

Construction of Death Penalty Legal Arrangements in Indonesia

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Abstract:

Purpose:

This study aims to investigate and understand the construction of death penalty legal arrangements in Indonesia.

Methodology:

This study uses document analysis to examine various documents, such as texts, records, official reports, personal diaries, or historical documents, that provide valuable insights for this study.

Findings:

The death penalty is only a means of exception. So, the death penalty is likened to amputation or surgery in the medical field, which is not the main medicine but the last medicine. Second, the concept of capital punishment as a special punishment departs from the idea of mono-dualistic balance. This idea is oriented towards balancing public interest or protecting society and paying attention to individual interests or protection, with a probationary period of 10 years. Third, the maintenance of capital punishment, even though it is a special punishment, is also based on avoiding societal demands or reactions that are revengeful or extra-legal.

Implication:

This study has implications for policy, public awareness, comparative analysis, human rights advocacy, and future research directions. Its findings can contribute to informed decision-making, public discourse, and efforts to promote a more just and humane legal system.

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INTRODUCTION

In the history of human civilization eradicating crimes, other than using this model, some ways tend to be inhumane, for example, by picis law, separating the organs of the body to the four winds using a horse, torture to death, stabbing with iron from the buttocks, sawed, burned alive, boiled, and in various other ways, which are even carried out in front of the wider community. This choice was made to provide a deterrent and learning effect for society then; social conditions and human understanding of the recognition, respect and protection of human rights had not yet developed. Indonesia is one of the countries that still maintains and recognizes the legality of capital punishment to punish perpetrators of crimes, even though the pros and cons regarding capital punishment have been going on for a long time. Capital punishment in Indonesia will continue in the future because, in the newest Criminal Code, capital punishment is still one of the criminal sanctions maintained to punish criminals. Regulation on capital punishment in the latest Criminal Code is regulated in Articles 67, 98, And 100. The implementation of capital punishment in Indonesia has become a topic of discussion that is quite actual and a prolonged polemic for civilized countries. It is because the application of capital punishment is not following the state philosophy, which adheres to Pancasila, which always upholds a just and civilized sense of humanity. However, the application of capital punishment, regardless of the reasons and logic, is still carried out in Indonesia from various existing criminal cases. The choice or establishment of capital punishment to overcome crime is a policy choice. In establishing a policy, people may argue for or against capital punishment. However, after the policy has been adopted/decided and then formulated in law, from the point of view of criminal law policy/politics and criminal policy, it is hoped that the policy on the formulation of the death penalty can be implemented at the stage of the application of the final punishment.

METHODS

This study uses document analysis to examine various documents, such as texts, records, official reports, personal diaries, or historical documents, that provide valuable insights for this study.

RESULT AND DISCUSSION

Death Penalty Setting. The death penalty in statutory regulations can be found in various sectoral laws related to the form of the crime committed. However, Article 10 of the Criminal Code (KUHP), the legal umbrella for all types of criminal acts and violations, places the death penalty as the top principal crime whose existence is recognized. Apart from being determined as the primary punishment in Article 10 of the Criminal Code, there are 10 (ten) types of crimes in the Criminal Code that carry the death penalty. In contrast, eleven other crimes are scattered in sectoral laws and carry a maximum death penalty. The distribution of death sentences is contained in Table 1.

Table 1. Crimes With the Death Penalty

No.	Type of Crime	Regulation
1.	Terrorism	Law No. 15/2003 Stipulation of Government Regulation in Lieu of Law No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism became Law.
2.	Genocide Crimes against humanity	Law No. 26/2000 concerning the Human Rights Court
3.	Corruption under certain circumstances	Law No. 31/1999 concerning the Eradication of Corruption Crimes
4.	Organized abuse of psychotropics	Law No. 5/1997 concerning Psychotropics
5.	Organized Narcotics Abuse	Law No. 27/1997 concerning Narcotics as strengthened by the Constitutional Court Decision No. 2-3/PUU-V/2007
6.	Aviation and crimes against aviation facilities/infrastructure	Law No. 4/1976 concerning Amendments and Additions to Several Articles in the Criminal Code Related to the Expansion of the Applicability of Criminal Law Provisions, Aviation Crime, and Crime Against Aviation Facilities/Infrastructure
7.	Subversive	Law No. 11/PNPS/1963
8.	Economic crime	Government Regulation in Lieu of Law No. 21/1959
9.	Criminal acts that jeopardize the implementation of food and clothing equipment	Presidential Regulation No. 5/1959
10.	Possession of firearms	Emergency Law No. 12/1951

11. Crime :	Criminal Code Article 104
Treason	Article 111 Section (2)
Inviting or inciting other countries to attack RI;	
Protecting enemies or helping enemies who are fighting against RI	Article 124 Section (3)
Killing heads of friendly countries	
Premeditated murder	Article 140 Section (4)
Theft with violence by two or more people at night with damage to the house resulting in severe injury or death;	Article 140 Section (3) and Article 340
Piracy at sea, by the sea, and in rivers causes other people to die;	Article 365 Section (4)
Encourage rebellion or riots among workers against the state defense company during the war;	
	Article 444

Source: Compiled by Author, 2023

Indonesia is not the only country that applies punishment; at least until 2006, 68 (sixty-eight) countries still carried it out. Meanwhile, 88 countries have completely abolished the death penalty for all types of crimes, 11 countries have imposed it on specific crimes, such as those committed in a state of war, and 30 other countries have not implemented it but still recognize its existence in their laws and regulations. The method of executing the death penalty is based on Law no. 2/Pnps/1964 concerning Procedures for Executing the Death Penalties handed down by Courts in the General Courts and the Military are carried out by being shot to death. In addition to being shot to death, in several countries for certain types of crimes, such as murder, adultery, drug abuse, several countries carried out by hanging, beheading, beheading, injection (euthanasia), and electric shock.

In the history of human civilization eradicating crimes, other than using this model, some ways tend to be inhumane, for example, by picis law, separating the organs of the body to the four winds using a horse, torture to death, stabbing with iron from the buttocks, sawed, burned alive, boiled, and various other ways, which are even carried out in front of the wider community. This choice was made to provide a deterrent and learning effect for society then; social conditions and human understanding of the recognition, respect and protection of human rights had not yet developed.

The Degree of Constitutionality of Capital Punishment According to the 1945 Constitution. Article 3 of the General Declaration of Human Rights (UDHR) of the United Nations (UN), which is then emphasized in Article 6 Section (1) of the International Convention on Civil and Political Rights (ICCPR), provides guarantees and recognition of the right to life which cannot be taken away and must be respected and protected by fundamental rights. A similar construction is emphasized in Article 28A, which is then emphasized in Article 28I Section (1) of the 1945 Constitution, that the right to life is a non-derogable right (a right that under any circumstances must be protected, and therefore nothing can reduce or revoke it).

However, the right to life, which Article 3 DUHAM and Article 6 Section (1) ICCPR and Article 28A and Article 28I Section (1) of the 1945 Constitution stated is an absolute right that only God has the right to revoke, by Article 6 Section (2) and Section (4) The ICCPR can actually be revoked, but in ways that are not reckless, not in accessible ways, even when the convict has been declared through a final decision to be sentenced to death, he is still given the right to apply for pardon to the head of state. Likewise, the permissibility of the death penalty is applied to crimes committed under certain conditions, as referred to in Article 4 Section (1) of the ICCPR, so that there is a construction of carrying out the death penalty as a final option that cannot be applied other than that choice in a crime.

More than that, the permissibility of the death penalty as a punishment in national law is regulated by Article 28I Section (5) and Article 28J of the 1945 Constitution. These two articles emphasize that the implementation of human rights, including the right to life, is carried out based on the principles of a democratic rule of law, which are guaranteed, regulated, and stipulated in laws and regulations, as well as in their implementation, always consider morals, religious values, security, and public order in a democratic society. When the Bali Nine group tested the Narcotics Law and Amrozi, Ali Ghufon and Imam Samudra proposed reviewing the constitutionality of Law No.

2/Pnps/1964, MK through Decision No.2-3/PUU-V/2007 for narcotics cases and Case Number 21/PUU-VI/2008 for the Bali bombing group, clearly stated that the death penalty contained in the Narcotics Law and procedures the implementation of the death penalty is not inconsistent with the 1945 Constitution.

In considering Case No.2-3/PUU-V/2007, the Constitutional Court based on the logic of justification for the death penalty as a constitutional punishment or not contrary to the 1945 Constitution, the Constitutional Court stated six legal rationales, namely:

1. The 1945 Constitution does not have unlimited rights, but the law makes restrictions possible.
2. Historically, the development of Indonesian constitutionalism has shown a tendency not to absolute human rights, in the sense that in some instances, by order of the Constitution, human rights can be limited by law.
3. Since the reform, the idea of constitutionalism in Indonesia has tended to limit rights, including the right to life.
4. Rejection of the death penalty is not based on Sharia boundaries, as referred to in the Cairo Declaration.
5. The right to life is a non-absolute right, like the right to be prosecuted under retroactive regulations, which are not absolute, as referred to in Case Decision No. 065/PUU-II/2004.
6. Several international instruments limit the right to life as a non-absolute right.

Death Penalty Regulations in the Criminal Code. Acts or crimes punishable by death under the Criminal Code, among others: Article 104, Article 111 Section (2), Article 124 Section (3), Article 140 Section (3), Article 340, Article 365 Section (4), Article 368, Article 444 of the Criminal Code, Article 479 K Section (2) and Article 479 o Section (2).

Death Penalty provisions outside the Criminal Code. According to the Executive Director of the Institute for Democracy and Human Rights Studies, Asmara Nababan stated, "It is time for the essence of this constitutional change to be debated. Is it still appropriating for us to sentence someone to death if the 1945 Constitution, as the highest law of this country, affirms that the right to life cannot be reduced under any circumstances? There are several laws and regulations in specific crimes that apply the death penalty, including:

1. Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, namely in Article 2 Section (2), reads: If the criminal act of corruption referred to in Section (1) is committed in certain circumstances, the death penalty is imposed. The elucidation of Article 2 (2) states what is meant by "certain circumstances" in this provision is intended as an eradication for the perpetrators of the crime committed when the country is in a state of danger following the applicable law, when a national natural disaster occurs, as a repetition criminal acts of corruption, or when the country is in a state of economic and monetary crisis. RI Law No. 22 of 2007 concerning Narcotics, namely on:
 - a. Article 80 (1) states, "Whoever without rights and against the law: produces, processes, extracts, converts, assembles, or provides narcotics Category I, shall be punished with the death penalty or life imprisonment, or imprisonment for a maximum of 20 (twenty) years and a maximum fine of IDR 1,000,000,000.00 (one billion rupiahs).
 - b. Article 80 (2), If the crime as referred to in Section (1) letter a was preceded by a conspiracy to commit a crime, the penalty shall be the death penalty or life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) year and a fine of at least IDR 200,000,000.00. (Two hundred million rupiahs) and a maximum of IDR 2,000,000,000.00 (two billion rupiahs).
 - c. Article 80 (3), If the crime referred to in Section (1) adi is committed in an organized manner, the penalty shall be the death penalty or life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine for a maximum a minimum of IDR 500,000,000.00 (five hundred million rupiah) and a maximum of IDR 4,000,000,000.00 (four billion rupiahs).
 - d. Article 81 Section (3)a, if the crime as referred to in: Section (1) letter a is committed in an organized manner, the penalty shall be death penalty or life imprisonment, or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least IDR 500,000,000.00 (five hundred million rupiahs) and a maximum of IDR 4,000,000,000.00 9 four billion rupiah). Article 82 Section (1)a, whoever without rights and against the law: imports, exports, offers for sale, distributes, sells, buys, delivers, receives, becomes an intermediary in buying and selling, or exchanges narcotics Category I, shall be punished with capital punishment or imprisonment life imprisonment, or imprisonment for a maximum of 20 (twenty) years and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

- e. Article 82 Section (1) b. Importing, exporting, offering for sale, distributing, selling, buying, delivering, receiving, an intermediary in buying and selling, or exchanging narcotics Category II, shall be punished with the death penalty or life imprisonment, or imprisonment for a maximum of 15 (fifteen) years and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiahs). Article 82 Section (1) c. Importing, exporting, offering for sale, distributing, selling, buying, delivering, receiving, an intermediary in buying and selling, or exchanging narcotics Category III, shall be punished with the death penalty or life imprisonment, or imprisonment for a maximum of 10 (ten) years and fined 300,000,000.00 (three hundred million rupiahs) maximum).
- f. Article 82 Section (2)a, If the crime referred to in Section (1) is preceded by a conspiracy, then the crime referred to in: Section (1) letter a shall be punished with capital punishment or life imprisonment or imprisonment a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiahs).
- g. Article 82 Section (3)a. If the crime referred to in Section (1) letter a is committed in an organized manner, the penalty should be the death penalty or life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least IDR 500,000 000.00 (five hundred million rupiahs) and a maximum of Rp. 3,000,000,000.00 (three billion rupiah).
2. UU RI No 5 of 1997 concerning Psychotropics, namely on Article 59 Section (2), If the crime referred to in Section (1) is committed in an organized manner, the penalty is death or life imprisonment or imprisonment for 20 (twenty) years and a fine of Rp. 750,000,000.00 (seven hundred and fifty million rupiah).
3. Government Regulation in lieu of RI Law No. 1 of 2002 concerning Eradication of Criminal Acts of Terrorism, namely on:
 - a. Article 6, every person who deliberately uses violence or threats of violence to create an atmosphere of terror or widespread fear of people or causes mass casualties by seizing independence or loss of life and property of others, or causing damage or destruction to objects – vital strategic or environmental objects or public facilities or international facilities, shall be punished with the death penalty or life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years.
 - b. Article 8, Sentenced for committing a crime of terrorism with the same punishment as referred to in Article 6, every person who:
 - i. Destroy, render unusable or damage buildings for securing air traffic or thwart efforts to secure said buildings.
 - ii. They are causing the destruction, unusability or damage to buildings for securing air traffic or failure of efforts to secure said buildings.
 - iii. Deliberately and unlawfully destroying, damaging, taking, or moving a sign or device for flight safety, causing the worker to use the sign or device, or placing the wrong sign or device.
 - iv. His negligence caused the sign or device for flight security to be destroyed, damaged, taken or moved or causes the wrong sign or device to be used for flight security to be installed
 - v. Deliberately or unlawfully destroys or renders unusable an aircraft wholly or partly owned by another person.
 - vi. Intentionally and unlawfully harm, destroy, render unusable or damage an aircraft
 - vii. His negligence caused the aircraft to be injured, destroyed, unusable, or damaged.
 - viii. To unlawfully benefit oneself or another person, the insurer causes a fire or explosion, an accident, destruction, damage or renders unusable the aircraft which is insured against danger or whose cargo is insured as well as the wages that will be received for the transportation of the cargo. , or for the cargo that has received a deposit.
 - ix. In an aircraft with an unlawful act of seizing or maintaining seizure or control of an aircraft in flight.
 - x. An aircraft with violence or threats of violence or threats in other forms seizes or maintains confiscation or controls the control of an aircraft in flight.
 - xi. Doing it jointly as a continuation of a conspiracy, carried out with premeditation, resulting in serious injury to someone, causing damage to an aircraft so that it could endanger its flight, carried out to seize independence or continue to deprive someone of freedom.

- xii. Intentionally and unlawfully commits acts of violence against a person on board an aircraft in flight if the act may endanger the safety of the aircraft.
- xiii. Deliberately and unlawfully damages an aircraft in service or causes damage to the aircraft causing it to be unable to fly or endangering flight safety.
- xiv. Deliberately and unlawfully places or causes to be placed in an aircraft on service, in any way, a device or substance that can destroy the aircraft making it unable to fly or cause damage to the aircraft, which can endanger safety in flight.
- xv. Doing jointly with 2 (two) or more people, as a continuation of a conspiracy, commits premeditated, premeditated, and causes serious injury to someone from the actions referred to in letters l, m, and n.
- xvi. Providing information that he knows is false and that the act endangers the safety of the aircraft in flight.
- xvii. Inside the aircraft, perform actions that can endanger the safety of the aircraft in flight.
- xviii. In the aircraft, perform actions that can disturb the order and order in the aircraft in flight.
- c. Article 9, every person who unlawfully imports into Indonesia, makes, receives, tries to surrender, controls, carries, has supplies on him or has in his possession, keeps, transports, hides, uses, or takes out to and/or from Indonesia a weapon fire, ammunition, or explosives and other dangerous materials with the intent to commit a crime of terrorism, shall be punished with the death penalty or life imprisonment or imprisonment for a minimum of 3 (three) years and a maximum of 20 (twenty) years.
- d. Article 10 shall be punished with the same punishment as referred to in Article 6, anyone who deliberately uses chemical weapons, biological weapons, radiology, microorganisms, radioactive or its components, causing an atmosphere of terror or widespread fear of people, causing mass casualties, endangering health, causing chaos to life, security, and people's rights, or causing damage, destruction to vital strategic objects, the environment, public facilities or international facilities.
- e. Article 14, everyone who plans and/or mobilizes other people to commit acts of terrorism as referred to in Article 6, Article 7, Article 8, Article 9, Article 10
- f. Article 11 and Article 12 are punishable by death or life imprisonment.
- g. Article 15, every person who commits conspiracy, experimentation, or assistance to commit the crime of terrorism as referred to in Article 6, Article 7, Article 8, Article 9, Article 10, Article 11, and Article 12 shall be punished with the same punishment as the perpetrator—the crime.
- h. Article 16, every person outside the territory of the Republic of Indonesia who aids, facilitation, facilities, or information for the occurrence of a criminal act of terrorism shall be punished with the same sentence as the perpetrator of the crime referred to in Article 6,
- i. Article 7, Article 8, Article 9, Article 10, Article 11, and Article 12.
- 4. Law No. 36 of 2000 concerning the Human Rights Court, namely on:
 - a. Article 36, every person who commits an act as referred to in Article 8 letters a, b, c, d, or we shall be punished with the death penalty or life imprisonment or imprisonment for a maximum of 25 (twenty-five) years and a minimum of 10 (ten years). Article 37, every person who commits an act as referred to in Article 9 letters a, b, c, d, e or j shall be subject to the death penalty or life imprisonment or imprisonment for a maximum of 25 (twenty-five) years and a minimum of 10 (ten years).
 - b. Article 41, attempts, conspiracy, or assistance to commit an offense as referred to in Article 8 or Article 9 shall be punished with the same punishment as provided for in Article 36, Article 37, Article 38, Article 39, and Article 40.
 - c. Article 42 Section (3), the act referred to in Section (1) and Section (2) is punishable by the same punishment as referred to in Article 36, Article 37, Article 38, Article 39 and Article 40.

Death Penalty Regulations in the Latest Draft Criminal Code. In the 2012 Draft Criminal Code concept, capital punishment is regulated in several articles, such as Article 66, Article 87, Article 88, Article 89, and Article 90. There are several crimes punishable by death in the draft Criminal Code as in Article 215, Article 228, Article 237, Article 242, Article 244, Article 247, Article 262 Section (2), Article 269 Section (2), Article 394 Section (1) and (2), Article 395 Section (1) and (2), Article 369, Article 397, Article 398 and Article 399. Both the cons and the pros, the reasons he gave, were all based on Human Rights (HAM). It is necessary to elaborate on both

arguments while referring to national law. According to Indonesian Human Rights Watch, there are three main reasons why the courts often use the death penalty, including:

1. The Dutch colonial regime used the result of implementing the death penalty. In practice, it continued to be used until the New Order authoritarian regime to give fear and even kill political opponents. It can be seen in applying political crimes Article 104 of the Criminal Code.
2. Efforts to issue several new legal provisions include the death penalty as a measure of political compensation due to the inability to fix the corrupt legal system, even though the death penalty has never proven its effectiveness in reducing the number of crimes, including narcotics.
3. The increase in the crime rate is seen solely as the responsibility of the individual perpetrators (Waluyadi, 2009).

The tendency of experts who agree that the death penalty is maintained in existence is generally based on conventional reasons, namely, the death penalty is urgently needed to eliminate people who are deemed to endanger the public interest or the state and are deemed irreparable. At the same time, those who are against capital punishment usually make the excuse that a crime death is contrary to human rights and is a form of punishment that can no longer be corrected if, after the execution is carried out, an error is found in the sentence handed down by the judge. Several experts and figures who support the existence of the death penalty are Jonkers, Lambroso, Garofalo, Hazewinkel Suringa, Van Hantum, Barda Namawi Arief, Oemar Senoadji, and T.B Simatupang. Jonkers supports capital punishment with his opinion that "criminal reasons cannot be withdrawn if they have been carried out" is not an acceptable reason to state that "death punishment is unacceptable. Because in court, the judge's decision is usually based on valid reasons (Hamzah & Sumangelipu, 1985).

111 countries oppose capital punishment, while 84 countries still maintain it. The reasons for abolishing the death penalty in these countries vary. Some remove it from their criminal justice system because there is a broader understanding of the meaning of human rights. A Constitutional Court judge in South Africa outlawed the death penalty in the new Constitution and called the right to life the most important of all human rights. The state must show this in all its actions, including how criminals are punished.

On the other hand, some countries have abolished and reinstated, such as the Philippines, Nepal, Papua New Guinea, and Russia. The general reasons given by groups who approve of capital punishment, such as Kant, Hegel, Herbart, Stahl, Garafalo, Lambroso, H.G. Rambonnet, and H.B Vos, are:

1. Dangerous people must be eliminated so as not to interfere and hinder the progress of society.
2. As an embodiment of revenge.
3. If an extensive criminal who is put in prison is not killed, then when he is free, he will repeat his actions.
4. Those who are not released will cause trouble and chaos in the prison.
5. Frighten other people so they do not dare to do it.

The second view is that they reject the death penalty because they think this criminal sanction is inhumane and contrary to the principles of a just and civilized humanity. In the Netherlands, an action committee against death row inmates was formed, which was chaired by P.J. Meertens, who has put forward seven fundamental reasons for refusing death row inmates; that is:

1. If the judge gives the wrong decision and the death penalty has been carried out, it cannot be corrected.
2. A sentence that no longer allows an explanation from the prisoner is unacceptable.
3. Reimposing the death penalty means a decline in culture.
4. Capital punishment generally causes the heirs to suffer more than the convicts themselves.
5. It is feared that after several national-socialist people have been sentenced to death, many people will be happy about the continuation of the national-socialist spirit.

The choice or establishment of the death penalty to tackle crime is a policy choice. In establishing a policy, people may argue for or against capital punishment. However, after the policy is taken/decided and then formulated (formulated) in law, from the point of view of penal and criminal policies, the death penalty formulation policy is undoubtedly expected to be implemented at the application stage (Nawawi, 2005).

The decision of Constitutional Court, Number 2-3/PUUV/2007, stated that the death penalty is not against the Constitution because the right to live in the spirit of the 1945 Constitution and the history of the Indonesian Constitution is not intended as an absolute and inarguable right. In addition, the International Covenant on Civil Political Rights instrument continues to accommodate the death penalty if the member sees it as the most severe crime and follows the laws in effect at the time. However, later in the decision, the

Constitutional Court gave directions so that the construction of the death penalty in the future pays attention to the following matters (Erdianto, 2014, pp. 156-157).

1. The death penalty is no longer a principal punishment but a unique and alternative punishment.
2. The death penalty can be imposed with a probationary period of ten years which, if the convict has commendable behavior, can be changed to imprisonment for life or twenty years.
3. The death penalty cannot be imposed on minors.
4. Execution of capital punishment against pregnant women and someone who is mentally ill is suspended until the pregnant woman gives birth and the convict who is mentally ill recovers.

On the other hand, few experts and figures oppose the death penalty and rely on a scientific basis for thinking. An Italian national named Beccaria is a classical school figure famous for his vocals against capital punishment. Beccaria opposed the death penalty because the process was carried out terribly against a person accused of killing his child (sometime after the execution, it could be proven that the decision was wrong) (Sumangelipu & Hamzah, 1985, p. 37).

After the fragrance of Beccaria's name sank, the names of expert figures who opposed the death penalty emerged. The names are Ferri, Leo Polak, Modderman and other figures, while in Indonesia, the figures who are very vocal against the death penalty are Roeslan Saleh, J.E. Sahetapy, and Todung Mulia Lubis, who have openly rejected the existence of the death penalty since they were young (as well as other expert figures that the author did not mention one by one). A life sentence is sufficient to protect a person predisposed to committing a crime, according to Ferri, an Italian national who opposes the death penalty (Sumangelipu & Hamzah, 1985, p. 37). Another opinion conveyed by Modderman uses an analogy in rejecting the death penalty, saying, "After all, you are still establishing zoos where wild animals are collected, which are also not impossible to escape from their shortcomings and disturb the security of society. I would be more afraid if I were suddenly caught with such a wild beast rather than being caught with the criminals referred to above." (Sumangelipu & Hamzah, 1985, p. 42).

This opinion is in stark contrast to what happened in Indonesia because a few years after Modderman's opinion was agreed on the abolition of the death penalty, in Indonesia, the death penalty was imposed instead. Based on comparing criminal law, we can see Andi Hamzah's opinion, "In the Indonesian Criminal Code, the death penalty is listed, while in the Netherlands, since 1870, it has been abolished. The reason is that the situation in Indonesia is different from the Netherlands, with thousands of islands, various ethnic groups, and insufficient police force, so a heavier sentence is needed. By itself, Articles relating to the death penalty, such as Article 6 and Article 11 (execution of death penalty), are contained in the WvSI (KUHP) but not in Ned. WvS." (Hamzah, 2008)

Historically, we can conclude that the Dutch's inconsistency in rejecting the death penalty was based on the concept of tyranny to maintain power in the Indonesian colony. Regarding the existence of the death penalty in its correlation with Pancasila, Sahetapy has a different opinion from Andi Hamzah and A. Sumangelipu, who explained that the death penalty is contrary to the basic norms of this country, namely Pancasila. It was based on Article 95 Section (2), even though, at that time, it had been decreed back in the 1945 Constitution (but it should be noted that the UUDS was also born from Pancasila). In addition to relying on these reasons, Sahetapy also stated that capital punishment is a colonial legacy that is inappropriate to continue (as explained above) (Hamzah, 2008).

In the decision of the Constitutional Court in the Request for Material Review of Law Number 22 of 1997 Concerning Narcotics against the 1945 Constitution which states that capital punishment is not against the Constitution, there are four dissenting opinions from the constitutional judges. The judges are Constitutional Justice H. Harjono, Constitutional Justice H. Achmad Roestand, Constitutional Justice H.M. Laica Marzuki, and Constitutional Justice Maruarar Siahaan. In this case, the author cites the reasons of Constitutional Justice Maruarar Siahaan, who rejected the existence of the death penalty:

For the right to life, there are no instructions stating that restrictions on this right can be carried out by eliminating life itself, even though it is recognized and has become part of the human rights of other people which must also be respected; the right to life may be limited because the law requires justice to restore the balance that has been injured. His violation was limiting his movement space by being placed in a particular place and undergoing special mandatory training. The opinion of Constitutional Justice Maruarar Siahaan focuses on the concept of human rights. It is following the development of the rejection of the death penalty today (previously,

the rejection was emphasized on the implementation of cruel executions and the effectiveness of the death penalty). So, it is clear that the problem of the pros and cons of capital punishment is a problem that is not easy to generalize into the same mindset for everyone.

Currently, in the Draft Criminal Code, capital punishment is a specific principal punishment and is constantly threatened with an alternative. Even though it is not included as a basic punishment, capital punishment is still recognized as a particular form of primary punishment. The execution of death row inmates will be carried out before a firing squad following Law Number 2/Pnps/1964 (Presidential Decree Number 2 of 1964) (LN 1964 Number 38), which was stipulated to become Law Number 5 of 1969 concerning Procedures for the Implementation of Death Penalty in Article 2 Section (1) that is if the Minister of Justice does not stipulate otherwise, the death penalty shall be carried out within the jurisdiction of the court which decided at the first level.

The philosophy of punishment based on retaliation is no longer the primary reference in Indonesia. It was confirmed by the Constitutional Court in decision 013/PUU-I/2003: that the non-retroactive principle refers more to the philosophy of punishment on retributive grounds, even though this principle is no longer the primary reference of the criminal system in our country, which refers more to the principle of preventive and educative. It is also in line with RI Law No. 12 of 1995 concerning Corrections, which emphasizes that convicts are not only objects but also subjects who are no different from other humans who can at any time make mistakes or oversights that can be subject to punishment, so they do not have to be eradicated. So, what must be eradicated are factors that can cause convicts to do things contrary to law, decency, religion, or other social obligations that can be subject to punishment.

CONCLUSION

The issuance of capital punishment from the main punishment and became an alternative (exceptional) special punishment, according to Prof. Dr. Barda Nawawi, SH, a member of the Drafting Team for the Criminal Code Bill, is based on three main ideas.

1. First, from the point of view of the objective of the death penalty punishment, in essence, it is not the main or main means to regulate, discipline and improve individuals or society. The death penalty is only a means of exception. So the death penalty is likened to amputation or surgery in the medical field, which is not the primary medicine, but is only the last medicine.
2. Second, the concept of capital punishment as a special punishment departs from the idea of mono-dualistic balance. This idea is oriented towards balancing the public interest or protecting society and paying attention to individual interests or protection. It means that, in addition to protecting the death penalty community, it also pays attention to individual interests, such as provisions for the postponement of the execution of capital punishment for pregnant women and people with mental illness (Article 81 Section (3). Another example is the possibility of postponing the execution of capital punishment, otherwise known as the "conditional death penalty," with a probationary period of 10 years (Article 82 Section (1).
3. Third, the maintenance of capital punishment, even though it is a special punishment, is also based on avoiding demands or reactions from a society that is revengeful or extra-legal. It means that the provision of capital punishment in the Law (UU) is intended to avoid people's emotions. Implementation of capital punishment in the Draft Criminal Code is carried out through several stages. In the first stage, as far as possible, the death penalty is avoided by choosing an alternative punishment in the form of life imprisonment or imprisonment for a specific time, a maximum of 20 years. In the second stage, postponing the death penalty with a probationary period of 10 years is possible. In the postponement of the death penalty, it is possible to change the death penalty to life imprisonment or imprisonment for a maximum of 20 years. In the third stage, the convict can apply for clemency. The death penalty is only carried out if the President denies a request for mercy. If clemency is refused and the death penalty is not carried out for 10 years, the death penalty can be changed to life imprisonment.

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