

PENJATUHAN HUKUMAN MATI TERHADAP PELAKU PERKOSAAN SANTRIWATI PESANTREN MADANI DALAM PERSPEKTIF HAK ASASI MANUSIA

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INTISARI

Penelitian ini membahas tentang hukuman mati terhadap pelaku kekerasan seksual kepada santriwati pesantren madani yaitu HW selaku kepala pesantren dari sisi Hak Asasi Manusia (HAM) dan kesesuaian kekerasan seksual yang dilakukan HW termasuk sebagai *the most serious crime* dalam hukum HAM Nasional dan Internasional beserta pro dan kontra pidana mati sebagai jalan terakhir untuk menghukum pelaku kejahatan.

Penulisan Hukum ini adalah berjenis normatif dengan studi pustaka dan data sekunder diperkuat dengan wawancara narasumber untuk mendapatkan informasi terkait. Kemudian data dianalisis menggunakan metode kualitatif yang selanjutnya dituangkan dalam bentuk uraian untuk menarik kesimpulan yang dilakukan secara objektif dan sistematis.

Penelitian ini memuat kesimpulan bahwa kasus kekerasan seksual yang dilakukan HW tidak memenuhi kriteria *the most serious crime* secara keseluruhan serta belum sesuai dengan hukum HAM Internasional maupun Nasional. *Universal Declaration of Human Rights (DUHAM)*, *ICCPR*, dan *VCLT* mengatur terkait pidana mati dan hak untuk hidup. Penjatuhan pidana mati dalam kasus HW menimbulkan pro dan kontra. Putusan pidana mati terhadap terdakwa kekerasan seksual kasus HW dianalisis juga dari asas-asas, prinsip, teori hukum pidana serta harus sejalan dengan Pasal 28A, 28I UUD NRI 1945 dan Pasal 9 UU HAM yang pada hakikatnya setiap orang berhak untuk hidup dan hak untuk hidup ini tidak dapat dikurangi atau dibatasi dalam keadaan apa pun. Penjatuhan hukuman mati yang dijatuhkan terhadap HW dinilai tidak tepat dan tidak perlu dilaksanakan karena terdapat ketentuan tersebut sehingga dapat diganti atau dikonversi dengan pidana seumur hidup.

Kata kunci: kekerasan seksual, the most serious crime, HAM, hak hidup

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IMPLEMENTATION OF THE DEATH PENALTY AGAINST THE RAPE OF MADANI BOARDING SCHOOL STUDENTS IN HUMAN RIGHTS PERSPECTIVE

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ABSTRACT

This study discusses the death penalty for perpetrators of sexual violence against female Islamic boarding schools, namely HW in terms of Human Rights (HAM) and sexual violence as the most serious crime in human rights law and the suitability of sexual violence committed by HW including as the most serious crime in national and international Human Rights Law along with the pros and cons of capital punishment as a way finally to punish the perpetrator.

This legal writing is of a normative type with literature and secondary data strengthened by interviews with sources to obtain relevant information. Then the data were analyzed using qualitative methods which were then outlined in the form of descriptions to draw conclusions which were carried out objectively and systematically.

This study conclude that cases of sexual violence committed by HW do not meet the criteria of the most serious crime as a whole and are not in accordance with international and national human rights law. The Universal Declaration of Human Rights (DUHAM), ICCPR, and VCLT regulate death penalty and the right to life. The imposition of capital punishment in the HW case raises pros and cons. The death penalty decision against the defendant for sexual violence in the HW case was also analyzed from the principles, principles, theories of criminal law and must be in line with Articles 28A, 28I of the 1945 Constitution of the Republic of Indonesia and Article 9 of the Human Rights Law which in essence every person has the right to life and the right to life. this cannot be reduced or limited under any circumstances. The death penalty imposed on HW is considered inappropriate and does not need to be carried out because there is such a provision that can be replaced or converted to life imprisonment.

Keyword: *sexual violence, the most serious crime, human rights, the right to life*

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