

**PERSPEKTIF HUKUM DAN HAK ASASI MANUSIA
TERHADAP PELAKSANAAN TINDAK PIDANA MATI
DI INDONESIA**

TESIS

Oleh:

JAMALUL KAMAL

201420252010



**PROGRAM STUDI MAGISTER HUKUM
FAKULTAS HUKUM
UNIVERSITAS BHAYANGKARA JAKARTA RAYA
JAKARTA
2018**

LEMBAR PERSETUJUAN PEMBIMBING

Judul Tesis : **Perspektif Hukum dan Hak Asasi Manusia
terhadap Pelaksanaan Tindak Pidana Mati di
Indonesia.**

Nama Mahasiswa : JAMALUL KAMAL

Nomor Pokok Mahasiswa : 201420252010

Program Studi/Fakultas : Magister Hukum/Hukum

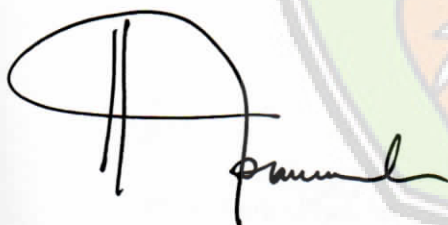
Konsentrasi : Hukum Pidana

Jakarta, November 2018


MENYETUJUI:

Pembimbing I

Pembimbing II



Prof. Koesparmono Irsan, S.IK. SH, MBA, MM.
NIDK : 0324034001



Dr. H. Boy Nurdin, SH., MH.
NIDN : 311026802

LEMBAR PENGESAHAN

Judul Tesis : **Perspektif Hukum dan Hak Asasi Manusia terhadap Pelaksanaan Tindak Pidana Mati di Indonesia.**

Nama Mahasiswa : JAMALUL KAMAL

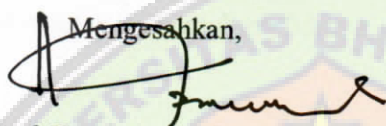
Nomor Pokok Mahasiswa : 201420252010

Program Studi/Fakultas : Magister Hukum/Hukum

Konsentrasi : Hukum Pidana

Tanggal Lulus Ujian Tesis : 23 November 2018

Jakarta, November 2018

Mengesahkan,


Ketua Tim Penguji : Prof. Koesparmono Irsan, S.IK. SH, MBA, M.M.
NIDK : 0324034001

Penguji I : Dr. H. Erwin Owan Hermansyah, SH., MH.
NIDN : NIDN : 0319046403

Penguji II : Dr. Hotma P. Sibuea, SH., MH.
NIDN : 0323035802

MENGETAHUI,

PLH. Ketua Program Studi

Magister Hukum

Pjs Dekan

Fakultas Hukum

Bhatara Ibnu Reza, S.H., MSi., LL.M., Ph.D

NIP: 1809353

Bhatara Ibnu Reza, S.H., MSi., LL.M., Ph.D.

NIP: 1809353

LEMBAR PERNYATAAN

Dengan ini saya menyatakan bahwa:

Tesis Yang Berjudul:

“Perspektif Hukum dan Hak Asasi Manusia terhadap Pelaksanaan Tindak Pidana Mati di Indonesia”.

Ini adalah benar-benar merupakan hasil karya saya sendiri dan tidak mengandung materi yang ditulis oleh orang lain kecuali pengutipan sebagai referensi yang sumbernya telah dituliskan secara jelas sesuai dengan kaidah penulisan karya ilmiah.

Apabila di kemudian hari ditemukan adanya kecurangan dalam karya ini, saya bersedia menerima sanksi dari Universitas Bhayangkara Jakarta Raya sesuai dengan peraturan yang berlaku.

Saya mengizinkan tesis ini dipinjam dan digandakan melalui Perpustakaan Universitas Bhayangkara Jakarta Raya.

Saya memberikan ijin kepada Perpustakaan Universitas Bhayangkara Jakarta Raya untuk menyimpan tesis ini dalam bentuk digital dan mempublikasikannya melalui internet selama publikasi tersebut melalui portal Universitas Bhayangkara Jakarta Raya.

Jakarta, November 2018

Yang Membuat Pernyataan,



JAMALUL KAMAL

ABSTRACT

The death penalty (*dood straf*) is one of the ways of criminal law enforcement of the most controversial in the world, it happened since the days of Babylon until today, including in Indonesia, the punishment is still used as one of the penalties for those convicted of the crime. Many experts approve of capital punishment, but most of them do not approve it, while still having a view that is argumentative and supported by a solid reason. The purpose of this study is to learn more about the sanction of capital punishment under criminal law in Indonesia, and to find out how the sanction of capital punishment in human right perspective. This is a library research that using data written material as reference basis, and the specification of the research is analytic. Crime is the basic part of an error committed against someone in a crime and should be sanctioned for his actions in accordance with applicable law. The sanctions are the toughest criminal penalty of capital punishment, especially in Indonesia could be given to serious criminal offenses such as drugs, terrorism, treason, or planned murder. If assessed, the rising drug crime, terrorism, or other crimes not solely caused by the absence of the death penalty, but by structural problems such as poverty or the law enforcement agencies / countries are corrupt. Some data indicate that, in some countries, a decrease in drug case not caused the death penalty. However, the reduction in the number of drug distribution is due on law enforcement, such as the attitude of law enforcement agencies in these countries are not venal. As known to the fundamental principle of human rights, which are listed in the "Universal Declaration of Human Rights" in 1948 and the Act No. 5 1998 RI 1998 states that the right to life is one of human rights. Therefore, the fundamental reason that states that the death penalty is a kind of the most important human rights violations, namely the right to life and is a fundamental right that can not be violated, reduced or restricted under any circumstances, whether it is in a state of emergency, war, including when a person as a prisoner. The death penalty will not be repaired if a judge had erred and the death penalty has been carried out, and life will never be returned to the person who has been sentenced to death. Therefore worthy presumably the government to consider and analyze the return on criminal laws of the death penalty, and is expected to further maximize rule of law and human rights in Indonesia, with the attempt to create a clean government in enforcing the rule of the law and full respect for human rights enforcement in the form statements and real action.

Keywords: crime, human rights, the death penalty

ABSTRACT

The death penalty (*dood straf*) is one of the ways of criminal law enforcement of the most controversial in the world, it happened since the days of Babylon until today, including in Indonesia, the punishment is still used as one of the penalties for those convicted of the crime. Many experts approve of capital punishment, but most of them do not approve it, while still having a view that is argumentative and supported by a solid reason. The purpose of this study is to learn more about the sanction of capital punishment under criminal law in Indonesia, and to find out how the sanction of capital punishment in human right perspective. This is a library research that using data written material as reference basis, and the specification of the research is analytic. Crime is the basic part of an error committed against someone in a crime and should be sanctioned for his actions in accordance with applicable law. The sanctions are the toughest criminal penalty of capital punishment, especially in Indonesia could be given to serious criminal offenses such as drugs, terrorism, treason, or planned murder. If assessed, the rising drug crime, terrorism, or other crimes not solely caused by the absence of the death penalty, but by structural problems such as poverty or the law enforcement agencies / countries are corrupt. Some data indicate that, in some countries, a decrease in drug case not caused the death penalty. However, the reduction in the number of drug distribution is due on law enforcement, such as the attitude of law enforcement agencies in these countries are not venal. As known to the fundamental principle of human rights, which are listed in the "Universal Declaration of Human Rights" in 1948 and the Act No. 5 1998 RI 1998 states that the right to life is one of human rights. Therefore, the fundamental reason that states that the death penalty is a kind of the most important human rights violations, namely the right to life and is a fundamental right that can not be violated, reduced or restricted under any circumstances, whether it is in a state of emergency, war, including when a person as a prisoner. The death penalty will not be repaired if a judge had erred and the death penalty has been carried out, and life will never be returned to the person who has been sentenced to death. Therefore worthy presumably the government to consider and analyze the return on criminal laws of the death penalty, and is expected to further maximize rule of law and human rights in Indonesia, with the attempt to create a clean government in enforcing the rule of the law and full respect for human rights enforcement in the form statements and real action.

Keywords: crime, human rights, the death penalty

KATA PENGANTAR

Puji syukur kami panjatkan kehadirat Tuhan Yang Maha Esa karena dengan rahmat, karunia, serta taufik dan hidayah-Nya kami dapat menyelesaikan makalah tesis tentang PERSPEKTIF HUKUM DAN HAK ASASI MANUSIA TERHADAP TINDAK PIDANA MATI DI INDONESIA ini dengan baik meskipun banyak kekurangan di dalamnya. Untuk itu, sepantasnyalah ucapan terimakasih yang tinggi penulis sampaikan kepada Bapak Dr. H. Boy Nurdin, SH., MH., dan Bapak Prof. Koesparmono Irsan, S.IK. SH, MBA, M.M selaku pembimbing tesis yang telah memberikan motivasi, bimbingan, dan berbagai masukan di dalam penulisan makalah tesis ini.

Penulis sangat berharap makalah tesis ini dapat berguna dalam rangka menambah ilmu, wawasan, dan pengetahuan di dunia hukum terutama tentang hukuman mati. Penulis juga menyadari sepenuhnya bahwa di dalam makalah ini terdapat kekurangan dan jauh dari kata sempurna. Oleh sebab itu, penulis berharap adanya kritik, saran dan usulan demi perbaikan makalah tesis ini, untuk mencapai kesempurnaan dan menjadi jauh lebih baik.

Semoga makalah tesis ini dapat dipahami bagi siapapun yang membacanya, sehingga dapat berguna bagi penulis sendiri maupun orang yang senang membacanya. Maafkan atas segala kekurangan, semoga Allah YME memberikan petunjuk, bimbingan, dan hidayah untuk kita sekalian.

Jakarta, November 2018

Jamalul Kamal

DAFTAR ISI

HALAMAN JUDUL	
LEMBAR PERSETUJUAN TESIS	
LEMBAR PERNYATAAN KEASLIAN TESIS	
LEMBAR PENGESAHAN TESIS	
PERSEMBAHAN/MOTTO	
KATA PENGANTAR	i
ABSTRAK	ii
DAFTAR ISI	iv
 BAB I PENDAHULUAN	 1
A. Latar Belakang Masalah	21
B. Rumusan Masalah	21
1. Rumusan Masalah	21
C. Tujuan dan Kegunaan Penelitian	21
1. Tujuan Penelitian.....	21
a. Tujuan Umum	21
b. Tujuan Khusus	22
2. Manfaat Penelitian	22
a. Manfaat Teoritis	22
b. Manfaat Praktis	23
D. Kerangka Teoritis, Konseptual dan Pemikiran	23
1. Kerangka Teoritis	23
2. Kerangka Konsepsional.....	27
3. Kerangka Pemikiran	29
E. Metode Penelitian	30
1. Jenis Penelitian	30
2. Spesifikasi Penelitian	31
3. Pendekatan Penelitian	32
F. Sistematika Penulisan	

	32
BAB II TINJAUAN PUSTAKA	34
A. Pengertian Pidana	36
B. Teori dan Tujuan Hukum Pidana	39
C. Tindak Pidana dengan Hukuman Mati	39
D. Berbagai Tindak Pidana dengan Ancaman Hukuman Mati di Indonesia dan Berbagai Negara	54
E. Pidana Mati dari Sudut Pandangan Islam	71
BAB III PERSPEKTIF HUKUM TERHADAP TINDAK PIDANA MATI DI INDONESIA	78
BAB IV PERSPEKTIF HAK ASASI MANUSIA TERHADAP TINDAK PIDANA MATI DI INDONESIA	87
BAB V PENUTUP	100
A. Kesimpulan	100
B. Saran	101
DAFTAR KEPUSTAKAAN	102
RIWAYAT HIDUP PENULIS	107