Sosioedukasi
JURNAL ILMIAH ILMU PENDIDIKAN DAN SOSIAL
ISSN: 2086-6135 E-ISSN: 2541-612x
Volume 14 No. 4. December 2025 https://ejournal.unibabwi.ac.id/index.php/sosioedukasi/index

CONTROVERSY OF EQUAL RIGHTS TO THE APPLICATION OF THE DEATH PENALTY TO EXTRA ORDINARY CRIME PERSPECTIVE PANCASILA WITH JUSTICE

Billy Pahlevy Islamy[1a], Nurdin[2b*], Dominikus Rato[3c], I Gede Widhiarna Suarda[4d], Bayu Dwi Anggono[5e]

[1,3,4,5] Faculty of Law, University of Jember, Indonesia
[2] Faculty of Law, University of Muhammadiyah Gresik, Indonesia

a lawbilly123@gmail.com
b nurdin231174@gmail.com
c dominikusrato.fh@unej.ac.id
d igedewidhiana.suarda@unej.ac.id
e bayu_fhunej@unej.ac.id

(*) Corresponding Author
nurdin231174@gmail.com

ARTICLE HISTORY
Received : 20-10-2025
Revised : 07-11-2025
Accepted : 30-12-2025

KEYWORDS
Death Penalty;
Extraordinary Crime;
Pancasila.

ABSTRACT
This study explores the controversy surrounding the application of the death penalty to perpetrators of extraordinary crimes from the perspective of Pancasila, which upholds the principles of civilized justice. Although the death penalty is officially regulated in the Criminal Code and sectoral laws related to narcotics, terrorism, and corruption, its practice shows inconsistencies. The state strongly enforces the death penalty for drug and terrorism offenders but is more lenient toward corruption offenders, even though the law allows the death penalty under certain circumstances. This disparity raises concerns about potential abuse of power, violates the principle of equality before the law, and undermines public trust in the legal system. The research employs a qualitative method with a normative legal approach, analyzing laws and regulations, doctrines, court decisions, and relevant academic literature. The analysis is conducted descriptively and analytically, with Pancasila used as an evaluative framework. The findings emphasize the need for consistent application of the death penalty for all extraordinary crimes to ensure that the law upholds substantive justice. Using Pancasila as a benchmark, the state is expected to enforce the law in an equitable, accountable, and fair manner, so that the death penalty serves as an instrument of justice rather than a tool of power.

INTRODUCTIONS

Indonesia as a country of law puts justice and equality before the law as the main non-negotiable principle. The concept of equality before the law contained in Article 27 paragraph (1) of the 1945 Constitution affirms that all citizens, without exception, have an equal position in the eyes of the law. This principle is not only part of the

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constitutional norm, but also represents the noble value of Pancasila which prioritizes social justice and respect for human dignity. However, the reality of law enforcement in Indonesia often shows a discrepancy between constitutional idealism and empirical practice, especially in the context of the application of the death penalty to extraordinary crimes such as terrorism, narcotics, and corruption. (Laia et al., 2020; Samosir et al., 2021) (Rahmi, 2018)

This discrepancy is increasingly felt when the public is faced with the fact that the application of the death penalty seems to be selective, strict against terrorism and narcotics cases, but soft and compromising on perpetrators of corruption crimes. In fact, normatively, all three are categorized as extraordinary crimes that threaten national stability and human values. This inequality raises a fundamental question about substantive justice in the Indonesian legal system: why are perpetrators of corruption who clearly harm the state's finances and cause misery to the wider community not be punished on par with perpetrators of terrorism or drug traffickers? This question leads to the allegation that the Indonesian legal system still leaves room for power intervention and disparity in legal treatment. (Butar-butar et al., 2023) (Sinaga et al., 2023)

This situation is certainly not only a formal legal issue, but also touches on the ideological aspect of the state. Pancasila as the basis of the state not only contains normative values, but also becomes a moral foundation in the formation and implementation of laws. When the application of the death penalty does not reflect equality and consistency, it becomes a form of violation of the spirit of civilized justice contained in the second and fifth precepts of Pancasila. Therefore, it is important to reconstruct the meaning of equality before the law by placing Pancasila as an evaluative instrument for law enforcement practices, especially in the death penalty policy for extraordinary crimes. (Ardinal et al., 2022; Sastro, 2017)

The tension between the principle of equality and the reality of law enforcement inequality has been a concern in various academic studies. In their research, they emphasized that the principle of equality before the law in Indonesia is still at the normative level and has not touched the substance of its implementation. They noted that inconsistency by law enforcement officials and political influence have weakened the implementation of this principle in various court rulings, especially in high-profile cases such as corruption. (Hakim, 2020)

In line with that, the application of the death penalty for drug dealers from a human rights perspective, and finds that although the state has a strong justification for imposing the death penalty, there is a risk of violating the rights of the accused if the procedure is not carried out carefully and responsibly. This shows that the procedural aspect of law enforcement is as important as the legitimacy of the legal substance itself. (Suryandari & Soerachmat, 2019)

Meanwhile, the study revealed that the application of the death penalty against corrupt perpetrators almost never occurred even though there was a legal basis in the Corruption Act. They noted that in major cases such as social assistance corruption during the COVID-19 pandemic or political bribery by high-ranking officials, court rulings tend to be lenient and do not reflect a deterrent effect. This study strengthens the suspicion that the application of the death penalty in Indonesia is still symbolic and does not reach all types of extraordinary crimes fairly and equitably. (Scott, 2020)

The disconnect between legal norms and their implementation is the basis for the urgency of this research. If the law continues to be applied discriminatorily, public trust in the legal system will decrease, and Pancasila as the basic value of the state will lose its corrective power. In a situation like this, efforts are needed to re-dismantle the structure of Indonesian criminal law thinking so that it is more in line with the values of substantive justice that live in society. This requires an interdisciplinary approach between normative law, legal philosophy, and public policy studies to re-examine the legitimacy of the death penalty in the context of extraordinary crimes holistically.

This study aims to analyze the controversy over the application of the death penalty to perpetrators of extraordinary crimes from the perspective of Pancasila which upholds civilized justice. By placing Pancasila as an analytical lens, this study seeks to explore the extent to which Indonesian criminal law reflects the values of justice, equality, and humanity in its implementation. Theoretically, this research is expected to enrich the treasures of criminal law science and expand the study of legal philosophy based on state ideology. Practically, the results of this research

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are expected to be able to provide constructive recommendations for policy makers, law enforcement officials, and academics in formulating a more fair, consistent, and rooted criminal policy direction based on Pancasila values.

METHOD

This research uses a qualitative approach with normative legal research methods, which focuses on the study of positive legal norms, legal principles, and principles that apply in the Indonesian national legal system. This approach was chosen because the problems studied are conceptual and normative, namely related to justice in the application of the death penalty to extraordinary crimes from the perspective of Pancasila as the basis of the state. The study focuses on the analysis of laws and regulations, doctrines, and court decisions relevant to the research topic. In addition, a conceptual approach is used to understand the basic ideas that form the framework of Indonesian criminal law, particularly related to the principle of equality before the law and the implementation of the death penalty. (Irwansyah, 2020)

Data collection was carried out through literature studies which included the study of primary, secondary, and tertiary legal materials. The primary legal material consists of laws and regulations such as the 1945 Constitution, the Criminal Code (KUHP), the Law on Corruption, the Law on the Eradication of Terrorism Crimes, and the Law on Narcotics. Secondary legal materials include the results of previous research, scientific journal articles, criminal law literature, and relevant academic documents. The tertiary legal materials are in the form of legal dictionaries, encyclopedias, and other supporting sources that are used to strengthen the conceptual framework. (Purwati, 2020)

Data analysis is carried out in a descriptive-analytical manner, namely by describing relevant legal findings and then analyzing them in depth within the framework of justice theory, criminal law principles, and Pancasila values. Each legal element found is critically examined to identify gaps between legal norms and their implementation practices. An analysis was also carried out on the selective tendency in the application of the death penalty, as well as its impact on the integrity of the principle of equality before the law. Thus, the results of the analysis are expected to be able to provide a comprehensive picture of the problems of the application of the death penalty in the context of extraordinary crimes and provide recommendations based on Pancasila values to encourage just and civilized legal reform. (Efendi & Ibrahim, 2016)

RESULT AND DISCUSSIONS

Inequality in the Application of the Death Penalty for Perpetrators of Extraordinary Crimes in Indonesia

The application of the death penalty in the Indonesian legal system has historical roots and a strong juridical foundation. As the most severe form of punishment in the penal system, the death penalty is applied selectively for the types of crimes that are considered the most dangerous and threaten the existence of the state and society. In the context of national law, the death penalty is regulated not only in the Criminal Code (KUHP), but also in a number of sectoral laws such as Law No. 35 of 2009 concerning Narcotics, Law No. 15 of 2003 concerning the Eradication of Terrorism Crimes, and Law No. 31 of 1999 jo. Law No. 20 of 2001 concerning the Eradication of Corruption. These three types of crimes—narcotics, terrorism, and corruption—are classified as extraordinary crimes because of their systemic and cross-border damage, both territorially and socially.

Normatively, the existence of articles that open up the possibility of the death penalty for perpetrators of extraordinary crimes shows that the state is committed to maximum repressive efforts in the context of protecting society and state stability. However, the implementation of these norms actually shows an imbalance. The state appears firm and uncompromising in imposing and executing the death penalty against perpetrators of narcotics and terrorism crimes, but it is lenient and even permissive towards corrupt perpetrators, even though normatively corruption crimes also allow the death penalty.

This inequality is evident from various case studies. In the case of terrorism, the state acts quickly and decisively. The perpetrators of the 2002 Bali bombings—Amrozi, Ali Ghufron (Mukhlas), and Imam Samudra—were executed in 2008. The execution was carried out after going through a relatively fast legal process compared to other

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types of crimes. The state considers that their actions threaten national security and cause a large number of casualties, so the death penalty is considered a form of legal protection for the wider community. Similarly, in the case of Oman Rochman alias Aman Abdurrahman who was sentenced to death for being an intellectual actor in a series of terror acts. The state clearly shows that in the context of terrorism, the death penalty is a legitimate and necessary instrument. (Asiyah et al., 2020)

A similar attitude is shown in the case of narcotics. Freddy Budiman, who was proven to be in control of an international drug network, was sentenced to death and executed on July 29, 2016. In this case, the state emphasized that drug trafficking is a serious threat to the future of the younger generation and undermines the social order of society. In the logic of law enforcement, narcotics crimes have massive dimensions and destructive social effects, so the imposition of the death penalty is considered proportionate. The state has even ignored international pressure that tends to reject the death penalty, while insisting that the rule of national law is a top priority.

However, similar firmness is not shown in corruption cases. In fact, Law No. 31 of 1999 jo. Law No. 20 of 2001 explicitly opens the possibility of applying the death penalty for corruption perpetrators in certain circumstances, as stipulated in Article 2 paragraph (2). For example, if corruption is committed when the country is in a state of crisis or disaster, the death penalty can be imposed. However, until now there has not been a single court decision that imposes the death penalty on corruptors. The most striking case was the corruption scandal of COVID-19 social assistance funds carried out by the Minister of Social Affairs at the time, Juliari P. Batubara. Corruption is carried out in a national health emergency, when millions of Indonesians are in very difficult economic conditions. However, the sentence handed down was only eleven years in prison. This caused a polemic because the act clearly met the elements of "certain circumstances" regulated in the criminal penal article. (Leasa, 2020)

In addition, the case of Eddy Prabowo, former Minister of Maritime Affairs and Fisheries, also reflects the state's indecisiveness. He was involved in the corruption of lobster seed exports with the value of state losses reaching billions of rupiah. Even though it was carried out in a pandemic situation that demanded efficiency and budget integrity, Eddy was only sentenced to five years in prison. This lenient verdict reinforces the impression that Indonesia's legal system is elitist, harsh only on perpetrators who come from the lower social class or do not have access to power.

The absence of the application of the death penalty in corruption cases indicates the existence of an inequality structure in the criminal justice system in Indonesia. The state seems to have an easier time imposing the death penalty on criminals who have no significant political or economic power. On the other hand, corrupt perpetrators who generally come from the elite actually receive lighter treatment. This gives rise to the perception that the law in Indonesia is not value-free, but is strongly influenced by the social position and strength of the perpetrators' networks. (Muqorobin & Arief, 2020)

In the realm of legal theory, this inequality hurts the principles of retributive and distributive justice. Retributive justice demands that the punishment imposed be proportionate to the moral error and harm caused. If drug and terrorism perpetrators are considered worthy of the death penalty because of the damage they cause, then corrupt perpetrators should also face equal consequences because corruption not only harms the state financially, but also weakens public morality and exacerbates social inequality. Meanwhile, distributive justice requires that legal treatment does not discriminate based on social status, wealth, or power. When perpetrators of extraordinary crimes are treated differently even though the legal threat is the same, distributive justice fails to be realized. (Sari, 2020)

Furthermore, the legal partiality that appears in this inequality also results in a crisis of public trust in legal institutions. The public became skeptical of the judicial process, and there was a perception that the law could be bought or negotiated. This is dangerous because it can trigger vigilantism or legal apathy that weakens the rule of law in the long run. When society no longer believes that the law is a tool of justice, then the integrity of the law as a whole will collapse. In this context, the death penalty as an instrument of the state actually loses its social legitimacy value because it is only used selectively, not based on objective principles and equality.

This inequality also reflects failures in the formulation and implementation of national legal politics. Legal politics should be directed to ensure that law is not only a tool of power, but also a moral and social instrument that

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reflects the basic values of the nation. In this case, the values of Pancasila, especially social justice and humanity that are just and civilized, should be used as a benchmark in formulating and implementing criminal policies. However, the inconsistency in the application of the death penalty to extraordinary crimes actually shows that Indonesian legal politics is still pragmatic and not rooted in the nation's ideological values. (Adinda et al., 2024)

Not only stopping at normative and social impacts, the inequality in the application of the death penalty also has international implications. Indonesia as a democracy that is active in international forums often receives criticism from the global community for the application of the death penalty, especially in narcotics cases. In fact, if consistency is applied, the death penalty should also be imposed on corrupt perpetrators who are proven to systemically deprive people of their right to life. This inconsistency actually weakens Indonesia's position in the global debate on the death penalty, as it cannot demonstrate the principles of equality and justice in its implementation.

Pancasila as a Paradigm of Justice in the Evaluation of the Death Penalty

Pancasila as the basis of the Indonesian state is not only a constitutional symbol, but also a source of value that must animate all aspects of the life of the nation and state, including in the legal system and practice of justice enforcement. In the context of the application of the death penalty to extraordinary crimes, Pancasila has a strategic position as an evaluative paradigm that is able to bridge the demand for retributive justice with the protection of human rights. As an open ideology, Pancasila has flexibility in responding to social dynamics, but is still firmly rooted in the values of humanity, justice, and wisdom that uphold human dignity and dignity.

The values in Pancasila implicitly contain the principles of substantive justice that should be the basis for the application of criminal law, especially the death penalty. The second precept, "A just and civilized humanity," demands that the legal and judicial systems place human beings as the primary subjects who are protected and respected. In this context, the application of the death penalty cannot be carried out arbitrarily, let alone discriminatory. It must be considered comprehensively through the principles of due process of law and equality before the law. Any form of deviation from this principle not only hurts the sense of justice, but also denies the principle of humanity in the second precept. (Arwansyah et al., 2021)

Meanwhile, the fifth precept, "Social justice for all Indonesian people," provides a normative framework that the legal system must ensure justice that is not only legal-formal, but also contextual and socially impact-oriented. In the application of the death penalty to perpetrators of extraordinary crimes, this value of social justice should be a guideline in ensuring that all perpetrators of crimes that damage the social order of society—whether through physical violence (such as terrorism), generational moral destruction (such as narcotics), or systemic losses to the state (such as corruption)—are treated equally before the law. If the state is only firm against two types of crime, but soft on corruption, then social justice will never really be present.

The application of the death penalty in Indonesia has actually gained legal legitimacy through various applicable legal instruments. The old Criminal Code (Article 10) expressly lists the death penalty as one of the main criminal forms. Even the new Criminal Code in 2023 still maintains the death penalty in the national criminal law structure, albeit with stricter regulations. In Article 100 of the new Criminal Code, the death penalty is applied alternatively, and can only be imposed if the perpetrator's actions cause victims or an extraordinary impact on society. In addition, the death penalty in the new Criminal Code is placed as a "conditional penalty" that must be reviewed after a 10-year probation period, thus indirectly narrowing the scope for absolute execution. (Purwono, 2024)

Outside the Criminal Code, in sectoral regulations, the threat of the death penalty is also explicitly regulated. Law No. 35 of 2009 concerning Narcotics includes the death penalty in Articles 113, 114, 118, and 119, especially for perpetrators of the production or distribution of class I narcotics in large quantities. In Law No. 15 of 2003 concerning the Eradication of Terrorism Crimes, the death penalty is contained in Article 6, Article 8, and Article 14, with the provision that perpetrators who cause casualties or extensive damage to vital objects of the state can be sentenced to death. In this context, the state appears firm and consistent. (Hahamu et al., 2020)

However, the main problem is the state's inconsistency in the application of the death penalty to corruption crimes. In fact, in Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption Crimes, Article 2 paragraph (2) explicitly provides room for the imposition of the death penalty if

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corruption is carried out in certain circumstances, such as in the situation of natural disasters, national crises, or other emergencies. In various cases of major corruption that occurred in the midst of the COVID-19 pandemic—such as the Juliari Batubara case related to social assistance funds—the element of "certain circumstances" was very fulfilled. However, this article is not used by the public prosecutor or the panel of judges, giving the impression that the provision is only symbolic.

Public criticism was even sharper when the new Criminal Code in 2023 no longer listed corruption as a criminal offense punishable by death. In the Special Crimes Chapter, which is regulated between Article 598 to Article 610, only delicacies such as gross human rights violations, terrorism, and narcotics are mentioned. The disappearance of corruption from the category of capital offenses in the new Criminal Code marks a setback in national legal politics. This decision shows that the state no longer views corruption as an extraordinary crime that deserves maximum sanctions, despite its social, economic, and political ramifications. (Dewi, 2020)

The inequality in the use of death penalty articles indicates that the law in Indonesia has not been implemented fairly and equitably. The application of the death penalty to perpetrators of terrorism and narcotics does show the state's firmness in maintaining public stability and security. However, the softness of law enforcement against corrupt perpetrators shows that there is structural resistance in the legal system to the application of equivalent sanctions. If the state really wants to uphold the principle of substantive justice as mandated by Pancasila, then all perpetrators of extraordinary crimes must be treated with the same standards, both in terms of the threat of punishment and its implementation.

In the realm of legal theory, this condition indicates a crisis in the integration between positive law and moral law. Gustav Radbruch in his theory of the three elements of law—justice, utility, and legal certainty—states that law must run on the balance of all three. If law only pursues certainty but ignores justice, then it loses its soul as a living normative system. In the context of the death penalty in Indonesia, legal certainty seems to apply only to two types of crimes (narcotics and terrorism), while in corruption, the application of the death penalty becomes uncertain, even though the legal threat is clear. This indicates that there is structural injustice in the judicial process that is directly contrary to the values of Pancasila.

Furthermore, Pancasila rejects all forms of legal discrimination. When perpetrators from the lower class or marginalized groups are more easily sentenced to death, while perpetrators from the bureaucratic or political elite receive light sentences, the state is indirectly creating legal inequality based on social class. This principle is contrary to the spirit of unity and human values upheld in the second and third precepts of Pancasila. Discriminatory law enforcement like this not only hurts the sense of justice, but also weakens the legitimacy of the law in the eyes of society. (Parindo et al., 2024)

The right to life is indeed a human right that should not be violated carelessly. However, in the Pancasila approach, individual rights must be considered proportionally to the rights of the wider community. Therefore, the death penalty can still be justified in the context of collective protection of the community from the dangers of extraordinary crimes. With the note that its implementation is carried out consistently, accountably, and equitably. Without these principles, the death penalty will only be a tool of power, not a tool of justice.

By making Pancasila an evaluative paradigm, the state not only enforces the law procedurally, but also restores the law as a reflection of the nation's noble values. The application of the death penalty to all perpetrators of extraordinary crimes fairly and consistently is a concrete form of implementation of Pancasila values. The state must demonstrate a commitment that the death penalty is not merely an instrument of legal violence, but an expression of responsibility to the people, to social justice, and to the dignity of the law itself. Without all of that, Pancasila will only be an empty text that is alienated from the legal reality in Indonesia.

CONCLUSION

The inequality in the application of the death penalty in Indonesia is evident in the difference in the treatment of narcotics and terrorism perpetrators who are punished harshly to death, while perpetrators of corruption—although

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normatively liable to the death penalty under certain circumstances—always receive lighter sentences. This condition shows that there is a legal disparity influenced by political power and social status, thereby hurting the principles of retributive and distributive justice. These inconsistencies have caused a crisis of public trust in the legal system, weakened the legitimacy of the death penalty as an instrument of the state, and shown that the law is still elitist and pragmatic, not rooted in substantive justice values.

As the basis of the state, Pancasila should be an evaluative paradigm in the application of the death penalty, ensuring consistency, equality, and respect for human values and social justice. Although the death penalty has legitimacy in the old Criminal Code, the new Criminal Code, and sectoral laws, the practice of its application is still discriminatory because corruption is no longer included as a crime worthy of the death penalty. This shows a political and legal setback that is contrary to the values of Pancasila, especially the second and fifth precepts. By placing Pancasila as a benchmark, the state is required to enforce the death penalty for all extraordinary crimes fairly and equally, so that the law truly becomes an instrument of justice, not just a tool of power.

Fundamentally, it is recommended to carry out a political reconstruction of criminal law to overcome the disparity in the application of the death penalty to extraordinary crimes. This reconstruction requires a revision of legislation that is oriented towards restoring legal immunity. The government and the House of Representatives (DPR) are instructed to review and revise the 2023 Criminal Code (KUHP), by re-entering corruption crimes into crimes that deserve the death penalty, in order to prevent the political deterioration of national law. In addition, it is necessary to harmonize sectoral laws, especially the Corruption Crime Law (Corruption Law), so that the provisions of the death penalty in certain circumstances (for example during a crisis or disaster) through Article 2 paragraph (2) of the Corruption Law are upgraded to a mandatory status to be applied by the public prosecutor/prosecutor, as a concrete step to realize the consistency of sanctions against all crimes that systematically damage the socio-economic order.

The aspect of law enforcement practice (judicial) requires strengthening consistency and accountability so that the principle of equality before the law can be enforced, rejecting the existence of elite privilege in the judicial process. The Supreme Court (MA) and related law enforcement agencies need to formulate explicit judicial guidelines to establish the criteria for "certain circumstances" in the Corruption Law, thereby minimizing multiinterpretation and abuse of authority. Philosophically, law enforcement officials must be required to undergo ethical education that makes Pancasila an evaluative paradigm and moral compass, emphasizing that the application of the death penalty must be consistent and equal to all perpetrators of extraordinary crimes—both terrorism, narcotics, and corruption. This approach ensures that the law functions as an instrument of social justice that protects the collective rights of society, not merely a tool of power.

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