

CHAPTER I INTRODUCTION

I. Research Background

Death penalty or execution or capital punishment is the most controversial way of law sentence this day. For some it is considered as human right violation, but for some again it is a form of justice. Death sentence opponents assume it as inhumane.¹ There are many organization worldwide, such as Amnesty International intended to pursue the abolishment of death sentence as their main purpose.²

The recent survey conducted by the United Nations (UN), as of May 2012, out of 195 countries of UN member, 103 countries (53%) have abolished death penalty for all crimes. Six countries (3%) have abolished it, but still practice it for exceptional case like war crime. Fifty countries (26%) still practice death penalty, but have not used it for at least ten years or are under moratorium, while 36 countries (18%) retain death penalty in both law and practice.³

On 16 December 1996, United Nations held a General Assembly regarding a multilateral treaty called the International Covenant on Civil and Political Rights (ICCPR). This multilateral treaty aims to make its

¹ Dan Malone, "*Cruel and Unusual: Executing the Mentally Ill*", (New York: Amnesty International Magazine Fall 2005). P. 13

² Brian Evans, "The Death Penalty in 2011: Three Things You Should Know", (California: Amnesty International, 26 March 2012)

³ Amnesty International "Death Penalty Facts", , May 2012

parties commits to respect the civil and political rights of individuals, including the right of life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. As of April 2014, the Covenant has 74 signatories and 168 parties.⁴

Indonesia and Brazil is two of the countries that ratifies this multilateral treaty.⁵⁶ Brazil signed ICCPR on 12 December 1991 and immediately ratified it on January 24, 1992⁷, while Indonesia ratified ICCPR by adopting it onto Act. No. 22 Year 2005 about Ratification of International Covenant on Civil and Political Rights. In global perspective, countries that had signed and ratified ICCPR is seen as a country that respect civil and political rights of individuals. This two country had a close relation in economy and trade.⁸ Currently, Brazil is Indonesia's main trade partner in South America region.⁹ In trading, Indonesia and Brazil is doing the bilateral trade such as export and import. Indonesia mainly exports yarn, natural rubber, crude palm oil, cocoa, and paper, electronic

⁴ "UN Treaty Collection: International Covenant on Civil and Political Rights". United Nations. 6 March 2012

⁵ Centre for Civil and Political Rights, "Indonesia" <http://www.ccprcentre.org/country/indonesia/>, retrieved on April 23, 2015

⁶ Centre for Civil and Political Rights, "Brazil" <http://www.ccprcentre.org/country/brazil/>, retrieved on April 23, 2015

⁷ Wikipedia. "International Covenant on Civil and Political Rights." http://en.wikipedia.org/wiki/International_Covenant_on_Civil_and_Political_Rights, retrieved on April 23, 2015

⁸ Linda Yulisman. "Brazil hopes to forge closer links with Indonesia". www.thejakartapost.com. (Jakarta: The Jakarta Post, October 5, 2011) Retrieved on April 23, 2015

⁹ Ibid

and automotive spare part from Brazil. While Brazil exports soybean oil, sugar cane, cotton and iron from Indonesia.¹⁰

Recently, these two countries are facing a bad bilateral relations. The issue started when President Joko Widodo of Indonesia commands Minister of Politics, Laws and Human Rights, Tedjo Edhi Purdijatno to execute six death convicted on drug cases on December 24, 2015. Five of six death convicted is foreigner, while only one death convicted is an Indonesia woman. This situation had raises outcry from all the five countries of origin of death convicted.¹¹

January 18, 2015 is a very hard day for Brazil, one of the five countries of death convict. That day, Marco Archer was the first Brazilian national to be executed abroad.¹² Before this happen, Brazilian authority even warned Indonesia that the execution will damage the relations of the two countries.¹³ As a respond of the execution, the Brazilian ambassador to Indonesia has been recalled and Brazil refused to accept the letter of credential from the new Indonesia Ambassador to Brazil.¹⁴

¹⁰ Wikipedia. "Brazil-Indonesia Relations" http://en.wikipedia.org/wiki/Brazil%E2%80%93Indonesia_relations Retrieved on April 22, 2015

¹¹ Detiknews. "Jokowi Perintahkan Kejaksaan Eksekusi Mati Gembong Narkoba Bulan Ini" <http://news.detik.com/read/2014/12/04/105637/2767474/10/jokowi-perintahkan-kejaksaan-eksekusi-mati-gembong-narkoba-bulan-ini?nd772204btr> Retrieved on April 15, 2015

¹² BBC. "Brazil 'outraged' by Indonesia Drug Trafficking Execution" www.bbc.com/news/world-latin-america-30866752. Retrieved on April 15, 2015

¹³ Ibid.

¹⁴ AntaraNews. "Ini Kronologis Penolakan Surat Kepercayaan Dubes Toto" <http://www.antaranews.com/berita/481610/ini-kronologis-penolakan-surat-kepercayaan-dubes-toto> Retrieved on April 16, 2015

In fighting against drugs, Indonesia and Brazil are much different countries. Indonesia allows death penalty on certain drugs case, while Brazil prohibits death penalty on all cases. As stated on article 80-82 Act No.22/1997 about drugs, it is clearly stated that one can be given death penalty when he or her violate the rules that have been set by the government of Indonesia.¹⁵ But when we are talking about Brazil drugs regulation, it is so different. Someone with drugs possession or the one who violate rules on Brazilian drugs law, can only be punished for maximum of 15 years in prison and some daily fine as clearly stated on Art 33 Act 11.343/2006 regarding to Brazilian Drug's Law.¹⁶

When Indonesia decided to do the execution of one of the two Brazilian death invicted regarding the drug's case, it attracts controversies from all around the world and within Indonesian citizen itself. Indonesia, a country that had signed and ratified the International Covenant on Civil and Political Rights (ICCPR) was considered violating human rights.¹⁷

The ICCPR itself does not prohibit death sentence, but stated that death sentence can only be given to the most serious crimes in accordance with the law in force at the time of the commission of crime and as long as it is not contrary with the Covenant on the Prevention and Punishment of the

¹⁵ Act No. 22 of 1997 about Drugs Article 80-82

¹⁶ Act No. 11.343 of 2006 about Brazilian Drug's Law Article 33

¹⁷ TribunNews, "Indonesia Hargai Pandangan Semua Pihak soal Hukuman Mati" <http://m.tribunnews.com/nasional/2015/02/24/indonesia-hargai-pandangan-semua-pihak-soal-hukuman-mati#> Retrieved on April 15, 2015

Crime of Genocide.¹⁸ In this case, Indonesia is once again considered misinterpreted the meaning of serious crimes.¹⁹

This issue had arose a lot of controversies and lead to some bad bilateral relationship between two countries. Based on these reasons, therefore, the author raised the title: **“INDONESIAN AND INTERNATIONAL LAW APPROACHES TO DEATH SENTENCES: (STUDY CASE OF BRAZILIAN DRUG DEALER’S DEATH SENTENCE IN INDONESIA)”**.

II. Research Questions

The researcher has identified some major problem and the question arose in this regard are as follows:

1. Is the Indonesian action in giving the death sentence to a Brazilian can be justified under Indonesian and international law?
2. Is the Brazilian government actions to close its embassy in Indonesia as a reaction to the death sentence of their citizens can be justified under Indonesian and international law?

III. Research Objectives and Benefits

Research Objectives

The purpose of the research are:

¹⁸ International Covenant on Civil and Political Rights Article 6

¹⁹ The New York Times, “Countries Questioning Indonesia’s Push to Execute Drug Offenders” http://www.nytimes.com/2015/03/04/world/asia/bali-nine-indonesia-drug-executions-angers-nations.html?_r=0 Retrieved on April 16, 2015

1. To analyze whether the Indonesian action in giving the death sentence to Brazilian can be justified under the Indonesian and international law.
2. To analyze whether the Brazilian government actions to close its embassy in Indonesia as a reaction to the death sentence of their citizens can be justified under Indonesian and international law.

Research Benefits

The research is expected to give benefits such as:

1. To provide clear information to readers regarding the Indonesian action in giving the death sentence to Brazilian can be justified under the Indonesian and international law.
2. To provide clear information to readers regarding the Brazilian government actions to close its embassy in Indonesia as a reaction to the death sentence of their citizens can be justified under Indonesian and international law.