

## **The Death Crime Arrangements in the New KUHP Reviewed from the Perspective of the Purpose of Punishment Theory**

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**Abstract.** *The death penalty often has pros and cons in its implementation. The death penalty is considered to violate human rights, but on the other hand, the death penalty is considered to have a deterrent effect on perpetrators and society so that they do not commit similar crimes. In the reform of the Criminal Code, the death penalty is still maintained even though its nature is different from that in Wetboek van Strafrecht, namely that the death penalty is no longer the main punishment but rather an alternative punishment. This study aims to analyze the death penalty regulations in the new Criminal Code using normative juridical methods. Based on the concept of capital punishment in the new Criminal Code, it is based on the concept of balance between the interests of the individual (perpetrator of the crime) and the interests of the wider community in general, especially the victim; balance of interests of perpetrators and victims of crime; a balance between material and formal aspects as well as a balance regarding legal certainty and the elasticity/flexibility of punishment. The concept of the death penalty in the new Criminal Code is in accordance with the theory of relative criminal objectives/utilitarian view. The aim of punishment must be directed towards prevention efforts so that in the future the crime does not happen again. However, it is necessary to reconsider the application of the death penalty against perpetrators of widespread crimes such as corruption and drug trafficking. There is also a need to harmonize laws and regulations outside the Criminal Code which still apply the death penalty.*

**Keywords:** Code; Criminal; Death; Penalty; Punishment.

### **1. Introduction**

Judges have the authority to impose sentences on perpetrators of criminal acts by considering juridically and sociologically so that the sentences imposed are in accordance with the principles of justice, legal certainty and provide benefits for the convict and society. Therefore, the concept of deterrence is modified in the

implementation of prison sentences with the concept of guidance, which means that the application of the sentence must pay attention to the purpose of the punishment (straf soort), the severity of the crime (straf), and the method of imposing the sentence (straf modus).<sup>1</sup>

The aim of punishment is based on expert opinion, consisting of three theories, namely absolute/retaliation theory, relative/objective theory and integrative/combined theory. The current reform of criminal law in Indonesia no longer sees the aim of punishment as retribution. However, the purpose of punishment is to repair individual and social damage caused by criminal acts. The aims of punishment are: (a) prevention (general and specific), (b) community protection, (c) maintaining community solidarity, (d) compensation.<sup>2</sup>

The death penalty is the highest punishment imposed on criminals. The death penalty often has pros and cons in its implementation, many countries in the world no longer maintain the death penalty because it is considered to violate human rights, but on the other hand, the death penalty is considered to have a deterrent effect on perpetrators and society so that they do not commit similar crimes. . The conflict between the pro-death penalty group and the con-death penalty group and the process for carrying out the death penalty execution which takes a very long time and even drags on in uncertainty about when the death penalty execution can be carried out is a problem that must be resolved comprehensively.<sup>3</sup>

The existence of the death penalty in Indonesia has a strong legal basis as regulated in Article 10 of the Criminal Code which relates to the main punishment which consists of (1) death penalty, (2) imprisonment, (3) imprisonment, (4) fine, (5) ) criminal cover-up. In the reform of the Criminal Code in Law Number 1 of 2023, the death penalty is still maintained even though its nature is different from that in *Wetboek van Strafrecht* (old Criminal Code).<sup>4</sup>In the new Criminal Code, the death penalty is no longer the main punishment but rather an alternative punishment. This has created a polemic in the view of community legal experts. In the new Criminal Code, the death penalty can be canceled if the death convict has good behavior for 10 years so that there is a leniency in the form of life imprisonment or 20 years with a Presidential Decree after receiving consideration from the Supreme Court.

Based on the description above, the author is interested in discussing further the regulation of the death penalty in the old and new Criminal Code and relating it

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<sup>1</sup>Warih Anjari, 2015, *The Imposition of the Death Penalty in Indonesia from a Human Rights Perspective*, Widya Yustisia Journal, Vol 1 (2), p.108

<sup>2</sup>Muladi, 2004, *Conditional Criminal Institutions*, 4th Printing, PT Alumni, Bandung, p. 61

<sup>3</sup>Roby Anugrah, Raja Desril, 2021, *Death Penalty Formulation Policy in Reforming Indonesian Criminal Law*, Journal of Indonesian Legal Development, Vol 3 (1), p. 80-95

<sup>4</sup>Amelia Arif, 2019, *Problems of Imposing the Death Penalty in the Perspective of Human Rights and Criminal Law*, Kosmik Hukum Journal Vol. 19(1), p.92

to the theory of the purpose of punishment.

## 2. Research Methods

This research uses a Normative Juridical approach, Descriptive Analysis research specifications with secondary data sources, Literary Study Data Collection Methods and Qualitative Data Analysis.

## 3. Result and Discussion

### 3.1. Death Penalty Regulations in the Criminal Code (WvS) and Law Number 1 of 2023 concerning the Criminal Code

The death penalty or capital punishment is a type of crime that is still valid in Indonesia. According to *Wetboek van Strafrecht*, aka the Criminal Code (KUHP), which is currently used, the death penalty is the most serious principal crime. Criminal acts that are punishable by the death penalty according to the Criminal Code (KUHP) can be found in the following articles: Article 104; Article 111 paragraph (2); Article 124 paragraph (3); Article 140 paragraph (3) which relates to crimes against state security; Article 340 (premeditated murder); Article 365 (4) (Theft with violence); Article 444; Article 479 paragraph (2); related to aircraft hijacking.

Based on this article, it is known that the threat of the death penalty is not formulated singularly, in the sense that the threat of the death penalty is always formulated alternatively, so that with this alternative formulation there is always the option for the judge to impose a penalty other than the death penalty, for example life imprisonment or criminal punishment. for the time being. There are interesting things regarding the death penalty contained in article by article in the Criminal Code, because even though the Criminal Code which has been in effect since January 1918 is a legacy or even a copy of the Dutch WvS, the Netherlands itself has abolished the death penalty since 1870. Post-products Independence increased the number of crimes punishable by the death penalty: firearms crimes, air piracy, terrorism, drugs, serious human rights violations and corruption.<sup>5</sup>

The reform of criminal law with the enactment of Law Number 1 of 2023 concerning the Criminal Code cannot be separated from the ideology or way of life of the nation, whether from national ideology, human conditions, nature and national traditions, as well as international developments recognized by civilized society in other words. "The Principle of Balancing Interests with a Pancasila Insight", meaning that Pancasila values must be absorbed into the articles of the

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<sup>5</sup>Unnever, J. 2010. Global support for the death penalty. *Journal Punishment and Society*, Vol.12, (4) pp.479-484.

## Criminal Code.<sup>6</sup>

Based on the provisions of Article 64 letter c of Law Number 1 of 2023 concerning the Criminal Code, it states "crimes that are special in nature for certain criminal acts specified in the Law. Furthermore, Article 67 states that the punishment that is of a special nature as in Article 64 letter c is the death penalty which is always threatened alternatively. The provisions of Article 64 letter c and Article 67 of the Criminal Code are the path taken by the legislators so that the death penalty is a special crime and is always threatened alternatively. This illustrates that in the future regulation of the death penalty, the Indonesian nation will take a middle path to continue to recognize the existence of the death penalty, but the death penalty must be special and always be threatened alternatively so that the Panel of Judges in their consideration in deciding a case has a choice as to whether a person will be given criminal sanctions. dead or not. It is further explained in Article 98 of the Criminal Code that the death penalty is alternatively punishable as a last resort to prevent criminal acts and protect the community.<sup>7</sup>

Article 100 paragraph (1) of Law Number 1 of 2023 concerning the Criminal Code states that the judge can impose the death penalty with a probation period of 10 (ten) years, if the death row convict shows remorse, there is hope for improvement and the defendant's role in the crime. it's not that important or there are mitigating reasons. It is further explained in Article 100 paragraph (2) that the death penalty with a probationary period as referred to in paragraph (1) must be included in the court decision. The provisions of Article 100 paragraph (2) provide legal certainty that a person convicted is sentenced to death or capital punishment with a probation period of (10) ten years. A convict sentenced to death with a probation period of 10 (ten) years, if during the ten year probation period he shows good attitude and actions, the death penalty can be changed to life imprisonment by presidential decree after receiving consideration from the Supreme Court, Correctional Institution. and the Prosecutor's Office.

### **1) The existence of the death penalty in the Criminal Code is viewed from the perspective of the theory of the purpose of punishment**

The theory of the purpose of punishment is divided into 3 groups, namely:<sup>8</sup>

#### a. Revenge Theory(retribution/ absolute)

In absolute theory, the basis of this theory is retribution. This means that

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<sup>6</sup>Maulidah, Khilmatin & Jaya, Nyoman Union Putra, 2019, Policy Formulation of the Principle of Judge Forgiveness in Efforts to Update the National Criminal Law. Journal of Indonesian Legal Development, Vol.1, (3), p. 281-293.

<sup>7</sup>Law Number 1 of 2023 concerning the Criminal Code, Sinar Graphics, Jakarta.

<sup>8</sup>Wirjono Prodjodikoro, 2011, Principles of Criminal Law in Indonesia, Cet. IV, Refika Aditama, Bandung.

punishment is a necessity or an absolute thing following the occurrence of a crime. Criminal law does not care about the consequences that arise from the imposition of a criminal sentence on someone. This is because the aim of the crime is only to pursue the satisfaction of the injured party in order to repay the person who has committed the crime.

b. Goal Theory(utilitarian/doeltheorieen/relative)

This relative theory sees that criminal punishment aims to improve criminals so that they become good people and will not commit crimes again. This relative theory is also called goal theory. According to this theory, a crime does not absolutely have to be followed by a crime. The aim of the crime must be directed at ensuring that in the future the crime that has been committed does not happen again.

c. Combined Theory

This combined theory is a combination of absolute theory and relative theory. This combined theory recognizes the existence of an element of "retaliation" in criminal law, but on the other hand also recognizes the element of prevention and the element of correcting criminals that is inherent in each crime. A combined theory is a theory that combines the thoughts contained in the absolute theory and the relative theory, namely that the basis for criminal imposition is for retaliation and defense of social order.

The ten year probationary period in the provisions of Article 100 of Law Number 1 of 2023 is in accordance with the theory or basics of punishment which is Utilitarian/relative in nature, punishment is not just for retaliation or reward for people who have committed a criminal act, but has the aim- specific useful purpose.<sup>9</sup>The ten year probation period has the aim that within the ten year period the convict will show a change in behavior in his daily life so that he does not repeat the crime. Furthermore, the ten year probation period has the aim of improving the convict's self through the efforts and will of the death row convict himself. The postponement of the implementation of the death penalty is a concrete manifestation of the idea of balancing the elasticity of punishment, and is also an opportunity for the convict to improve himself.

The regulation of the death penalty in Law Number 1 of 2023 concerning the Criminal Code is an effort to adapt the death penalty to the socio-cultural and religious values of the Indonesian nation by relying on the idea of balance, thereby placing the death penalty as a special crime and always punishable by law. alternative, and the removal of the death penalty from the list of basic crimes and the death penalty is a last resort.<sup>10</sup> Judging from the purpose of punishment, the death penalty is essentially not the main/main means for

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<sup>9</sup>Muladi and Barda Nawawi Arief, 2010, Criminal Theories and Policies. Alumni, Bandung.p.51.

<sup>10</sup>Barda Nawawi Arief, 2012, Death Penalty Global Perspective, Criminal Law Reform and Criminal Alternatives for Corruptors, Pustaka Magister, Semarang.

regulating, ordering and improving individuals/society. The death penalty is the last/exceptional means. This can be identified with "amputation/surgery" in the medical field which is not essentially a primary medicine. But it is an exception as a last option.<sup>11</sup>

According to the author, the existence of the death penalty is appropriate to be implemented in Law Number 1 of 2023 concerning the Criminal Code because it will provide a sense of justice for the families of victims of a criminal act. The new Criminal Code tries to look at the perspective of the perpetrator of the crime to provide an opportunity for the perpetrator to show remorse and efforts to improve themselves that come from the convict's own will. Apart from that, within a period of 10 years, the convict has the opportunity to show evidence/new evidence so that the convict can submit legal action for judicial review. The existence of a ten year probationary period is in accordance with the theory or basics of Utilitarian punishment, where according to utilitarian theory, punishment is not just for retaliation or compensation for people who have committed a criminal act, but has certain useful purposes. . The ten year probation period has the aim that within the ten year period the convict will show a change in behavior in his daily life so as not to repeat the crime. However, it is necessary to consider immediately giving the death penalty without probation for convicts with extraordinary crimes, for example terrorism, abuse/violence against minors with a large number of victims and terrorism. For example, in the case of the Bali bombing which claimed the lives of hundreds of people from various countries, the families of the victims demanded that convicted terrorists be sentenced to death with the idea of life for life so that there is no need for a probation period for perpetrators of criminal acts of terrorism. Meanwhile, for criminal acts of corruption, according to the author, the most effective thing is to impoverish the convict and attempt to recover state financial losses, not by giving the death penalty.

#### **4. Conclusion**

With the enactment of Law Number 1 of 2023 concerning the Criminal Code, there was a reform in the existence of the death penalty, where in the new Criminal Code the death penalty was formulated as a special crime and was used as a last resort to protect society. The regulation of the death penalty in the new Criminal Code, namely that the death penalty can be changed to a life sentence or a maximum sentence of twenty years with a probation period of ten years. The concept of capital punishment in the new Criminal Code is based on the concept of balance between the interests of the individual (perpetrator of the crime) and the interests of the wider community in general, especially the victim; balance of interests of perpetrators and victims of crime; a balance between

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<sup>11</sup>Barda Nawawi Arief, 2012, Scientific Approach and Religious Approach, in the Context of Optimizing and Reforming Law Enforcement (Criminal) in Indonesia. Diponegoro University Publishing Agency, Semarang.

material and formal aspects as well as a balance regarding legal certainty and the elasticity/flexibility of punishment. The concept of the death penalty in the new Criminal Code is in accordance with the theory of relative criminal objectives/utilitarian view. The aim of punishment must be directed towards prevention efforts so that in the future the crime does not happen again.

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