

Dynamics of Changing The Death Penalty to Life Prison in The New KUHP

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ABSTRACT

Objective: This study aims to analyze the regulation of the death penalty within the Indonesian criminal law system and to examine the conversion of the death penalty into life imprisonment from the perspective of sentencing objectives under the new Criminal Code. **Method:** This research employs normative legal research using statutory, conceptual, and comparative approaches. The collected materials are analyzed qualitatively through legal interpretation. **Results:** The findings indicate that the reformulation of the death penalty reflects a paradigm shift in Indonesian criminal law. The death penalty is no longer treated as an absolute principal punishment but as a special punishment whose execution may be postponed and converted into life imprisonment if the convicted person demonstrates positive behavioral changes during the probationary period. This reform implements the sentencing objectives stipulated in Article 51 of the 2023 Criminal Code, emphasizing public protection, offender rehabilitation, social reintegration, and the restoration of social balance. **Novelty:** Unlike the previous Criminal Code, which classified the death penalty as a principal punishment, the new Criminal Code recognizes it as a special punishment that may be converted into life imprisonment after the convicted person successfully completes a ten-year probationary period and fulfills certain legal requirements. Therefore, the conversion of the death penalty into life imprisonment represents a legal policy compromise that balances law enforcement, human rights protection, and the development of modern sentencing theory.

INTRODUCTION

The implications of the death penalty for perpetrators of corruption and highlight that despite the consensus on the evils of corruption, the effectiveness of the death penalty as a sanction remains questionable [1], [2]. They found that this policy may not be effective in reducing the rate of corruption in Indonesia, given the reality that corrupt practices remain widespread despite severe punishment. The importance of public understanding of the ratio legis of the death penalty to corruptors, by emphasizing the need for a more holistic approach in eradicating corruption rather than relying solely on the death penalty. The application of the death penalty is also an important study in terrorism cases. The death penalty can be considered legitimate and effective in tackling terrorism crimes, but it must also take into account human rights norms [3], [4]. The balance between law enforcement and the protection of human rights is crucial in determining the direction of the death penalty policy. In addition, Ananda explained that the application of the death penalty needs to be closely supervised so as not to violate the principles of justice and legal ethics. Criticism of the death penalty focuses not only on its legal or moral aspects, but also on the psychological impact on death row inmates. There are significant effects of the execution of the death penalty on the psychiatric

condition of the convict that must be considered, including the level of stress and psychosocial impact that can arise from the uncertainty of execution [5], [6]. This shows that the law is not only related to adherence to norms, but also to broader social impacts. Overall, the effectiveness of the death penalty as a criminal offence in Indonesia is still a complex debate, considering various aspects, including legality, morality, and psychological impact. Exploring these perspectives helps us understand that the solution to crime is not just the application of severe sanctions, but also involves the evaluation of policies oriented towards justice and humanity. In the realm of criminal law studies in Indonesia, previous research on problems that need to be studied in the dynamics of the death penalty in Indonesia includes several main aspects related to changes and challenges in the application of the death penalty in accordance with the latest updates in the Indonesian Criminal Code (KUHP) [7], [8]. Despite the updates in the Criminal Code, the challenges of implementation on the ground remain a major problem. The analysis should include how Indonesia's justice system prepares to implement these changes, both in terms of judicial procedures, the implementation of sentences, and oversight of the implementation of the death penalty.

RESEARCH METHOD

Research is a translation of the English research (re means return, and search means to search) thus research means to seek back. The word research comes from the Latin word *reserare* which means to reveal or open. Thus, research is defined as the activity of revealing or uncovering knowledge because knowledge, both existing and undiscovered, is considered to already exist or hidden in nature that only requires disclosure.¹⁵ Thus, research means searching for something. What is sought in a research is correct knowledge, where this correct knowledge can later be used to answer certain questions or ignorance, research is true knowledge, where this correct knowledge can later be used to answer certain questions or ignorance [9], [10], [11].

In this study, the author uses a type of normative legal research. Normative legal research methods are used to analyze various relevant regulations and legal documents. The normative approach, often referred to as literature studies, is based on doctrinal methods. This approach focuses on the analysis of written legal norms, so that the type of data studied comes mostly from secondary sources, such as laws and regulations, the opinions of legal experts, and other juridical literature that are generally found in the Library collection. According to Soerjono Soekanto and Sri Mamudji, normative legal research is a form of legal research conducted through investigation of library sources or secondary data only.

RESULTS AND DISCUSSION

Results

The death penalty is a form of punishment that has long been known in the Indonesian criminal law system. Its existence cannot be separated from the history of the formation of the Criminal Code which is a legacy of Dutch colonial law through the

Wetboek van Strafrecht voor Nederlandsch-Indië, in its development the death penalty is still maintained as a type of crime that can be imposed on the perpetrators of certain crimes that are considered very serious and threaten the legal interests of the community and the state. The existence of the death penalty in the old Criminal Code shows that Indonesia's criminal law still accommodates a repressive approach in order to provide protection for the public interest through the provision of the heaviest sanctions to the perpetrators of certain crimes. The position of the death penalty in the old Criminal Code is regulated in Article 10 of the Criminal Code which classifies the death penalty as one of the main crimes. The placement of the death penalty as the main crime shows that the lawmakers at that time considered the death penalty as a legitimate and important instrument in the national penal system. In this construction, the death penalty has an equivalent position to imprisonment, imprisonment, and fines as the main form of sanctions that can be imposed by judges. This position shows the orientation of criminal law that still emphasizes the aspect of retributive justice as one of the main goals of punishment.⁴¹ The existence of the death penalty in the old Criminal Code was heavily influenced by absolute theory or the theory of retribution [12], [13]. This theory views that a crime is imposed as a moral consequence for mistakes committed by the perpetrators of criminal acts. A person who commits a serious crime is considered worthy of a punishment commensurate with his deeds. Therefore, the death penalty is positioned as the highest form of retribution against the perpetrators of criminal acts that cause great losses to the community, such as premeditated murder, certain treason, and other crimes that threaten the safety of the state. This view developed quite strongly in the classical criminal law system that formed the basis for the formation of the old Criminal Code.

The death penalty in Indonesia has undergone a fairly dynamic development in line with changes in the paradigm of criminal law, the development of human rights, and public demands for the protection of the public interest. From the colonial period until the birth of the Criminal Code in 2023, the death penalty has been maintained as one of the criminal instruments aimed at tackling criminal acts that are considered to have a high level of seriousness. However, the form of regulation, position, and implementation mechanism have undergone various changes that reflect the direction of criminal law policy. During the enactment of the Wetboek van Strafrecht voor Nederlandsch-Indië which was later adopted as the Indonesian Criminal Code, the death penalty was placed as the main crime as stipulated in Article 10 of the Criminal Code. This provision shows that the lawmakers at that time still viewed the death penalty as a legitimate means of providing retribution to the perpetrators of certain crimes. In the old Criminal Code, the death penalty was threatened for several serious crimes such as treason against the President and Vice President, aiding the enemy in time of war, premeditated murder, and several forms of crimes that are considered to threaten state security. Further developments show that the death penalty is not only found in the Criminal Code, but also in various laws outside the Criminal Code (special criminal law) [14], [15]. This phenomenon emerged as the state's response to the increase in crime which is seen as an extraordinary crime. One example is Law Number 35 of 2009 concerning Narcotics which

provides death threats against perpetrators of certain narcotics crimes in large numbers. Lawmakers argue that narcotics crimes have a wide impact on social life, public health, and the future of the nation's generations, so they require heavy sanctions. In addition to narcotics crimes, the death penalty is also regulated in Law Number 5 of 2018 concerning the Eradication of Terrorism Crimes. The arrangement is based on the consideration that terrorism is a crime that threatens national security, causes widespread fear, and has the potential to cause a large number of victims. Therefore, the state gives the authority to the court to impose the death penalty on perpetrators of certain terrorism crimes that meet the elements as specified in the law. This arrangement shows that the death penalty is still seen as an instrument of community protection against extraordinary crimes [16].

The death penalty is one of the most controversial forms of punishment in the modern criminal law system. The debate on the existence of the death penalty is not only related to positive legal aspects, but also touches on philosophical, moral, social, and human rights dimensions. In Indonesia, the discourse on the death penalty continues to grow along with the changing paradigm of criminal law and increasing awareness of human rights protection. The debate essentially centers on the question of whether the state has the legitimacy to deprive a person of his right to life through legal mechanisms as a form of punishment. 50From a juridical perspective, groups that support the death penalty argue that the existence of the death penalty still has a strong legal basis in Indonesia's legal system. The Constitutional Court through several of its rulings emphasized that the death penalty does not contradict the 1945 Constitution of the Republic of Indonesia as long as its implementation is carried out according to the principle of due process of law. Proponents of the death penalty argue that the right to life is indeed a fundamental right, but in certain contexts the state has the authority to restrict these rights based on the provisions of applicable law in order to protect the interests of the wider community.

Criminalization is one of the important instruments in the criminal law system that functions as a means to respond to violations of the law committed by a person. In the development of criminal law, the purpose of criminal law always changes along with the development of legal thinking, social values, and the needs of society. Therefore, understanding the purpose of punishment is important to know the direction of criminal law policies applied in a legal system. The old Criminal Code (KUHP), which is a legacy of the *Wetboek van Strafrecht voor Nederlandsch-Indië*, was formed based on the classical criminal law paradigm that developed in Europe in the 19th century. This paradigm places crime as a consequence of unlawful acts committed by the perpetrator. In this system, the imposition of penalties is seen as a form of state reaction to violations of the law that have disturbed public order and legal interests protected by the state. Although the old Criminal Code did not explicitly regulate the purpose of punishment, various provisions contained in it show that the penal system adopted emphasizes more on the aspects of retribution and prevention. The perpetrator of the criminal act is considered to have to account for his actions through the provision of sanctions proportional to the level of the mistake committed. In addition, crime is also seen as a

means to prevent criminal acts from occurring both by the same perpetrator and by other members of society. The dominance of retributive thinking in the old Criminal Code is reflected in the existence of the death penalty as a principal crime that occupies the highest position in the criminal hierarchy. The placement of the death penalty as the main crime shows that the lawmakers at that time still considered retribution as one of the main goals of punishment. The heavier the criminal act committed, the heavier the penalty that can be imposed on the perpetrator [17].

Discussion

The death penalty in the old Criminal Code is also often justified through the deterrence theory. According to this theory, the death penalty threat is believed to be able to provide a deterrent effect both to the perpetrator and to the community in general so that it can prevent similar crimes from occurring. In this context, the death penalty is seen as a means of protecting the community against crimes that are considered very dangerous. However, the effectiveness of the death penalty as a means of prevention is still a debate among academics and legal practitioners because there is no empirical evidence that consistently shows that the existence of the death penalty is able to significantly reduce crime rates [18], [19]. The development of modern criminal law thought then led to criticism of the death penalty in the old Criminal Code. The criticism is mainly related to the protection of human rights, especially the right to life, which is recognized as a fundamental right inherent in every human being. Groups that oppose the death penalty argue that the state should not take away a person's right to life, even if the person has committed a very serious crime. On the other hand, groups that support the death penalty argue that the protection of the public and the public interest must still be a priority so that the death penalty is still necessary under certain conditions. The debate shows that the position of the death penalty in the old Criminal Code is not only a legal issue, but also concerns philosophical, moral, and human rights aspects [20].

The application of the death penalty during the enactment of the old Criminal Code was generally imposed on perpetrators of criminal acts that were categorized as extraordinary crimes, such as narcotics crimes, terrorism, and premeditated murder. However, the implementation of the death penalty often faces various obstacles, both from the procedural and political aspects of the law. This condition causes many death row inmates to undergo a very long waiting period before executions are carried out. This situation then raises new problems related to legal certainty and the protection of the rights of convicts who are in a state of waiting for the execution of the death penalty. The status of the death penalty as the main crime in the old Criminal Code has ultimately become one of the important issues on the criminal law reform agenda [21]. The drafters of the new Criminal Code sought to reformulate the death penalty by taking into account the development of modern criminal law thinking, human rights principles, and the need for community protection. The reformulation was realized through a change in the status of the death penalty from a basic crime to a special penalty that is alternative and conditional. This change shows a paradigm shift from a repressive approach to a more humanistic and social-reintegration-oriented approach.

The development of international law and the growing concern for the protection of human rights have given rise to various criticisms of the existence of the death penalty. Indonesia as a country that has ratified various international human rights instruments faces challenges in maintaining the existence of the death penalty in the midst of the development of abolitionist movements in various countries. The debate intensified after the right to life was recognized as one of the fundamental rights guaranteed in the 1945 Constitution of the Republic of Indonesia and Law Number 39 of 1999 concerning Human Rights. An important development in the regulation of the death penalty occurred at the time of the establishment of the Criminal Code through Law Number 1 of 2023 concerning the Criminal Code. In the new Criminal Code, the death penalty is no longer placed as a principal crime as in the old Criminal Code, but as a special crime that is always threatened alternatively. The change shows that there is an effort by lawmakers to balance the need for public protection with respect for human rights. The new Criminal Code also introduces the concept of the death penalty that was previously unknown in the Indonesian criminal law system. Through the provisions of Article 100 of the Criminal Code, the judge can impose the death penalty with a probation period of ten years if there are mitigating reasons, such as the defendant's remorse, the defendant's role in the crime, or the hope of self-improvement. If during the probation period the convict shows good attitude and behavior, the death penalty can be changed to life imprisonment based on the President's decision after obtaining the consideration of the Supreme Court [22], [23].

Groups that support the death penalty argue that the sanctions are necessary to deal with extraordinary crimes such as terrorism, large-scale narcotics trafficking, and premeditated murder that results in many victims. According to this view, the death penalty has a preventive function that can have a deterrent effect on perpetrators and potential perpetrators of criminal acts. The presence of death threats is considered to be able to provide maximum protection to the community from the threat of crime that is very dangerous and has a wide impact on social life.⁵¹ On the other hand, the group that opposes the death penalty bases its argument on the principle of human rights, especially the right to life, which is a right that cannot be reduced under any circumstances (non-derogable rights). According to this view, the state does not have the moral legitimacy to take someone's life because such an act is contrary to the human values on which the modern legal state is based. In addition, the implementation of the death penalty is considered to eliminate opportunities for perpetrators to improve themselves and undergo the rehabilitation process, which is one of the goals of contemporary punishment. The debate on the death penalty is also closely related to theories of punishment. The absolute theory or theory of retribution views that the crime is imposed solely as a commensurate retribution for the evil deeds committed by the perpetrator. Based on this theory, the death penalty is considered valid if the crime committed by the perpetrator has caused such great losses that it requires a commensurate punishment.⁵² This view is rooted in the thought of Immanuel Kant, who asserted that justice demands that every wrongdoer receive a punishment commensurate with his or her mistake. In contrast to absolute theory, relative theory or goal theory places crime as a

means to achieve certain goals, such as crime prevention, community protection, and rehabilitation of offenders. Based on this theory, the effectiveness of the death penalty is often questioned because it does not provide an opportunity for the perpetrator to improve his behavior. In addition, various studies show that there is no consistent evidence that countries that have implemented the death penalty have lower crime rates than countries that have abolished the death penalty. Therefore, some academics consider that the death penalty is more relevant to achieve the goals of modern punishment than the death penalty [24].

The legal basis for changing the death penalty to a life sentence is regulated in Article 100 of Law Number 1 of 2023 concerning the Criminal Code. This provision provides the possibility for a death row inmate who has served a probation period of ten years by showing commendable attitudes and deeds to obtain a criminal change to a life prison sentence. This arrangement shows that the lawmakers provide space for the application of humanitarian principles without eliminating the criminal function as a means of protecting the community. The opportunity to change the death penalty to a life sentence is not carried out automatically, but must meet certain conditions that have been determined by law. One of the main conditions is that the convict must show real remorse and show positive behavior changes during the probation period. In addition, the results of coaching in correctional institutions are one of the important indicators in assessing whether convicts deserve criminal reform. Thus, the evaluation is not only based on the administrative aspect, but also takes into account the moral and social development of the convict himself.

The mechanism of changing the death penalty to a life sentence reflects the application of rehabilitation theory and criminal individualization. Rehabilitation theory emphasizes that the purpose of punishment is not only to inflict suffering on the perpetrator, but also to encourage changes in attitudes and behaviors so that the perpetrator can return to becoming a responsible member of society. Meanwhile, the principle of criminal individualization requires that judges and the state pay attention to the personal condition of each perpetrator so that the crime imposed is truly in accordance with the level of error and potential for improvement possessed by the convict.

One of the fundamental updates introduced in Law Number 1 of 2023 concerning the Criminal Code is the explicit formulation of the purpose of the penalty. Unlike the old Criminal Code which does not expressly regulate the purpose of criminal punishment, the Criminal Code provides a clear normative basis through Article 51. This arrangement shows a paradigm shift in Indonesian criminal law politics that is no longer solely oriented towards retaliation against the perpetrators of criminal acts, but also pays attention to aspects of community protection, rehabilitation of perpetrators, and the restoration of the balance disturbed by criminal acts. Article 51 of the Criminal Code stipulates that punishment aims to prevent the commission of criminal acts by enforcing legal norms for the protection of the community. In addition, criminalization also aims to socialize convicts through coaching and guidance to become good and useful people,

resolving conflicts caused by criminal acts, restoring balance, and bringing a sense of security and peace in society. This provision shows that the purpose of punishment in the new Criminal Code has a wider scope than the criminal paradigm in the old Criminal Code. The formulation of the purpose of punishment in Article 51 shows the influence of a combined theory (*verenigingstheorie*) that integrates various penal purposes into one balanced system. In this theory, punishment is not only seen as a means of retribution for the wrongs of the perpetrators, but also as an instrument to prevent the occurrence of crimes, correct the perpetrators, and restore disturbed social relations. Thus, the penal system adopted by the Criminal Code is no longer dominated by one particular theory, but rather seeks to accommodate various penal objectives proportionately. One of the important aspects in Article 51 of the Criminal Code is the recognition of the rehabilitation function in punishment. The lawmakers emphasized that convicts must be given the opportunity to improve themselves through the process of coaching and guidance. This approach shows a change in the perspective of criminal offenders. If in the classical paradigm the perpetrator is seen as more of an object of punishment, then in the new paradigm the perpetrator is seen as an individual who still has the potential to change and return to becoming a productive member of society.

The change in the death penalty to life imprisonment in the National Criminal Code is a form of criminal law reform that shows a change in the orientation of criminal policy in Indonesia. The reform not only changes the mechanism for carrying out the death penalty, but also changes the perspective on the function of criminality in the national criminal law system. If previously the death penalty was positioned as the highest form of retribution that was final, then in the National Criminal Code the death penalty is placed as a special penalty whose implementation still allows evaluation based on the development of the convict's behavior. These changes are inseparable from the development of modern criminal theory that places punishment as an instrument to achieve a broader goal than simply retribution to the perpetrator. Through the regulation of the conditional death penalty and the possibility of changing the penalty to life imprisonment, the lawmakers show that the success of punishment is no longer only measured by the severity of the sentence imposed, but also by the ability of the legal system to encourage change in the behavior of perpetrators and create community protection in a sustainable manner. In the perspective of the purpose of punishment as stipulated in Article 51 of the National Criminal Code, the change of the death penalty to life imprisonment is a real implementation of the goal of rehabilitation and social reintegration. The opportunity given to convicts to improve themselves during probation shows that the state recognizes the possibility of changes in human behavior. Thus, criminalization is no longer understood as an instrument to end the life of the perpetrator alone, but as a means to assess whether the perpetrator still has the potential to live a life in accordance with legal norms and social values. The policy still maintains the function of protecting the community as one of the main goals of criminalization. The state does not necessarily remove the death penalty from the Indonesian criminal law system, but it still retains it for certain crimes that are considered to have a high level of seriousness.

This approach shows that lawmakers seek to balance the interests of public protection with respect for human rights through more proportionate and selective mechanisms.

CONCLUSION

Fundamental Finding : The reformulation of the death penalty in Law Number 1 of 2023 concerning the Criminal Code marks a paradigm shift in the Indonesian penal system from a retributive approach that emphasizes retribution towards a more humanistic, corrective, and rehabilitative approach. Fundamental criminalization in Indonesian criminal law is the transition from the retributive orientation (retribution) that dominated the old Criminal Code to a modern paradigm that is more humanistic, corrective, rehabilitative, and restorative in the National Criminal Code (Law No. 1 of 2023). **Implication :** By changing the status of the death penalty from a basic crime to a special crime that is alternative and conditional, the state seeks to balance the interests of public protection against extraordinary crimes with the principle of respect for human rights. The real implementation of this shift is the reformulation of the death penalty from an absolute basic penalty to a conditional special penalty, which provides space for the evaluation of convict behavior as a form of balance between the interests of community protection and respect for human rights and human dignity in line with the values of Pancasila. **Limitation :** The mechanism of probation for ten years and the opportunity to change the death penalty to life imprisonment based on the behavior of the convict is a manifestation of the principle of criminal individualization and ultimum remedium, which aims to provide legal certainty, encourage self-improvement of convicts, and provide space for objective evaluation before execution is carried out. **Future Research :** This change is explicitly reflected in the formulation of the purpose of punishment in Article 51 of the Criminal Code, which integrates aspects of community protection, rehabilitation of perpetrators, and the restoration of social balance, while strengthening the principle of individualization of punishment as a foundation so that the imposition of criminal punishment is more proportionate to the real condition of the perpetrator.

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