{Abdul Haris, kepala lapas Nusa Kambangan, Nusa kambangan, 15th of April 2017 at 14.30 PM}

From Grade 1 Batu penitentiary of Nusa Kambangan, the author went to sports venues for the convicted and civilian settlements to see where they live. At dinner, the author met with Mr. Dita Yudhanugraha (prosecutor) and asked: "if the convicted person was sentenced to death, what will happen to the convicted person?" And he answered they must wait for the time set for execution. In Nusa Kambangan there is an inconsistency with time to execute death. He also mentioned that pursuant to Article 90 of the clemensy constitution number 22 year 2002 stated that if the application for pardon the death row convicted is rejected by the President and capital punishment is not executed for 10 years, not because of the escaped convict, the capital punishment can be changed into life-long punishment by Presidential Decree as mentioned in Articles 89 paragraph (1), implementation of capital punishment may be postponed with a trial period of 10 (ten) years, if:

a) people's reaction to the convict is not too great;

b) the convict shows a sense of regret and there is hope for improvement;

c) the position of the convicted person in the criminal act is not very important, And

d) There are mitigating reasons.

Articles 89 paragraph (2), if the convicted person during the probation period as referred to in paragraph (1) shows a commendable attitude and deed, then capital punishment can be changed to a life sentence or a maximum imprisonment of 20 (twenty) years with the Decree of the Minister of Law and Human Rights. Articles 89 paragraph (3), if the convicted person during the probation period as referred to in paragraph (1) does not show commendable attitudes and
actions and no hope of correction, then capital punishment may be executed on the orders of the
Attorney General. 6 Elucidation of Article 90 states that: With the same mindset as Article 87, in
the event that the judge's decision to impose capital punishment has obtained permanent legal
force and his / her application is rejected, the execution of the death penalty is delayed for 10
ten) years not because the convicted person To escape, then the Minister of Law and Human
Rights has the authority to convert the sentence of death into a life sentence of imprisonment.16

After all the information the author got from the interview, the author finally asked
permission to return to Cikarang and the author said many thanks to all of the speakers.

2.2 Death Execution According To Ministry Of Justice and Human Rights

After a few weeks, the author traveled from Cikarang to Jakarta to interview head of the
criminal justice sytem in Jakarta. Ario Priojati, SH, M.Si. The author writes about
Kemenkumham’s policy on the waiting period of death sentence convicted in Nusa Kambangan.
According to Ario Priojati, the waiting period not ruled yet to be executed but Mr. Ario said the
execution will held as soon as posible, it means faster will be better. However in the
implementation most of agencies constrained by the cost, that is the reason the death penalty not
execute yet. Mr. Ario also said the execution can held as soon as posible after the decision from
the court because during the waiting process, the convict already has feelings of uneasiness. He
is deeply concerned about the long-serving convicts and he hopes that prosecutors, executors,
courts, and police to work together to speed up the execution process. And Kemenkumham

16 Dita Yudhanugraha, prosecutor, , Nusa kambangan ,15th of April 2017 at 15.00 PM
hopes to speed up the execution because to reduce over capacity in prison but Kemenkumham has no authority to make the rules accelerate execution.\textsuperscript{17}

He also mention that the presidency mandate into Law no. 2 / PNPS / 1964 Year 1964 on Procedures for the Criminal Implementation Denied by the Courts in the General and Military Courts ("Law 2 / PNPS / 1964") is still a guide to execute capital punishment or death sentence for convicted persons sent to court the general and military courts.

In Article 1 of Law 2 / PNPS / 1964, among others, it is stipulated that the imposition of capital punishment imposed by the court in the general court or military court shall be conducted by being shot to death.

The other rules on the execution of capital punishment are the Chief of Police Regulation no. 12 of 2010 on the Procedure of Criminal Implementation ("Perkapolri 12/2010"). Further details of this rule can be found in the article on the Imprisonment of Narcotics Crime.

Then, what are the reasons for postponing the execution of capital punishment? One of the causes of the delay in the execution of capital punishment is that the death row inmate is pregnant. It is mentioned in Article 7 of Law 2 / PNPS / 1964 which reads:

"If the convict is pregnant, then the execution of capital punishment can only be done forty days after the child is born."

Thus, the execution of capital punishment for a pregnant prisoner was delayed up to forty days after her child was born. That is, the execution of capital punishment will not be done if the

\textsuperscript{17} Ario,Priojati, head of the criminal justice section, Nusa kambangan,15th of may 2017 at 10.30 PM
prisoner dies in a state of pregnancy. Further explanations can be found in the article Execution of Death Penalty for Prejudiced Prisoners.

Deferred execution of capital punishment can also be done due to another factor, namely the request of the convicted person. In Article 6 Paragraph (2) of Law 2 / PNPS / 1964, it is said that if the convicted person wants to say something, then the information or message is received by the Prosecutor / Prosecutor.

In the article that given by Ario Priojati, stating that in this regard, the Attorney General Basrief Arief in the article on the reason for the postponement of the Death Penalty accessed according Law 2 / PNPS / 1964, required the prisoner to have a chance to submit a final request, where it is mentioned, if the convicted person wanted to say something, The statements or messages are received by the attorney general or the relevant prosecutor. He said, among other things, that the last request of the convicted person varies, among others, there is a request to meet the family, while his family sic out there, the accused ask for permision and this request must be fulfilled in order to give them time for a moment.18

In the same article, the Head of the Attorney General's Information Center (The attorney general’s case), Untung Setia Arimuladi, said that one of the reasons why the execution of a death row inmate was delayed for long after the fall of court verdict because it was still given his rights as a convicted person.

These rights are according to Untung Setia Arimuladi, among them legal remedies (judicial review) as well as a pardon request from the President (Clemency). Once passed and fulfilled all the rights of the convicted person, then the execution carried out.

18 ibid
The same is also explained by Heri Aryanto, S.H. In the articles, Police alloweded shot dead a Suspected Robber /Terrorist. Several factors or reasons why the death row inmates have not been executed even though the verdict has been legally enforceable, including:

1. Whereas in the criminal justice system, the court judge is a public prosecutor. If there has been no decision on the execution of the public prosecutor, in this case, the Attorney General, then the execution cannot be implemented;

2. Whereas with respect to the decision of permanent legal force, the convicted person shall be entitled to file a pardon (Clemency) remedy to the President in the form of a request for change, mitigation, abolition or elimination of criminal action against him, as provided for in Law no. 22 of 2002 on Clemency ("Law No. 22/2002"). Therefore, the decision on capital punishment, as stipulated in Article 3 of Law no. 22/2002, the execution of death cannot be executed or postponed until there is a decision from the president regarding the request for the pardon from the convicted person.

For information, pursuant to Article 2 paragraph (3) of Law no. 5 of 2010 on Amendment to Law no. 22 of 2002 on Grassi ("Law 5/2010"), a petition for clemency may only be filed 1 (one) time over a court decision having a permanent legal force. The petition for a pardon shall be filed within a period of 1 (one) year from the date the decision has obtained permanent legal force (Article 7 paragraph (2) of Law 5/2010).

Still related to the clemency, similar to the explanation of Heri Aryanto, Former Justice Djoko Sarwoko in the article Suspected Accident Death Sentence Executions we accessed from the official website Berita Satu acknowledged the obstacles to executing the death row convicts. According to him, it is related to the opportunity given regarding the continued legal efforts of
the convicts. A death row inmate who abruptly approached his execution filed judicial review was inevitable must be accommodated resulting in the retreat of the execution process. In addition, after the judicial review rejected, death row inmate was still given the opportunity if you want to apply for clemency. This is why some executions of death row inmates are delayed.

It is said in Article 2 until Article 16 of the Law of death penalty, as follows: That the Regional Police Chief is responsible for its implementation, determining the time and place of execution of capital punishment. The responsibility for implementation is to be responsible for security and order during the execution of capital punishment and to provide the necessary personnel and tools for it.

The force in question was to form a firing squad consisting of a non-commissioned officer, twelve enlisted men under the leadership of an officer, all from the Mobile Brigade Corps. All of these are under the orders of the prosecutor responsible for their execution until the completion of the execution of the death penalty. If the convicted person wants to say something, then the information or message received by the prosecutor. The implementation of capital punishment is not carried out in public and in the simplest way possible. The convict dressed modestly and in an orderly manner. The defender of the convicted person at his own request or at the request of the convicted person may attend the execution of capital punishment. If requested, the convict may be accompanied by a spiritual coaching. Upon arrival at the place of execution of capital punishment, the guard commander closed the convict's eyes with a cloth unless the convict did not want it. The criminal may stand, sit or kneel.

If deemed necessary, then the prosecutor may order the convict to be tied his hands and legs or tied to a special backrest made for it. The distance between the points where the convict
is located and where the shooter team cannot exceed ten meters and should not be less than five meters. When all the preparations have been completed, the prosecutor commands to commence the execution of capital punishment and immediately the convict's escort will distance himself from the convicted person.

Using his sword as a gesture the commander of the shooter gave the order to get ready then by moving his sword upwards he ordered his team to aim for the convict's heart and by jerking his sword down quickly, he gave the command to shoot.

If after the shooting the convict still showed signs that he was not dead then the team commander immediately ordered the non-commissioned firefighters to fire the ending shots by pressing the end of the barrel of his weapon to the convict's head just above his ears. To obtain certainty about the death of the convict requested the help of a doctor. For the burial of the convicted person to be handed over to his family or friend of the convicted person unless it is based on the general interest of the prosecutor decides otherwise. There is also no possibility of the burial by the family or friend of the convicted person, and then the burial is held by the state by heeding the way of burial determined by the religion / Convicted.

The prosecutor should make an official report of the entire implementation of the capital punishment. The contents of the minutes shall be circulated into a court order which has had a permanent legal power and signed by it.

Interviews with some further informants according to Mr. Ario Priojati, SH, M. Si clarify that there are no rules that govern the waiting period and some of the speakers are hoping to accelerate the execution because the waiting period of several years up to tens of years can make the convict get trauma or mental disorder due to death penalty.
Based on interview with suspected parents Mrs. Aisyah where her son is accused death penalty. Her son has been waiting in the prison up to eight years but he do not know when he will be execute. However during I just had a limited information about Mr. Zainal here he is accused death penalty and also Mrs. Aisyah never visit her son anymore because of his age. Beside that Mr. Zainal is accused death penalty drug case. In order to achieve more information I tried to visit Mr. Zainal to gain more information but unfortunately I was not allowed to meet Mr. Zainal because Mr. Zainal will be move to Medan or Nusa Kambangan. According to Mrs Aisyah her son stress because he has been regretted his actions, lost his future, tourted by other prisoners, and far away from family. Zainal has been prisoned up to eight years before executed and during eight years Zainal more stress because always thinking he will be execute.\textsuperscript{19}

\textsuperscript{19} Zainal, terpidana mati kasus narkoba, Aceh, 28th of agutus 2017 at 10.30 PM
CHAPTER III

DEATH EXECUTION IN CRIMINAL JUSTICE SYSTEM OF INDONESIA

3.1 Definitions

The judicial system is a case management system since the parties who feel aggrieved or from any charges person has committed a criminal act until the implementation of the verdict. Especially for the criminal justice system, as a network, operate the criminal justice system as the primary means of criminal law, and in this case a material criminal law, formal criminal law and criminal law enforcement.  

The criminal justice system puts more demands of the role of judges faced with the fulfillment of the public interest (public) and the determination of the fate of a person, rather than the other cases. Therefore, the occurrence of a crime impact on the emergence of the duties and authority of law enforcement to uncover who the real perpetrators (intellectual actor) of the criminal act.

The Criminal Justice System (SPP) is derived from the word "system" and "criminal justice". Understanding the "system" can be interpreted as a continuum between a numbers of interrelated elements to achieve certain goals. In view of Muladi, understanding the system must be seen in context, both as a physical system in the sense of an integrated set of elements that work to achieve a goal and as a system in the sense of abstract ideas is a regular arrangement which is mutual dependence.

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The Criminal Justice System in Indonesia is based on legislation that is either contained within or outside of the Code of Criminal Procedure (Criminal Code) has a device structure or sub-system consisting of police who carry out the investigation, the Prosecutor who carry out prosecutions against an offense, the Court of carrying out or implementing the law on a case by a judge's decision, as well as Correctional Institution and the Center for Correctional duty to provide guidance to the convict in order to integrate a healthy society so it can play a role again as a member of the public who are free and responsible. Provide guidance to convicts who received a sentence of imprisonment is done by Corrections, while convicts were punished in the form of conditional criminal or criminal trial conducted by Correctional Agency. The subsystems as a whole and is a union trying to transform inputs into outputs into goal Criminal Justice System that is tackling crime or controlling the crimes that are within the limits of tolerance that can be accepted by society.22

3.1.1 Definition of suspects

Criminal Code Article 1 point (14) explains that the suspect was a man because of his actions and circumstances, based on preliminary evidence reasonably suspected as criminals while the grain (15) testified that the accused is a suspect demanded, examined and judged in court. According to Andi Hamzah, the words "for his actions and circumstances" seems inappropriate because with those words as if the investigators already know the actions and circumstances of the suspect when it is something that still has to be sought out by the Code of Criminal Procedure Article I penyidik.1 items (1) explains that the investigator is a police officer of the Republic of Indonesia or civil service officials certain given special authority by law to conduct an investigation while the item (2) explains that the investigation is a series of actions

the investigator in the case and in the manner set out in this law to search for and collect evidence with evidence that shed light on criminal acts that occur and to find the suspects.

Understanding the suspect is often misunderstood by most people of Indonesia, that as though it was certainly guilty suspect. Whereas the right to determine the guilt or innocence is the court, the ruling of the court which has permanent legal force.23

**Classification suspect**

Classification Suspect Inbau and Reid (in Mujiyono 2009) suggests that the suspect can be classified into two types as follows:

1) Suspect mistakes definitive or can be ascertained

   To suspect I type this, the check is performed to obtain recognition of the suspect and evidence that shows alleged errors as complete as derived from facts and data presented in front sidang court.

2) Suspect mistakes uncertain.

   Type II for suspects, then the examination is done carefully through effective methods to attract confidence suspect error, so as to avoid any confusion in determining whether or not a person suspected of committing a crime.24

Once a person named as a suspect, the investigator is authorized (for the sake of the investigation, the investigator and the investigator auxiliary authorities (for the purpose of investigation) the right to conduct the inspection, arrest, and detention as an advanced stage, against a suspect with a warrant of arrest sparks identity of the suspect and stating the reason

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for the arrest and a brief description of cases of crimes that presupposed and where he was examined. In the process of proficiency level, the suspect will be questioning related to the case being examined. About testimony suspect contained in the articles of the Criminal Procedure Code the following:

**Article 117**

(1) Description suspects or witnesses to investigators granted without pressure from anyone or in any form.

(2) In the case of the suspect to give a description of what exactly he had done with regard to the crime of which presupposed to him, investigators noted in the record-precision as expeditiously as conformed n word used by the suspect himself.

**Article 118**

(1) Description suspects or witnesses are recorded in the minutes signed by the investigator and by giving information that was after they approved its contents.

(2) In the case of a suspect or a witness does not want to sign-arms, the investigators noted that in the official report by mentioning the reason.

**Article 119**
In the case of a suspect or a witness who should be heard resident or residing outside the jurisdiction investigator who runs the investigation, examination of suspects or witnesses can be charged to the investigator at the residence or place of residence or the suspect and the witness.

The starting point inspection before the investigation is suspect because of the suspect obtained information about criminal events which are being examined. Examination of the suspect before the investigator to obtain information about criminal events which are being examined. The suspect is the focus of the investigation, the suspect must be enforced against akusatur principle, that the suspect is placed on the position of human's dignity. The suspect should be considered as a subject of examination is not an object of inspection, for criminal offenses committed acts that become the object of examination. The suspect must be presumed innocent in accordance with the legal principle of presumption of innocence (presumption of innocence) to obtain judicial decisions have binding legal force. Furthermore, on examination of criminal acts is also necessary to examine prosecution witnesses or experts in order to light and details alleged criminal events. Examination preceded by a valid summons stating the reasons for calling and concerned a reasonable period between the receipt of the call and a call was required to meet (Article 112 paragraph (1) Criminal Code). The procedure for the examination and interrogate suspected, in terms of juridical, among others:

a) Description of the suspect or a witness to an investigator was given without any pressure from anyone or in any form. (Article 117 paragraph (1) Criminal Code);

b) the investigator noted with expeditiously as-rigorous description of a suspect in the investigation report in accordance with the set of words used by the suspect himself (Section 117 subsection (2) Criminal Code);

c) if the suspect or witnesses should be examined resides outside the jurisdiction investigators conducted an examination, the investigator in question may charge an examination to the investigator in charge at the residence or place of residence the suspect (Article 119 of the Criminal Code);

d) If a suspect or witnesses called to give fair and reasonable grounds that he can not come to the investigator conducting the examination, the investigator can come alone to the residence of the suspect to carry out checks (Article 113 of the Criminal Procedure Code).

To provide legal protection against a suspect then UndangUndangNomor 8 of 1981 on Criminal Proceedings should be realized, particularly in the investigation of criminal cases, especially at this stage of the interrogation frequent arbitrary actions of investigators to the suspect who allegedly committed these efforts are pidana. Tindakan to obtain confessions or information directly from the suspect, but in ways that do often can not be justified legally. Suspect in providing information to the investigator must freely without any pressure or coercion from investigators so that checks can be achieved without deviating from the truth. At the level of scrutiny, the investigator merely took note of the suspect given without having to make a forced action that the suspect testified needed. Violent ways according to the provisions of the Criminal Code can not be justified because it is against the law. Law No. 8 of 1981 on Criminal Procedure Law has provided a legal guarantee upon the suspect in order to obtain the protection
of his rights and fair treatment before the law, proving wrong or whether a suspect or defendant must be done before the trials are open to the public.\textsuperscript{26}

3.1.1.1 Suspect

Defendant is a person who acts or conditions based on minimal evidence were accused was subsequently charged, examined and judged in the trial is the defendant pengadilan. Definition person alleged to have committed a crime and there is ample reason for examination in session court.

From the formula above it can be concluded that the elements of the accused are:

1. Suspected as perpetrators of a crime;
2. Enough reason for scrutiny of himself in front of
   1. the court;
   2. Or people who are being prosecuted, or
   3. Medium tried in court.

\textbf{Evidence Description defendant}

Evidence testimony of the defendant are strictly regulated by Article 189 Criminal Procedure Code, as follows:

1. Description defendant is what the defendant stated in the siding of acts committed or that he knew his own or her own experience.
2. Description defendant given outside the courtroom can be used to help find evidence in

\textsuperscript{26}Mujiyono, Agus Sri. \textit{Analisis Perlindungan Hukum Hak Tersangka dan Potensi Pelanggarannya pada Penyidikan Perkara Pidana}. Surakarta: Fakultas Hukum UNS, 2009, p.6-36.
the trial as long as the information is backed up by a legal evidence throughout the case against her.

3. Description defendant can only be used against itself.

4. Description defendant alone is not enough to prove that he is guilty of committing acts against her, but must be accompanied by other evidence.\(^{27}\)

According to Article 189 Paragraph (1) Criminal Procedure Code above, information from the defendant is what the accused stated in court about the actions he did or he knows himself or experienced themselves. So that an outline description of the accused is:

1) what is the defendant "made known" or "explain" in court,

2) And what is stated or explained it is about the act that the defendant did or about which he knew or that relate to what the defendant's own experience in criminal and is being examined.\(^{28}\)

Of notions above, it can be concluded that the requirement of legitimate information from the defendant should include:

1. What is the accused stated in court.

2. The statement accused include:
   - The defendant did himself,
   - The defendant knew his own,
   - Which naturally defendant himself.

Article 184 paragraph (1) Criminal Code to include information from the defendant as evidence that the fifth or last after the appliance evidence. This is in contrast with the HIR that puts

\(^{27}\)ibid

information from the defendant on the third place of the above directives, only in HIR "testimony of the defendant" as contained in Article 184 paragraph (1) c Criminal Code, pursuant to Article 295 item 3 HIR-called "confession of the accused".

The second difference this term when viewed in terms of juridical, lies in the definition of "information from the defendant" a little broader than the term "confession of the accused", because the term "testimony of the defendant" as well include "recognition" and "denial", while the term "recognition the accused ", only limited disclosure statement itself without including the definition of denial. So it can be seen clearly that the "testimony of the defendant" as evidence do not need to be the same or shape recognition. All information from the defendant should be heard. Whether it be a denial, recognition, or recognition of some of the actions or circumstances.29

While the testimony of the defendant on the grounds placed third in the instructions above HIR, because a user can be obtained from the testimony of the accused, then in such case the instructions can be obtained only after first checking the defendant.

**Principle Rate Description Accused**

Of course not all the information from the defendant considered as valid evidence. To determine the extent to which information from the defendant can be judged as valid evidence by law, required some principles as a stepping stone, among others:

1. Description was stated in court testimony given at the hearing is a statement in the form of explanation expressed by the defendant and the statement in the form of explanation.

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an explanation or answer to a question from the chairman defendant trial, the judge members, and the public prosecutor or counsel.

2. As for the actions that the defendant did, seen, or experienced themselves

Statement defendants include:

a) The actions of the defendant do alone. The defendant himself has done it, and not someone other than the defendant.

b) About what was known by the defendant, the defendant himself who knows what happened. Knowing here means he knows how to do something or how a criminal act was committed. Not that knowing in the sense of knowledge that is of opinion, but solely with respect to the knowledge of the criminal incident against her.

c) Of what is experienced by the defendant. The defendant himself who experienced the event, namely experience in relation to the acts charged. However, if the defendant denies experiencing the incident, then such denial remains a testimony of the defendant.

Description defendant only constitute evidence against himself. According to this principle, what was described a person in the trial in his capacity as a defendant, can only be used as evidence against himself. If the defendant in a case made up of several people, each of which binds only to the testimony of the defendant himself. In other words, that the testimony of the defendant should not be used as evidence for the other defendants.\(^\text{30}\)

3.1.2 Definition of convicted

\(^{30}\text{ibid}\)
Offenders is a convicted by a court decision that has obtained permanent legal force, and if in the process of judicial judge finds the evidence strong that could declare the defendant guilty and the judge knocking hammer and permanent legal power (incraht) then when it also the status of the defendant be convicted and serving sentences who have decided hakim.dan if sentenced to death means the courts have ruled that the death row inmates should run criminal past which is guessed to death according to the results of the study authors.

Inmates are convicts serving prisoners missing criminal independence in Penitentiary. (Article 1, paragraph 7 of Act No. 12 of 1995 on correctional). Law Dictionary defined within the Convicts are: people who were serving a sentence in a penal institution or society Di in Article 14 under Law No. 12 of 1995 on the correctional that inmates are entitled:

- a. Doing worship in accordance with his religion or belief;
- b. Treatment, both spiritual and physical care;
- c. Education and teaching;
- d. Health services and decent food;
- e. Lodged a complaint;
- f. Reading material and follows the broadcast media which are not prohibited;
- g. A wage or premium for work performed;
- h. Receive family visits, legal counsel, or other particular person;
- i. Get a reduction in criminal past (remission);
- j. Getting the opportunity to assimilate including home leave;
- k. Parole;

Get off free and get ahead of the other rights in accordance with legislation that Berlaku.Narapidana can be moved from prisons to other prisons for the benefit of:
a. Coaching;
b. Security and order;
c. The judicial process; and
d. Others are considered necessary

Development Prisoners In is activities carried out useful to obtain better results. It is common knowledge that the person has committed a crime and sentenced by a court would spend his days in the House of Detention or Prison as the embodiment in carrying out the punishment he received. Inside the Correctional Institution, the person will status as prisoners and undergoing training which has been programmed. At first coaching prisoners in Indonesia using penal system. Such coaching model has actually been executed long before Indonesia's independence. Basic law or laws used in the penal system is Regalement prison, this rule has been used since 1917.31

It could be said that the treatment of prisoners at that time was like treatment of Dutch colonizers against fighters who were captured. They are treated as mere objects convicted the Independence. but their power is often used for physical activities. This makes remote penal system of human values and human rights. Thus the purpose of the prison as a place to accommodate the perpetrators intended to deter (regred) and no longer committing a crime. For that regulations made hard, and often inhumane.32

The idea first came about changing the purpose of fostering the inmates of the penal system to the correctional system is expressed by Sahardjo. According Sahardjo in correctional purpose means that not only the people who diayomi against repeated transgressions by the

32*ibid*
convict, but also who has lost diayomi by giving him life provision as useful citizens in society. From the aegis apparent that the convict is not an act of revenge on the state of reconciliation cannot be achieved by torture, except by the guidance. Convicts also not sentenced to torture, but lost the independence of the state criminal taking of personal freedom and in time will restore it to the public again has an obligation towards the convicted person in the community.33

The conception of a new system calls for the replacement of coaching inmates in the bill, to become law society.contitution law will eliminate the smell of liberal-kolonial.Sistem overall correctional according to article 1, paragraph 2 of Law No. 12 of 1995 (uu correctional) is an order of the directives and restrictions as well as ways of coaching prisoners based on Pancasila carried out in an integrated manner between the builder, which is fostered, and communities to improve the quality of the prisoners in order to realize the error, improve ourselves and not to repeat so that the criminal can be received by the community, and actively participate in the development and can be normal life as a good citizen and a responsible .System correctional will be able to change the negative image of the penal system to treat inmates as subjects as well as objects that are based on human treating people as people who have a parallel existence with humans. System promises a humanist coaching model, while respecting the prisoners humanely and not solely reprisals from the state. Missing the penalty would be enough independence as a separate suffering so no need to be supplemented with other torture and physical punishment contrary to human right. Penal system, the role of prisoners to build itself completely unnoticed. Inmates also are not nurtured but left unchecked, the task of the prison at that time no more than supervise inmates in order not to make a fuss and do not run away from prison .education and employment provided merely as a pastime, but economically exploited. Let someone be

convicted, a sentence, without giving guidance will not change the inmates. However inmates are human beings who have the potential to be developed towards a positive development, which is capable of changing a person to be productive.

In fostering inmates cannot be equated with the most people and should use coaching principles prisoners. There are four important components in maintaining inmates are:

a. Myself, the inmates themselves.

b. Family, is a member of the immediate family, or a close relative.

c. Society, are the ones that surround the inmate while still outside the Prison / Detention, can ordinary people, community leaders or local officials.

d. Officers, may be police officers, lawyers, and religious officials, social workers, personnel Penitentiary, Imprisoned, BAPAS, judges and others.34

In the penal system, the purpose of sentencing is coaching and guidance, to the stages of admission / orientation, coaching and assimilation. At this stage of development, inmates nurtured, guided so that in the future are not committing a crime again, being at the stage of assimilation, inmates were assimilated into the middle of the community outside prisons. It is an effort to provide supplies to inmates in order more awkward when out of the institution society. different of the penal system, a new system of coaching inmates, the goal is raising awareness of its existence as human. Consciousness inmates as prisoner’s development objectives, how to achieve it by various the following stages:

a. Know yourself. In this phase of prisoners taken in the atmosphere and situation that may reflect, explore and identify yourself.

34Harsono, op.cit. p. 51.
b. Having a religious awareness, awareness of the belief in God Almighty, aware of God's being with limited and as being capable of determining its own future.

c. Getting to know the potential, in this stage of the inmates are trained to recognize potential yourself. Being able to develop their potential, develop positive things in themselves, expanding the horizon, always trying to get ahead and always strive to develop human resources.

d. Know how to motivate, is able to motivate yourself in a positive direction, towards change for the better.

e. Able to motivate others, prisoners have to know yourself, have been able to motivate yourself, is expected to motivate other people, groups, families and the surrounding community.

f. Being able to have a heightened awareness, both for myself, family, and group, surrounding communities, religion, race and country. Participate actively and creatively in building the nation.

g. Being able to think and act. At a higher stage, prisoners are expected to be slight positive thinking, make decisions for themselves, able to act on the decision earlier. Thus the prisoners are expected mempu independent, not dependent on other people.

h. Have a strong confidence, inmates who have to know yourself, are expected to have strong confidence. Believe in God, believing themselves able to change the behavior, actions and circumstances dirisendiri for the better.

i. Have responsibilities. Getting to know yourself is an attempt to establish a sense of responsibility. If the inmates are able to think, make decisions and act, then inmates should be able also to be responsible as consequent on the steps that have been taken.
j. Being a whole person. At the last stage is expected Prisoners into people with personality intact. Able to face the challenges, obstacles, obstacles, hindrances and any issues in every step of life.\textsuperscript{35}

In fostering the necessary principles and guidance for the inmates. According Sahardjo ten principles and guidance for inmates are as follows:

a. People who lost must be acknowledged by giving him life provision as good citizens and useful in society.

b. Criminal punishment is not an act of retaliation from the state.

c. A sense of repentance cannot be achieved by torture, but with guidance.

d. The state does not have the right to make someone worse than before he went to prison.

e. During the lost freedom of movement, prisoners must be known to the public and should not be ostracized from society.

f. The work given to prisoners should not be to fill the time or only for institution interests or country. The work presented must be devoted to development of the country.

g. Guidance and training should be based on the principles of Pancasila.

h. Each person is a human being and should be treated as a human even though he had lost. Not to be shown to the prisoner that he was a criminal.

i. It was only sentenced inmates lost independence

j. Physical facilities for adult institutions is one of the barriers to the implementation of the penal system.\textsuperscript{36}

\textsuperscript{35}ibid

\textsuperscript{36}ibid
3.1.3 Understanding the Criminal

Penal Code are legal regulations on the criminal. The word "criminal" means being "criminalized", ie by the ruling authority is delegated to a person as an awful thing felt and also things that are not every day Delegated .criminal is suffering deliberately imposed on those who commit acts that qualify certain.

Crime itself always contains elements or traits as follows:

a. Crime was essentially a result of the imposition of suffering or sorrow other unpleasant consequence.

b. Criminal was given intentionally by persons or entities who have the power (by the authorities).

c. Crime was imposed on a person who has committed a crime under the law.°

Crime is essentially the imposition of suffering against the makers of a criminal offense which is expected to have an influence on people who are subject to criminal .criminal this can only be felt significantly by the convict when the judge's decision is carried out effectively. Punishment here is expected that the convict committed the crime.with their sentencing, the sentencing objectives will be achieved.

3.1.4 Correctional facility

Definition of Prisons Correctional definition in Article 1 paragraph 3 Penal Law is to implement guidance of Prisoners and Correctional Learners. Penitentiary as a technical implementation unit in the field of coaching inmates under and directly responsible to the Head Office of the Ministry of Law and Human Rights. Penitentiary established in each of the Capital

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District or Municipality, but when needed can be established at the district level or administrative city. Intended to improve the quality of legal services and equitable justice for prisoners and their families with regard to the development outside the region or territory, population growth and an increase in the number of criminal acts that occurred in the same district or city administrations concerned. Realizing the implementation of an effective and efficient criminal, then Penitentiary divided into several groups, namely:

1. According to age:
   a. Penitentiary for children.
   b. Prison for youth.
   c. Penitentiary for adults.

2. According to gender:
   a. Correctional Institute for women.
   b. Special Correctional Institution men.

3. According to its capacity:
   a. Penitentiary Class I.
   b. Correctional Institution Class II.
   c. Class III Penitentiary.38

3.1.4.1 Status, Duties and Functions of Penitentiary

a. the Position Penitentiary
Correctional (prisons) a technical unit in the field of coaching inmates. Prisons are under and directly responsible to the Regional Office of the Ministry of Justice and Human Rights.

b. Task Penitentiary

Correctional Institution in charge of providing guidance social and community services, correctional clients guidance according to the rules applicable legislation.

c. Function Penitentiary

In implementing its tasks, each of which has a function Penitentiary:

a) Adult Correctional Institution is used for the placement of adult male prisoners aged over 21 (twenty-one) years.

b) Penitentiary female adult inmates used to placement of women aged over 21 (twenty-one) years.

c) Youth Penitentiary inmates used to placement of young men and women aged over 18 (eighteen) years to 21 (twenty-one) years.\(^{39}\)

3.1.5 Death row phenomenon

The death row phenomenon is the term used to refer to the emotional stress felt by the prisoners on death row. Concerns about the ethics that caused this suffering to prisoners have raised some legal issues about the constitutionality of capital punishment in the United States and other countries. In connection with the use of solitary confinement with the occupants of death penalty, death row and death row syndrome phenomena are two concepts that get ground. The death row syndrome should be seen as a different concept, which refers to the eternal

\(^{39}\)ibid
psychological effects of the death row phenomenon, which only refers to the triggers of this syndrome.40

At its basic level, the death row phenomenon raises the legitimacy of the death penalty. By establishing that "execution after a long delay under the harsh conditions of the death penalty. It is a cruel and inhuman punishment. It faces the implications of capital punishment" Following a tortuous period of delay.

The death row phenomenon occurs as a result of the multiple conditions experienced under the death penalty. Despite the variance in the quality of detention facilities perceived worldwide, the row of death. The general condition is marked bleak, with "rigid security, isolation, limited movement, and harsh conditions." As noted in Soering v. England, circumstances such as conditions of extreme capital punishment, waiting time for long executions and widespread suffering from anticipatory execution Work in concert produces the death row phenomenon. The intense isolation and fear that is inherent in life in the death row must have resulted in a physical and physical decline. A academic discussion of the death row phenomenon generally identifies at least two components: temporal and physical.26 Recent considerations of Death phenomenon has included a third component, experience, which isolates the psychological impact of living under the shadow of capital punishment.

3.2 Punishment Theory

Theory as a Theory and the combined theory as an integrative view within the purpose of punishment assume that punishment has a political purpose, in which the two theories combine a

Utilitarian view with a Retributivist view. The Utilitarians' view which states that the purpose of punishment must have proven consequences and a retributivist view which states that justice can be achieved when the theological objective is made by using the principles of justice.\textsuperscript{41}

Some theories relating to the purpose of punishment are as follows:

3.2.1 Absolute Theory / Retribution

According to this theory the penalty is imposed solely on the person who has committed a crime. Immanuel Kant views criminal as "Imperative Kategorische" ie a person must be convicted by a Judge because he has committed a crime so the criminal shows a demand for justice. This absolute demand of justice is seen in Immanuel Kant's opinion in his book "Philosophy of Law" as follows:

- Criminal is never carried out solely as a means to promote other purposes / goodness for my own siphon as well as for society but in all cases must be imposed because the person has committed a crime.\textsuperscript{42}

Regarding the theory of retaliation, Andi Hamzah also gave the following opinion:

- The theory of retaliation says that the criminal is not aimed at the practical, such as repairing criminals. It is the crime itself that contains elements of criminal sanction. Criminal absolute, because committed a crime. It is not necessary to think about the benefits of criminal detention”. \textsuperscript{43}

\textsuperscript{42}Muladi, and Barda Nawawi Arief. \textit{Teori-teori dan Kebijakan Pidana}. Bandung: Alumni, 2005,p.42
This means that the theory of vengeance does not think about how to foster my criminal
guardian, whereas my criminals have the right to be nurtured and to be useful human beings
according to their dignity and prestige.

3.2.2 Objectives Theory / Relative

The adherents of this theory see as something that can be used to achieve utilization,
whether associated with the guilty or associated with the outside world, for example by isolating
and repairing criminals or preventing potential criminals, will make the world a better place. The
basis of justification of the existence of the criminal according to this theory lies in its purpose.
Criminal is imposed not quia peccatum est (because people make mistakes) do ne peccetur (so
people do not commit evil), it is quite clear that this goal theory seeks to realize order in
society. 44

Regarding criminal purposes for crime prevention, it is commonly divided into
two terms, namely:

a. Special Prevention (Special Prevention) or Special Prevention That criminal
influence is shown to the convicted person, where this particular prevention
emphasizes the criminal purpose of the convict not to repeat his actions again.
Criminal functions to educate and improve the Convict to be a good and
useful member of society, in accordance with his dignity and prestige.

b. General Prevention (General Prevenie) or General Prevention General
Prevention It emphasizes that the criminal purpose is to maintain public order
from criminal disorder. Criminal influence is shown to the general public with

a view to frightening. This means that the prevention of crime to be achieved by the criminal is to affect the behavior of members of society in general not to conduct criminal acts.

According to Johan Andenaes there are three forms of influence in the sense of general prevention:

1. Effect of prevention.
2. Influence to strengthen moral restrictions.
3. Influence to encourage a habit.

3.2.3 Combined Theory

Combined theory is a combination of relative theory. According to the combined theory, criminal purposes always reply to criminal wrongdoers are also intended to protect the public by realizing order with the severity of the criminal must not exceed the limits of retaliation.

According to Pellegrino Rossi in his book "Traite de Droit Penal" written in 1828 states: 'Though retaliation as a principle of criminal sanction that criminal severity must not extend beyond a just retaliation, the criminal has various influences such as the repair of something damaged in society and General prevention'

Against this combined theory there are three influential streams, namely:

a. Combined theory that emphasizes the element of vengeance, but its usefulness to society. Pompe mentions in his book "Hand boek van het Ned.Strafrecht" that a criminal is a sanction that has its own characteristics of other sanctions and is

45 ibid
bound to the purpose of such sanctions will therefore be applied if it is to the
benefit of the fulfillment of the rules useful for the public interest.

b. Combined theory that emphasizes code of Conduct society defense. Vengeance is
the nature of a criminal but its purpose is to protect the welfare of society.

c. Combined theory that views the same vengeance and defense of public order.

Similarly, Roeslan Saleh argued, that the criminal nature there are two axis that determines the
lines of criminal law are:

a. The Prevention aspect, namely that criminal law is a law of sanction, an attempt to
sustain life together by preventing crime.

b. The aspect of Revenge, namely that criminal law at the same time is also a legal
determinant, is a correction and reaction to something that is not legal.47

In essence the criminal always protects the public and retaliation for unlawful deeds. In addition
Roeslan Saleh also argued that criminal law contains other matters, namely that criminal is
expected as one that will bring harmony and as an educational process to make people acceptable
in society. So it should be a criminal purpose is to establish the welfare of the state and society
that is not contrary to the norms of decency and humanity in accordance with Pancasila.

3.2.3 Integrative Theory

This Integrative Theory was introduced by Muladi, a professor from Diponegoro
University Law Faculty: Today the problem of criminal prosecution becomes very complex as a
result of efforts to pay more attention to the factors of human rights, and to make the crime

operational and functional. This requires a multi-dimensional approach that is fundamental to the impact of criminalization, whether involving individual or social impacts\textsuperscript{48}

Such an approach leads to the necessity of choosing an integrative theory of the purpose of punishment, which can fulfill its function in order to overcome the damage caused by individual and social damages. The choice of integrative theory about the purpose of punishment is based on reasons, both sociological, ideological, and juridical. The sociological reasons can be cited in the opinion put forward by Stanley Grupp, that the feasibility of a criminal theory depends on the individual's assumptions of the nature of man, the information one receives as a useful science, the kind and extent of knowledge that may be achieved and the assessment of the conditions To apply certain theorists and possibilities that can be done to find those requirements. Ideologically, based on Pancasila, man is placed on the whole of his dignity as a creature of God Almighty with the consciousness to develop his nature as a personal and social being. The rounded and whole pancasila gives confidence to the people and the people of Indonesia that the happiness of life will be achieved if it is based on harmony and balance, both in human life with nature, in relation to other nations, in human relation with God, or in the pursuit of progress and happiness spiritual. Furthermore, Muladi's juridical reasons agree with Herbert L. Packer's opinion as follows: There are only two objectives of the crime of punishment, namely the imposition of sufficient suffering against criminals and crime prevention\textsuperscript{49}.

Integrative punishment theory requires an integral approach to criminal purposes, based on the recognition that the tensions between the criminal objectives cannot be solved

\textsuperscript{48}ibid
\textsuperscript{49}ibid
comprehensively. Based on the recognition that none of the objectives of punishment is definitive, this integrative theory of punishment reviews the purpose of punishment from all perspectives. Criminal is a necessity, but a form of social control that is solved, because wearing suffering on behalf of the goals to which it attains is a possibility. Based on sociological, ideological and juridical reasons above.

The purpose of punishment devices mentioned above are:

a. Prevention (general and special);

b. Community Protection;

c. Maintaining Community Solidarity and

d. Supervision / Weighing.  

3.3 Legal Force

Formally, the role of the community in participating in fostering prisoners or ex-prisoners is not contained in the Act. However, morally participation in fostering prisoners or ex-prisoners is expected. This penitentiary system uses the Pancasila philosophy as the basis of view, the goal is to raise the consciousness of the inmate of his / her existence as a full human self and capable of carrying out the change of self towards the better And more positive. This kind of awareness is something that prisoners should know in order to understand the meaning and consciousness correctly and can apply in everyday life. In principle, all convicts who undergo criminal disappearance of independence after it is decided through a court decision with a legal force

\[50\text{ibid}\]
remained placed in Penitentiary Prisons as stipulated in Article 1 point 3 Jo. Number 7UU. 12 Year 1995 (concerning Corrections).

It is therefore also reinforced by some of the provisions contained in Perkapolri no. 12 of 2010 on the Procedure of Criminal Implementation ("Perkapolri 12/2010"). In Perkapolri 12/2010 it is explained, among others, that the organization of execution of the death penalty is carried out by firing squads and support squads, the support team is divided into 5 squads. One of the support teams, which is Team 2, which is 10 people, is in charge of carrying out security and escort to death row convicts in Penitentiary / LP, as well as escorting death row convicts from the place of isolation to the location of the execution of capital punishment and from the location of the execution of capital punishment to the hospital See Article 7 Paragraph [1] in conjunction with Article 7 paragraph [1] jo Article 9 jo Article 11 Perkapolri 12/2010). Thus, death row inmates are placed in prisons as places of isolation for death row inmates pending execution. It is true that the function of the penitentiary system in prisons as stipulated in Article 1 the number 2 of Law 12/1995 is to carry out guidance on inmates in order to improve themselves and be accepted back by the community. This guidance is also given to death row convicts, because the convict still has another legal effort so there is still no chance of death sentence. These legal efforts are in between.

3.3.1 Juridicial Review

A review is a tremendous remedy against a permanently enforceable court ruling. The request for review was made on the basis of, among others (Article 263 paragraph [2] of Law No. 8 of 1981 on Criminal Procedure Code - "Criminal Procedure Code"): 
If there is a new circumstance that raises strong allegations, that if the circumstances are known at the time of the hearing, the result shall be either a free verdict or an independent verdict of any lawsuit or the claim of the public prosecutor is unacceptable or the case is applied to a less severe penal provision;

When in decisions there is a declaration that something has been proven, but the thing or circumstance as the basis and reason of the declared verdict proved to be contrary to one another;

When the verdict clearly indicates a judge's oversight or a tangible error.In Article 268 paragraph (1) of the Criminal Procedure Code is stated, the request for review does not suspend or stop the execution of the verdict (in this case the death sentence). However, Deputy General Prosecutor Darmono, in the article of the Death Door Sentence, has not filed a Legal Effort, saying that as long as the defendant still has the right to file a legal remedy in accordance with the provisions of the law, the Prosecutor's Office will not yet execute.

3.3.2 Clemency

The pardon setting is set out in UU no. 22 of 2002 on Grasses as has been amended by UU no. 5 of 2010 on Amendment to Law no. The criminal verdict, including the death sentence which has a permanent legal force, can be applied for a one-time pardon to the President (Article 2 of the Hague Law). The petition for clemency does not delay the execution of the conviction for the convicted person, except in the case of the death sentence (Article 3 of the Correctional Law). The petition for clemency shall be filed within a maximum of 1 year from the date of the decision of obtaining permanent legal force (Article 7 of the Correctional Law). Thus, if a sentence of death sentence is filed for clemency, then the execution is suspended, because capital
punishment can not be executed before the Presidential Decree on rejection of the petition for pardon is accepted by the convicted person (see Article 13 of the Law)

a. Law Number 8 Year 1981 regarding Criminal Procedure Law

b. Law Number 12 Year 1995 regarding Corrections

c. Law Number 22 Year 2002 on Grasis as has been amended by Law Number 5 Year 2010 concerning Amendment to Law Number 22 Year 2002 concerning Pardon

d. Regulation of the Chief of Police of the Republic of Indonesia Number 12 Year 2010 concerning the Procedures of Criminal Implementation\textsuperscript{51}

\textsuperscript{51}Undang-Undang Dasar Negara Republik Indonesia Tahun 1945
CHAPTER IV

PROBLEM IN THE IMPLEMENTATION OF DEATH EXECUTION IN INDONESIAN CRIMINAL SYSTEM

After a thorough research through literature review and comparing it with the practice that exists, through information taken from the interviewees, both from the prison officer (Warden) and the relevant prisoner. It can be found various factors that can obstruct the execution of death to death row convict.

Factors that inhibit or delay the execution of convicted persons who have received permanent legal decisions include:

4.1 Problems in Budgeting

According to the interview with the ario priojati, SH, M.Si, some Institute were constrained by cost and kemenkumham hoped to speed up the execution to reduce over capacity in prison but kemenkumham did not have the authority to make the rules quicken the death execution, all back again to the government, where should be affirmed the issue of death penalty. In here as we can see a lot of irregularities is happening because there is no certainty about the death row inmates when they are going to be executed. From some places I have visited, the prisoners are really hope to know when they will be executed, based on the interview along with the convicted they said that they have 2 sentences of imprisonment and death penalty and I could tell that there are many irregularities in prisons because there is no legal certainty so that the inmates do many negative things in prison. Some of the news I D Apat many drug dealers found able to do the operation in the prison because they got no attention from the government about the waiting period.
Questioning the fund, until now there has been no rules that explicitly regulate the cost that required to carry out the dead execution. The government and the legislature are still reluctant to question the budget for execution. This is due to the assumption that there are still many important issues in Indonesia other than criminal law. In fact, an important factor affecting the delay in the execution of the death penalty is related to the laws and regulations, in this matter the filing of the Clemency and judicial review, as it is clear in the existing law in Indonesia Article 268 Paragraph (3) stated that: "Request a review of a decision Can only be done once ". In the legal system in Indonesia, judicial review is the highest legal effort, where there is no more effort on the judicial review, but there are irregularities where sometimes judicial review can be submitted several times, this is what makes the death sentence to be delayed. In relation to the filing of the judicial review where it can only be submitted once, it has been able to represent the sense of community justice because if the extraordinary legal effort can be filed several times equally means to injure justice that is expected by the community. Whereas the Clemency petition should only be submitted twice if Clemency is rejected and has passed two years. But in reality, Clemency and judicial review can be submitted repeatedly and repeatedly without any time limitations. The weakness of Law Number 22 Year 2002 on Clemency that impedes the execution of death is as follows:

(1) Absence of stipulation concerning time when applying for pardon
(2) The absence of provisions regulating the death row inmate or his / her family who are not filing clemency
(3) Unequivocal regulation on several times should be sentenced to death for clemency
(4) The absence of provisions regulating the deadline of execution of capital punishment following a presidential pardon refusal the importance of legal certainty in Indonesia will
facilitate law enforcers in exercising their authority, and for the enforcement of the law and the return of public / public trust to the legal instruments Indonesia.

4.2 Due to the Excessive Flagging Dead Execution

4.2.1 for the Death Penalty

From the results of previous discussion, it can be seen that there is often a delayed execution time caused by many things such as regulations that regulate the time limits filing judicial review and Clemency application is not clear, so the implementation was delayed, the cost used for execution is relatively expensive while Funds from the Attorney (executor) is very limited and so forth. This time has considerable impact on death row convicts, for the community as well as for the LP who is entrusted by the convict’s inmate to death. Especially for death row inmates, the prominent impact is related to human right that is the abandonment the fate of the convicted person because the regulation is not certain. A convicted, the death row inmate would expect the existence of justice and legal certainty. Prolonged periods of time will actually make the convicted worse, tormented both physically and mentally (psychic) is extraordinary and this situation is not necessarily experienced by most people. Of course, this kind of situation can be categorized as a violation of human rights. In the eyes of the International, such a situation is of great concern although in Indonesia there is a protection institution that protects human rights for everyone (Komnas HAM), but this government agency is still cannot reach it. This should not be allowed to drag on until the convict is tortured and eventually dies in prison.
4.2.2 for the Community

The purpose of the criminal law in general is to prevent the public from committing a crime. This noble goal will not be realized if the punishment system within a country is not well structured. Although the criminal threats contained in the legislation are of a nature to frighten people into not committing criminal acts, the implementation must be done in earnest. Nowadays people are starting to realize that the threats listed in the legislation are only formal as they are known on paper only. The fact that the execution of capital punishment, which is not done seriously can make people become restless and lose confidence in the existing legal system. That way the public will ignore the criminal threats that exist in the provisions of legislation so that it is feared will emerge a greater impact such as crimes committed by society with regardless of the existing criminal threats. This should not happen if the actual crime is committed. This assumption is supported by the opinion of Sahetapy stating that "With the 'inflation' of this seemingly 'cheap' mortal threat, one is hesitant and will ask whether it will actually apply this cruel punishment in practice". Demkian Sahetapy's opinion gives the intention that the reality is happening, the people are reluctant to believe with a threat of capital punishment will actually be executed or not. Criminalization aimed to prevent people from committing the same crime will not be maximized. Actually, the provision of criminal sanction against the perpetrators of evil is the absolute desire of the people, in this case so that the people are satisfied that justice has been established.

4.2.3 for prisons that accommodate death row convicts

A prisoner dies before his or her execution, first granted the freedom to obtain the rights he or she possesses with the application of a judicial review or a Grasi. Not necessarily a prosecutor or General Attorney executing the death row after the first submission of the judicial
review or Grasi, since the law provides an opportunity for subsequent appeals for the judicial review or Clemency. If it is done, it has eliminated some of the rights of death row inmate to obtain justice. While for death row inmates in time of opportunity to apply judicial review or Grasi, firstly prosecutor entrusted to prison to be temporarily accommodated in order to get coaching. In this case who is fully responsible for the death row inmate is the Attorney (executor). Besides the prison space is already full, the prison is also continuously conducting intensive coaching to the prisoners. Along with this, he added: "Actually, the party who has the heaviest burden is the LP, because here (Nias Minas Stone 1 prison) in addition to being full, we also have to coach and maintain good physical and spiritual health constantly, the prisoners are very sensitive just to be approached. Thus it can look so great impact caused by the grace period that is too long for the death row inmates who are waiting for death execution. Therefore, through this research, the authors always recommend that the provisions in the rules of law both Clemency and judicial review must be corrected again considering the impact caused by a very large and increasingly widespread, and human rights should be the highest goal of the criminal justice system that must be respected.

4.2.4 Double Sanctions for the Death Penalty

The execution of the death row must be executed after a court that has obtained permanent legal force and to the prisoner has been given the opportunity to propose rights such as the judicial review and the Clemency petition to the President has awarded a criminal verdict. Execution can be executed by fiat executie (approval of the President). It is clear here that capital punishment should serve as the last penal tool and can only be used against people who are irreversible and perceived as dangerous for the people and the life of the state. Please note here that the death penalty and imprisonment have different concepts. Regarding the correlation of
normatively there is no connection at all, only capital punishment is used as a means for the state to seize the independence of the convicted person before the execution so that he did not escape from the attorney that entrusted them to the prison. The death penalty and imprisonment are part of the criminal types applicable under Indonesian positive criminal law (as described in the Criminal Code). As is known, the two criminal forms are very different and can not be accumulated. Only in the das sein level this is often the case of death row convicts. Implementation of imprisonment is adjusted to the basic fungi Penal Institution as a place of punishment and forbidden during the criminal sanction imposed on him and in this case the prisoners were also categorized as prisoners of Penitentiary. The main function of Correctional Institution is to foster and prepare the prisoners in order to live in society without harm and harming other members of the community. Whereas the convicted person shall die before being executed, the convict shall wait for a certain period of time to obtain certainty whether it will be executed or not, in this case upon the receipt of the judicial review or by a presidential pardon by a Presidential Decree requiring the abolition or alteration of his criminal form. In order to wait for a certain period of time to obtain the certainty of his crime, the convict is placed (deposited) to prison to the authority and responsibility of the Prosecutor (executor). While in connection with the prison system, death row inmates are treated the same as convicted prisoners in prisons in general. Following the prison officer's statement: "Basically the formation of prisoners sentenced to death is treated the same as other prisoners who are prisoners, only to death row inmates more emphasized to the side of spiritual guidance in a motive effort to immediately repent". It is seen that there is an element of rejection of the imprisonment system, which is uncertain, how long the convicted person must wait for death execution. Based on this, the problem arises where the prison facilities as if imposed by the state as an additional criminal
form against the death row convict. It is said that because of the tendency in this country, the execution of death to convict will take place in a relatively long time as described in the previous topic. So it seems as if most of the death row inmate underwent two criminal forms at once, that is with the prison sentence begins first, then then carried out the actual criminal was imposed on him that is capital punishment. This problem causes the more complex problematic in the death penalty. Now the news topic seems to be shifting concerning the problematic of postponing the execution of capital punishment. The overlapping of the criminal system will only add to the stalling of the law enforcement process until eventually many parties are harmed both for the convicts themselves, for the community as well as the penitentiary. From the above formulation, there are findings that the deadline of delay in the execution of capital punishment that is too long for the death row convict is a double sanction that besides the death penalty, the convict must also have a prison sentence in advance without certain time limit certainty.

4.3 How Indonesia Criminal Justice System Control Death Penalty

4.3.1 Death Penalty Procedure According to Indonesian Legislation

Death penalty applies to those who committing criminal acts that are categorized as serious crimes such as treason, premeditated murder, drugs, terrorism, corruptions and other things. These things shows that Indonesia still applies the death penalties in its criminal law provisions

Indonesian criminal law recognizes several types of criminal sanctions contained in Article 10 of the Criminal Code which divided into two principal punishment and additional criminal law as the following:

1. Principal punishment consists of:
a. Death penalty  
b. Penalty  
c. Criminal crime  
d. Fine  
e. Criminal cover (added under Act No. 20 of 1946)

2. Additional criminal laws consists of 
   a. Criminal revocation of certain rights  
   b. Criminal looting of certain goods  
   c. The judge decision about the weight of the criminal announcement according to Article 69 of the Criminal Code.\(^\text{52}\)

The fundamental difference between the principal and the additional criminal is that the imposition of the principal penalty is imperative and the additional penalty is facultative. The imposition of the principal penalty is based on the fact that if in the case of a crime committed by a person charged by the public prosecutor has been legally and convincingly proven, its imposition is imperative. While the additional criminal itself in accordance with the term "supplementary" shall not be imposed independently or separately without any principal penalty. This means that additional criminal may be imposed together with the principal (facultative) criminal. Meanwhile, the principal penalty can be imposed on a stand-alone basis without having being accompanied by an additional criminal.\(^\text{53}\)

1. Regulation (legislation), currently with the Constitution and judicial review law, where judicial review can be submitted more than once and clemency also can submitted more


\(^{53}\) ibid
than once, that can impede the execution of capital punishment, because the technical arrangement when the time period of judicial review submitted is not regulated in legislation and the flexibility of provisions on the clemency, of course it can inhibit the implementation of the execution.

2. The district court which receives the submission of a review (judicial review) of a Convicted person, regally unable to refuse if it deems his judicial review filing is irrelevant, since in this case the district court has no capacity in rejecting the judicial review in positive law. While those with authority for it are the Supreme Court. The occurrence of it according to informants because of the confusion in translating the existing rules so that there is a mistake in interpreting a legislation.

3. Lack of socialization / publication, In the case of socialization related to legislation, An invitation on the procedure for the execution of capital punishment is still lacking, where it is lack of understanding between law enforcers and the public, in general of society, so there is often confusion when the executor still has the authority where to complete the legal instrument that must be lived whether clemency or judicial review.

4. Regarding the time, the fact that the judicial review filing is not seen from novum (evidenceNew) existing, while in this case the technical filing of the judicial review according to positive law is if found new evidence, but what happens is the judicial review submission Only to complete its rights alone in the absence of novum and this is also served by supreme court of course it is against the law, so they have long-time for decision-making process related to whether or not received the judicial review.
5. The high cost used for the execution of dead execution considering the party Burdened costs are the executor (Attorney), while from the Attorney itself The finances are so limited that in practice they are often experienced Obstacles.

The law does not expressly regulate in which case a convicted person may filed am judicial review and in which case a convicted person can not file a judicial review, here which leads to confusion of the executor so that the necessary regulatory improvements there is legal certainty as well as for the public certainty and for the convict to die not too long time in a criminal prison that would have violated the rights and the convict.\textsuperscript{54}

Actually the important factors that affect the delayed execution of the death penalty is related to the laws and regulations in this matter the filing of Gclemency and judicial review, Because it is clear in the rule of law that exist in Indonesia Article 268 Paragraph (3) stated that: "A request for review of a decision can only be made once Only ".

In the legal system in Indonesia, judicial review is the highest legal effort, where none exists more efforts on the judicial review, but there are irregularities where sometimes judicial review can be submitted Several times, it is then that the execution of the death penalty becomes delayed. The connection with the submission of the judicial review which can only be submitted once it has been able to represent the sense of community justice because if the extraordinary legal effort can be filed several times the same its mean that already injurious justice that is expected by the community. Whereas the clemency petition should only be submitted twice if

\textsuperscript{54} Prakoso, Djoko. \textit{Masalah Pidana Mati}. Jakarta: Bina Aksara, 1987, p.35
clemency is rejected and has passed two years. But in reality, clemency and judicial review can be submitted repeatedly and repeatedly without time limitations.\textsuperscript{55}

Apart from the criminal acts set forth in the Criminal Code, there are several provisions outside the Criminal Code which also govern the crimes that are threatened with the death penalty, among which are:

1. Economic Crime (Law No. 7 / Drt / 1955);
2. Narcotics Crime (Law No. 35 of 2009);
3. Corruption Crime Law No. 31 of 1999 as amended and supplemented by Law No. 20 Year 2001);
4. Criminal Acts against Human Rights (39 of 1999);
5. Criminal Acts of Terrorism (Act No. 15 of 2003).\textsuperscript{56}

The criminal philosophy of death for the Indonesian nation is inseparable from the views and attitudes of the Indonesian people as stated in the MPR Decree Number XVII / MPR / 1998 which states that the views and attitudes of the Indonesian people regarding human rights are derived from religious teachings, universal moral values, and noble values Culture of the nation, and based on Pancasila. So that human rights formulated substantially by using the approach of normative, empirical, descriptive, and analytical, among others mentioned. That human rights are a fundamental right inherent on the human nature which is natural and universal as a gift from God, the function is to ensure the survival, independence, Human and community development, which should not be ignored, seized or inviolable by everyone.\textsuperscript{57}

\textsuperscript{55} Peraturan Perundang-Undangan No.22 tahun 2002 tentang grasi.
\textsuperscript{56} Peraturan Perundang-Undangan Indonesia.
\textsuperscript{57} Hamzah and Sumangelipu, Op. cit, p. 82
Therefore, In the Decree of MPR Number XVII / MPR / 1998 Article 1 assigns to the State's High Institutions and the entire government apparatus, to respect, and disseminate human rights comprehension to the whole society. The views and attitudes of the Indonesian nation, as well as contained in the Charter of Human Rights, also raised in the second amendment of the 1945 Constitution of Article 28 A, which states that every person has the right to live, sustain his life and life.

Second Amendment of the 1945 Constitution Article 28 A states that every person shall have the right to live and have the right to maintain his life and life. As the Basic Law affirmed in the Legislation Order which is a guideline in the making rule of law under it, as the Decree of MPR Number III / MPR / 2000, then the entire rule of law, whether existing or established, in accordance with the Constitution as the supreme law or called as Staatgrundgezet. 58

The death penalty according to the 2006 Criminal Code Draft is only applied on an alternative basis, considering the fact that there are many difficulties in the execution of capital punishment. While the deadline for the execution of death for convicted, According to the 2006 Criminal Code Draft may be postponed with a trial period of ten years if conditions are met such as the convict may still be corrected and show remorse, the criminal may be replaced by a life imprisonment or Temporary prison sentence (maximum of twenty years)

As the articles that govern regarding capital punishment under the new Draft Penal Code is as follows:

Paragraph 11 (Capital Punishment);

Article 87 which stated:

58 Ibid, p. 74
“*The death penalty is alternatively dropped as a last resort to protect the community*”

Article 89 which stated:

1. The execution of capital punishment may be postponed with a trial period of 10 (ten) years, if:
   a. The reaction of public's to the convict is not too big
   b. The convict shows a sense of regret and there is still hope to improvement
   c. The position of the convicted in the inclusion of criminal acts is not really important If there are any mitigating reasons.
2. If convicted during probation as referred in paragraph (1) does not show attitude and commendable deeds, Then capital punishment may be changed to a lifetime penalty or a maximum imprisonment (twenty years) With a Ministerial Decree in charge of law.
3. If convicted during probation as referred in paragraph (1) does not show attitude and commendable deeds and there is no hope for improvement, then capital punishment can be executed by order of Attorney General.
4. Article 90 which stated :
   "*If the petition or pardon is denied and capital punishment not carried out for 10 (ten) years because the escaped convict, Then the criminal can be changed to Life sentence with Presidential Decree*.”

By seeing the provisions contained in the foregoing Articles, There seems to be some progress in this Bill. Such as the final consideration which is definitely determined through a very long evaluation (mostly ten years). To complicate the execution of death for a convicted, but the
current law which requires the grace period of prolonged execution which is expanding (death row phenomenon) against a prisoner. Not in accordance with contemporary human rights norms because it is not limited by the grace period. President and experience of the Human Rights Committee (ICCPR) or the Committee against Torture (CAT) both of them have been ratified by the Government of Indonesia indicating the practice also not allowed although the fact always happens.⁵⁹

The implementation of capital punishment in Indonesia is done by shot to death (accordance with Article 1 of Law No. 2 of PNPS 1964 On the Procedures of the Criminal Implementation handed down by the Courts in the General Courts and military) that is Presidential Decree Number 2 of 1964 (State Gazette Number 38) Which is stipulated into law no.5 years 1969. Implementation of capital punishment shall be done if the case has permanent legal power (Kracht van gewijsde). If the legal efforts such Banding, Kasasi, Review and Grace has been used. And the final result of the convict shall still be sentenced to death. The execution of his or her punishment shall be done immediately, unless there are other reasons such as pregnant prisoner (the implementation after 40 days his child was born) or the convicted person is ill then the implementation can be postponed temporarily.⁶⁰

Thus justice has not been established, justice exists if there is harmony between the value of certainty and equity. The speed of criminal execution is just as important as certainty and comparison (Criminal weight suffered). A penalty imposed has a greater effect than if the criminal act is suspended, because if it is delayed for a long and the community will forget the crime committed by the convicted, and the effect is expected in order to prevent people from

committing crimes the same will never be realized. Based on Articles 24, 25, 26, 27, 28, 29 of the Criminal Procedure Code (KUHAP), States that the period of detention for a defendant with a criminal is above nine years Began the investigation process until the decision of Cassation from the Supreme Court (MA) was 700 days. Not to be added to the unrestricted MA period (judicial review) as well as the length of time the president takes into consideration of the clemency decision, different from judicial review with no time period. Then the clemency based on Law Number 22 of 2002 about clemency, According to Articles 8, 9, 10, 11, 12 the maximum time required is 7 months 11 days, if the clemency itself submitted through KaLapas. And if the clemency submitted by themself, then the time period is 7 months 4 days. Based on this law, the convicted can apply the second clemency after the request of the first clemency rejected, and has passed two years. 61

Like the provisions contained in the Law of, a clemency petition filed after a court decision obtaining a permanent legal force (Kracht van gewijsde) not limited by responsibility and the certain time. Article 7 Paragraphs (1) and (2) of the clemency law stated that:

1. A clemency may be filed from the court's decision obtaining a permanent legal force.

2. The petition for clemency referred in paragraph (1) shall not be limited by a certain grace period.

Although paragraph 3 stated that:

"The petition for clemency does not delay the execution of the conviction of convicted persons, except in the case of a death sentence ".

61 Peraturan Perundang-Undangan No.22 tahun 2002 tentang grasi.
A glance article above is similar with Article 13 which states:

“For the person who get the death penalty, Lawyer or family of the convicted person applying for clemency, and the capital punishment cannot be executed before Presidential Decree on rejection of request for clemency is accepted by the convicted person.”

From the provision article above can be said that the convicted person has the full right to a clemency petition and the submission may be filed more than once while the convicted person is applying for the clemency, then the execution of die cannot be implemented in other words there is a delay implementation. The facts already mentioned above, Shows there is no determination how long the time limit should apply Since the death sentence was dropped Until a request for review of verdict has been handed down after the cassation attempt has been convicted, As well as the application of clemency be obstacle to the implementation of capital punishment. The uncertainty of this deadline proven very influential on various attempts to be postponed a deadly execution, and this aspect of time also seems that often opens the up opportunities of various legal. From the convicted party which ultimately led to the death sentence itself being delayed.\textsuperscript{62}

Thus the execution of capital punishment on death row convicts really takes a relatively time to arrive at the execution. Besides this kind of thing is contrary to the principle of legal certainty, Also contrary to the judicial principle which is done quickly, Where if the convict has been terminated by the court and has obtained a permanent legal force (Kracht van gewijsde) And there is no longer other law that can be taken, then the criminal implementation should be done immediately for the realization of the purpose punishment. While to manifest the purpose.

\textsuperscript{62} ibid
There must be a change of provisions regarding the term limits for the convicted person the opportunity to conduct legal efforts both clemency and judicial review so that will create harmony between the certainty and the balance of law.

4.3.2 The Execution of Dead in Indonesia According to Presidential Decree Number 2 Year 1964

In Presidential Decree No. 2 of 1964 explicitly states that the imposition of capital punishment imposed by the Court, well in the general court environment and military courts, are carried out by being shot to death (Article 1) in the following manner:

1. Carried out in the jurisdiction he courts that handed down the decision in the first instance.

2. The death penalty imposed on him several persons in a decision, implemented at the same time and place, If there are things that do not allow such an implementation (article 2)

3. Chief of the Regional Police (KAPOLDA) Responsible for its implementation at the same time determining the time and place of execution of capital punishment.

4. If in determination the time and place it stuck with the other authority of Chief of the Regional Police (KAPOLDA) so it negotiates with that of Chief of the Regional Police (KAPOLDA).

5. Chief of the Regional Police (KAPOLDA) or the officer appointed by him attends the execution of the capital punishment together with the High Prosecutor with in charge of the execution.

6. Waiting for the execution of capital punishment, the convicted person is detained in a prison or in other place especially appointed by the High Prosecutor.
7. 3x24 hours before the time of execution capital punishment, The High Prosecutor informs the convicted of the death penalty.

8. If the convicted person wants to express or says something, Then the statement or the message was received by the High Prosecutor / Attorney.

9. If the convicted person in a state of pregnancy, then the execution of capital punishment can only be implemented 40 days after the child was born.

10. Defenders of the convicted person at his own request or the request of the convicted person, May attend the execution of capital punishment.

11. The death penalty not implemented in front of public, and it will done as simple as possible, otherwise set by president.

12. For the execution of capital punishment, Chief of the Regional Police (KAPOLDA) who responsible for forming a firing squad consisting of a Bintara (Brigadir- sekarang), 12 enlisted men under the leadership of an officer, all from the Mobile Brigade (Brimob POLRI).

13. Especially to carry out this task, the shooter team does not use its organic weapons.

14. This shooter team under the orders of the Prosecutor / prosecutor until the completion of the execution of capital punishment.

15. The convicted person shall be brought to the place of criminal execution with adequate police sufficient.

16. If requested, the convict may be accompanied by a rokhani nurse.

17. The convict dressed modestly and in an orderly manner
18. Arriving at the place of execution of capital punishment, The Guards
Commander closed the convict's eyes with a cloth, except the convict does not
want it.
19. The convicted person may have his or her penalty standing, sitting or kneeling
20. If it is deemed necessary, the High Prosecutor / Attorney may order the convict
to be tied up by his hands and feet or tied to a special backrest made for it.
21. After the convicted person is ready to place where he will execute the death
penalty, then the firing squad with the weapon is filled to the place determined
by the Attorney.
22. The distance between the point where the convict is located and the shooter's
squad should not exceed 10 meters and not be less than 5 meters.
23. When all preparations have been completed, the Prosecutor shall commence the
execution of capital punishment.
24. By using his sword to commence the execution of capital punishment.
25. The Shooting Team Commander gives the order to get ready, then by moving his
sword up, and he orders his Team to aim at the convict's heart and by declaring
his sword down quickly, he gives the command to shoot.
26. Iafter the shooting, the convict still shows signs that he not dead yet, then the
shooter commander immediately orders the Bintara shooter team to unleash the
final shot by pressing the end of the barrel of the weapon to the head of the
convict just above his ears.
27. To obtain certainty about the death of the convicted person can seek the help of a
doctor.
28. For the burial of a convicted person shall be transferred to his / her family or friend of the convicted person, unless based on the general interest the Prosecutor shall decide otherwise.

29. In this last instance, And also if there is no possibility of burial performed by his family or a convicted friend then the burial determined by the religion / belief of the convicted person.\(^{63}\)

That the head of the local regional police responsible for its implementation, determining the time and place of execution of the criminal dead. Is meant by responsible for implementation is responsible for security and order during the execution of the criminal to death as well as providing manpower and tools necessary for it.

The energy question is forming a squad shooter consisting of a bintara, twelve men of tantama under the command of an officer, all from the Mobile Brigade. All these were under the command of the Prosecutor is responsible for its implementation until the completion of the implementation of the dead criminal.

If the convicted person was about to put forward something, then the information or message that is received by the District Attorney. The implementation of the criminal to death not implemented in public and by means as simple as possible. Convict dressed in simple and orderly. Defenders of the convicted person upon own request or at the request of the convicted person may attend the execution of a criminal to death. If requested, the convicted person may be accompanied by a nurse. Upon arrival at the place of execution of the criminal dead, Commander

\(^{63}\) Peraturan Kepala Polisi No.12 tahun 2010 tentang pelaksana pidana mati.
of the guards turn a blind eye the convicted person with the cloth unless the convicted person does not want it. Convicted person may stand, sit or kneel.

If deemed necessary so prosecutors can be ordered so that the convicted person bound hands and feet were bound to the backrest or specially made for it. The distance between the points where the convicted person is and place squad shooter may not exceed ten meters and must not be less than five meters. If all the preparations have been completed, then the District Attorney ordered to start the implementation of the criminal to death and immediately the companion of convicted person abstain from the convicted person.

By using his sword as a squad Commander signals shooter give orders so be prepared then by moving the sword upward he ordered regunya to aim at the heart of the convicted person and with plucked his sword down quickly, he gave the order to shoot.

If the convicted person was still after the shooting showed signs that he was not dead yet then Commander immediately ordered the squad to the NCO squad shooter to release the shot differ over by emphasizing his end of the barrel on the convicted person's head just above the ears. To obtain certainty about the death row inmates asked the help of a doctor. For the burial of the convicted person be handed over to his family or a friend of the convicted person exception if based on common interests that prosecutors decided otherwise. If there is not also the possibility of the implementation of the burial by the family or friend of the convicted person, then the burial was held by the State with regard to the manner of burial determined by religion/belief that is shared by the convicted person.\textsuperscript{64}

\textsuperscript{64} Ibid.
Such prosecutors should make news event of the overall implementation of the dead criminal. The content of the events on the news should be disalinkan into a court decree has fixed legal power and signed by him.

The factors supporting the implementation of the criminal to death next to the attention of the writer to be examined, the more stressed a number of factors which, according to the results of a review of the literature, among others, are:

1. The communication factor;
2. Resource factors;
3. Structure factors;
4. Factors of attitude.

The relationship between the factors examined determinants of terlambatnya implementation of the criminal dies as acquired from research results among others can be outlined as follows:

(1) The communication factor;

The first factor is the communication factors that strongly influence the implementation of policies related to the overthrow of the criminal. This communication is manifested in the form of "socialization" of a criminal verdict that death has the power. The communication here has the meaning that there should be an effort to disseminating criminal statutes to die itself to all the elements of implementing both horizontally as well as vertically, and thus the entire related elements in General has already obtained the official explanation about will tackle efforts related
to socialization. If it is not done then it can lead to the onset of a variety of reasons for delays performance of criminal to death row inmates.

(2) Resource factors;

In this research, resource factors manifested in the form of funds, means, and energy, which in General has no influence on the means, with the provision of the criminal decided to die, then directly or indirectly the issue of resources is the responsibility of Government to host them. That needs to be underlined is along these resources meet the usual criteria such as the existence of a firing squad, a place has been prepared, the necessary funds available, and theuntukpersiapan method or the pengeksekusian way that has been chosen, then the verdict of the criminal dead has met the requirements to implemented, so in essence factor of resources is not an inhibitor of factor means.

(3) Structure factors;

The structure has an important influence toward the implementation of a policy. One of the most fundamental structural aspects of an organization is the work procedures (Standard Operating Prosedurel/SOP). Policy implementers need to adhere to the established work procedures, and cannot change it without coordination with the parties concerned. This is a very important factor in the recent execution of a criminal to death. The real criminal to death already has laws regulating its implementation device, for beracaranya is already regulated in the CODE of CRIMINAL PROCEDURE whereas technical pelaksanaanya set forth in law No. 2 PNPS taun 1964. But the rules governing its legal insrumen on a recent opportunity finally opened the criminal to death itself. Examples of these studies include the absence of time restrictions for
filing a petition for review (judicial review), as stated in section 264 paragraph (3) of the CODE of CRIMINAL PROCEDURE which reads:

"Request for Review is not limited by a time period".

(4) Factors of attitude.

Attitude factors seen as determinants of recent criminal dead, implementation in this study generally well-grounded, the attitude in question is other than knowledge of a criminal to death, are also factors relating to the commitment, the authority/firmness, and consistency from all over pertinent elements directly starting from a judge who dropped the verdict, prosecutors and security apparatus (firing squad/other) as executor. In addition it also shaped the people they determine the attitude of the ruling of the criminal to death that has been dropped. Resolute stance of the Government or the executor is indispensable for the unsettled criminal dead, and this matter should be supported by the community's own attitude that means criminal verdict that death was already in accordance with the will of the general public and will not cause a debate later in the day.  

For the acceleration of the implementation of the criminal dead, things need to be done by the Attorney as executors, among others, are:

1. Ask the Chairman of the High Court, the Chairman of the Supreme appellate ruling so Mahkama and/or cassation and review egera published.

2. Appealed to the President in order to immediately publish the Kepres about refuse or accept the petition for Pardons convicted person.

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Provide input to the legislature and relevant agencies in order to create a clear legal rules regarding the provision of a review or Clemency, it means there is a change in conditions.
CHAPTER V
CONCLUSION & SUGGESTIONS

In this chapter will be described the conclusions that can be derived from this research. Besides that also at the end will be described about the suggestions of researchers.

5.1 Conclusions

From the results of research and data analysis, then got some conclusions as follows:

1. Implementation of capital punishment in Indonesia is in fact not implemented immediately and takes a grace period that is too long. This too long due to the many obstacles faced by the high prosecutor's office in executing the execution, among others, is the regulation that regulates the guidelines for filing a Judicial review and the Clemency petition there is no clear provision regarding the time limit and the number of death sentences may file it so that it does not legally contain any element of certainty; the lack of socialization of the execution of capital punishment for the enforcers and the public, the high cost of execution and the lack of clarity on the allocation of the budget used for the execution of death.

2. An excessively long deadline for death row inmates who are awaiting execution is a double sanction for death row convicts, in addition to the convict will be executed, the convict must also serve imprisonment within an indeterminate time period. Time lapse too long can lead to good disruption physical and psychic convicted, while the convicted wanted to get justice and legal certainty is clear.
5.2 Suggestions

Based on the above conclusions, the following suggest a suggestion:

1. Through this research, it is expected that the government will conduct a review and make or revise clear regulation regarding the petition for clemency, especially the regulation on the number of times allowed to apply for pardon and the period of submission.

2. It is necessary to socialize the rules underlying the execution of comprehensive capital punishment either between institutions or related institutions, as well as socialization to the public.

3. It is necessary to coordinate inter-agency related to the execution of capital punishment so that between law enforcement officers do not misunderstand in executing execution of capital punishment.

4. In terms of funding, it is better for the government to make a clear regulation on the special budget allocation to finance the execution of death row convicts, since the required costs are quite large, while the financial capacity of the prosecutor is very limited.

5. Regarding the timeframe, it would be clearer and better if the government paid little attention and ratified the new Draft Penal Code, for the certainty of the time period of death row in waiting for execution and for the creation of criminal efficiency and punishment in the Indonesian criminal law system.

6. More research is needed on improving the welfare of the community in general through development programs that are just and sustainable, so that the potential of people to commit drug crimes due to poverty suffered can be minimized.
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International covenant on civil political rights (ICCPR)
APPENDIX: