



Indonesia's Constitutional Foundation Applies the Death Penalty Against the Intermediary for the Sale and Purchase of Narcotics Bandar

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Abstract

The danger of narcotics use is quite large in its influence on the state, if there is a large-scale use of narcotics in society, then the Indonesian nation will become a sick nation, if this happens the country will be fragile from within because national resilience has declined. This research plays an important role in obtaining accurate and reliable data. Therefore, the research method used as a tool or method for guiding in conducting research is normative juridical, namely analyzing the relationship between applicable laws and regulations with legal theory and practice of implementing positive law in the field regarding the issues discussed. In conclusion, the definition of the right to life as regulated in Article 28 J paragraph (2) of the 1945 Constitution is a right where no one's life may be taken arbitrarily. What is not allowed is "arbitrarily deprive of his life". Meanwhile, regarding the difference in decisions between the Serang District Court Decision Number 837/Pid.Sus/2020/PN. Srg who decided the death penalty, which was annulled by the decision of the Banten High Court Number 36/PID.SUS/2021/PT BTN), is not a substantive matter, all judges agree on the death penalty, but rather on a matter of belief and a matter of trial technicality such as the number that is still doubtful by the Serang judges, and the elderly age of the defendant.

Keywords: *Death Penalty; Human Rights; Sovereignty.*

A. Introduction

The current narcotics problem has penetrated all elements of the nation, from children to adults, from the lower classes to officials, even politicians and law enforcement officers are also not sterile from narcotics abuse, so that efforts to eradicate it are not enough to be handled only by the government and law enforcement officers. law, but it is necessary to involve the whole community to play a role and actively participate in the prevention and eradication of illegal goods, drugs or other addictive substances. Indonesia is one of the countries suspected of being a place for narcotics traffic, so that narcotics crime is no longer a local crime but has spread throughout Indonesia and is often used as a transit area by perpetrators before arriving at their destination (other countries). (Dirdjosisworo, 2000:13)

The National Narcotics Agency (BNN) has disclosed various cases throughout 2018, including 914 narcotics/narcotic precursors cases involving 1,355 suspects and

as many as 53 ML cases involving 70 suspects with total assets of IDR 229 billion. Meanwhile, the National Police succeeded in uncovering 33,060 narcotics/narcotic precursors cases with 43,320 suspects and 7 cases of money laundering offenses with 8 suspects. Meanwhile, the amount of evidence confiscated in 2018 by the National Narcotics Agency and the National Police and Customs and Excise. In 2019 BNN together with the National Police, TNI, Customs and Immigration have also succeeded in uncovering 33,371 narcotics cases with a number of evidences, namely marijuana type narcotics with a total of 112.2 tons, methamphetamine weighing 5.01 tons, Ecstasy as much as 1.3 million Items and PCC of 1.65 million items were confiscated from a number of places throughout Indonesia. (BNN 2019).

Thus, it is true that Indonesia is one of the destinations for international narcotics trafficking, due to the fact that there has been an increase in cases and the number of arrests from the BNN. From year to year there has been a significant spike in trafficking, its use so that it is necessary to find a formulation so that drug dealers feel "horrified" in fear of being caught by narcotics officers in Indonesia. (BNN: 2019). One of the efforts to prevent the latent danger of narcotics, the state and all the elements contained in it must have a strong awareness and motivation to actively participate in breaking the chain of this "humanitarian" crime. In fact, the United Nations Organization (UN) which has the official authority to manage the joints of life internationally has issued a statement that narcotics crimes include extraordinary crimes (extraordinary crimes) that require seriousness in handling them both at the level of investigation, prosecution and judge's decision to do not play the game in such cases.

The danger of narcotics use is quite large in its influence on the state, if there is a large-scale use of narcotics in society, the Indonesian nation will become a sick nation, if this happens the country will be fragile from within because national resilience has declined. (Gatot Supramno, 2004:5) Therefore, it is reasonable that drug trafficking must immediately find a rational solution, because it is clear that narcotics crime is a social problem that can disrupt the social function of society.

The statutory provisions that regulate narcotics issues have been drafted and enforced, however, narcotics-related crimes have not yet been mitigated against the abuse and distribution of narcotics. In Law No. 35 of 2009 concerning Narcotics, various kinds of criminal sanctions have been included, both imprisonment, fines, to the death penalty. In this context, Indonesia has decided several cases related to narcotics abuse with the death penalty. (Wijayanti P, 2009:59). The threat of the death penalty is a social defense. According to Hartawi A.M, the death penalty is a means of social defense to prevent the general public from disasters and dangers or threats of great danger that may occur and which will befall the community who have caused or caused misery and disrupted social, religious and state life. (Hartawi, 2003:29) Conspiracy as referred to in the provisions of Article 132 paragraph (1) of the Narcotics Law is exceptional, which means that it is considered a crime in the criminal acts mentioned in the Narcotics Law only, namely Article 111 to Article 126 and Article 129 and the crime of conspiracy is also punished the same as the crimes of articles 111 to 126 and 129. The elements of Article 132 paragraph (1) of the Narcotics Law consist of:

1. Trial/malicious conspiracy

2. To commit a narcotic crime or narcotic precursor
3. As referred to in Articles 111 to 126 and 129 of the Narcotics Law.

Conspiracy (*samenspanning*) is a crime to commit a crime, it can be said that an agreed, prepared or planned crime has not occurred. In the Criminal Code, trial and conspiracy are only punished less than the main punishment. However, it is different from the current Narcotics Law, which punishes the same as the main punishment for a completed offense.

Because narcotics crime is seen as a serious crime. Observing various complicated problems related to drugs, it is clear that the death penalty for convicts in drug cases is an appropriate and not excessive punishment, as well as a form of Indonesia's firmness to combat drug crime as a fully sovereign nation both internally and externally.

The internal implementation of sovereignty will certainly not cause long-term problems. Its scope is the application of national law to Indonesian citizens. Meanwhile, if the perpetrator of the crime is a foreigner, then the study of sovereignty comes out as a form of Indonesian jurisdiction in the international legal system. There are quite serious problems related to the enforcement of the outgoing sovereignty. (Bayu Puji, 2018:210) In this thesis research, the author gives an example of a narcotic crime case in the form of a malicious conspiracy to become an intermediary in the sale and purchase of narcotics whose case has been decided by the Banten High Court with its Decision Number 36/PID.SUS/2021/PT BTN.

In this case, the first defendant is Bashir Ahmed Bin Muhammad Umea (65 years), a Pakistani citizen, the second defendant is Adel Bin Saeed Yaslam Awadh (47 years) a Yemeni citizen, based on evidence and facts at trial it was proven that he had conspired to commit crimes. Narcotics crime, namely without rights or against the law offering for sale, selling, buying, receiving, intermediary in buying and selling, exchanging or delivering Narcotics Category I non-plants weighing more than 5 grams, namely in the form of Narcotics class I type Metaphetamines with a total weight approximately 797,110 (seven hundred ninety-seven thousand one hundred and ten) Grams, so that the Serang District Court with its decision Number 837/Pid.Sus/2020/PN.Srg stipulates that:

1. Defendant I BASHIR AHMED Bin MUHAMMAD UMEAR and Defendant II ADEL Bin. SAEED YASLAM AWADH has been legally and convincingly proven guilty of committing the crime of "Evil Conspiracy to accept, sell, become an intermediary in the sale and purchase of narcotics class I non-plants weighing more than 5 (five) grams" ;
2. Sentencing defendant I BASHIR AHMED Bin MUHAMMAD UMEAR and defendant II ADEL Bin. SAEED YASLAM AWADH mentioned above are therefore each with the death penalty.

The judges at the Tangerang District Court have dared to decide on the death penalty in accordance with their interpretation and belief in Article 111 to Article 126 and Article 129 and the crime of conspiracy to commit crimes, punishable by the crime of articles 111 to 126 and 129. The elements of Article 132 of the Narcotics Law, however, in an appeal, PT Jawa Barat changed its decision from a death sentence to a 20 year sentence. Thus, the death penalty for cases of illegal narcotics trafficking is still

going on, there is no uniformity in efforts to prevent narcotics trafficking in Indonesia through the deterrent aspect of punishment.

B. Method

Research methods play an important role in obtaining accurate and reliable data. This research method is also used as a tool or method for guidelines in conducting research. Research in this theme uses normative juridical, namely analyzing the relationship between applicable laws and regulations with legal theory and practice of implementing positive law regarding the issues discussed.

This study will analyze legal issues, facts, and other legal phenomena related to the legal approach, then obtain a comprehensive picture of the problem to be studied. Research in the form of descriptive analysis will only describe the state of the object or problem and is not intended to draw or draw generally accepted conclusions regarding narcotics abuse. (Soerjono S, 2010:81)

The type of research/approach carried out is by using a normative juridical approach. Normative legal research is research that prioritizes library data, namely research on secondary data. Secondary data, can be in the form of primary, secondary or tertiary legal materials. This research includes research on positive legal provisions that apply in Indonesia relating to narcotics abuse. (Rony Hanitijo, 2000:24)

Legal materials that provide further explanation of primary and secondary legal materials, namely, dictionaries, both translated and legal dictionaries, magazines and the internet (virtual research).

C. Results and Discussion

1. Indonesian Legal Sovereignty

Indonesian Legal Sovereignty in Implementing the Death Penalty Against Perpetrators of Evil Conspiracy Becomes Intermediary for the Sale and Purchase of Narcotics Part of State Sovereignty or part of local wisdom where Indonesia has a majority Muslim population who receives capital punishment as part of confession or faith in the Koran. There is no international law that prohibits the existence of the death penalty and its implementation, in fact more than half of the countries in the world still enforce the death penalty, both in America, Arabia and the North African peninsula.

Each country has the sovereign right to determine its own political, legal, economic and social systems according to the interests and conditions of each country. This joint statement was made in response to statements by the European Union and a number of other countries that were disappointed that the death penalty was not included in the latest document. Countries such as Switzerland, Turkey, Uruguay, Norway, Canada, Brazil and also Australia have called for the death penalty not to be applied to narcotics-related crimes. (Bambang Hariyon, 2009:64)

Indonesia actively plays a role in eradicating drugs, one of which is by executing the producers, dealers or dealers of these illegal drugs. Drug abuse is a serious problem in many countries.

"On that basis, the death penalty is still an important component of the criminal law system that can be applied to very serious crimes in the drug issue. The implementation of the death penalty also adheres to the principles of law and justice,

The Indonesian government is serious about overcoming the problem of drug and drug abuse. The government does not want the younger generation to become a generation that is trapped in drug abuse. If you pay attention to Article 28 J of the second amendment to the 1945 Constitution, it appears that with consideration of the greater benefit, a person's right to life has limitations. Article 28 J paragraph (2) states that: "In exercising his rights and freedoms, everyone is obliged to comply with the restrictions established by law for the sole purpose of guaranteeing the recognition and respect for the rights and freedoms of others and to fulfill fair demands. in accordance with moral considerations, religious values, security, and public order in a democratic society." (Harun Alrasid, 2004:152)

Thus, although everyone has the right to life and life, this right is not absolute. These rights are limited by the rights of others or communal rights, such as the application of the death penalty as long as it is carried out in accordance with applicable norms and values.

It can also be said that the implementation of the death penalty is in line with and guaranteed by the basic law of the constitution. This restriction is intended to guarantee the recognition and respect for the rights and freedoms of others, in order to fulfill the demands of justice according to considerations of morals, religious values, security and public order. The definition of the right to life as regulated in the 1945 Constitution is a right where no one's life may be taken arbitrarily. What should not be "arbitrarily deprive of his life" (Wirasila, 2022:9 locit, 2022)

In the International Agreement on Civil and Political Rights it is stated, "every human being has the right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." However, it is also explained that for countries that have not abolished the use of the death penalty, the death penalty may be applied only for the most serious crimes in accordance with the law in force at the time of the crime. carried out and does not conflict with the provisions of the present Covenant and the Convention on the Prevention and Punishment of the Crime of Genocide.

In line with the contents of Civil and Political Rights, a statement that is identical to the provisions of Article 28 J of the Second Amendment to the 1945 Constitution.

Article 28 J of the Indonesian Constitution is also emphasized in Article 73 of the Human Rights Law which states: "The rights and freedoms regulated in this law can only be limited by and based on the law, solely to ensure the recognition and respect for human rights. human rights as well as the basic freedoms of others, morality, public order, and the interests of the nation."

What needs to be considered is the UN recommendation for countries that still use the death penalty to pay attention to what is called The safeguards Quaranteening Protection of the Right of Those Who Facing The Death Penalty which was adopted by the UN in 1984. According to the UN recommendation, what needs to be done is The guideline for every country that still selectively uses the death penalty is that the death penalty should be carried out with minimum suffering. So it is necessary to consider finding an alternative way of implementing the death penalty that is more humane. (ICCPR:2022)

Basis (Reason) for the Death Penalty for Narcotics Crime Narcotics crimes, including makers, dealers and dealers, are very dangerous to human life, society, nation and state, so it is a serious and serious crime.

Narcotics abuse and illicit trafficking is increasingly spreading to all levels of society from the elite level to the village community. Narcotics damage human resources as one of the capitals of national development, therefore the abuse and eradication of narcotics must be seriously dealt with by law enforcers and all levels of society to save Indonesia from the dangers of Narcotics.

In criminalizing narcotics crimes, the Indonesian nation always considers human rights. Human rights are negative rights because they are natural and universal, so they do not require ratification, but in the increasingly complex life of society, nation and state, legal regulation of human rights (positivization of rights) will strengthen Indonesia's position as a state of law. The considerations that form the basis for the stipulation of the Narcotics Law in regulating narcotics crimes are as follows:(Muladi, 2007:6)

- 1) That importing, exporting, producing, planting, storing, distributing, and/or using Narcotics without strict and thorough control and supervision as well as contrary to laws and regulations is a Narcotics crime because it is very detrimental and is a considerable danger to life. people, society, nation and state as well as Indonesia's national security;
- 2) Whereas the narcotics crime has been transnational in nature, carried out using a high modus operandi, advanced technology, supported by an extensive network of organizations, and has caused many victims, especially among the nation's young generation which is very dangerous to the life of the community, nation and state so that the Law Narcotics are expected to be able to adapt to the developing situation and conditions to overcome and eradicate these crimes.

In the general explanation, the considerations in the elaboration of the articles, including the death penalty, include: (Wijanti: 201: 53)

- 1) Misuse and illicit trafficking of Narcotics can result in greater danger to the life and cultural values of the nation which in the end will be able to weaken national security.
- 2) Narcotics crime in society shows an increasing trend both quantitatively and qualitatively with widespread victims, especially among children, adolescents, and the younger generation in general.
- 3) Narcotics crimes are no longer carried out individually, but involve many people who together, even constitute an organized syndicate with a wide network that works neatly and very confidentially both at the national and international levels.
- 4) Criminal sanctions are aggravated from the old law.⁶¹ Sanctions are regulated regarding the weighting of criminal sanctions, both in terms of
- 5) special forms of minimum punishment, imprisonment of 20 (twenty) years, life imprisonment, or death penalty. Legally, the Indonesian legal death penalty has a strong legal basis.

Muladi is of the opinion that there is no single statutory regulation in Indonesia, both the 1945 Constitution of the Republic of Indonesia, the Criminal Code, the Narcotics Law and Law no. 39 of 1999 concerning Human Rights which mentions the prohibition of the use of the death penalty, so that there is no big difference in

perception because ideologically and sociologically the Indonesian people accept the death penalty. (Muladi, 2007:8).

The death penalty is still important enough to be maintained as a last resort in sentencing to achieve justice, certainty and benefit. The death penalty is appropriate or appropriate to be given to narcotics criminals in the categories of makers, dealers and dealers. The crime of drug makers, dealers and dealers is a serious, serious crime that damages the younger generation, and threatens human life. It is illogical to state that the death penalty does not deter these crimes. The death penalty is imposed on perpetrators of criminal acts who commit serious and serious crimes, as a bulwark / last resort to protect the people and nation of Indonesia. Moreover, there is an argument that states that the death penalty is the right of God which cannot be done by humans to sentence someone to death.

2. Study on PN Decision Number 36/PID.SUS/2021/PT BTN)

Judge's consideration in the decision of the Banten High Court (PT) Number 36/PID.SUS/2021/PT BTN, for the improvement or refinement of the decision under District Court (PN) I Serang - Banten, Number 837/Pid.Sus/2020/PN. Srg, on behalf of Defendant I BASHIR AHMED bin MUHAMMAD UMEAR and Defendant II ADEL bin YASLAM AWADH, namely: 1) Stating Defendant I BASHIR AHMED Bin MUHAMMAD UMEAR and Defendant II ADEL Bin. SAEED YASLAM AWADH has been legally and convincingly proven guilty of committing the crime of "Evil Conspiracy to accept, sell, become an intermediary in the sale and purchase of narcotics class I non-plants weighing more than 5 (five) grams"; 2) Sentencing defendant I BASHIR AHMED Bin MUHAMMAD UMEAR and defendant II ADEL Bin. SAEED YASLAM AWADH mentioned above are therefore each with the death penalty.

The Serang District Court sentenced the death penalty to an appeal. The considerations of the Banten High Court judges include:

- a) Considering, that each of them has declared an appeal, the Public Prosecutor on March 2, 2021, Defendant I on March 1, 2021, and Defendant II on March 3, 2021 before the Junior Registrar of Crimes at the Serang District Court as stated in the Deed, The decision of the Banten High Court Number 36/PID.SUS/2021/PT BTN, the Appeal Request Number 10/Akta.Pid/2021/PN Srg and the appeal request by the Substitute Bailiff of the Serang District Court have been notified to the Prosecutor on March 8, 2021, To Defendant I and Defendant II respectively dated March 9, 2021.
- b) Considering, whereas Defendant I and Defendant II have submitted a Memorandum of Appeal through their Proxy on March 23, 2021 which was received by the Junior Criminal Registrar of the Serang District Court and on March 24, 2021, the memorandum of appeal has been notified and submitted to the Public Prosecutor, as well as the Prosecutor The General has also submitted a Memorandum of Appeal dated March 24, 2021 and has been notified by the Bailiff of the Serang District Court to Defendant I and Defendant II on March 26, 2021, on the Memorandum of Appeal of the Defendants, the Public Prosecutor has submitted a Counter Memorandum of Appeal on March 26, 2021, and has been notified to the Defendants on April 5, 2021, and based on the Memorandum of Appeal of the Public Prosecutor, the Defendants have submitted a Counter

- Memorandum of Appeal dated April 5, 2021, and has been notified by the Bailiff of Serang District Court on April 6, 2021 to the Public Prosecutor; 78
- c) Considering, the Serang District Court Registrar on March 17, 2021 has notified the Public Prosecutor, Defendant I and Defendant II to study the case file for 7 (seven) working days starting March 7, 2021; Considering that the request and examination at the appeal level by the Defendants and the Public Prosecutor have been submitted within the time limit and in accordance with the procedures and conditions stipulated by law, the appeal is accepted;
 - d) Considering after a copy of the Serang District Court's decision Number 837/Pid.Sus/2020/PnSrg dated February 24, 2021, was studied, the High Court did not specifically agree with the sentence imposed on the Defendant, while the remaining legal considerations were correct and appropriate, so they were taken over as consideration by the Court. High alone in adjudicating and deciding this case.
 - e) Considering whereas in its decision the judge of first instance has stated that defendant I BASHIR AHMED Bin MUHAMMAD UMEAR and defendant II ADEL Bin. SAEED YASLAM AWADH has been declared legally and convincingly guilty of committing a criminal act of "evil conspiracy to accept, sell, become an intermediary in the sale and purchase of narcotics class I non-plants weighing more than 5 (five) grams" and then sentenced the defendant I BASHIR AHMED Bin MUHAMMAD UMEAR and Defendant II ADEL Bin. SAEED YASLAM AWADH mentioned above are therefore each with the Death Penalty;
 - f) Considering whereas regarding the imposition of a death penalty by the first instance judge, the High Court will consider the following:
 - 1) Considering that after carefully examining and examining that in the Public Prosecutor's Claim as well as in the considerations of the first instance judge in this case, it has been found that the amount of Narcotics proven to have been misused by the Defendants is stated to be: "more than 5 (five) Grams",
 - 2) Considering that the terminology of the word "weighing" of narcotics "Exceeds 5 (five) Grams", which was proven to be misused by the Defendants is a sentence that has multiple interpretations which means that the weight of the narcotics can be 10, 20, or even 50 or 1000 grams, so this shows that there is no certainty regarding the amount of narcotics abused by the Defendant, and at the same time it shows the doubts of the first-level judge in considering his decision.
 - 3) Considering whereas in addition, based on the facts revealed at the trial that the Defendants did not admit that they were the owners of narcotics with a gross weight of 786,795 grams, they were admitted as belonging to Mr. Satar (DPO), and about 49 kg of methamphetamine/narcotics which were sold to Br. King, the Defendant Bashir did not know and did not know Mr. King as the buyer or the person who ordered Narcotics from the Defendant, besides that, there was also no evidence of transfer of payments from the Defendants to the Narcotics buyer Mr. King;
 - 4) Considering whereas the certainty of the amount of narcotics abused by the defendants is necessary to determine the type of crime and the severity of

the punishment to be imposed on the defendant (article 10 of the Criminal Code);⁸¹

- g) Considering, therefore the High Court is of the opinion that the imposition of a death penalty in this case against the Defendant is deemed inappropriate and not in accordance with the facts at trial and the principles of legal certainty and justice. prison;
- h) Considering whereas after the Panel of Judges of the High Court carefully examined the decision of the judge at the first instance, there were facts in court that Defendant I BASHIR AHMED Bin MUHAMMAD UMEAR, aged 65 years is an advanced age so that it can be considered as a mitigating factor for the Defendant;
- i) Considering that based on the description of the considerations above, the decision of the Serang District Court Number 837/pid.Sus/2020/PnSrg dated February 24, 2021, for which the appeal was requested, must be corrected regarding the type of punishment that must be imposed on the Defendants to be sentenced to imprisonment, and the length of the sentence. the prison will be mentioned in the verdict below,
- j) Considering whereas the length of the sentence to be imposed on the Defendant as stated in the following verdict is deemed to have been fair and proportionate in accordance with a sense of justice and conscience;
- k) Considering because the defendant has been sentenced to a crime, he is burdened with paying court fees at both levels of justice;
- l) In view of the provisions of Article 10 of the Criminal Code and Article 114 paragraph (2) Jo. Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics Jo Article 65 paragraph (1) of the Criminal Code, Law Number 8 of 1981 concerning the Criminal Procedure Code, and other relevant regulations .⁸³ Based on the considerations above, the panel of judges at the Banten High Court with their decision Number 36/PID.SUS/2021/PT BTN decided: To amend the Serang District Court Decision Number 837/Pid.Sus/2020/PN Srg on 24 February 2021 for which an appeal is requested, regarding the type of punishment imposed, against the Defendants so that the order reads as follows:
 - 1) Sentencing Defendant I BASHIR AHMED Bin MUHAMMAD UMEAR and Defendant II ADEL Bin. SAEED YASLAM AWADH is therefore subject to imprisonment for 20 (twenty) years and a fine of Rp. 1,000,000,000 (one billion rupiah) provided that if the fine is not paid by the Defendants, the fine shall be replaced with imprisonment for 1 (one) year; 2) Strengthening the decision of the Serang District Court for the rest; and 3) Determine that the Defendants remain in custody.

3. Decision Analyst

Serang Court Decision Number 837/Pid.Sus/2020/PN. Srg, on behalf of the Defendant I BASHIR AHMED bin MUHAMMAD UMEAR and the Defendant II ADEL bin YASLAM AWADH, sentenced both of them to the death penalty. The judges believed that the convicts deserved to be given the death penalty, for two main reasons, namely the defendant was convincingly proven to have circulated or controlled the illegal distribution of narcotics which could damage the continuity of the Indonesian nation's generation, and secondly, positive law has accommodated through the interpretation

of Article 28 J of the 1945 Constitution of the Republic of Indonesia and Law No. 35/2009 on Narcotics in conjunction with Law No. 1 of 1946, the Criminal Code does not prohibit judges from imposing the death penalty.

In the decision of the Constitutional Court Number: 2-3/PUU-V/2007 concerning Judicial Review of Law Number 22 of 1997 in conjunction with the Narcotics Law against the 1945 Constitution which rejected the petitioners' petition to abolish the death penalty not only in narcotics cases but from the Indonesian criminal system. In this regard, the main argument put forward by the Petitioners is that the death penalty is contrary to the right to life (Anang Iskandar, 2008:13).

The Constitutional Court's decision according to the formulation of Article 28I paragraph (1) of the 1945 Constitution, it is said, against the arguments of the Petitioners, the Court is of the opinion that according to the history of the preparation of Article 28I of the 1945 Constitution, as explained at the trial on 23 May 2007 by Lukman Hakim Saefuddin, a former member of the Ad Hoc Committee I The MPR Working Body (PAH I BP MPR) which is in charge of preparing the draft amendments to the 1945 Constitution, and Patrialis Akbar stated that the issuance of MPR Decree Number XVII/MPR/1998 and Law Number 39 of 1999) is the same, namely adhering to the establishment of human rights not without limits.

It is also said that the same spirit is also contained in the regulation of human rights in the 1945 Constitution, namely that human rights are not free but it is possible to be limited as long as the limitation is stipulated by law. This means that as long as there is a law that regulates the death penalty, the judge has the right to decide.

Meanwhile, in the District Court's decision No. 36/PID.SUS/2021/PT BTN) which annulled the Serang District Court's decision to a sentence of 20 years and a fine of Rp. 1 billion with conviction in the trial, among others, the judges at the Tangerang District Court still had doubts about the amount of the convict's baggage, the age of the convict has reached 65 years, and not all charges are recognized by the convict, especially the relationship between narcotics owners and buyers. In addition, the judges at the Banten High Court did not find any money transfers from the dealers and buyers to the convicts.

It was stated by a judge, after carefully examining and examining that in the Public Prosecutor's Claim as well as in the consideration of the judge at the first instance in this case it was found that the amount of Narcotics that was proven to have been misused by the Defendants was stated: "more than 5 (five) Grams". This is no doubt in numbers.

Second, apart from that, based on the facts revealed at the trial that the Defendants did not admit that they were the owners of narcotics with a gross weight of 786,795 grams, they were admitted as belonging to Mr. Satar (DPO), and about 49 kg of methamphetamine/narcotics which were sold to Br. King, the Defendant Bashir did not know and did not know Mr. King as the buyer or the person who ordered Narcotics from the Defendant, besides that there was also no evidence of transfer of payments from the Defendants to the Narcotics buyer Mr. King.

In addition, the two defendants were old so that the panel argued that the defendants were sentenced to prison terms, and annulled the Serang District Court's decision by deciding to sentence Defendant I BASHIR AHMED Bin MUHAMMAD UMEAR and Defendant II ADEL Bin. Therefore, SAEED YASLAM AWADH is sentenced

to prison for 20 (twenty) years and a fine of Rp. 1,000,000,000 (one billion rupiah) with the condition that if he cannot pay, he is replaced with imprisonment for 1 (one) year; and determined that the Defendants remain in custody.

Thus, the appeal by the defendants was responded to by the PT judge in Banten, the defendant did not deserve to be sentenced to death on the grounds that it was not at the positive legal level the articles in the legislation, but at the technical and philosophical level of law, such as age, no facts were found. which is convincing, and the decision of the Serang District Court judge which is considered to still contain doubts. This means that the judges in the Banten High Court are in agreement with the death penalty as long as all conditions are met.

D. Conclusion

Indonesia's legal sovereignty in applying the death penalty to perpetrators of conspiracy to become intermediaries for buying and selling narcotics, the juridical basis uses positive law, both in the Criminal Code and Law No. 35 of 2009 concerning Narcotics.

The two laws were made in line with legal norms, Pancasila and the Indonesian Constitution Article 27 and Article 28 J. concerning the legal equality of all citizens and the need for protection of the right to life for all citizens. Everyone has the right to life and life, but these rights are not absolute. This right is limited by the application of the death penalty as long as it is carried out in accordance with applicable norms and values. It can also be said that the implementation of the death penalty is in line with and guaranteed by the basic law of the constitution. This restriction is intended to guarantee the recognition and respect for the rights and freedoms of others, in order to fulfill the demands of justice according to considerations of morals, religious values, security and public order.

The definition of the right to life as regulated in Article 28 J paragraph (2) of the 1945 Constitution is a right where no one's life may be taken arbitrarily. What should not be "arbitrarily deprive of his life". Meanwhile, regarding the difference in decisions between the Serang District Court Decision Number 837/Pid.Sus/2020/PN. Srg, who decided the death penalty against the defendant, was later annulled by the Banten High Court Decision Number 36/PID.SUS/2021/PT BTN) which corrected the Serang District Court's decision, not because he did not agree with the death penalty, but rather a matter of belief and technical questions. the trial, such as the number that the Serang judges are still doubting, and the rejection of the defendant's charges, including the lack of accuracy of the first judge regarding the transfer of payments. It was at that point that there was a difference of opinion, not on the substance of the legal sovereignty of the death penalty.

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