

## **Extrajudicial Killing VS Due Process of Law (Comparative Study in the Philippines and Indonesia)**



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**ABSTRACT:** The failure of a thorough investigation or investigation to catch the mastermind behind a criminal act of murder which ends in a government order to commit murder which is carried out under the law against the perpetrator is the definition of Extrajudicial Killing. One of the countries that practices Extrajudicial Killing is the Philippines. In an effort to eradicate drug trafficking in the country, this action was carried out under the leadership of Rodrigo. In studying this problem the author uses normative legal research methods or statutory approaches. The result of this research is that the Extrajudicial Killing Act can be indicated as a government policy that attacks certain civilians, this can be seen from how President Duterte constantly voices or orders to execute outside the court the perpetrators of drug dealers. This Extrajudicial Killing action can also be referred to as a crime against humanity because the action was carried out by the authorities in a systematic and planned manner. If this is implemented in Indonesia, it will conflict with the principle of *due process of law*.

**KEYWORDS:** Extrajudicial Killing; HAM; Violation.

### **INTRODUCTION**

The failure of a thorough investigation or investigation to catch the mastermind behind a criminal act of murder which results in a government order to commit murder which is carried out within the law against the perpetrator is the definition of Extrajudicial Killing. <sup>1</sup>In extrajudicial killing, the perpetrator is killed brutally so that it can be said that extrajudicial killing is similar to torturing humans, which of course is a heinous thing because the action was carried out outside the court. Because based on the reasons described above, it can be said that this action is a form of violation of human rights which is included in the category of serious human rights. Following are some of the features of Extrajudicial Killing, including: death is the goal of this punishment; the application of this penalty is not carried out by a formal legal process; state apparatus are perpetrators of extrajudicial killings; there is no statutory order or action to defend oneself in relation to the action that caused the death.<sup>2</sup>

It can be said that the principle of the presumption of innocence is ruled out in this Extrajudicial Killing. As we know, until the court gives a statement that the perpetrator is guilty, it can be said that the perpetrator cannot be considered guilty of the crime charged, this is the definition of the presumption of innocence. <sup>3</sup>Basically, those who have the authority to carry out extrajudicial killings are actually able to carry out these actions through an official process but choose not to do so, this was conveyed by the Executive Director of Amnesty International Indonesia, namely Usman Hamid. Under the pretext of self-defense and carrying out statutory orders, government officials carry out this extrajudicial killing act in an effort to cause death for someone, this is a benchmark for this action. One of the countries that practices Extrajudicial Killing is the Philippines. In an effort to eradicate drug trafficking in the country, this action was carried out under the leadership of Rodrigo.<sup>4</sup>

### **RESEARCH METHODS**

In this paper the research method used is normative with a case approach and a statutory approach, this is also often referred to as a research method with a conceptual basis. In this research using library study data collection techniques which will later be studied with qualitative analysis, besides that the sources of legal materials used are primary and secondary legal materials, namely books and legal journals.<sup>5</sup>

<sup>1</sup> Qalib , Nuri . "Settlement of Grave Human Rights Violations with the International Criminal Court." *Lexcentian Journal* 2 . 3 (20 21 ) ,Pg 12

<sup>2</sup> Aditya, Bagus , *Kajia Human Rights in International Law*, Surabaya : Alumni, 2018 . pg 30

<sup>3</sup> Jasmin, Nadifa . *Human Rights Violations Of Extrajudicial Killing To The Alleged Drug Offenders In The Philippines* . Journal of Justicia , 20 22 . pg 7

<sup>4</sup> Ramzi, Hamdan , *Development of the Dynamics of the Process of Drafting Human Rights Law*, Surabaya : Gramatika , 20 18, Page 42

<sup>5</sup> Johnny Ibrahim Jonaedi Efendi, *Normative and Empirical Legal Research Methods* (Jakarta: Prenada Media, 2018). p. 35.

### RESEARCH RESULTS AND DISCUSSION

#### 1. Overview According to Human Rights related to Extrajudicial Killing in the Philippines

Murder committed outside the court without any legal process by the local government is the definition of extrajudicial killing, or what is more familiarly known as Extrajudicial Killing. Basically, previously the perpetrators went through an official legal process, but due to the lack of sufficient evidence, the government carried out extrajudicial executions. Therefore, extrajudicial <sup>6</sup>killing is considered as an unethical act by most of humanity. The executor in this action is the armed forces or police in that country or it can also be carried out by the local government against targets including prominent social figures, religious leaders, political figures or against trade unions. Basically in accordance with existing Human Rights principles that when taking another person's life it is clear that it cannot be arbitrary but must go through a valid legal process so if we see that in the concept or principle of the Extrajudicial Killing action this is the taking of human life or that of another person in an illegal or unofficial way.<sup>7</sup>

The main characteristics attached to acts of crimes against humanity have been listed in the International Law Commission / ILC in 1968, including: actions that are essential and of course cruel in crimes against humanity are the first concepts; the act was committed on a large scale or the crime was also committed systematically, this is the second concept; the government or a group or organization provides encouragement to commit this act or crime against humanity, this is the third characteristic.<sup>8</sup>

Related to the characteristics that are complementary to an act of crime against humanity <sup>9</sup>are listed in Article 7 of the 1998 Rome Statute. In this crime against humanity there is the most important element, namely the existence of a systematic nature and also a widespread nature. Related to the involvement of the state or government in an act of crime against humanity is not clearly stated in the 1998 Rome Statute .<sup>10</sup>In the involvement of the state government there is a tendency to link the elements of the widespread or systematic. As we know related to this problem, the settlement of international disputes must be based on international law and also treaties and customs, as one of the formal sources of this treaty that has been recognized, this is stated in Article 38 paragraph 1 of the Statute Ic .<sup>11</sup>

#### 2. Juridical Study of Death Penalties in the Philippines without Trial

Every human being has rights inherent in him, namely the right to life and this right must be protected, this is stated in article 6 paragraph 1 ICCPR. By arbitrary action no one has the right to deprive another person of his right to life. Article 4 of the ICCPR states that the right to life is an absolute right that cannot be removed even in an emergency situation in the life of the state. This is a statement from the Human Rights Committee. Regarding the Extrajudicial Killing that occurred in the Philippines, it violated Article 9 paragraph 1 of the ICCPR and is also a clear violation of the right to life. Deprivation of liberty, mental illness, vagrancy, immigration control, educational purposes, and other criminal cases are all contained in Article 9 paragraph 1, this was conveyed by the Human Rights Committee.<sup>12</sup>

One of the arbitrary deprivation of the right to life by the state is the Extrajudicial Killing Act against drug dealers in the Philippines. Without going through the legal process and law enforcement in the Philippines, the government arbitrarily executes out of court against drug dealers, this is clearly a heinous act and a form of violation of international human rights. <sup>13</sup>Violation of *the Bill of Rights* is related to the act of *extrajudicial killing* when viewed from the 1987 Constitution of the Republic of the Philippines. Without a legal process a person cannot be deprived of his right to life and freedom, this is in accordance with the basis of International Law as the author has described in the previous chapter. The category of severe human rights can be given in the Extrajudicial Killing action implemented in the Philippines when viewed from the perspective of International Law and <sup>14</sup>Philippine National Law. Drug dealers, of course, also have the Right to Life like other humans, even if Extrajudicial Killing is not enforced, it would be wiser if the offender is rehabilitated and processed according to applicable law. to live by the government. <sup>15</sup>This Extrajudicial Killing action can be indicated as a government policy that attacks certain civilians, this can be seen from how President Duterte constantly voices or orders to execute outside the court the perpetrators of drug dealers. Attacks that can be said to have been systematic can be seen from the repeated attacks carried out by the police. <sup>16</sup>In addition, of course, a higher official will be held responsible for the assassination attempt carried out by the police with full planning and awareness. Regarding those who carried out the assassination attempt, President Duterte did not take any steps. International and national human rights law in the Philippines has clearly been violated by the Extrajudicial Killing action. This Extrajudicial Killing action can also be referred to as a crime against humanity because the action was carried out by the authorities in a systematic and planned manner.<sup>17</sup>

<sup>6</sup> Puspitasari , Ayu . " Legal Protection for Victims of Extrajudicial Actions ." *Lexcentian Journal* 8 . 1 ( 2022 ) ,pg 12

<sup>7</sup> Anton, Ari . *International Crime Review* . Surabaya : PT Graphic . 20 19 . pg 50

<sup>8</sup> Arie Siswanto. *International Criminal Law*. Yogyakarta: Andi Offset, 201 8 . pg 25

<sup>9</sup> Haryo Budi Nugroh, 'Universal Declaration of Human Rights', *Journal of International Law* , 4.1 (2006), 133–68.

<sup>10</sup> Nauri , Iqbal . " Juridical Study of the International Criminal Court in Settlement of the Rohingya Case." *Journal of Justice* 1 . 2 (20 19 ) ,Pg 8

<sup>11</sup> Riyadi , Hamdan , *Human Rights Law International Perspective* , Bandung : Grafindo Indonesia , 20 20 . pg 31

<sup>12</sup> Hapsaari , Andin , *Theory of Human Rights* , Surabaya : PT Graphic , 20 19 . pg 56

<sup>13</sup> Aisha, praise . *Extrajudicial Killing in the Philippines* . *Journal of Justicia* Vol 5 , 202 1 . pg 11

<sup>14</sup> Hartini , Yahya . " Juridical Study on Legal Protection of Ethnic People." *Diponegoro University Journal* Vol 1 (20 19 ) , Page 5

<sup>15</sup> Praise Arianti . " Study of Extra Judicial Killing in a Positive Legal Perspective." *Diponegoro University* Vol 1 (2022 ) , Page 9

<sup>16</sup> Yusriyadi, 'Police And Sociological Law Enforcement', *Progressive Law Journal* , 4.1 (2008), 78–95.

<sup>17</sup> Misbah , *the Moral Principles of State Administrators modern* , Surabaya : Gramatika , 2019 . pg 23

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### CONCLUSION

One of the arbitrary deprivation of the right to life by the state is the Extrajudicial Killing Act against drug dealers in the Philippines. Without going through the legal process and law enforcement in the Philippines, the government arbitrarily executes out of court against drug dealers, this is clearly a heinous act and a form of violation of international human rights. International and national human rights law in the Philippines has clearly been violated by the Extrajudicial Killing action. This Extrajudicial Killing action can also be referred to as a crime against humanity because the action was carried out by the authorities in a systematic and planned manner.

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