

CRITICAL REVIEW TOWARD THE FILING OF LEGAL EFFORT FOR THE CONVITS OF DEATH PENALTY BEFORE EXECUTION PROCESS IN INDONESIA

Cahya Wulandari

ABSTRACT

The purposes of this research are reviewed the legal effort for the convits of death penalty in Indonesia and analyzed the constraints faced by the convits in the filing process of legal effort. The method used is a qualitative research with sociological jurisdiction approach. The results of this research are: the first, the filing of legal effort for the convits are judicial review which is regulated in Article 263 of Criminal Code Procedure chapter XVIII. These provisions causing the execution process of death penalty has been delayed due to the convits feeling overburdened if in the process of judicial review the convits should attend. That became the reason is the convits not able to set up a fund to trial process both material and immaterial. The second, constraints faced in the filing of judicial review and clemency are there is no written regulation which explain the time frame for the filing of legal effort that led to the postponement of the execution process. Besides that the issuance of SEMA Number. 1 of 2010 which requires the filing of judicial review should be attended by the convits in each session also being a constraint. The conclusion of this research are: The first, there is no regulation which clearly regulate the filing of legal effort. The second, constraints faced in the filing of judicial review are the issuance of SEMA Number 1 of 2010 about the filing rules of judicial review. In addition the submission of clemency to the president take a long time because there is no written regulation even though it is set in the Act Number. 2 of 2002 about clemency.

Key words: Filing; Execution Process; Convits; Legal Effort

A. INTRODUCTION

The death penalty states in Article 10 of the Criminal Code and formulated into Act Number 2/PNPS/1964 about mechanism of death penalty. Furthermore in the implementation there are various problems, one of which is about the period of execution. The cause of the delay executions are the rights of the convits has not been fulfilled. This is because the state does not want to usurp the rights of convits as provided by law. Rights included the right to judicial review and get a forgiveness from the president or clemency.

When all of convits rights were filled, the prosecutor as an executor are determine the time to execute the convits. Judicially clemency and judicial review have been stated and formulated in Act Number 22 of 2002 about clemency and judicial review states in Article 263, Article 264, Article 265, Article 266, Article 267, Article 268, Article 269 of Criminal Code Procedure. However the regulation stated in Criminal Code Procedure and other regulations are not perfect, in the implementation there are many problems that emerge from the filing of the legal effort. These problems are causing the posponement of execution and emerging some problems. One of which is Bahar bin Bahar cases who become the convits of death penalty. He died in prison due to the posponement of execution for 40 years. He already took a legal effort with filing a clemency to the President for 4 times but no one answered (Kedaulatan Rakyat Online, 2012).

Based on these problems, the researchers who have a good knowledge and were teaching for more than 10 years in criminal law have responsibility to analyze by did this research. At the other side the researchers have a duty as a lecturer or academician to do a research for find a truth, to service the society with our knowledge so that the society can get a benefit from our existence. In addition, the researcher are interested in the constraints and the problems which faced by the convits to filing the legal effort.

RESEARCH PROBLEMS

1. How are the critical analysis toward the filling process of legal effort for the convits of death penalty in Indonesia?
2. How are the constrains which faced by the convits of death penalty to filling the legal effort?

RESEARCH METHODS

1. Research Approach
This research used sociological-juridical approach by collecting data from primary and secondary data.
2. Method of Data Collection
This research used both primary and secondary data.. Primary data was obtained from the legal division staff and the convits of death penalty by using purposive sampling technique. Secondary data was collected through literature study including the regulations, books, journals, articles, dictionaries and other legal materials.
3. Method of Analysis
This research used a model of interactive analysis to analyze the data collected. In this interactive model, researchers focus on three components are: reduction of data, the data display and drawing conclucyng (Miles & Huberman, 1984).

B. RESULTS AND DISCUSSION

B.1. The Filing Process of Legal Effort for the Convicts of Death Penalty In Indonesia

The Indonesian government under the leadership of President Joko Widodo is showing the assertiveness to combat a crime which is harmful to many people, especially for crimes which basically threatened by the death penalty. In May 2016, the government carrying out the third execution but there are many constrains. Before the execution process, there are many steps that must be done by the prosecution as an executor (Provisions of Article 1 point 6 of Perkapolri Number. 12 of 2010). These process should be passed by the convicts of death penalty after the decision has permanent legal entity.

Though the convicts sentenced by a death penalty but the convicts still have rights that must be fulfilled by the government, as mandated by the Constitution of 1945 that states every citizen has the right to defend his/her life, the government should provided a rights for the convicts of death penalty in the form of legal effort. This legal effort can be fulfilled by filing a judicial review and clemency to the president.

B.1.1 Legal Effort of the Death Penalty Convicts in the Criminal Code Procedure

In Article 1 point 12 of Criminal Code Procedure states that legal effort are the right of the convicts or the general prosecutor to oppose the decision of the court in the form of appeal or cassation or the right of the convicts to filing for judicial review in the case and in the manner stipulated in regulation". As well as the convicts of death penalty also has the same rights as the other convicts. But the differences of their legal effort are only the convicts of death penalty who have obtained permanent legal entity who can file legal effort but with an extraordinary legal effort as provided in Article 263 of the Criminal Code Procedure.

B.1.2 The Filing of Judicial Review to the Supreme Court by the Convicts of Dead Penalty in Indonesia

The legal basis for judicial review is Act Number. 14 of 1970 in Article 21 which amended with Act Number 4 of 2004 in Article 23 about judicial authorities. Right to request for judicial review is only given to the convicts or his/her heirs and there are only a court decision that has obtained permanent legal entity and does not states free decision or acquittal. Furthermore, the convicts filing a judicial review then wait until the files are checked by the Supreme Court with an unspecified time.

Totally the convicts of death penalty at the Batu Nusambangan, 10 of death penalty convicts had been awaiting the filing of judicial review and based on some research found that the filing of judicial review was rejected for various reasons. Based on the interview with Mr. Edi Warsono as a head guidance of Batu Nusakambangan states that one of the convicts died while waiting for a decision of judicial review and there are some constrains in judicial review that is the issuance of SEMA No. 1 of 2010 which requires the convicts who filing the judicial review must be present at the trial process.

B.1.3 The Process of Clemency to the President by the Convicts of Death Penalty in Indonesia

Clemency is a gift from the president in the form of forgiveness to change, mitigation, reduction or abolition of the judgment execution to convicts. Granting clemency is not a technical of juridical justice and not related to the assessment of the judge's verdict (explanation of the Act Number. 22 of 2002 about clemency). The legal basis is Article 2 (1) of Act Number. 22 of 2002. The verdict of punishment that may be filed for clemency to the president is the death penalty, life imprisonment or minimum two years imprisonment and the filing of clemency only can be submitted one time.

B.2. The Constrains Faced to File the Legal Effort in Indonesia

Constrains encountered in the process of judicial review are stated by Mr Benny Sudrajat as the convicts of death penalty. The constrains are the mechanism should be attended by the convicts in any trial process. Based on the interviews and analysis conducted by the researchers, there are some constrains in the judicial review and clemency are:

- a. There are no rules which state about the time period for filing the legal effort either judicial review or clemency.
- b. In the process of judicial review the constrains encountered is the filing process that there are new rules requiring that the convicts must attend to the trial process that sometimes the convicts are not able to fill both material and immaterial.
- c. The filing of clemency have constraints on the Act Number. 22 of 2002 about clemency which does not state the filing requirements for clemency and unspecified period of time after the filing requirements have been accepted by the president, it is delaying the execution process.

B.2.1 The Constrains Faced to File the Judicial Review by the Convicts of Death Penalty

SEMA Number. 1 of 2010 in which regulates the filing of judicial review requires that the convicts of death penalty should to attend in the trial process. These conditions are led to the execution of death penalty has been delayed due to the convicts are feeling overwhelmed if in the process of judicial review, the convicts must be present and that became the reason is not able to set up a fund to trial process both material and immaterial.

From the these descriptions, the researchers conclude that the constrains encountered in the filing process of judicial review in Indonesia are as follows:

1. Judicial review must be attended by the convicts. It emerges some problems because take high costs to the trial process.
2. SEMA Number. 1 of 2010 is not clearly explain about the period of time to file the judicial review so inflictobscurity.
3. Judicial review should only could do once.

B.2.2 The Constrains Faced in Filing Process of Clemency

The convicts have the right to file a clemency, but not all the convicts have a right to file a clemency only the convicts who receive sentences as death penalty, imprisonment lifetime or minimum two years imprisonment and the filing clemency, it may be filed only one time. Rights to file a clemency notified to the convicts by the judge or the presiding judge when the trial process on the first level.

B.2.3 The Weaknesses of the Act Number. 22 of 2002 Jo the Act Number 5 of 2010 about Clemency

The provisions of the Act Number. 22 of 2002 Juncto the Act Number 5 of 2010 about clemency only mention the punishment or sentence imposed by the judges to the convicts that could be used as a reference to file for clemency. This emerges new problems if the Act does not specify any qualifying criminal offense to obtain a clemency, so all of the convicts have a right to file a clemency without analyze regardless of what they do.

Based on data obtained and the analysis of the researchers, there are several issues in the implementation of clemency:

1. There is no clear regulations about period of time to process the filing of clemency.
2. There is no rules governing which regulate about the criminal qualification to file the clemency.
3. Lack of budgets which are provided by the state to process the filing of clemency and indicated there political power inside.
4. No mentioned requirements to file a clemency inside the regulation
5. Law enforcer especially legal aid in accompanying the convicts of death penalty.

C. CONCLUSIONS

It was concluded that the implementation of filing process of legal effort in Indonesia have many problems either the filing process of judicial review or the filing process of clemency. Indeed in the written regulation in Indonesia there is no mention certainty about the timing and execution in detail and clearly causing not proportional of law enforcer in Indonesia. One of these is the filing process of judicial review which constraints experienced by the issuance of SEMA Number. 1 of 2010 in which regulates about the filing of judicial review to death penalty convicts and obliging them to attend in the trial process. Given these conditions led to the execution of death penalty has been delayed due to the convicts feeling overwhelmed if in the process of judicial review filing the convicts must be present and that became the reason is not able to set up a fund to the proceedings both material and immaterial. Then the filing process for clemency that have constraints on filing period until the results issued is too long and there is no certainty that make the convicts of death penalty fretted for years.

D. REFERENCES

Books:

- Chazawi, Adami. 2010. *Lembaga Peninjauan Kembali (PK) Perkara Pidana dalam Penegakan Hukum Dalam Penyimpangan Praktik dan Peradilan Sesat*. Jakarta : Sinar Grafika
- Effendy, Marwan. 2012. *Sistem Peradilan Pidana (Tinjauan Terhadap Beberapa Perkembangan Hukum Pidana)*. Jakarta : Referensi
- Lexy Moleong. 2012. *Metodologi Penelitian Kualitatif (Ed Revisi)*. Bandung: Remaja Rosdakarya.
- _____. 2014. *Metode Penelitian Kuantitatif Kualitatif dan R&D*. Bandung : Alfabeta.
- Marwan dan Jimmy. 2009. *Kamus Hukum (Dictionary Of Law Complete Edition)*. Surabaya: Reality Publiser
- Moleong, Lexy J. 2002. *Metode Penelitian Kualitatif*. Bandung: Remaja Rosdakarya
- Muhammad, Rusli. 2011. *Sistem Peradilan Pidana Indonesia*. Yogyakarta: UII Press Yogyakarta.
- Nelvita Purba, Sri Sulistyawati. 2015. *Pelaksanaan Hukuman Mati (Prespektif Hak asasi Manusia dan hukum pidana di Indonesia)*. Yogyakarta: Graha Ilmu.
- Sugiyono. 2014. *Memahami Penelitian Kualitatif*. Bandung: Penerbit Alfabeta.
- Yon Artiono Arabai. *Aku Menolak Hukuman Mati (telaah atas penerapan pidana mati)*. Jakarta: Kepustakaan Populer Gramedia
- Zainal, Mohadi. 1984. *Pidana Mati Dihapuskan atau Dipertahankan*. Yogyakarta: Hanindita Offset.

Regulations;

- Undang Undang Dasar Negara Republik Indonesia Tahun 1945 (The Constitution of the Republic of Indonesia)
- Kitab Undang Undang Hukum Pidana (Criminal Code)
- Kitab Undang Undang Hukum Acara Pidana (Criminal Code Procedures)
- Undang- Undang No. 5 Tahun 2010 atas perubahan UU No. 22 Tahun 2002 Tentang Grasi (The Act Number 5 of 2010 changing the Act Number 22 of 2002 about clemency).
- Penetapan Presiden No. 2 Tahun 1964 Tentang Tata Cara Pelaksanaan Pidana Mati di Indonesia. SEMA No. 1 Tahun 2012 tentang Pengajuan Permohonan PK dalam Perkara Pidana

Online :

- Basuki Rahmat, berita CNN Indonesia Nasional. *Eksekusi Terpidana Mati, DPR: Jangan Ada PK diatas PK*. Diakses di <http://m.cnnindonesia.com/nasional.20150427101700-12-49406/eksekusi-terpidana-mati-dpr-jangan-ada-pk-di-atas-pk/>
- Hadi Saputra Manalu. 2013. *Jurnal Ilmiah tentang Implementasi Hak-Hak Narapidana untuk mendapatkan Upah/Premi atas pekerjaan yang dilakukan di lembaga pemasyarakatan pajangan kelas IIB Bantul*. Universitas Atma Jaya Yogyakarta. at E-Journal Nasional at <http://e-journal.uajy.ac.id/454/3/2/MIH01585>

Cahya Wulandari, S.H.,M.Hum
Faculty of Law, Semarang State University,
50229, Semarang, Indonesia
E-mail: cahyawulandari@yahoo.com